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

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NETSPHERE, ET AL. (Number 3: 09-CV-0988-F
Plaintiff, (

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vs. (

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JEFFREY BARON, ET AL. (
Defendant. (January 4, 2011

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Hearing on Motion to Vacate Order Appointing Receivership
Before the Honorable Royal Furgeson

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P R O C E E D I N G S :

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THE COURT: Mr. Frye, if you will call the case.

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MR. FRYE: 3:09-CV-0988-F, Jeff Netsphere versus Jeffrey Baron, et al.

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MR. GOLDEN: Good morning, Barry Golden, counsel for the receiver along with receiver, Peter S. Vogel.

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THE COURT: Announcements for Mr. Baron.

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MR. SCHEPPS: Good morning, your Honor. Gary Schepps and Jeffrey Barrett, appellate counsel for

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Mr. Baron.

11

THE COURT: Good morning.

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MR. SCHEPPS: Thank you very much.

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THE COURT: Let's see if we have Mr. Tom Jackson and Mr. Joseph Cox for Quantec Tech or Novo Point.

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09:06 15

MR. GOLDEN: Barry Golden again. I spoke with Mr. Jackson yesterday, and he advised me at the end of the last hearing he was excused and didn't believe that he needed to be here today, and we don't have any issues that I'm fighting with Mr. Jackson over.

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THE COURT: Okay. Great. That's perfect. By the way, the receiver has filed a request to reimburse Mr. Cox.

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23

MR. GOLDEN: Yes, your Honor.

24

THE COURT: That's Mr. Joshua Cox representing Quantec, Novo Point?

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09:07 1 MR. GOLDEN: Yes, your Honor.

2 THE COURT: Explain to me just a minute.

3 MR. GOLDEN: In the receiver order, it states
4 the receiver can retain professionals, including
5 attorneys, for the purposes of the receivership. What we
6 have done is retained Mr. Cox as well as Mr. Eckels, and
7 at some point we're going to finalize a couple of the
8 other Quantec and Novo Point LLC employees and make them
9 receiver professionals. This way, before we pay them we
10 will be filing fee aps. We're doing this to make sure
11 there is transparency with regard to the money we're
12 disbursing.

13 THE COURT: I think after the last hearing they
14 made the receiver aware that Quantec and Novo Point funds
09:08 15 are available.

16 MR. GOLDEN: Yes, what we have now is a joint
17 access account so that Mr. Harbin, who's the manager of
18 Quantec and Novo Point -- he has access as well as the
19 receiver and receiver's counsel. So what we would propose
20 is that Mr. Cox and Mr. Eckels, those are the two
21 attorneys for Novo Point and -- the receiver professionals
22 who are current or former attorneys for Quantec and Novo
23 Point -- we have asked them to be paid, and we have
24 requested that they be paid out of one of the two accounts
25 that are physically for Quantec and Novo Point, the

09:08 1 company bank accounts.

2 THE COURT: I do have the order for Mr. Joshua
3 Cox. Is there a motion for anyone else, Mr. Golden?

4 MR. GOLDEN: The one we filed yesterday, your
5 Honor, for Mr. James Eckels.

6 THE COURT: Yes, sir.

7 MR. SCHEPPS: Your Honor, we object to the Court
8 proceeding on these receiver motions for expense
9 reimbursement for receiver professionals.

10 THE COURT: Thank you very much, sir.

11 MR. SCHEPPS: Thank you.

12 THE COURT: Okay. Then I'll look at the other
13 ones before me.

14 MR. GOLDEN: And to be clear, your Honor, for
09:09 15 those I think -- I'm not sure how we phrased it in the
16 motion, and we can pencil the order how we need to, but
17 those monies for Mr. Eckels and Mr. Cox we believe should
18 come from the Compass Bank accounts which are the LLC
19 accounts as opposed to Mr. Baron's personal accounts.

20 THE COURT: If perhaps you will redo the orders
21 for me. Because that's not clear in the order.

22 MR. GOLDEN: We will do that, and at a break I
23 will hand them to you, your Honor.

24 THE COURT: That would be great. Thank you very
25 much. Okay. For the trustee.

09:10 1 MR. ROOSSIEN: Dennis Roossien for the Trustee.
2 My partners Ray Urbanik, Richard Hunt and Ufa Ufotumana.
3 And the trustee Mr. Sherman is also here.

4 THE COURT: I have you, Mr. Roossien,
5 Mr. Urbanik and Mr. Hunt and Mr. Ufotumana, and of course,
6 the trustee Mr. Sherman.

7 MR. MACPETE: Good morning, your Honor. Happy
8 New Year. John MacPete. And on the phone is Ravi Puri
9 for Netsphere.

10 THE COURT: Mr. Puri, spell your first name for
11 me.

12 MR. PURI: R-a-v-i.

13 THE COURT: Mr. Puri making an appearance here?
14 Is he your cocounsel?

09:11 15 MR. MACPETE: He is an attorney, your Honor, but
16 he's not intending to speak as counsel. He's basically
17 the client representative.

18 THE COURT: The court reporter needs his address
19 and information. You'll get that to her, right?

20 MR. MACPETE: Do you mind if I send it to Kevin
21 and he can forward it on?

22 THE COURT: That will be fine and Kevin can
23 help, too. Anyone else here for appearance today?

24 MR. FERGUSON: Dean Ferguson here on behalf of
25 myself, former attorney for Mr. Baron.

09:12 1 THE COURT: Anyone else here? Is Mr. Baron here
2 this morning?

3 MR. SCHEPPS: No, your Honor.

4 THE COURT: So if he were to be called as a
5 witness, he would not be available? Is that what I
6 understand?

7 MR. SCHEPPS: He doesn't appear on any witness
8 list, your Honor.

9 THE COURT: If I were to call him as a witness
10 he would not be available to me?

11 MR. SCHEPPS: Yes, we could have him here.

12 THE COURT: Okay. Good.

13 MR. SCHEPPS: If the Court so desires.

14 THE COURT: I may consider that at some point in
09:13 15 the hearing.

16 MR. ROOSIEN: Your Honor, I would mention in
17 that regard that Mr. Baron was directed to be here on the
18 17th as that matter was continued. I assumed that matter
19 remained in force. I'm very surprised he's not here.

20 THE COURT: Normally, I expect parties to the
21 case to be present. I don't know why that would not be
22 the case here.

23 MR. SCHEPPS: I believe he wasn't feeling well
24 this morning, your Honor.

25 THE COURT: Well, maybe he can feel better this

09:13 1 afternoon.

2 MR. SCHEPPS: Maybe he would feel better this
3 afternoon, and if he's needed, we have a way to reach him.

4 THE COURT: Thank you, Mr. Roossien. Okay. One
5 of the first orders of business before we begin the
6 presentation is the -- I do have lots of documents in
7 front of me. I also have Mr. Vogel's application for
8 reimbursement of fees of the receiver and the firm Gardere
9 Wynne. I do have the application for Mr. Eckels. And we
10 have to talk about the application under seal.

11 We have to talk about the letter I received
12 yesterday from Mr. Thomas about his representation of
13 Mr. Baron in bankruptcy.

14 I have the motion for order confirming propriety
09:16 15 of fund management that we will have to take up. I also
16 want to talk about the Trustee's request that I take
17 judicial notice, and that's basically that I take judicial
18 notice of all of the lawsuits that have been -- all the
19 attorneys that have been involved in all the lawsuits for
20 Mr. Baron. Yes, Mr. Roossien.

21 MR. ROOSSIEN: Yes, your Honor, we have tendered
22 a set of exhibits. They were actually the set of exhibits
23 that we attached to our response sometime ago now. And
24 they are either pleadings from this Court, pleadings from
25 other courts or there are a few that summarize things that

09:17 1 are of record in various courts, and so our request is
2 that the Court take judicial notice of those. I'm
3 prepared to do that in due course in the case when we get
4 there.

5 THE COURT: Excellent.

6 MR. SCHEPPS: We object to the Court taking
7 judicial notice of the lawsuits because they are not
8 relevant to these proceedings, and we also object to the
9 Court taking judicial notice of the exhibits attached to
10 the response to our motion to vacate or stay.

11 THE COURT: Well, you will have an opportunity
12 to do that when they are presented through the testimony.

13 MR. SCHEPPS: Also, we would like to reurge our
14 objection to the Court taking up any matters of the
09:18 15 receiver motions for reimbursement or fund management
16 because Mr. Lyon is not representing Mr. Baron. And the
17 Court is taking his money and said he can't hire an
18 attorney, and he has nobody representing him with respect
19 to the receiver's motions. I'm only here on the very
20 narrow issue for the appeal, and I'm appearing under Rule
21 8(a) of the Federal Rules of appellate procedure. So Mr.
22 Baron does not have any anybody representing him with
23 respect to the motions that are made, and we believe by
24 looking at the motions that came through on PACER that the
25 receiver is attempting to commingle Mr. Baron's personal

09:18 1 funds and personal assets with corporate assets to where
2 he's only the beneficiary of certain trusts that own other
3 LLC's and corporations, and he has no representation with
4 respect to that.

5 THE COURT: It sounds like to me you are
6 representing him with respect to that.

7 MR. SCHEPPS: No, I'm not. I'm only here on the
8 very narrow issue of motion to vacate and stay. I'm only
9 pointing out what came through the filings in the last few
10 days.

11 THE COURT: Mr. Baron made no application to me
12 to have counsel for these matters.

13 MR. SCHEPPS: Mr. Lyon is supposed to be
14 representing him, but Mr. Lyon has sent an e-mail
09:19 15 correspondence to Mr. Baron over Christmas and said that
16 he's specifically not representing him in any matters
17 other than with respect to the global settlement. The
18 Court has taken his money. He doesn't have a lawyer, and
19 the receiver has made a bunch of motions concerning
20 Mr. Baron's money, and he doesn't have an attorney to
21 represent him on that.

22 THE COURT: We have counsel who just entered the
23 courtroom.

24 Mr. Lyon, how are you?

25 MR. LYON: I got stuck on the train. I

09:20 1 apologize to the Court.

2 THE COURT: Mr. Lyon, I'm being told by
3 Mr. Schepps that your representation of Mr. Baron is
4 limited in some way

5 MR. LYON: That's correct. Last time I thought
6 my appearance was here just to complete the settlement
7 agreement out of the bankruptcy court because when the
8 trustee got the documents one of the documents was an
9 order dismissing this matter. I signed that document at
10 that time assuming this thing was going to be completed
11 pretty quickly. Obviously, it was not. And at that point
12 in time I had not been paid for the longest period of
13 time. I was here just to complete the settlement
14 agreement. I'm willing to withdraw at this time. I'm not
09:21 15 being paid. It keeps costing me time and money to come
16 down here.

17 THE COURT: I understand that.

18 MR. MACPETE: As you may remember, at the end of
19 the last hearing Mr. Lyon brought up the issue of it was
20 his signature and maybe we could have Mr. Baron have
21 someone to sign a new one and, your Honor wanted Mr. Lyon
22 to stay on being counsel of record so the original
23 dismissal order he signed would still be good.

24 MR. LYON: Your Honor, I'm at the mercy of this
25 Court. Whatever the Court wishes to do. I'm here at the

09:21 1 Court's favor.

2 THE COURT: I appreciate that.

3 MR. URBANIK: Your Honor, as you probably are
4 aware, the bankruptcy approved the big settlement
5 agreement, the one that ended four years of litigation and
6 seven lawsuits on July 28. Judge Jurnigan scheduled a
7 conference to implement and make sure parties are
8 cooperating four times in August and four times in
9 September to make surely the parties were cooperating.

10 The reason this litigation was not dismissed was because
11 Judge Jurnigan wanted all the parties to complete all the
12 parts of the settlement agreement. And if anything was
13 not completed, the settlement agreement would collapse,
14 and we would be back in front of you in the original
09:22 15 lawsuit filed May 28, 2009 by Mr. MacPete. We never got
16 the settlement completed. Baron didn't pay his lawyers,
17 and they started coming to us for money. We settled for a
18 certain amount. We didn't settle for a certain amount
19 plus the legal fees for nineteen lawyers. So Judge
20 Jurnigan with her consent we didn't dismiss this case
21 because we thought we might very well be up here, and here
22 we are. The special master was terminated. Some of the
23 hearings where the Judge Jurnigan warned Mr. Baron were
24 September 15, September 22, September 30, October 8, and
25 then she issued her report and recommendation October 12.

09:23 1 This case was never dismissed because we couldn't get the
2 settlement done. They were all coming to us saying we
3 weren't paid by Mr. Baron. Now we want the money from
4 you. That's why this case wasn't dismissed.

5 As far as Mr. Lyon was concerned, he's been in
6 and out. I got a call from him November 19th he was
7 resigning, two days after Martin Thomas resigned and two
8 days before Stan Brewer resigned. The judge issued a
9 report recommendation because the lawyers kept coming in
10 and out, and she called it a cavalcade of lawyers. What
11 was happening, Judge, there was a new set of sub rosa
12 class of lawyers coming in to say they were in-house
13 counsel because they knew they couldn't come into court
14 and appear before Judge Jurnigan. Then you had a layer of
09:24 15 lawyers quitting and then a new lawyer. One of the
16 lawyers we never saw, Mr. Barry, he sued Mr. Baron for
17 fraud. So all of this was happening right before the
18 receivership was created. Through the lawyers resigning,
19 the mediation process for the law firm fees was
20 essentially sabotaged. Stan Broom was supposed to
21 represent Mr. Baron in the law firm claims. There were
22 somewhere between twelve and fifteen. These lawyers
23 weren't paid by Mr. Baron. He resigned the 22nd. No one
24 was cooperating with Mr. Vogel who was still special
25 master. No one objected to Mr. Vogel overseeing the legal

09:24 1 disputes, the mediator. Mr. Schepps called me this
2 morning and said he's going to seek to strike Judge
3 Jurnigan's order of October 12th, and I said "It's too
4 late," and he said "I wasn't the lawyer then; I'm the
5 lawyer now." So as far as Mr. Lyon is concerned, I don't
6 know if he's in or out, but Mr. Schepps has filed about
7 ten motions in this case. The reason this case wasn't
8 dismissed is the reasons that Baron has sabotaged the
9 settlement agreement.

10 THE COURT: Thank you. Mr. Lyon, I'm going to
11 let you withdraw. Mr. Schepps, you are here for all
12 purposes. That's it. I'm considering you here for all
13 purposes. You filed objections to all sorts of things
14 involving receivership applications and so forth. That's
09:25 15 the way it's going to be. That's the way it is.

16 MR. SCHEPPS: Who is going to pay me?

17 THE COURT: I'll probably end up paying you at
18 the end of the case.

19 MR. SCHEPPS: Your Honor, like I said at the
20 last hearing, I don't believe you have subject matter
21 jurisdiction to pay me. There is a brand new case from
22 the Fifth Circuit, September 3rd, 2010 and the court of
23 appeals said the district courts do not have jurisdiction
24 to pay attorneys' fees.

25 THE COURT: I think that case is inapplicable to

09:26 1 this matter. So you are here for all purposes.

2 Okay. Now, it's time for me to hear from the
3 receiver and the trustee.

4 MR. GOLDEN: Your Honor, Barry Golden, the
5 receiver. To be clear, the receiver is neither the movant
6 or respondent on this motion to stay. The receiver will
7 appear as a receiver if called by either side.

8 THE COURT: That will be fine. Okay,
9 Mr. Roossien.

10 MR. ROOSSIEN: Your Honor, by and large, I would
11 like to stand on the papers that we have put forward with
12 the Court.

13 THE COURT: Well, what I would like to do is put
14 those papers in as exhibits in this hearing through a
09:27 15 witness.

16 MR. ROOSSIEN: What I mean is we have filed a
17 response that sets forth our position with regard to the
18 matters before the Court, and at the last hearing I gave a
19 short summary of that with regard to the additional papers
20 that we have presented that are matters of record. We
21 have an exhibit binder to be able to present to the Court.

22 THE COURT: Mr. who?

23 MR. ROOSSIEN: We have an exhibit binder to put
24 before the Court, and then we have several witnesses
25 through whom we can present those.

09:27 1 THE COURT: Perfect.

2 MR. ROOSSIEN: And then with regard to the
3 witnesses, it's our understanding that Mr. Baron's
4 counsel -- Mr. Baron rather -- intends to call nine
5 witnesses, and those would be -- they envelope our witness
6 list. So it being his motion, I suspect he's able to
7 proceed on that.

8 THE COURT: Excellent. By the way, Mr. Schepps,
9 if the Fifth Circuit says I can't pay you, you may be
10 working for free, but you will not be the last lawyer for
11 Mr. Baron who worked for free.

12 MR. SCHEPPS: It wouldn't be the last time I
13 have ever worked for free in my legal career.

14 THE COURT: That's a good spirit.

09:28 15 MR. SCHEPPS: We have a couple of housekeeping
16 matters we would like to take up, if I may.

17 THE COURT: Sure.

18 MR. SCHEPPS: We filed this morning a notice to
19 strike the notice of transmittal regarding withdrawal of
20 reference, and I believe it's Document 201. We also filed
21 a motion to vacate the order adopting Judge Jurnigan's
22 report. We filed that this morning.

23 THE COURT: Let's start over. You filed a
24 motion to strike what?

25 MR. SCHEPPS: Strike the notice of transmittal

09:28 1 of the master's report that was submitted to the Court by
2 Judge Jurnigan.

3 THE COURT: You filed this this morning, notice
4 of motion to strike transmittal and motion to strike the
5 special master report.

6 MR. SCHEPPS: Yes, we would like to briefly
7 present them so that we have a clean record for the court
8 of appeals.

9 THE COURT: Okay.

10 MR. SCHEPPS: On the motion to strike --

11 MR. URBANIK: Your Honor, those were just
12 received this morning. We have not had an opportunity to
13 review them and prepare a response. I don't think the
14 matters are ripe for hearing this morning. They could be
09:30 15 filed weeks ago. In fact, Judge Jurnigan's order was
16 October 12. I asked Mr. Schepps "Why didn't you file it
17 then?" And his answer was "We weren't his counsel."

18 THE COURT: Well, you can respond. I think the
19 rule is 21 days. And I'll allow you to respond, and then
20 we'll have a hearing on these motions.

21 MR. SCHEPPS: Thank you, Judge.

22 THE COURT: Anything else?

23 MR. SCHEPPS: Not unless we're going into the
24 entire motion to vacate and stay.

25 MR. URBANIK: Your Honor, I think all the

09:30 1 attorneys should understand better your time limits and
2 your schedule, and they have two hours, and maybe we have
3 two hours? Can you give us guidance on how much time we
4 have available?

5 THE COURT: We have available today. I'll keep
6 an eye on the clock. But if we need -- Can you do your
7 job today?

8 MR. ROOSSIEN: Your Honor, we can easily do our
9 job today. I would be interested to know whether or not
10 Mr. Baron intends to push this beyond today.

11 MR. SCHEPPS: Yes, we can do our job today.

12 MR. URBANIK: And I believe Mr. Roossien intends
13 to speak about Mr. Baron. We were intending on call him,
14 and we're surprised he's not.

09:31 15 THE COURT: We'll see him at 1:30.

16 MR. BARRETT: Your Honor, I'm just assisting.
17 I'm not making an appearance in this matter with
18 Mr. Schepps, and I'm just assisting Mr. Schepps.

19 THE COURT: What does that mean?

20 MR. BARRETT: It means I was originally brought
21 into this -- I haven't been paid anything either. But I
22 was asked by Mr. Schepps to assist in the last hearing
23 which I did, and because it was turned into another
24 hearing, I just agreed to assist in this hearing as well.
25 So I would ask not to be held as Mr. Baron's counsel as

09:32 1 well in this matter or bound as his counsel as well and
2 just proffer to the Court that I'm assisting Mr. Schepps
3 in this matter.

4 THE COURT: Are you going to ask any questions
5 of any witness?

6 MR. BARRETT: I was going to. I certainly
7 prepared for this hearing.

8 THE COURT: Normally that would be an
9 appearance. It's kind of like you have your fingers
10 crossed behind your back when we're on the
11 playground. I'm not for sure how you can participate in
12 the hearing and not be counsel of record. Maybe there is
13 some exceptions to the Rule that I'm unaware of. I have
14 only been doing this forty years, and it may be something
09:32 15 happened in those forty years that I have missed. I do
16 appreciate your being here. I do know that you are not
17 being paid. As I say, there is a long line of lawyers out
18 there that have not been paid.

19 MR. BARRETT: In that respect, I will say I have
20 spent a week and a half with my client preparing for this
21 hearing, and if that's the Court's position I'm not going
22 to ask any questions on this matter. We're going to
23 proceed solely on the appeal in that case.

24 MR. MACPETE: Your Honor, could I make a
25 suggestion?

09:33 1 THE COURT: You can. You know, I have only been
2 a lawyer for forty plus years. I've been in lots of
3 lawsuits. I have never seen a situation where lawyers
4 come in limiting their appearance in forever. Forty years
5 I have never seen this.

6 MR. BARRETT: Well, I'm only appearing here for
7 appellate purposes.

8 THE COURT: If you are only here appearing for
9 appellate purposes, you have nothing to do at all.

10 MR. BARRETT: Well, your Honor has said we will
11 be working for free in this case.

12 THE COURT: Well, my goal has been to set up
13 this receivership because I think your client, Mr. Baron,
14 has completely abused my Court, the bankruptcy court and a
09:34 15 couple of dozen lawyers and abused the legal process, and
16 so I have been trying to figure out a way that I could
17 remedy this terrible problem. And so I've got again
18 lawyers coming before me who haven't been paid. I
19 understand that.

20 MR. BARRETT: And your Honor, respectfully, I
21 believe the evidence that I have spent a week and a half
22 on would show differently than what you have formed an
23 opinion on.

24 THE COURT: Let me tell you, I didn't form an
25 opinion. It's fact. It has been in my Court. I have

09:35 1 witnessed things in my Court. So I'm not talking about
2 opinion. If you're here telling me that Mr. Baron who
3 went through five or six lawyers in a very short period of
4 time in my Court, if that didn't happen --

5 MR. BARRETT: That's not what I said, your
6 Honor.

7 THE COURT: What did you say?

8 MR. BARRETT: Well, your statement earlier was
9 with respect to Mr. Baron's conduct.

10 THE COURT: Yes, that I saw in my courtroom.

11 MR. BARRETT: Okay. I understood it to be based
12 on Judge Jurnigan's report.

13 THE COURT: Well, Mr. Baron was in my courtroom.

14 MR. BARRETT: Okay. What did he do in your
09:35 15 courtroom, your Honor?

16 THE COURT: It's in the record. Why don't you
17 read the record?

18 THE COURT: You were here the whole time?

19 MR. BARRETT: I was.

20 THE COURT: And you didn't see any different
21 parade of lawyers?

22 MR. BARRETT: Your Honor, I have seen a parade
23 of lawyers, yes, I have.

24 THE COURT: Did you see them in my courtroom?

25 MR. BARRETT: I think that Mr. Baron does have a

09:36 1 problem with lawyers, yes.

2 THE COURT: And do you understand that the
3 problem became so acute that it was creating an
4 obstruction of the legal process? Did you ever witness
5 that? I witnessed that.

6 MR. BARRETT: I do, your Honor, but this case
7 settled.

8 THE COURT: This case did not settle during my
9 time in the proceedings. It did not settle.

10 MR. BARRETT: Well, Mr. Baron was required to
11 execute a document which he did.

12 THE COURT: In Judge Jurnigan's court

13 MR. BARRETT: In Judge Jurnigan's court, that's
14 correct, which he did. And Mr. Urbanik is holding the
09:36 15 dismissal papers, and he has not filed those papers. So
16 here we are now with other lawyers perpetuating the case
17 and getting paid on the case. I think it's a combination
18 of Mr. Baron having a chronic lawyer problem and lawyers
19 also running up fees in the case.

20 THE COURT: Well, Mr. Barrett, you are here for
21 all purposes. I'm glad to have you here. You look like a
22 good lawyer. So you are here for all purposes.

23 Mr. Urbanik, is there anything you want to say?

24 MR. URBANIK: Your Honor, there is two different
25 worlds here, reality and then Mr. Baron's world. Everyone

09:37 1 was trying to complete the settlement, and he did
2 everything he could to fire his legal team, fire the
3 lawyers and not participate in the mediation, and then the
4 receivership was created. In nothing they have filed with
5 you or the Fifth Circuit do they acknowledge the two-year
6 history of chaos created through the hiring and firing of
7 the lawyers. They filed a number of pleadings with the
8 Fifth Circuit and do not mention any of the warnings.
9 There were twenty, including from this Court in the
10 beginning of the litigation. They are in their own world,
11 attacking lawyers instead of dealing with the facts.
12 We're not in Baron's world; we're in reality. We need to
13 get the witnesses on to explain to the Court and create
14 the record why the receivership was created. There has
09:38 15 not been any pleading filed by this team that dealt with
16 any of the facts. None of the facts. They ignore them.
17 They misled the Fifth Circuit. They wrote in a pleading a
18 week ago that you declined to rule. That was deceptive.
19 It was sanctionable. Very unprofessional behavior. And
20 it's continuing to this day.

21 THE COURT: Yes, Mr. MacPete.

22 MR. MACPETE: I have one other point that I want
23 your Honor to keep in mind, and that is I think Mr.
24 Baron's legal team is taking a narrow view of what your
25 case is, your Honor. Your case is not limited to the case

09:39 1 I originally filed and you entered a preliminary
2 injunction in. Your case encompasses not only that aspect
3 but essentially the oversight of Judge Jurnigan's
4 bankruptcy case. I know you are aware of that, but I
5 wanted to state it out loud that your case is not limited
6 to my case but Judge Jurnigan's case and your oversight of
7 Mr. Baron's conduct in that case as well as this one that
8 you personally witnessed.

9 THE COURT: I agree. And Mr. Barrett and
10 Mr. Schepps, I'm glad you are here. You are here for all
11 purposes, and you represent Mr. Baron.

12 MR. BARRETT: Yes, sir.

13 THE COURT: Ready, Mr. Roossien?

14 MR. ROOSSIEN: Yes, your Honor, I am delighted
09:39 15 to call witnesses. However, it's not my motion.

16 MR. SCHEPPS: May I make an opening statement?

17 THE COURT: Okay.

18 MR. SCHEPPS: We're going to request a ruling as
19 a matter of law. I wanted to point a few things out to
20 the Court.

21 THE COURT: Okay. Briefly.

22 MR. SCHEPPS: Briefly. There is no property
23 interest that's been invoked in this case. Receiverships
24 are specifically to make further dispositions. Without
25 it, as a matter of law, the Court may not order a

09:40 1 receivership against an individual. This Court has taken
2 personal jurisdiction over Mr. Baron's body, over his
3 money, credit cards, his --

4 THE COURT: Actually, I haven't taken
5 jurisdiction over his body. If I had he would be in jail.

6 MR. SCHEPPS: That's what the receiver order
7 says.

8 THE COURT: If I took jurisdiction over his
9 body, he would be in detention.

10 MR. SCHEPPS: Over the receivership party. And
11 he's a receivership party.

12 THE COURT: I have taken over his property, but
13 not his body. Do you understand if I took possession of
14 his body, he would be in detention which I actually
09:41 15 considered several times? So please understand that I
16 have not taken custody of his body.

17 MR. SCHEPPS: Thank you. Your Honor, the
18 receivership is a special remedy that is allowed only as a
19 step only to achieve a further disposition of final
20 property. In Gordon versus Washington 295 US 30, the
21 Court held there is no occasion for a court to appoint
22 receiver authority on property too which there was no
23 further request for disposition. That's the occasion here
24 in this Court. There is no request for further
25 disposition. And the Court has entered a receivership for

09:42 1 the sake of a receivership without any request by any
2 party to make a further disposition of receivership
3 property. So that makes the receivership an end instead
4 of a means to reach an end. And that's the fundamental
5 problem with the receivership. And this Court does not
6 have subject matter jurisdiction over disposition of
7 Mr. Baron's asset, nor the fee disputes with his prior
8 attorneys. In the case of Griffin versus Lee that was
9 handed down just a couple of months ago, the court said if
10 an attorney has a fee dispute with a client in a case in
11 which he represented the client in a federal matter -- the
12 Fifth Circuit said that's a state court problem and that
13 the trial court has no subject matter jurisdiction to rule
14 on an attorney fee application, and we believe that the
09:43 15 receivership has been put in place as a vehicle to pay
16 attorneys and circumvent the Rule that the Court doesn't
17 have subject matter jurisdiction. And we believe it's for
18 an improper purpose and the Court does not have
19 jurisdiction over Mr. Baron's personal assets.

20 And imposition of a receivership, the third
21 point, your Honor, requires due process. And without due
22 process the receivership is void ab initio. That means
23 it's void in the rendition of the receivership order.
24 It's an extraordinary remedy to be employed with the
25 utmost caution, and the district court has the discretion

09:44 1 to appoint a receiver only after a finding is made showing
2 the necessity of a receivership. And there was none in
3 this case. There was no opportunity for Mr. Baron or
4 Mr. Baron's attorneys to appear. There was no hearing
5 held. There were no affidavits attached to the motion for
6 receivership. There were no declarations attached to the
7 motion for receivership. There were no findings made in
8 the order for receivership. And it completely and totally
9 lacks any features of due process. And under the
10 Worldwide Volkswagen case that means it's void in the
11 rendition, and the court should immediately vacate the
12 order because it was issued without due process.

13 And furthermore, the reason for the receivership
14 motion was so that it would bar Mr. Baron from hiring
09:45 15 attorneys. It would strip him of his assets, Number 13,
16 in order to prevent him from freely hiring attorneys. And
17 hiring an attorney of your choice is a Constitutional
18 right, and he has been deprived of that. And right now we
19 move the Court for an order as a matter of law vacating
20 the receivership in the same vein as a motion for a
21 directed verdict because it was issued without -- it was
22 issued without due process. And so we would request that
23 the Court make a ruling right now and as a matter of law
24 on whether to vacate it or not.

25 THE COURT: Well, you know, first, it's not a

09:46 1 motion for directed verdict. It's a motion for judgment
2 as a matter of law which takes place after evidence is
3 presented. But thank you very much. I'll hear from
4 Mr. Roossien.

5 MR. ROOSSIEN: Your Honor, a couple of things.
6 I believe your Honor has the ability to limit opening
7 statement, and it would be nice to get to the witnesses.
8 We had a lot of discussion last time and didn't manage to
9 get there. I hope we can get to calling a few witnesses
10 today.

11 THE COURT: As soon as you finish.

12 MR. ROOSSIEN: Outstanding. I will be brief. I
13 believe there has been due process. I pointed this out
14 before, and obviously with regard to policing the docket
09:47 15 of this Court and the bankruptcy court this Court has
16 jurisdiction ancillary too which the Court can have a
17 receiver, and once the receiver is in place, there are a
18 whole host of matters that come before the Court, and we
19 appreciate the Court's patience in that regard, and we'll
20 let them call witnesses.

21 THE COURT: First witness.

22 MR. BARRETT: We call Gary Lyon, and we invoke
23 the rule.

24 THE COURT: Who are your witnesses?

25 MR. BARRETT: Actually we call Ray Urbanik

09:47 1 first. The Court indicated previously the Court will
2 withhold a finding as to Ray Urbanik's testimony until the
3 end of the hearing. And I would just point out to your
4 Honor that Mr. Urbanik has filed a sworn application in
5 the case. He's therefore a fact witness, and if the Court
6 were to deny Mr. Urbanik's testimony, then we ask for a
7 specific order denying relief, and then we would, of
8 course, ask for an offer of proof from Mr. Urbanik.

9 THE COURT: Mr. Urbanik's testimony, if needed,
10 will be the last witness. I have control of the Court and
11 the order of the witnesses.

12 Now, you say you want to invoke the Rule.
13 First, Mr. Urbanik is sitting here as counsel, so he's not
14 under the rule. Who are you invoking the rule for?

09:49 15 MR. BARRETT: Gary Lyon, Gerritt Pronske, Peter
16 Vogel.

17 THE COURT: You understand Mr. Vogel is the
18 receiver. He's a party. He's here as the receiver. He
19 cannot be placed under the Rule. Mr. Sherman is the
20 Trustee. He cannot be placed under the rule. So who else
21 do you wish to place under the Rule?

22 THE COURT: Mr. Chesnin. Is he here.

23 MR. CHESNIN: Here.

24 THE COURT: Thank you.

25 MR. BARRETT: Dean Ferguson. Mr. Ferguson is

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here. Is Dr. Tetford here? And Mr. MacPete.

THE COURT: Mr. MacPete is counsel, and he's not under the Rule. So the two gentlemen, Mr. Chesnin and Mr. Ferguson, they have asked you be under the Rule. Are you an attorney Mr. Chesnin

MR. CHESNIN: Yes, sir.

THE COURT: These are fact witnesses?

MR. BARRETT: Yes and I am going to hurry it up. I'm not going to prolong this.

THE COURT: Mr. Chesnin, I normally don't put lawyers under the Rule, but if you and Mr. Ferguson would wait outside.

MR. FERGUSON: Your Honor, if I may bring my information forward.

THE COURT: Yes, sir. Anybody else in the courtroom who's to be called as a witness?

Mr. Lyon is the first witness. If you will please come forward, Mr. Lyon.

(Sworn)

GARY LYON

DIRECT EXAMINATION

BY MR. BARRETT:

Q State your name, sir, for the record?

A Gary G. Lyon.

Q How are you employed?

09:51 1 A Presently I'm not employed.
2 Q Back on or about -- Oh, let's say, August of
3 2010, how were you employed?
4 A At that time I was employed under a contract
5 with Jeffrey Baron.
6 Q And in what capacity was that contract?
7 A At that time I was general counsel.
8 Q For whom?
9 A Mr. Baron.
10 Q In what capacity?
11 A Just Mr. Baron's personal counsel.
12 Q For what entity?
13 A It was just for Mr. Baron. I was not working
14 for Ondova or any of the LLC's or the Trust. Just for
09:52 15 Mr. Baron.
16 Q Doing what?
17 A Doing general legal work. Handling any
18 particular filings he needed filed, document review.
19 Q In the bankruptcy court?
20 A In the bankruptcy court and also this Court.
21 Q So you were involved in the bankruptcy?
22 A That's correct.
23 Q And in this Court?
24 A Yes.
25 Q And that was the bankruptcy of Ondova?

09:52 1 A Ondova Limited Company.

2 Q So you weren't involved in Ondova?

3 A Yes, sir.

4 Q And in fact were you also -- Were you also
5 ordered at some point to attend a mediation subsequent to
6 that?

7 A I do not recall being ordered to attend a
8 mediation, no, sir.

9 Q You don't recall that?

10 A No, sir.

11 Q Did the settlement agreement, in fact, require
12 agreed orders of dismissal of the case be executed within
13 two days after the transfer date?

14 A Yes, sir.

09:53 15 Q And in fact, was that transfer date
16 approximately August 5th, 2010?

17 A I don't recall the date.

18 Q Okay. And to your knowledge, did Jeff Baron
19 comply with that?

20 A To my knowledge, he did.

21 Q And that was the only stipulation in the
22 settlement agreement that he complied with, correct?

23 A He also was required to sign as trustee of the
24 Day Star Trust which he was. We also negotiated a
25 settlement where he was to sign for the -- There is

09:54 1 another trust. It was a trust that was over one of the
2 other -- It was the trustee of the domain Jamboree. We
3 worked that settlement. He was not actually the trustee
4 at the time. We don't know for sure. We worked out a
5 settlement where the Court would allow him to sign if the
6 last known manager of the trust was not available.

7 Q Was that actually in the settlement agreement?

8 A (No response).

9 Q Were those subsequent things you talked about in
10 the settlement agreement?

11 A The subsequent things were in the settlement
12 agreement, but we actually announced that before the Court
13 on September 15th, September 21st.

14 Q But the only stipulation in the settlement
09:55 15 agreement was that he execute within two days after the
16 transfer date the agreed orders of dismissal, correct?

17 A That's correct to the best of my recollection.

18 Q And he did that, correct?

19 A I think he didn't do it within two days. In
20 fact, it took several days to get him to sign.

21 Q Oh, really. How many days did it take?

22 A I do not recall. I have to review my e-mails.

23 Q All right. Do you know approximately when that
24 e-mail would have been?

25 A There were several e-mails back and forward with

09:56 1 Jeff trying to get him to sign. Dean Ferguson was also a
2 part of that.

3 MR. BARRETT: May I have a second, your Honor?

4 THE COURT: Yes, sir.

5 BY MR. BARRETT

6 Q Okay. You didn't bring your e-mails down, did
7 you?

8 A It would take me ten to fifteen minutes to get
9 to them. But I do have my computer with me.

10 Q During a break, would you mind seeing if you can
11 find an e-mail that says when that settlement agreement
12 was required to be signed and when in fact Jeff signed it?

13 A Yes, sir.

14 Q And did Jeff pay you your attorneys' fees?

09:57 15 A Not completely.

16 Q You signed a settlement agreement with him,
17 didn't you?

18 A That's correct. I signed it for him because his
19 other attorney has withdrawn.

20 Q You were satisfied?

21 A No.

22 Q With the settlement agreement?

23 A I was satisfied with the settlement agreement,
24 but that has nothing to do with my fees.

25 Q You got paid what you agreed to?

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LYON - DIRECT - BARRETT

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09:58 1 A No, I did not.

2 Q Did you didn't agree with that settlement?

3 THE COURT: Excuse me. Did the settlement set
4 forth the legal fee agreement of Mr. Lyon in the
5 settlement agreement?

6 THE WITNESS: No, sir, it did not, your Honor.

7 BY MR. BARRETT:

8 Q It was a separate settlement, correct?

9 A No.

10 THE COURT: How many settlement agreements are
11 you talking about?

12 MR. BARRETT: Well, I believe Mr. Lyon settled
13 his attorneys' fees separate from the settlement
14 agreement.

09:58 15 THE COURT: Well, I need to know the settlement
16 agreements. So you are talking about the overall
17 settlement agreement is one settlement agreement.

18 MR. BARRETT: Yes, your Honor.

19 THE COURT: And then you say that Mr. Lyon and
20 Mr. Baron entered into a separate settlement agreement.

21 MR. BARRETT: I'm very sorry. I was not clear
22 on that.

23 THE COURT: Why don't you clarify that?

24 BY MR. BARRETT

25 Q Did you and Mr. Baron enter into a separate

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LYON - DIRECT - BARRETT

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09:59 1 settlement agreement for attorneys' fees?

2 A I did at the time based upon facts that
3 Mr. Baron gave that I have since found out were not true.

4 Q But you did settle for attorneys' fees?

5 A For August and September. I have not settled
6 for October or November.

7 Q How much did you get paid?

8 A Four thousand dollars.

9 Q Is that all you got paid?

10 A That's all I got paid for August and September.

11 Q What did you get paid total for all the work you
12 did?

13 A \$26,500.

14 Q Approximately?

09:59 15 A That's close. There would be expenses in there.

16 I don't want to be exact, but that was expenses, too.

17 Q And how long did you represent Mr. Baron?

18 A My representation, as I told Sid Chesnin, was
19 not done until I withdrew from these cases. So
20 effectively to today.

21 Q You're counting today?

22 A And I have not done much work for him in October
23 and November.

24 Q How long did you actively represent him?

25 A Through October and I have to get the e-mails.

10:00 1 Q Starting when to when?

2 A Starting April 25th.

3 Q Oh, really. Let's talk about that. Do you have
4 your billing statements with you?

5 A On the computer I do.

6 Q They would be on the computer?

7 A Yes, sir.

8 Q And you can access those as well?

9 A Yes, sir.

10 Q Would you mind to review those on the break as
11 well?

12 A Yes, sir.

13 MR. BARRETT: We will pass the witness.

14 THE COURT: Mr. Roossien.

10:00 15 CROSS EXAMINATION

16 BY MR. ROOSSIEN:

17 Q Mr. Lyon, did Mr. Baron ever ask you to find a
18 way out of the settlement agreement approved by the
19 bankruptcy court last summer?

20 A Several times prior to being signed, yes.

21 Q What do you mean prior to being signed?

22 A Prior to signing the settlement agreement there
23 were several times he asked to figure out a way -- He did
24 not want to do this.

25 MR. BARRETT: Objection, your Honor.

10:01 1 THE COURT: You have opened the door so wide.
2 You asked if he agreed about his fees in settlement. He
3 said no. Mr. Baron lied to him.

4 MR. BARRETT: That doesn't open the door to
5 attorneys' fees. We object to attorney-client privilege.

6 THE COURT: Your objection is overruled.

7 MR. BARRETT: Based upon Constitutional grounds
8 of attorney-client privilege.

9 THE WITNESS: Your Honor, at this time, I would
10 ask that the receiver waive my rule, and it's under the
11 purview of the receivership. I worked at the FDIC for a
12 long time and we could waive attorney-client privileges
13 that were done prior to the receiver. If the receiver
14 would waive my attorney-client privilege that would be
10:02 15 fine.

16 THE COURT: Well, I believe the door has been
17 opened, and the attorney-client privilege has been waived
18 based upon Mr. Barrett's questions. Mr. Barrett waived
19 the attorney-client privilege as to all of these witnesses
20 as he proceeds.

21 THE WITNESS: Thank you, your Honor.

22 BY MR. ROSSIEN:

23 Q Could you tell us what you know about
24 Mr. Baron's efforts to get out of the settlement agreement
25 in the bankruptcy court?

10:02 1 A A number of times comments about the oppressive
2 nature of the settlement agreement.

3 MR. BARRETT: May I have a standing objection?

4 THE COURT: You may.

5 A Other times it was issues brought up about a
6 particular fact. And a lot of those were true concerns,
7 and I understood them, and we attempted to resolve those
8 concerns with deliberate mediation and settlement hearings
9 and things like that. But in every way, Jeff was not
10 happy with the settlement, not happy that they were taking
11 his money away, not happy that they were controlling his
12 entities or not happy about a number of things. It was
13 what I was directed. Never an e-mail. Never in an e-mail
14 but constant phone calls, long phone calls, about his
10:03 15 problems with the settlement, problems with everything.
16 They were taking away his e-mails, his domain names and
17 everything, and I could understand his concern.

18 Q Was that up to the time you represented him?

19 A Up to the date we signed the settlement
20 agreement.

21 Q Which was when?

22 A The signature went in August. There was
23 signatures in September. Some we missed. So it's a fluid
24 date here. I'm trying to remember the exact date. But I
25 don't recall. I can find out.

10:04 1 Q It continued at least into September; is that
2 fair?

3 A Yes.

4 Q And there were signatures not just of Mr. Baron
5 individually but also certain trusts for which he was able
6 to sign; is that correct?

7 A Just two trusts that he signed.

8 Q There was some discussion about his
9 authorization to sign on behalf of those trusts? For
10 example, Day Star?

11 A Day Star I never had a problem with because we
12 found the Day Star trusts. I never found the documents
13 for the other trusts. So I was somewhat concerned with
14 Jeff signing, and in light of the fact that we could not
10:04 15 find a previous manager, and because I had some concerns
16 because Netsphere individuals had signed for that trust, I
17 still to this day have concerns over that signature. But
18 obviously the point is to bind what was an entity that had
19 an asset that was essentially valueless.

20 Q There was an additional signature that was
21 needed to conclude the settlement agreement; is that
22 correct?

23 A That's correct.

24 Q When was that signature finally affixed? A
25 month would be fine.

10:05 1 A It was in September. Mr. MacPete or Mr.
2 MacPete's client would know probably off the top of their
3 head.

4 Q And with regard to Day Star, this is a trust --
5 correct me if I'm wrong -- that Mr. Baron is both the
6 trustee and beneficiary of. Is that correct?

7 A That's correct.

8 Q And even to this day, to your knowledge, Day
9 Star would be a trust that Mr. Baron would control. Is
10 that correct?

11 A Well, would manage, yes.

12 Q In other words, he's the trustee, correct?

13 A Correct.

14 Q And the beneficiary?

10:05 15 A That's correct.

16 Q Now, do you recall being at a hearing December 1
17 of this year in bankruptcy court?

18 A December 1? I don't recall if I attended that
19 hearing or not.

20 Q This would be a hearing in the bankruptcy court
21 with regard to the Munsch Hart fee application. Do you
22 recall that?

23 A Yes, I was there after the receivership order,
24 yes, I was. I'm sorry.

25 Q This would be a few days?

10:06 1 A I thought that was after September 30th. I'm
2 sorry.

3 Q And the bankruptcy court records reflect you
4 appeared as attorney for Mr. Baron, correct?

5 A That's correct, I was attorney of record as well
6 as Thomas Martin.

7 Q And the fee application for Munsch Hart --
8 Docket 490 in the bankruptcy court -- is something you
9 objected to on behalf of Mr. Baron, correct?

10 A It was a limited objection. It was not
11 necessarily to the fees but to the nature of the
12 information providing the fees because we could not tell
13 whether the amount of fees were reasonable based upon the
14 amount of information provided.

10:07 15 Q That's fine. The record will reflect that
16 Docket 521 is the objection that you provided.

17 MR. ROOSSIEN: May I approach the witness, your
18 Honor?

19 THE COURT: You may. Are you going to mark
20 this?

21 MR. ROOSSIEN: I was going to proceed with the
22 bankruptcy court number. But actually it might be easier.
23 What's our number. Exhibit 48 if I may, your Honor. And
24 I'd like to ask the Court to take judicial notice of this
25 which is also Document 521 on the bankruptcy docket.

10:08 1 THE COURT: Absolutely.

2 BY MR. ROOSSIEN:

3 Q Mr. Lyon, this you indicate is a limited
4 objection. It also indicates toward the end here that the
5 conclusion here in Paragraph 8 is that the fee application
6 may be somewhat over reaching. Do you see that?

7 A That's correct.

8 Q Is that a fair statement?

9 A In light of what I was billing and what other
10 attorneys were billing, there were times that I felt like
11 that things were coming up that could have been settled
12 much quicker, but again, I felt like a lot of things were
13 going on that didn't need to go on. But I wanted to
14 settle this thing. I wanted to get it done. Some of that
10:08 15 was because of Mr. Baron's own actions and the adversarial
16 position that was at that time very hot and heavy that
17 made it seem overreaching on both parties. Not just Mr.
18 Baron but both parties. And I was wanting everything to
19 ratchet down and settle this thing and quit arguing and
20 bickering like little children. That was the basis of my
21 statement.

22 Q And you indicated in Paragraph 2 that the Munsch
23 Hart fee application itself correctly stated the
24 applicable test for the fees. Do you see that?

25 A Yes, sir.

10:09 1 Q Is that accurate?

2 A Yes.

3 Q And let me, if I may, show you a copy of the
4 application itself which is Docket 490.

5 THE COURT: I will admit Exhibit 48.

6 MR. ROOSSIEN: Thank you, your Honor. I would
7 like to mark the fee application itself as Exhibit 49,
8 Docket 490 in the bankruptcy court, and I would like to
9 ask the Court to take judicial notice of Exhibit 49.

10 THE COURT: I will as part of the court
11 records. And Exhibit 49 is admitted.

12 BY MR. ROOSSIEN:

13 Q Let me ask you to take a look, if you would, at
14 Page 5 of Exhibit 49, and it points out there is a
10:11 15 five-part test here for the reasonableness and necessity
16 of the fees requested. Do you see that?

17 A Yes, sir.

18 Q With regard to the first element, the time
19 spent, was there any dispute as to whether or not the time
20 spent as reflected in the exhibits was not actually spent?

21 A This is not all the exhibits. I don't have the
22 actual time records that were attached to the exhibit. I
23 apologize. But as I reviewed them, I had a lack of
24 information to determine whether all the things were
25 necessary because I was not involved in all of those

10:11 1 things, and that's why I sought a limited deposition.

2 MR. ROOSSIEN: Your Honor, could I mark as
3 Exhibit 50 the time sheets that he's talking about that
4 are Exhibit B to this application?

5 THE COURT: Certainly. Exhibit 50 is
6 admitted.

7 BY MR. ROOSSIEN:

8 Q Did your objection contend that any of the time
9 set forth in the sixty-page exhibit that is now Exhibit
10 50 -- was there any objection to whether or not time was
11 actually spent?

12 A The objection was based upon that I didn't have
13 enough information to make the determination of what you
14 are asking me to say that I determined. No, I did not. I
10:12 15 can't say it was objected to or not. I didn't have enough
16 information. I didn't have enough information based on
17 what's before me.

18 Q So the only time reflected is in Exhibit 50?

19 A That's correct.

20 Q Was there an objection to the rates set forth in
21 the invoices?

22 A Not at this time because under the Bankruptcy
23 Code I have the right to hold it to a final application.
24 I kept arguing to Jeff "Let's hold it to the end and get
25 it done all at once. We will have their fees." And the

10:13 1 limited objection was just that. I cannot sit here and
2 tell you that my objection was to the rate or time. I
3 just needed more information. At that point in time
4 talking to Ray, I assumed we could resolve it. That's
5 where I was going with it.

6 Q Okay. Let me clarify a couple of points.
7 First, in bankruptcy court practice and in this case in
8 particular, an interim fee application is just that; it's
9 interim and even at this point Judge Jurnigan still has
10 not determined finally what the fees for Munsch Hart will
11 be in the Ondova case. Is that a correct statement?

12 A That's correct.

13 Q So the action of the bankruptcy court in
14 approving this fee application is something that is
10:14 15 interim and still open to challenge at the end of the
16 case, right?

17 A That's correct.

18 Q And also with regard to this particular
19 objection, if I'm sensing this correctly, you urged
20 Mr. Baron not to present this objection. Is that right?

21 A I did.

22 Q And with regard to the issue of the rates
23 charged, there have been two prior applications too which
24 there have been no objections to the rates charged,
25 correct?

10:14 1 A That's correct. I was successful in stopping
2 one of them, and one of them Gerritt Pronske stopped.

3 Q So in both cases Mr. Baron actually wanted to
4 lodge objections, correct?

5 A That's true.

6 Q As to whether or not the work was reasonable,
7 necessary or comparable to other cases, you didn't have
8 any evidence to present, did not present any evidence on
9 those points contrary to Exhibit 50. Is that right?

10 A Not at that time.

11 Q And then when you were at the hearing and the
12 receiver piped up that he himself didn't have an objection
13 to the application, had you at that point withdrawn
14 Mr. Baron's own objection?

10:15 15 A I had not withdrawn it. At that time, I felt my
16 objection was taken over by the receiver. At that point,
17 I had no more authority to represent Mr. Baron on that
18 particular motion, nor did I have the authority to
19 represent him on the motions in limine that are still
20 pending over there in that court.

21 Q Very good. Thank you. When you put together
22 this particular objection, did you put forward the
23 strongest objection that you felt you reasonably could
24 under the circumstances bearing in mind the rules of the
25 court?

10:16 1 A That's correct. I wanted more information. And
2 at that time I didn't have enough information to go with a
3 full blown objection to the fees, and secondly, it was an
4 interim motion, and candidly because a lot of things have
5 been filed that wasted the Court's time, I didn't want to
6 waste the Court's time. I wanted to file a big objection
7 at the end. That's the way I practice law. Quit wasting
8 the Court's time.

9 Q Did you feel that Judge Jurnigan would sustain
10 the objection when you filed it?

11 MR. BARRETT: Objection to speculation.

12 THE COURT: Well, he's a lawyer. You were
13 planning on filing an objection at the end of the case?

14 THE WITNESS: Yes, your Honor.

10:17 15 THE COURT: And based upon how Judge Jurnigan
16 had handled matters up to that point, did you have a
17 professional view of the likelihood of success in your
18 objections?

19 THE WITNESS: In light of reasonableness of how
20 I tried to be in her court, I felt like she would at least
21 consider the possibility of having a deposition of
22 Mr. Urbanik so that I could delve deeper into these
23 matters and at least satisfy Jeff or Mr. Urbanik, one or
24 the other, they were right or we needed a modification. I
25 thought she would at least give me the opportunity to do a

10:17 1 deposition. So I believed she would grant this order.

2 BY MR. ROOSSIEN:

3 Q Did you have any expectations that Mr. Urbanik
4 would not support the application that you submitted?

5 A Ask that again.

6 Q You would expect that Mr. Urbanik believed that
7 the fees were reasonable and necessary, would you not?

8 A I wouldn't know what he believed.

9 MR. BARRETT: Objection to leading.

10 THE COURT: Overruled.

11 A In talking to Ray I would assume he wouldn't
12 support the motion if the information was not correct.

13 MR. BARRETT: One further thing.

14 REDIRECT EXAMINATION

10:18 15 BY MR. BARRETT

16 Q Now, Mr. Lyon, the document that I believe you
17 have in front of you titled Jeffrey Baron's Limited
18 Objection to the Third Fee Interim Application of Munsch
19 Hart, do you have that before you?

20 A Yes.

21 Q I didn't get that marked. This indicates that
22 Mr. Urbanik I believe had been paid or Munsch Hart had
23 been paid over \$670,000 from the estate of Jeff Baron,
24 correct?

25 A No, from the estate of the debtor which is

10:19 1 Ondova Limited Company.

2 Q Ondova. And Jeff Baron is the beneficiary of
3 Ondova?

4 A No, Jeff Baron is the beneficiary of the Day
5 Star Trust.

6 Q Okay.

7 A Ondova Limited Company is an asset of the Day
8 Star Trust.

9 Q So indirectly Jeff Baron is the beneficiary of
10 that, correct?

11 A That would be -- Yes.

12 Q That would be a fair statement?

13 A That's fine.

14 Q And could you see why Jeff Baron might be
10:19 15 concerned that \$670,000 plus is being taken out of that
16 trust?

17 A I understand that.

18 Q You understand that?

19 A Oh, absolutely.

20 Q And that's not some kind of a crazy thought or
21 an unreasonable thought, is it?

22 A No.

23 Q And could you also be understanding that Jeff
24 Baron could be alarmed that this application is now
25 seeking an additional \$328,600?

10:20 1 A Alarmed would be and under statement.

2 Q It would be and under statement?

3 A Correct.

4 Q So he certainly had a reason to do what he was
5 asking you to do?

6 A He had a reason.

7 Q And this document indicates I believe in
8 Paragraph 5 that the trustee -- Who was the trustee at
9 this time?

10 A Daniel Sherman.

11 Q This document indicates that Daniel Sherman, the
12 trustee, has recently concluded that the debtor could not
13 be economically or effectively reorganized in light of the
14 magnitude of administrative claims consisting of primarily
10:20 15 legal fees. Correct?

16 A Correct.

17 Q That's pretty alarming?

18 A That's correct. But it wasn't just their legal
19 fees.

20 Q Right. It was a lot of other legal fees, too?

21 A Yes.

22 Q So Jeff Baron had a lot of reason to be alarmed
23 that lawyers were taking money from him here, there and
24 everywhere, correct?

25 A I don't understand the question.

10:21 1

THE COURT: You do realize that it was through Mr. Mr. Baron's direction that Ondova went into bankruptcy in the first place.

4

MR. BARRETT: Well, I think that's arguable.

5

THE COURT: That's arguable that Mr. Baron had no role at all?

7

MR. BARRETT: He did but if I may ask the question.

9

THE COURT: You may.

10

BY MR. BARRETT:

11

Q Let me just ask you, Mr. Lyon, what lawyer actually placed his company into bankruptcy.

13

THE COURT: It's in the record.

14

10:22 15

A It's in the record, and Jeff was agreeable with that. I have seen e-mails from Jeff that he was agreeable with the legal opinion that we put Ondova in bankruptcy.

17

BY MR. BARRETT:

18

Q You don't recall the lawyer, whomever it was, placed his company in bankruptcy to avoid some sort of a contempt hearing he had pending?

21

THE COURT: Is that a statement you wish to stipulate to?

23

MR. BARRETT: I recall that, and I'm asking the witness that.

25

THE COURT: So Ondova was put in bankruptcy to

10:22 1 avoid a contempt hearing in my Court?

2 MR. BARRETT: And Judge Jurnigan's court.

3 THE COURT: Well, there wasn't a bankruptcy
4 until it was filed. There was no contempt or anything.
5 Let me make sure you stipulate that the purpose of the
6 bankruptcy was to avoid a contempt hearing in my Court.
7 That's a stipulation you wish to enter into?

8 MR. BARRETT: No, I don't.

9 THE COURT: That's your question.

10 MR. BARRETT: Well, I'm asking the question.

11 A My legal opinion was it was not to avoid. It
12 was to get time to get the assets in Ondova and have
13 Ondova handle some of these matters between Netsphere and
14 Ondova. The problem was things were going so quickly with
10:23 15 Jeff. I'm trying to recall the e-mails, and Jeff has them
16 in his possession. Going back and forth, this was
17 determined to be the best realm to get some control over
18 the assets of Ondova so that he could then resolve these
19 matters. In this Court, I don't recall what his opinion
20 was about this Court. I know he was troubled and felt
21 like he didn't -- Well, I'm not going there because that's
22 hearsay.

23 BY MR. BARRETT:

24 Q Well, let me ask one more question, if I may.

25 In your opinion, was it a good idea to put Ondova in

10:24 1 bankruptcy?

2 A At the time, yes.

3 Q And in the motion which you filed, you state in
4 Paragraph 8 "Upon initial review, it appears that the work
5 performed on the bankruptcy matter has been somewhat
6 overreaching." What do you mean by that?

7 A What I mean by that is both parties, all the
8 parties in this case, seem to argue down to minute word.
9 And Jeff was a part of that. He has to except that. Such
10 that we spent until eleven o'clock on a Sunday night
11 flipping a coin over one word. That to me is a failure on
12 the part of the attorneys. And I accept that. I failed
13 my responsibility to this Court to make sure that we got a
14 settlement that would affect both sides and not perfect,
10:25 15 and that was always my argument to Jeff. But quit running
16 up fees by filing thing after thing after thing, and
17 that's after this, and we filed another thing about the
18 receivership.

19 Q On Jeffrey's side and on the lawyers?

20 A Yes, sir.

21 Q I'm not accusing you of this. You have been
22 paid. You may not agree with the payments you got. But
23 is it your opinion that some of the lawyers in this case
24 got on board to get paid and when the money sort of ran
25 out, they got out of the case?

10:25 1

A No.

2

Q That's not true?

3

A No.

4

Q Why did some of the lawyers exit the case in your opinion?

5

THE COURT: If you know. You need to tell us which lawyer under what circumstances.

6

BY MR. BARRETT:

7

Q And let me get a file and I'll go through some people with you.

8

9

A That would help.

10

THE COURT: Is it Mr. Baron's position through his counsel that lawyers should work for free? Was that his position?

11

10:26 12

MR. BARRETT: No, sir.

13

THE COURT: In other words, you said the lawyers got into the case to get paid. Do most lawyers reasonably expect payment for their fees?

14

15

MR. BARRETT: That's not what I'm saying at all. What I'm saying, Judge, is the lawyers got involved in the case, and some of them got out when either there was no money or no expectation of money at that point and sent him huge bills under unreasonable circumstances

16

17

18

THE WITNESS: Your Honor, I can say I disagree with that statement.

19

10:27 1 MR. BARRETT: Fair enough. That's all I have.

2 THE COURT: Mr. Roossien, any follow-up.

3 MR. ROOSSIEN: I do not. I want to make sure
4 that we have admitted 50.

5 THE COURT: 38, 49 and 50 are admitted.

6 MR. ROOSSIEN: And I wanted to clarify when the
7 witness said "this," he held up the fee application.

8 THE WITNESS: I held up Exhibit 50.

9 THE COURT: Mr. MacPete, did you wish to ask
10 questions.

11 MR. MACPETE: I do, your Honor.

12 CROSS EXAMINATION

13 BY MR. MACPETE:

14 Q Mr. Lyon, one of the questions you were asked
10:27 15 earlier was what Mr. Baron's obligations were under the
16 settlement agreement. Do you recall that?

17 A Yes.

18 Q And he was trying to suggest that Mr. Baron's
19 obligations were limited to the three signatures that were
20 discussed. Is that correct?

21 A That's my understanding of where he was going.

22 Q That's not a fair summary of the settlement
23 agreement, is it?

24 A No.

25 Q And in fact, Mr. Baron has a number of

10:28 1 obligations under the settlement agreement including to
2 pay my clients.

3 A That's correct.

4 Q He also had an obligation to refrain from
5 contacting the U.S. Virgin Island Revenue Bureau with
6 regard to the structures?

7 A Yes.

8 Q So it would be fair to say it's not a reasonable
9 summary of Mr. Baron's obligations under the settlement
10 agreement that he sign three pieces of paper?

11 A The statement would be that was his obligation
12 at that moment, but many more under the agreement.

13 Q And in fact, sir, you are aware of this time
14 Mr. Baron has violated at least two of those obligations,
10:28 15 correct?

16 MR. BARRETT: Objection. Lack of personal
17 knowledge.

18 THE COURT: Well, he can testify to what he can.

19 THE WITNESS: I have personal knowledge that he
20 is actually in violation of one, yes.

21 THE COURT: You may testify to that.

22 A I have personal knowledge he's in violation of
23 Callingcards.telecom.

24 BY MR. MACPETE:

25 Q And that was for Netsphere August 2010?

10:29 1 A It was to pay back the money that Ondova
2 wrongfully received for the June revenue.

3 Q Are you also aware that Mr. Baron directed
4 Ms. Schurig to file tax returns for the three C corps
5 without obtaining the permission of Netsphere as per the
6 settlement agreement?

7 A I did not know that Jeff gave the directive. I
8 know that Ms. Schurig filed them.

9 Q At the time Ms. Schurig was acting as counsel
10 for Mr. Baron. Is that not correct?

11 A Again, I don't know that she was acting for
12 Mr. Baron at that time.

13 Q Do you have any idea who else she would have
14 been acting for?

10:30 15 A The Village Trust.

16 Q Which is an entity that Mr. Baron is the
17 beneficiary of and now subject to the receivership,
18 correct?

19 A That's correct.

20 Q Second point that I wanted to ask you about,
21 sir, was with respect to your fees. Now, you had a number
22 of discussions with Mr. Baron being paid, yes?

23 A Yes.

24 Q And did Mr. Baron make recommendations to you
25 that you would be fully paid?

10:30 1 A No. He constantly said he never had enough
2 money. He was broke. Didn't have any assets.

3 Q So he never actually promised to pay you?

4 A Other than the last agreement we had, he had no
5 money, could not pay me. Made a recommendation that the
6 new trustee said that we don't have enough money. I
7 verified that was wrong. But that Jeff actually entered
8 into an agreement for a lesser amount of fees,
9 substantially less.

10 Q And that was based on representations which you
11 subsequently determined were false?

12 A That's correct.

13 Q And in fact, you have not been paid?

14 A I have not been paid for the amount that was the
10:31 15 original contract. Jeff constantly tried to change the
16 contract. In fact, I believe he's in breach of the
17 contract in light of information provided with the last
18 document that was filed as late as yesterday. Jeff had
19 money in Wake Forest and other places he could have easily
20 paid me and most of the lawyers in this case.

21 Q Now, during your service as the general counsel
22 to Mr. Baron personally, you have actually witnessed him
23 retaining other attorneys, correct?

24 A I have.

25 Q And you witnessed him promising to pay those

10:31 1 attorneys their attorneys' fees, correct?

2 A Yes.

3 Q And in fact, he hasn't paid those attorneys'
4 fees, has he?

5 A For three he has not.

6 Q And did you reach any conclusions based upon the
7 representations that were being made and Mr. Baron's
8 subsequent conduct about whether he actually intended to
9 perform those promises that he made to those three
10 attorneys?

11 A Unfortunately, yes.

12 Q And what is that conclusion?

13 A That Jeff hires people, hired me, for the
14 purpose of getting as much work out of me as possible and
10:32 15 paying me as little as possible and preferably nothing.

16 Q Let me see if I can clarify your answer. Do you
17 agree, sir, that he made promise to those attorneys to pay
18 them that he did not intend to perform at the time he made
19 the promises?

20 A His actions indicated that.

21 Q Who are the three attorneys that you personally
22 witnessed these fraudulent promises being made to?

23 A Dean Ferguson was one.

24 MR. BARRETT: Objection, relevance, Judge.

25 THE COURT: Overruled.

10:32 1

BY MR. MACPETE:

2

A Dean Ferguson. A number of attorneys that did not come on that we interviewed. Tom Trickly being one. Stan Broom was one. And Martin Thomas.

5

Q Lastly, there was some discussion about -- during the redirect about this question of the bankruptcy and why it was filed. And I understand that you weren't counsel to Mr. Baron at the time the bankruptcy was filed, but you were present in the bankruptcy court when the bankruptcy court found that the bankruptcy had been filed for the improper purpose of avoiding the contempt hearing before his Honor Judge Ferguson, correct?

10

11

12

13

A I don't recall her stating that, but I do recall reading in the record that was her opinion at the time.

14

10:33 15

Obviously that's what she was making in the record.

16

MR. MACPETE: And your Honor, at this time I would ask the Court to take notice of Judge Jurnigan's finding that the bankruptcy was filed for the improper purpose to avoid the contempt hearing before this Court which I filed.

17

18

19

20

21

THE COURT: I will take that notice. Anything else?

22

23

MR. ROOSIEN: No, sir.

24

MR. BARRETT: No, sir.

25

THE COURT: We appreciate your being here,

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Mr. Lyon. Apparently you have been asked to look at certain e-mails.

MR. BARRETT: Judge, I will waive that. I think we have gotten into that sufficiently. I will waive that.

THE COURT: All right. You may be excused for all purposes. Next witness.

MR. BARRETT: Judge, at this time we call -- Since we have Mr. Ferguson waiting, can we get him in and out?

MR. BARRETT: Sure.

MR. LYON: One clarification. Would the Court wish me to file an order on the oral motion granting my motion to withdraw?

THE COURT: No, I'll receive your oral motion. I'll prepare the order myself. And you are excused for all purposes, and your representation is withdrawn for all purposes. Thank you so much.

(Sworn)

THE COURT: Let me say, Mr. Ferguson. My view was in connection with the questions that were asked of Mr. Lyon by Mr. Barrett that the attorney-client privilege was waived. Mr. Barrett asked about e-mails back and forth between Mr. Lyon and Mr. Baron. He asked about whether or not Mr. Baron made representations to him. He talked about matters that my view was invaded the

10:36 1 attorney-client privilege, and as the attorney for
2 Mr. Baron that was a waiver. I will do this witness by
3 witness, but I will tell you if similar questions are
4 asked of you, I will again find a waiver and all matters
5 involving attorney-client communications will be subjected
6 to question and answer.

7 THE WITNESS: Thank you.

8 BY MR. BARRETT:

9 Q Would you please state your name for the record,
10 sir.

11 A Dean William Ferguson.

12 Q And how are you presently employed?

13 A Law Office of Dean Ferguson.

14 Q And where do you live?

10:36 15 A Kingwood, Texas.

16 Q And you have come up numerous times for the
17 Netsphere case that's pending?

18 A Yes, I have traveled up here several times.

19 Q We appreciate that. In what capacity did you
20 represent Jeffrey Baron?

21 A I represented Jeff Baron individually.

22 Q When you say individually, individually against
23 whom or on behalf of whom?

24 A Well, Jeff hired me in connection with the
25 pending bankruptcy case, and at the time it was in late

10:37 1 July that he approached me. I got a call late on a
2 Tuesday night and was told that he had to have
3 representation because there was a settlement agreement
4 that his prior attorney, Mr. Pronske, who had been
5 representing him -- that he and Mr. Pronske had a parting
6 of the ways, and he needed to be represented in connection
7 with consummating the settlement agreement.

8 Q What kind of work do you typically do?

9 A Primarily bankruptcy and insolvency work.

10 Q Okay. And did you have many dealings with
11 Mr. Pronske?

12 A Prior to that time?

13 Q Well, to get up to speed in the case and things
14 like that.

10:38 15 A No, I had no conversations with Mr. Pronske
16 prior to the time I started.

17 Q All right. So you got involved to quickly try
18 to work out the settlement agreement. Is that right?

19 A Well, my understanding was the settlement
20 agreement had been essentially agreed to and that it was a
21 matter of getting it papered and finalized with the
22 bankruptcy court. At the time I think it was around July
23 24th or 25th, and there was a time deadline of July 28th I
24 believe that the court wanted to have the papers in and
25 signed by all the parties.

10:38 1 Q Now, that's unusual to get involved in something
2 like that so close to the resolution, is it not?

3 A Yes.

4 Q And were you skeptical when you got hired?

5 A No. At the particular time I was retained.

6 Q And approximately how long did you represent
7 Mr. Baron?

8 A Approximately forty-five days.

9 Q Okay. Approximately forty-five days. Now, you
10 were paid by Mr. Baron, were you not? Some money?

11 A Yes, I was paid some money.

12 Q In fact, you were paid twenty-two thousand
13 dollars, correct?

14 A That's correct in total.

10:39 15 Q But you sent him another bill, didn't you?

16 A Yes.

17 Q For twenty thousand dollars, right?

18 A Yes.

19 Q Now, you also billed him \$1,950 for local cell
20 phone charges, didn't you?

21 A Not in addition to the twenty thousand, no.
22 That was part of the twenty thousand.

23 Q Really?

24 A Yes.

25 Q Okay. Now the immediate agreement that you had

10:41 1 with Jeff was payment of five thousand dollars for work
2 that you had already performed, correct?

3 A I'm sorry. What agreement are you talking
4 about, sir?

5 Q Did you have some kind of a payment of five
6 thousand dollars first and then another five thousand or
7 did you just get the full twenty-two thousand dollar
8 payment?

9 A The initial retainer was five thousand dollars,
10 and then there was an agreement to pay additional amounts
11 of money for August. I agreed to reduce -- give a flat
12 rate for August based upon things which turned out not to
13 be true later, and the payments weren't received timely.
14 Ultimately, I did receive payment of twenty-two thousand
10:41 15 dollars in August.

16 Q And that's for forty-five days?

17 A No, that was for the period of time from July 29
18 through the end of August. Actually August 21st. It was
19 supposed to be a separate agreement for post-August 21.
20 As a matter of fact, I resigned representing Mr. Baron for
21 a period of about two days. He begged me to come back. I
22 said I would come back on the understanding that I would
23 be paid promptly on an agreement of three hundred dollars
24 an hour for the full amount of hours worked or at least we
25 agreed subsequently to another amount. We never reached

10:42 1 an agreement.

2 BY MR. BARRETT:

3 Q Now, much of your agreement -- And I realize
4 according to your Honor I may be waiving the
5 attorney-client privilege here. But much of your fee
6 agreement was documented by e-mail.

7 A It was discussed by e-mail, that's correct.

8 Q And in fact, the specifics of your agreements
9 were discussed by e-mail, correct?

10 A Well, we had phone conversations and e-mails
11 both, yes.

12 Q Without getting into those e-mails specifically
13 at this point, did you ever have an e-mail that discussed
14 this post-August agreement?

10:43 15 A Yes.

16 Q Do you have that with you?

17 A No, I wasn't asked to bring any documents. I
18 didn't know I was testifying for you.

19 Q All right. And that e-mail to your recollection
20 said what?

21 A There was several e-mails, and they specifically
22 stated in the absence of a specific agreement as to a flat
23 dollar amount or a set dollar amount that I expected to be
24 paid on an hourly basis for the only way we had ever
25 agreed which was three hundred dollars per hour. I

10:44 1 informed him several times after August 21st of the hours
2 I was continuing to incur because we were supposed to have
3 cut back to less than a full time representation. He
4 continued to utilize my services on a full time basis, and
5 I informed him several times that he was doing so and my
6 fee bill was growing larger.

7 Q Now, you said on a full time basis. Do you mean
8 your entire practice was his case?

9 A From July 28th until probably September 10 it
10 constituted about ninety-five percent of my case work.

11 Q So that would be a full time.

12 A Yes, and my understanding when I was originally
13 hired it was only supposed to be about thirty percent of
14 my case work which is why there was disagreement as to the
10:45 15 fees.

16 Q So you already sort of had a fee disagreement
17 with him prior to starting this three hundred dollars an
18 hour?

19 A No, the three hundred dollars per hour was
20 agreed at the very first conversation we ever had. I said
21 at that time if you want me to -- any concessions it's
22 going to have to be agreed to in writing and signed by
23 both of us. He agreed to that as the predicate that was
24 going to be done. Subsequently he changed his mind
25 several times. But that was agreed to the very first

10:45 1

conversation.

2

Q Were you billing him weekly, daily, monthly?

3

How were you billing?

4

A I told him that I would bill him -- Well, the

5

original agreement was that I would bill him on a monthly

6

basis, but the first retention letter specifically stated

7

that to the extent the utilization was more than

8

originally participated, I would submit fee bills when the

9

initial retainer was exhausted, the initial five thousand

10

dollars. That was exhausted within the first five days of

11

representation.

12

Q So that was exhausted July 28, 29, 30, 31,

13

September 1, 2?

14

A Within the first week. I can't say it was

10:46 15

exactly five days or --

16

THE COURT: I'm a little confused about timing.

17

If you can remember just the month he paid you the five

18

thousand.

19

THE WITNESS: The five thousand dollar payment

20

was received before the end of July. Either July 29th or

21

the 30th.

22

THE COURT: So it wouldn't be -- The timing is

23

all screwed up.

24

MR. BARRETT: May I clarify that?

25

BY MR. BARRETT:

10:46 1 Q I'm talking, sir, about the time after you have
2 received the twenty-two thousand dollars.

3 A I'm sorry.

4 Q After you have received the twenty-two thousand
5 dollars, did you agree at that point to bill him to come
6 back on the case only if he would pay you at three hundred
7 dollars an hour? Is that correct?

8 A Yes, that's correct.

9 Q Okay.

10 MR. BARRETT: I'm sorry, your Honor. Maybe I
11 wasn't clear on that. I thought I was, but that's what
12 I'm talking about.

13 THE COURT: Well, you were talking about the
14 five thousand dollars was used up the first week. But the
10:47 15 first week was not the end of August.

16 MR. BARRETT: And I thought he said there was
17 another agreement for five thousand dollars.

18 THE COURT: No, he didn't.

19 MR. BARRETT: I'm sorry. Excuse me. I
20 misunderstood.

21 THE COURT: Okay.

22 BY MR. BARRETT

23 Q So when you come back on the case, Mr. Ferguson,
24 and there is an agreement for three hundred dollars an
25 hour, how were you billing at that time? Weekly, monthly

10:47 1 or daily.

2 A There was not a set agreement. It was going to
3 be a let's give this a try. I told him we would see how
4 things went for the first week.

5 Q And you are spending ninety-five percent of your
6 time on his case. Is that correct?

7 A That's correct.

8 Q Did you bill him after that first week?

9 A I sent him an e-mail about the amount of time I
10 spent after the first week and stated that we needed to
11 reach an agreement as to the fee.

12 Q Did you bill on the second week?

13 A I again informed him how much time I had
14 incurred, and I did not send him a bill at that time, but
10:48 15 I told him how much was incurred and again invited him to
16 have a discussion as to the fee.

17 Q Did you bill him the third week?

18 A Yes.

19 Q And that bill was for twenty thousand?

20 A That's correct.

21 Q Now, that's a round number, would you agree with
22 me?

23 A Well, it was derived by multiplying the number
24 of hours I worked times three hundred dollars per hour and
25 adding the cell bill to it. That's where the number came

10:48 1 from. It was approximately twenty-one thousand, but I
2 don't know the exact dollar.

3 Q I think you said twenty thousand, did you not?

4 A It was not a flat twenty thousand dollar bill.
5 I don't recall sitting here now the exact amount I
6 submitted to mediation, but it was derived by taking a
7 number of hours and multiplying it by three hundred and
8 adding to it the portion of the cell bill that I thought
9 he was responsible for.

10 Q Did you inform him that you were spending
11 ninety-five percent of your time on this case?

12 A Yes.

13 Q And what were you doing on his case at that
14 time?

10:49 15 A Which particular time?

16 Q Well, from July 28 to September 10?

17 A Well, July 28, right around the time frame when
18 there was -- The settlement agreement that was in dispute,
19 Jeff wanted very badly to abrogate the settlement
20 agreement. He wanted to appeal it. He wanted some way to
21 break out of it and go the other direction. I spent a lot
22 of time not to do that. I had to analyze for him his
23 chances of success if he appealed something he agreed to,
24 and I told him his chances were slim and none and slim
25 just left town. But I spent a lot of time explaining to

10:50 1 him the ramifications he wanted to take. He wanted to sue
2 Gerritt Pronske. He wanted to commence preemptive
3 litigation against him, and I spent a lot of time
4 analyzing that for him and explaining to him what would
5 happen in my view if he attempted to file preemptive
6 litigation against Mr. Pronske. There was several other
7 things he asked me to do. He asked me to do things on
8 behalf of Novo Point, Quantec. At the time he was moving
9 from a situation where Quantec and Novo Point were being
10 run by Elizabeth Schurig's firm and all of its employees
11 were effectively her law firm. It was going to go to a
12 situation where there was no employees of Novo Point or
13 Quantec. So he asked me to interview people and find
14 people to represent and effectively become the employees
10:51 15 of Novo Point and Quantec. He asked me to form Quasar.

16 Q What's Quasar?

17 THE COURT: Let him finish.

18 A Quasar was an entity he wanted to create would
19 manage Quantec and Novo Point.

20 Q So you incorporated that?

21 A I did not specifically incorporate that. No.
22 Mr. Eckels did.

23 Q Go ahead, sir.

24 A It was through a number of things like that.
25 Basically Jeff was asking me to try to run his business

10:52 1 for him or to handle all the legal side. He felt free to
2 call me any hour of the day or night to discuss what was
3 going on and ask me for advice on how to set it up and how
4 best to arrange things so it couldn't be challenged by
5 other lawyers, how to do things so there would be no
6 judgments against him or how to do things so Mr. MacPete
7 wouldn't chase him.

8 Q You were essentially available for legal advice
9 twenty-four hours a day, seven days a week?

10 A As much as I didn't want to be available it was
11 seven days a week, yes.

12 Q And it's your testimony that was worth twenty
13 thousand dollars approximately?

14 A It was worth substantially more than that.

10:52 15 Q How much?

16 A Well, I discounted the time until August by over
17 thirty thousand dollars. I worked over two hundred hours
18 for him in August at three hundred dollars per hour. The
19 bill would have been over sixty thousand dollars, and we
20 spent three days negotiating, and I agreed to reduce that
21 to twenty-two thousand dollars. The subsequent time
22 frame, post-August 24, it was in excess of twenty thousand
23 dollars, the time that I worked for him. And frankly, I
24 told him when I began at that my norm hourly rate in the
25 Southern District of Texas is four hundred dollars an

10:53 1 hour. I received in excess of that when I practiced up in
2 the Northern District when I was a partner at Munsch Hart.
3 And I already discounted my services to three hundred
4 dollars an hour when I started to work for him. So I do
5 believe that I gave him full value.

6 MR. BARRETT: That's all I have.

7 THE COURT: Yes, Mr. Roossien.

8 MR. ROSSIEN: Your Honor, I'd like to present
9 the Court with a copy of our exhibits, if I may. I'd like
10 to start with Exhibit 41.

11 CROSS EXAMINATION

12 BY MR. ROSSIEN:

13 Q Mr. Ferguson, a couple of quick things. With
14 regard to the cell bill, why was the cell bill part of
10:55 15 your expenses that you thought Jeff should pay?

16 A First of all, I was going to be expecting twenty
17 or thirty percent of my time would be devoted to the case.
18 He called me on the cell most of the time, and it became
19 pretty apparent within the first week that Jeff was going
20 to call me all hours of the day and night. I told Jeff
21 during August I normally was on a cell plan where I paid
22 for three thousand minutes a month and paid a certain
23 dollar amount. That had been sufficient for as many years
24 of practice as I can remember. At least ten years of
25 practice that I hadn't had any more than that. But for

10:56 1 the time frame from July 28 through -- I think the cut off
2 was around August 21 or 20 the cell phone I had over five
3 thousand minutes that were devoted just to Jeff. I got
4 hit with a cell phone that was nineteen hundred dollars in
5 excess of my normal charges, and I discussed it with Jeff
6 at the time, and Jeff agreed to pay it at the time. But
7 later changed his mind.

8 Q And how long have you been a practicing
9 attorney?

10 A I was licensed in September of 1985.

11 Q And has all of your work been in the area of
12 bankruptcy?

13 A Essentially, yes.

14 Q And have you ever had a client who pestered you
10:57 15 more than Mr. Baron in terms of not respecting the hours
16 of the day?

17 A No.

18 Q Now, did Mr. Baron's activity level also cause
19 the lawyers who were involved with regard to other parties
20 to have a lot of activity themselves?

21 A Yes, much to my surprise.

22 Q And there was a status conference in front of
23 Judge Jurnigan on September 15 of 2010, a few days after
24 you finally resigned. Do you recall that status
25 conference?

10:58 1

A Yes.

2

Q And at that status conference Judge Jurnigan made a comment about a parade of lawyers. Mr. Pronske was there at the time. What was his status?

3

A I know that Gerritt had resigned, filed a motion requesting leave to resign, but I don't think that had been granted at that point in time.

4

Q And that was from the position of representing Mr. Baron?

5

A Yes.

6

Q And Mr. Patel was there. Was he a former lawyer of Mr. Baron as well?

7

A I'm not sure about that.

8

Q And Mr. Lyon was there?

10:58 9

A Yes.

10

Q And who did he represent?

11

A He also represented Jeff.

12

Q And you were there?

13

A Yes.

14

Q And then Mr. Thomas and Mr. Broom were there.

15

Who were they there to represent?

16

A It was my understanding -- I had just learned I guess that they were appearing as new counsel for Jeff.

17

It was a little bit of a surprise to me. I hadn't heard

18

about that until just days prior to the hearing.

10:59 1 Q How was it that it came up after you had agreed
2 to stay on on several occasions that you learned that Mr.
3 Baron no longer desired your services? How did that come
4 up?

5 A The Saturday before the particular hearing you
6 are talking about, the September 15th hearing, Jeff -- We
7 had a -- Mr. Eckels, Mr. Lyon and myself had one of our
8 regular Saturday afternoon five o'clock conference calls
9 that Jeff was supposed to participate in, and Jeff liked
10 to visit over the weekends several times. So we had a
11 normally scheduled call, and Jeff was late to that call,
12 and he explained at the time that he had been talking to
13 the counsel that was going to represent him against
14 Mr. Pronske. And I previously had discussed with Jeff.
11:00 15 One of the terms I had made clear in coming back to
16 represent him is I did not believe there was any merit to
17 his claims against Mr. Pronske. I told him I felt that
18 his claims he was asking me to assert were sanctionable,
19 and I wouldn't bring them. I said "If you want to find
20 another lawyer to bring those claims, you feel free to do
21 so," and he told me that he was going to go and look and
22 find someone. At that time he said he found someone who
23 was going to help him begin his case against Mr. Pronske.
24 He didn't tell us at that time that he had in fact hired
25 Mr. Thomas and that he was going to replace me in the

11:00 1 bankruptcy case.

2 Q So when did you find out?

3 A When I walked into court. I think I heard that
4 Mr. Thomas was on maybe the Monday before that hearing --
5 that Mr. Thomas was involved. Mark Ralston indicated --
6 Mark is the lawyer whom had originally referred Jeff to
7 me, and he also apparently had gotten a call from Jeff
8 saying that he needed a different lawyer in the
9 bankruptcy. I think that was the Monday before the
10 hearing. That was the first I heard that the case might
11 be moving is when Mark Ralston said, "Hey, what happened.
12 I sent him to Mr. Thomas. What happened with you and
13 Jeff?"

14 Q And but for Mr. Ralston's call, when was the
11:01 15 time you actually heard that from Mr. Baron?

16 A I didn't know that until I walked in the
17 courtroom that day.

18 Q Did you make an effort to participate in the
19 court-ordered mediation regarding the various claims
20 including yours?

21 A Yes, I submitted a mediation statement to
22 Mr. Vogel.

23 Q And to your understanding why didn't that
24 mediation go forward?

25 A Well, I'm not sure if it could have worked in

11:02 1 the first place. But there did not seem to be any person
2 on the other side to mediate with. I made several
3 attempts to try and discuss the case with either Mr. Baron
4 or counsel that might be appearing for him in the
5 mediation and had no luck even identifying who potential
6 counsel might be.

7 Q And you said there was some doubts in your mind
8 as to why it might not work in the first place. Can you
9 elaborate on that?

10 A It was clear to me under the circumstances.
11 Jeff had testified at that September 15th hearing. There
12 was a question that was asked as to whether he thought I
13 had provided value for him, and he stated affirmatively
14 that I had and that there was some disagreement as to the
11:03 15 value of those services. I had a bad car wreck in late
16 September. I had a concussion and separated shoulder, and
17 I couldn't work for the month of October, and I made
18 several attempts to find Mr. Baron or somebody that I
19 could talk to. I sent e-mails and offered to settle real
20 cheap because I desperately needed the money, and I ended
21 up borrowing the money at a substantial interest rate. I
22 told him that was going to happen. But it became clear to
23 me in trying to reach out to Jeff that no mediation was
24 going to succeed if Jeff was involved in it. In Jeff's
25 view the attorneys were entitled to zero. Irrespective of

11:03 1 the fact that he acknowledged the work was done, that he
2 had agreed to the amount that I had done and agreed that I
3 did good work for him. He felt that I should be paid
4 zero, and that seemed to be from the experience with Mr.
5 Pronske and the other attorneys I was aware of his modus
6 operandi. He felt whoever his former attorneys were, they
7 were not entitled to anything.

8 Q Just to make sure the record is clear, the car
9 wreck was after that September 15th status conference?

10 A That's correct.

11 Q So that was after you had already been
12 terminated.

13 A Correct.

14 Q And there was a point I believe where Mr. Baron
11:04 15 asked you to interview other lawyers. Do you recall that?

16 A There was actually several times during the
17 representation that he asked me to interview other
18 lawyers.

19 Q And do you recall him telling you why it was
20 that he needed you to do that?

21 A He kind of jokingly said, you know, you can
22 never have too many lawyers. He always wanted to have
23 somebody on tap.

24 MR. ROOSSIEN: Your Honor, I'd like to -- so I
25 don't overlook it -- ask the Court to take judicial notice

11:05 1 of the filing of our pleadings which are court documents
2 of our exhibits. Exhibits Numbered 2, 4 through 10, 12,
3 13 and 18 through 41.

4 THE COURT: Yes. And these are documents filed
5 either in the bankruptcy court or this Court, correct?

6 MR. ROOSSIEN: There are a few state court
7 filings as well. We have filed copies of those.

8 THE COURT: I will take judicial notice of the
9 pleadings of record and the records of the court.

10 BY MR. ROOSSIEN:

11 Q And with regard to Exhibit 41, would you take a
12 look at that, Mr. Ferguson?

13 A Yes.

14 Q At the end of Exhibit 41, the court expresses or
11:06 15 Judge Jurnigan expresses a concern about the impact that
16 could be made upon the Ondova bankruptcy estate if the
17 attorneys who represented Mr. Baron and his represented
18 entities go unpaid and make substantial contribution
19 claims against the bankrupt estate. Can you tell us what
20 it is that Judge Jurnigan is referring to?

21 A Yes, I think as Mr. Pronske filed an application
22 for substantial contribution based upon the efforts that
23 he did in representing Mr. Baron in helping achieve the
24 settlement and was asking that the bankruptcy estate pay
25 for the contribution. In a bankruptcy case, sometimes it

11:07 1 will be attorneys other than just the attorneys for the
2 estate, such as the trustee, can seek compensation if, in
3 fact, they provided substantial contribution that enabled
4 the bankruptcy to achieve results it otherwise might not
5 have.

6 Q So the record is clear on the interplay here.
7 If Ondova and Mr. Baron were to obtain a settlement from
8 Netsphere, the opposing party, would that be a benefit to
9 both of them?

10 A Yes, for Ondova and Mr. Baron. They are
11 parties. And so the parties themselves -- I don't think a
12 party themselves would be appropriate for them to try to
13 seek substantial contribution. But in circumstances such
14 as this where the attorney for Mr. Baron applied, that's
11:08 15 why Mr. Pronske felt that his services did help bring
16 about the settlement because otherwise Jeff wouldn't have
17 settled.

18 Q So if Netsphere is on the other side and
19 Netsphere ends up paying money to Ondova, then Mr. Pronske
20 is acting both on behalf of Mr. Baron but also providing a
21 collateral benefit to Ondova. Is that correct?

22 A Yes.

23 Q And even during the time that you are working
24 with Mr. Baron and you are advocating for the settlement,
25 as you discussed previously, are you providing a

11:09 1 collateral benefit to Ondova at that time?

2 A I believe so, yes.

3 Q And if you were to succeed in a substantial
4 contribution claim that you might present to the
5 bankruptcy court or to the trustee, then your additional
6 unpaid fees would become the responsibility of the
7 bankruptcy estate. Is that correct?

8 A That's correct.

9 MR. ROOSIEN: Thank you very much. That's all
10 I have.

11 THE COURT: Thank you. You may go next, and
12 I'll ask Mr. MacPete after you. Thank you, Mr. Barrett.

13 MR. BARRETT: Yes, your Honor.

14 REDIRECT EXAMINATION

11:10 15 BY MR. BARRETT

16 Q Mr. Ferguson, first off -- Well, Mr. Pronske
17 primarily drafted that settlement agreement, did he not?

18 A Well, I think it was a collaborative effort
19 between a lot of attorneys.

20 Q Primarily Mr. Pronske?

21 A You are saying on behalf of Mr. Baron?

22 Q Yes.

23 A I did not draft the language, that's correct.

24 Q But you did finish it up?

25 A Yes, I saw to it the settlement agreement was

11:10 1 signed and obtained the necessary signatures, and there
2 were a number of ancillary agreements that had to be
3 entered into in order to have the actual signed signature
4 and I did those ancillary agreements.

5 Q Now, certainly part of what was going on at the
6 time, sir, was the estate was seeking a new trustee. Is
7 that fair to say? Do you recall that?

8 A A new trustee. Other than Mr. Sherman.

9 Q No, no, no for the Village Trust?

10 A Yes, I'm sorry. I didn't understand what you
11 were talking about by the bankruptcy estate.

12 Q I meant to clarify. The estate was seeking a
13 new trustee for the Village Trust which managed all of
14 these corporations and entities. Is that correct?

11:11 15 A Yes.

16 Q And that was a problem finding a new trustee,
17 sort of?

18 A It was an ongoing problem that Jeff faced, was
19 who to select as the trustee and South Pack was ultimately
20 selected.

21 Q Now, South Pack, was that a trustee that was
22 also in the Cook Islands?

23 A Yes.

24 Q So you guys essentially moved trustees from one
25 building to another building; is that correct? In the

11:12 1 Cook Islands?

2 A I don't know where they were located. But they
3 were both trustees in the Cook Islands, that's correct.

4 Q That would make sense.

5 THE COURT: What would make sense?

6 MR. BARRETT: That the trustee in the Cook
7 Islands, your Honor, the original trustee for the Village
8 Trust that oversaw all of these corporations offshore,
9 that trustee was replaced by another trustee also in the
10 Cook Islands, your Honor.

11 THE COURT: I didn't understand what you meant
12 "that would make sense." It would make sense that you
13 would replace a Cook Island trustee with a Cook Island
14 trustee?

11:13 15 MR. BARRETT: No. It would make sense that if
16 one trustee from Cook Islands was replaced with another
17 trustee from the Cook Islands, they were probably in the
18 same building.

19 THE WITNESS: I don't know.

20 MR. BARRETT: That's fair enough.

21 BY MR. BARRETT

22 Q Now, that was all above board and negotiated as
23 part of the settlement agreement, correct?

24 A I'm not sure when you say above board.

25 Q The transfer of the trustee from one trustee to

11:13 1 the other trustee?

2 A There was a transfer from one trustee to another
3 trustee, okay.

4 Q Did you ever see a problem with that?

5 A Do you want to know about the process?

6 Q No, I'm just asking you did you ever see a
7 problem with that.

8 A What do you mean by problem?

9 THE COURT: Well, the first trustee, was he
10 involved in malfeasance or incompetence or something like
11 that?

12 THE WITNESS: No, Mr. Baron had a number of
13 claims against Mr. Adrian Taylor and wanted to find
14 grievances about him. With respect to seeking the
11:14 15 subsequent trustee, the characteristics he was seeking is
16 he wanted to find someone who would rubber stamp his
17 requests, and he was looking for a very passive trustee.
18 And that was the criteria he was looking for. Someone who
19 wouldn't interfere with his decisions as to what should
20 take place.

21 BY MR. BARRETT:

22 Q He wanted a trustee who would listen to him; is
23 that correct?

24 A Yes.

25 THE COURT: Did he want more that?

11:15 1 THE WITNESS: I don't know. He indicated he
2 wanted someone who would do as he said.

3 BY MR. BARRETT:

4 Q Do as he said like literally he could direct
5 them or do as he said that they would follow his input and
6 listen to his input and actually maybe consider his
7 requests?

8 A He didn't distinguish. He wanted somebody to do
9 what he said.

10 Q Well, we won't quibble with that.

11 THE COURT: Well, that's pretty clear.

12 THE WITNESS: I didn't question him further.

13 BY MR. BARRETT:

14 Q Was he using that language or are you
11:15 15 paraphrasing?

16 A To the best of my recollection, that's a quote.

17 Q Now, is it also fair to say the original trustee
18 over the Village Trust did not want to be involved
19 anymore?

20 A That's correct. He resigned.

21 Q And it was difficult to find a new trustee,
22 wasn't it?

23 A I really can't say how difficult it was.
24 Certainly, there was a dispute about how difficult that
25 was, and that was discussed in front of Judge Jurnigan at

11:16 1 length in several hearings.

2 Q And that was part of what took so long to get
3 the settlement agreement signed up?

4 A I don't think so.

5 Q Do you believe that Mr. Pronske -- Well, was it
6 Mr. Pronske that actually found the trustee?

7 A No.

8 Q Who found the trustee?

9 A I don't know.

10 Q Were you present at any hearings when
11 Mr. Pronske discussed the trustee?

12 A I did not have any overlap with Mr. Pronske on
13 hearings other than the ones where he attended, you know,
14 when both of us were no longer representing Mr. Baron.

11:17 15 THE COURT: Anything further?

16 MR. BARRETT: That's all I have.

17 THE COURT: Mr. MacPete.

18 MR. MACPETE: Thank you, your Honor.

19 CROSS EXAMINATION

20 BY MR. MACPETE:

21 Q Mr. Ferguson, let me take you back to your
22 testimony where you were describing what you were doing
23 for Mr. Baron. Do you recall telling this Court that one
24 of the things you did is you were asked to perform work on
25 behalf of Quantec LLC and Novo Point LLC? Do you recall

11:17 1 that?

2 A Yes.

3 Q And at the time you understood that those
4 entities were essentially being run for Mr. Baron by Ms.
5 Schurig and people in her offices. Is that correct?

6 A That's correct.

7 Q Is it your understanding that Ms. Schurig filed
8 tax returns for the three U.S. Virgin Island C corps at
9 Mr. Baron's direction?

10 A Yes.

11 Q And did you also understand under the settlement
12 agreement that Mr. Baron wasn't allowed to file tax
13 returns for those entities without the unanimous consent
14 of Netsphere?

11:18 15 A That was my understanding.

16 Q So was it your understanding that the tax
17 returns filed by Ms. Schurig actually a breach of the
18 settlement agreement with respect to Netsphere?

19 A I didn't understand how she was doing it or
20 under what authority. But I didn't form an opinion as to
21 whether it was actually a breach of it.

22 Q Because you didn't know whether or not Netsphere
23 had approved it?

24 A I didn't know what conversations had taken
25 place.

11:18 1 Q Assuming that Netsphere had not approved the
2 filing of those tax returns for the C corp, would you
3 agree with me that the filing of those tax returns is a
4 breach of the settlement agreement?

5 A To my understanding of it.

6 MR. BARRETT: Objection to speculation.

7 THE COURT: Overruled.

8 A As to my understanding, yes.

9 BY MR. MACPETE:

10 Q And I think you also testified that one of your
11 duties on behalf of Mr. Baron was to interview people to
12 be hired to work for Quantec LLC and Novo Point LLC,
13 correct?

14 A Well, at the point in time when Quantec and Novo
11:19 15 Point were no longer going to be run by Ms. Schurig's
16 firm, it was anticipated there was going to be a
17 subsequent entity. Whether that was going to be Quantec
18 or Novo Point or some other entity, I don't know. But
19 yes, I was asked to help find counsel for those entities,
20 whatever they were going to be.

21 Q And to be clear, at the time you were working on
22 hiring employees for Quantec LLC and Novo Point LLC,
23 Mr. Adrian Taylor was still the trustee for the Village
24 Trust, correct?

25 A That's correct.

11:19 1 Q And the Village Trust was ultimately the owner
2 of Quantec LLC and Novo Point LLC, correct?

3 A At that time, yes.

4 Q And would it be fair to say that, legally
5 speaking, Mr. Taylor would have been the individual that
6 should have been responsible if the corporate forms were
7 being observed to hire employees for Quantec LLC and Novo
8 Point LLC, correct?

9 A He was aware the discussions were ongoing
10 because they had to identify persons who were going to be
11 successors. There was a question as to the timing, when
12 that was going to take place. I didn't find someone and
13 say "Here, you now have a job." I was finding prospective
14 employees for when the turnover did in fact take place.

11:20 15 Mr. Taylor specifically refused to have any participation
16 in choosing those successors, and so that's how I became
17 involved in locating them, whether it's for Mr. Taylor or
18 for Mr. Baron.

19 Q But to be clear, you weren't representing Mr.
20 Taylor. You represented Mr. Baron personally, correct?

21 A That's correct.

22 Q And Mr. Baron personally was the person who
23 directed you to hire employees or locate employees for the
24 Quantec and Novo Point LLC's, correct?

25 A Yes.

11:21 1 Q And Mr. Baron's only relationship with the
2 Village Trust is as the beneficiary of the Village Trust,
3 correct?

4 A That's fair to say.

5 Q So it would be fair to say the beneficiary of
6 the Village Trust was locating employees for entities
7 owned by the Village Trust, correct?

8 A Prospective employees, yes.

9 Q Now, you mentioned the high level of activity of
10 Mr. Baron was surprising to you, correct?

11 A Yes.

12 Q And in fact, I think you ended up doing about
13 three times as much work working for Mr. Baron as you
14 expected to do. Is that right?

11:21 15 A That's correct.

16 Q And I think you testified because of all the
17 work you had to do, because of Mr. Baron's large amount of
18 activity I think is what you said, that also caused other
19 parties' lawyers to have to do a lot more work than they
20 otherwise would have to, correct?

21 A That's correct.

22 Q And would it be fair to say -- Well, I'm not
23 going to put words in your mouth. What would be your
24 characterization of the reasonableness of the level of
25 activity that Mr. Baron engaged in while you were his

11:22 1 counsel?

2 A I thought that it was excessive, and I tried to
3 curb it.

4 Q Would it be fair to say that Mr. Baron was a
5 vexatious litigant?

6 A In retrospect, yes.

7 Q Would it be fair to say as a result of
8 Mr. Baron's vexatious litigation in this case Netsphere
9 and the lawyers representing the trustee incurred legal
10 fees which they otherwise wouldn't have had to incur?

11 A I think that's fair.

12 Q Would it be fair to say it may be as much as
13 three times the legal fees that otherwise would have been
14 incurred?

11:23 15 A Over what?

16 MR. BARRETT: Objection. Speculation.

17 THE COURT: If you are able to make a judgment
18 on that. If you are not, you may say so, Mr. Ferguson.

19 A I can't say as to three times or a certain
20 amount.

21 BY MR. MACPETE:

22 Q Let's talk a little bit about the hiring or
23 interviewing of lawyers. How many lawyers did you
24 interview on behalf of Mr. Baron during the month of
25 September of 2010?

11:23 1 A The month of September?

2 THE COURT: You don't have to be specific. If
3 you could just --

4 A I'm not sure I interviewed someone in September.

5 BY MR. MACPETE:

6 Q I may have the month wrong. What month did you
7 spend doing that?

8 A August.

9 Q And how many lawyers did you interview?

10 A Five.

11 Q And I think you indicated that Mr. Baron said
12 you could never have too many lawyers?

13 A Correct.

14 Q And what was the stated purpose for in essence
11:24 15 lining up those lawyers?

16 A There really wasn't a stated purpose. I can
17 give an example. One of them subsequently, Mr. Cox, was
18 someone who ultimately became an employee of I believe
19 Novo Point, and at the time he was introduced to me as
20 being a gentlemen that Jeff had met, a lawyer that he had
21 met, and he wanted to talk to him about possibly doing
22 business in the future. There was no indication as to
23 what company or him personally or what capacity. And then
24 over time there were a couple of meetings and situations
25 where he would say, "Hey, I don't have anything for you

11:24 1 right now and maybe down the road," and ultimately he
2 became the lawyer for Novo Point.

3 Q Some of the lawyers you were asked to interview
4 were litigators?

5 A They all were.

6 Q In essence, Mr. Baron was lining up future
7 counsel when present counsel in the litigation left; isn't
8 that right?

9 A All I know is they were possible future counsel.

10 Q Now, tell the Court again how many years you
11 practiced bankruptcy law in the federal court.

12 A Twenty-five plus.

13 Q In the twenty-five plus years that you have been
14 representing clients in the bankruptcy court, have you
11:25 15 ever had a client go out and line up a back-up lawyer for
16 their existing counsel?

17 A No.

18 Q Have you ever had a client go out and line up
19 not one, not two but five back-up lawyers for the existing
20 counsel on a case?

21 A No.

22 Q Do you have any idea as to -- Strike that. You
23 understood that there were other lawyers that had been Mr.
24 Baron's counsel before in the case, correct?

25 A I learned that as the case went on. I did not

11:25 1 know that when I was first hired other than Mr. Pronske.
2 I was told about Mr. Pronske only at that point in time.

3 Q Subsequent to that, you learned there was
4 actually a number of this lawyers -- in fact, over ten
5 lawyers -- that had previously represented Baron in the
6 roughly five-year life of this case, correct?

7 A Yes.

8 Q And did you come to understand that a number of
9 those lawyers -- in fact every one except one -- had not
10 been fully paid for their service to Mr. Baron?

11 A I learned that, yes.

12 Q Did you ever come to the conclusion the reason
13 Mr. Baron had back-up lawyers is he would hire a lawyer
14 like yourself and get them to work as long as he could for
11:26 15 little or no money and then when payment was demanded he
16 would replace that lawyer with another one and do the same
17 thing over again?

18 MR. BARRETT: Objection. Facts not in evidence.
19 Hearsay, speculation. We'll stand on those objections.

20 THE COURT: Overruled. If you can answer, sir.

21 A Certainly by the end of the representation, it
22 certainly appeared that way, yes.

23 BY MR. MACPETE:

24 Q You also talked about this search for a new
25 trustee for the Village Trust. Do you recall that?

11:27 1 A Yes.

2 Q And I think your statement was Mr. Baron wanted
3 someone to rubber stamp his decisions. Was the reason for
4 that that Mr. Taylor was not rubber-stamping his decisions
5 at the end of the case?

6 A Mr. Taylor was not doing as Mr. Baron wished,
7 correct.

8 Q And Jeff did locate someone to replace
9 Mr. Taylor?

10 A Yes.

11 Q And who was that individual?

12 A I don't know the individual. It was South Pack
13 is all I knew at the time.

14 Q And was it your understanding from conversations
11:27 15 with Jeff that South Pack was someone that would rubber
16 stamp his decisions.

17 MR. BARRETT: Objection. Attorney-client
18 privilege.

19 THE COURT: We're way past that.

20 MR. BARRETT: Running objection.

21 THE COURT: As counsel for Mr. Baron you have
22 completely waived the attorney-client privilege in every
23 regard. So the objection is overruled.

24 A He said it met his goal of having a passive
25 trustee.

11:28 1

BY MR. MACPETE:

2

Q Let's talk a little bit about your fees. You said you had a discussion -- I'm sorry. I have forgotten. Which month was it you agreed to a set fee with Mr. Baron?

5

A I agreed in August to a flat fee of twenty-two thousand dollars based upon facts that turned out not to be facts.

8

Q But thereafter, you made an agreement with Mr. Baron that he would pay you three hundred dollars an hour for your services?

10

11

A Correct.

12

Q Do you have an opinion based upon the conversation you had with Mr. Baron and Mr. Baron's subsequent conduct whether or not at the time he promised to pay you three hundred dollars an hour for your services post-August he actually intended to perform that promise?

11:29 15

16

17

A I do have an opinion.

18

Q And what was your opinion?

19

A He did not intend to pay.

20

MR. MACPETE: Nothing further.

21

THE COURT: Mr. Ferguson, when Judge Jurnigan asked me to set up the mediation process, she was concerned that the lawyers who were seeking their fees -- that they had substantial contribution claims and those claims could exceed anything that was available in the

25

11:29 1 estate to pay those claims. Just help me with this as a
2 bankruptcy lawyer. If those fees did exceed all available
3 funds to pay, what would that mean about the bankruptcy?

4 THE WITNESS: Well, it could create a situation
5 where the bankruptcy, the Chapter 11, would turn to a
6 Chapter 7. It would be a situation where unsecured
7 creditors would not receive payment in full. A lot of
8 things could result.

9 THE COURT: Would it have any consequences for
10 the settlement physical at all that you can understand?

11 THE WITNESS: I believe that the settlement
12 could have been jeopardized under certain circumstances,
13 yes. There were certain things the trustee was supposed
14 to have received in terms of what they also agreed to and
11:30 15 certain expenses they agreed to. The trustee never agreed
16 to pay the fees of Mr. Pronske or my fees or anything like
17 that. So in cutting the original deal, I think that
18 certainly could have changed the fundamental nature of the
19 bankruptcy and breached the settlement.

20 THE COURT: Thank you very much for being here,
21 Mr. Ferguson. You are excused from further attendance.
22 We have one more lawyer out there, and to be courteous to
23 that lawyer, we'll delay lunch and get that lawyer in and
24 out. And hopefully, this will be a shorter witness. I
25 understand we have nine witnesses. We have finished two

11:31 1 in two hours.

2 (Sworn)

3 MR. SIDNEY CHESNIN

4 DIRECT EXAMINATION

5 BY MR. BARRETT:

6 Q Mr. Chesnin, would you tell the Court please
7 what do you do for a living.

8 THE COURT: Before we do this. Let me mention,
9 Mr. Chesnin, it's been my view that as counsel for
10 Mr. Baron Mr. Barrett has waived the attorney-client
11 privilege in regard to the last two witnesses, and so I
12 have allowed the witnesses to testify about communications
13 between themselves and Mr. Baron. I'm doing this on a
14 witness-by-witness basis, but I will inform you if in my
11:32 15 view the privilege has been waived, and therefore, you can
16 testify fully about all matters of communication inquired
17 on. Do you understand that?

18 THE WITNESS: Yes, sir.

19 BY MR. BARRETT:

20 Q Mr. Chesnin, how are you employed?

21 A I'm a self-employed lawyer of counsel to several
22 law firms.

23 Q And how do you know Jeff Baron?

24 A I was employed by Jeff Baron and Jeff Harbin on
25 November 16th, 2010 to be sort of an in-house counsel for

11:33 1 Jeff Baron, Novo Point and Quantec.

2 Q And who is Jeff Harbin?

3 A Jeff Harbin is a CPA who's also the manager of
4 Novo Point LLC and Quantec LLC.

5 Q Is he someone who has writing authority under
6 the present receivership, if you know?

7 A I have seen his name all over the papers. I get
8 the e-mails from the court, and it's apparent that he's in
9 this somewhere.

10 Q Fair enough. Let me ask you, Mr. Chesnin, first
11 off, are you familiar with Peter Vogel?

12 A To the extent that I have seen his name. Spoken
13 to him on the phone once I believe. And I have seen him
14 in court the last couple of times.

11:34 15 Q Do you know what his role in this case was?

16 A He started off as the special master in the
17 bankruptcy court or perhaps this Court. I'm not sure. He
18 then became the appointed mediator by Judge Ferguson, and
19 then on November 24 he was appointed the receiver.

20 Q Sir, in your opinion do you see any conflict of
21 interest in those hats that he was has worn?

22 MR. GOLDEN: Objection. Your Honor, failure to
23 lay predicate for an expert opinion.

24 THE COURT: All right. Lay the predicate.

25 MR. BARRETT: It's just in your opinion.

11:35 1 THE COURT: I thought you said in your expert
2 opinion.

3 MR. BARRETT: No. I said in your opinion.

4 THE COURT: I don't see how a lay person could
5 do that. So I'm just asking you to lay the predicate.

6 BY MR. BARRETT

7 Q Sir, you are an attorney. Is that right?

8 A Yes.

9 Q And how long have you been an attorney?

10 A Thirty-five years.

11 Q And as an attorney, have you had many occasions
12 to come across -- Well, let me ask you first. Are you
13 familiar with the term "conflict of interest"?

14 A Yes.

11:36 15 Q Do you understand what that term means in the
16 legal sense?

17 A Yes.

18 Q And have you had occasion to come across
19 conflict-of-interest situations in your practice?

20 A Yes.

21 Q Are you qualified to recognize
22 conflict-of-interest situations?

23 A Yes.

24 Q Now, let me ask you, in your expert opinion,
25 sir, do you believe that Peter Vogel has a conflict of

11:36 1 interest in wearing the three hats of master special,
2 mediator and receiver in this case with respect to Jeff
3 Baron.

4 MR. GOLDEN: I would renew my objection and
5 submit that the predicate has still not be laid for this
6 witness to be considered an expert.

7 MR. MACPETE: I would support the objection
8 Mr. Golden made.

9 THE COURT: The objection is sustained, but you
10 may continue your effort to lay a predicate.

11 MR. BARRETT: I'll just move on, Judge. If
12 that's not sufficient, I am going to move on.

13 BY MR. BARRETT

14 Q Sir, let me just ask you a little more about
11:37 15 Peter Vogel. Now, when he was appointed mediator in this
16 case, he was appointed to mediate these attorneys' fees
17 disputes, right?

18 A That was my understanding.

19 Q And did you make many efforts to communicate
20 with him in an effort -- as representing Jeff Baron to
21 mediate these claims?

22 A I contacted him three times.

23 Q And what happened?

24 A The first time Jeff Baron was concerned that
25 Mr. Vogel was going to be charging for preparation time,

11:38 1 and I was convinced he wouldn't. I called Mr. Vogel, who
2 indicated that he was not charging for preparation time,
3 and he would be charging fifteen hundred dollars for half
4 of a day mediation divided by two sides. I indicated that
5 we were interested in participating and would be awaiting
6 further documentation to assist us in getting into the
7 process.

8 The second time I sent him an e-mail which I
9 have provided to you, but I can't remember specifically.
10 If you have it, I would like to look at it. I believe I
11 sent two e-mails.

12 THE COURT: Mr. Chesnin, let me make sure I
13 understand. You called him once and e-mailed him twice.
14 That's the extent of your communication with him?

11:39 15 THE WITNESS: Yes.

16 BY MR. BARRETT:

17 Q Let me just ask you, did he ever reply to those
18 e-mails?

19 A He replied not at all to any of my
20 communications. My first e-mail, I indicated I was
21 awaiting the list of claims that was coming in. I
22 understood they would be coming in by the 22nd of
23 November, and I would be interested in getting on board
24 for the mediation. The second e-mail I had been informed
25 by Gerritt Pronske that there was a mediation scheduled

11:40 1 with Joyce Lindauer separate and apart from the mediation
2 in front of Mr. Vogel.

3 I asked Mr. Vogel whether or not the mediations
4 that had been separately scheduled -- namely Gerritt
5 Pronske and David Pacione -- were to be handled through
6 him or the other mediators, and I got no reply.

7 Q All right.

8 THE COURT: We'll mark those Baron whatever you
9 wish.

10 MR. BARRETT: I am going to mark them as Baron
11 Exhibits 1 and 2.

12 THE COURT: That's fine.

13 BY MR. BARRETT

14 Q I'll ask you if those are the e-mails that you
11:41 15 are talking about.

16 A The first one is an e-mail dated November 18th,
17 2010 to Peter Vogel, and the second one is an e-mail dated
18 November 23 to Peter Vogel.

19 Q Are those the e-mails you are speaking of?

20 A Yes, they are actually somewhat different than
21 my recollection. You know, if you want to get them
22 admitted.

23 MR. BARRETT: May I show them to counsel?

24 THE COURT: Yes, please do.

25 MR. BARRETT: I move to admit, your Honor.

11:43 1

THE COURT: Any objection?

2

MR. MACPETE: No, your Honor.

3

MR. GOLDEN: No, your Honor.

4

THE COURT: Baron 1 and 2 are admitted.

5

BY MR. BARRETT

6

Q In any event, Mr. Chesnin, is it your belief

7

that Peter Vogel was uncooperative in the mediation

8

effort?

9

A No, just unresponsive.

10

Q Unresponsive, is that fair to say?

11

A He did not respond to me.

12

Q Is it fair to say that basically the next thing

13

you knew Peter Vogel was a receiver in the case?

14

A He was appointed the receiver the day after my

11:44 15

last e-mail to him.

16

Q So he goes from mediator in the case to a day

17

later receiver in the case?

18

A Yes.

19

Q Are you familiar as counsel for the mediation --

20

are you at least familiar with the lawyers that claim that

21

they didn't get paid in this case?

22

A I am only familiar with a limited number of them

23

because I was dealing with those that were in the state

24

court or federal court system.

25

Q Can I just ask you generally, generally

11:45 1 speaking, did the lawyers in this case -- Are you aware
2 that the lawyers in this case in total got paid over five
3 million dollars?

4 MR. MACPETE: I object to lack of foundation and
5 personal knowledge.

6 THE COURT: If you lay the foundation for his
7 personal knowledge.

8 BY MR. BARRETT:

9 Q Sir, through your mediation and through your
10 representation of Jeffrey Baron, are you aware personally
11 whether or not the lawyers in this case got paid over five
12 million dollars?

13 MR. MACPETE: Same objection, your Honor.

14 THE COURT: You need to get into the details.

11:46 15 Let's just take one lawyer that you are familiar with,
16 Mr. Chesnin. Give me a name.

17 MR. BARRETT: May I go down a list, Judge?

18 THE COURT: Just give me a list.

19 MR. BARRETT: Dan Altman.

20 THE WITNESS: Your Honor, the answer to the
21 question is I'm not aware.

22 BY MR. BARRETT:

23 Q Are you familiar with Dan Altman?

24 A No.

25 Q Gary Tucker?

11:47 1
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11:47 15
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A No.

Q Christy Motley?

A No.

Q Okay. Generally speaking, sir, is it your opinion that many of these lawyers got paid substantial amounts of money?

MR. GOLDEN: Objection, your Honor.

MR. BARRETT: Judge, that question has been asked by Mr. MacPete.

THE COURT: There is no foundation for that. There is no foundation for that. I'm telling you, you need to lay a foundation. Mr. MacPete is a cross examiner. You are a direct examiner. Lay a foundation. You got Mr. Baron to come and testify. He can testify all day long on this subject. I don't know why we need Mr. Chesnin.

MR. BARRETT: Well, he may. I don't know.

THE WITNESS: Your Honor, if I may, I don't know.

MR. BARRETT: And if Mr. Baron testifies, it may turn into a twenty-hour hearing.

THE COURT: It won't. Mr. Chesnin does not know the answer to your questions.

MR. BARRETT: I realize that, Judge. I am going to move on.

11:48 1

BY MR. BARRETT:

2

Q Now, Mr. Chesnin, are you familiar with Stan

3

Broom?

4

A Yes.

5

Q And is Stan Broom one of the lawyers who's

6

alleged in the petition claiming that lawyers have not

7

been paid?

8

A Yes.

9

Q And in fact, has Stan Broom been paid?

10

A I think Stan Broom was owed four thousand

11

October 4th.

12

Q And did he, in fact, file a motion to withdraw?

13

A After I asked him to let me substitute in, he

14

said "I would rather withdraw."

11:49 15

Q So you offered to substitute in for Mr. Baron

16

rather than have him withdraw?

17

A Yes.

18

Q And he didn't do that?

19

A No.

20

Q And in fact, he filed a motion to withdraw in

21

the case?

22

A Yes.

23

Q And when was he paid?

24

A He's not been paid.

25

Q He has not been paid. He's owed four thousand

11:49 1 dollars?

2 A Right.

3 Q He files a motion to withdraw. How long after
4 his motion to withdraw is filed is this action that we're
5 here on today filed?

6 A An hour.

7 Q So Stan Broom filed a motion, and this entire
8 pleading we're here on today was filed within an hour?

9 A Yes.

10 MR. BARRETT: That's all I have, your Honor.
11 Thank you.

12 THE COURT: Mr. Roossien.

13 MR. ROOSSIEN: I will be careful not to extend
14 this.

11:50 15 THE COURT: That would be deeply appreciated.

16 CROSS EXAMINATION

17 BY MR. ROOSSIEN:

18 Q I think all I really want to clarify is at the
19 time you are communicating with Mr. Vogel Mr. Broom has
20 not yet filed his motion to withdraw. Is that correct?

21 A That's correct.

22 MR. ROOSSIEN: I think that's all I need, Judge.

23 THE COURT: Yes, Mr. MacPete.

24 CROSS EXAMINATION

25 BY MR. MACPETE:

11:50 1 Q Are you currently representing Mr. Baron,
2 Mr. Chesnin?

3 A No.

4 Q Why are you not representing Mr. Baron at this
5 point?

6 A Because when the receivership was clarified on
7 November 30th at the telephone conference to include two
8 of my employers, Quantec and Novo Point, I contacted Barry
9 Golden and asked him if I could be continued to represent
10 the receiver, and I was told I was not. I e-mailed
11 Mr. Baron and Mr. Harbin my resignation. I came in the
12 next day pro bono to help Mr. Baron clean up his office,
13 and I left for good.

14 Q Have you been fully paid by Mr. Baron?

11:51 15 A I have not nor can I because my payment was not
16 due until the 10th of December, and we were already in a
17 receivership.

18 Q And just to be clear, your representation was a
19 joint representation of Mr. Baron personally, Quantec LLC
20 and Novo Point LLC, correct?

21 A That's correct.

22 Q Did you obtain a waiver between Quantec and Novo
23 Point and Mr. Baron?

24 A There was one in process when the receivership
25 hit.

11:52 1 Q But there wasn't actually one that was entered
2 into prior to you beginning your representation, correct?

3 A That's correct.

4 MR. MACPETE: Thank you, nothing further

5 THE COURT: Since the receivership issue has
6 been raised do you have any questions, Mr. Golden?

7 MR. GOLDEN: Not at this time, your Honor.

8 THE COURT: We appreciate your patience here
9 today, and you are excused.

10 MR. BARRETT: Judge, may I ask one more
11 question?

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MR. BARRETT

11:52 15 Q Just one more question. Mr. Chesnin, do you
16 believe that Jeff Baron's lawyer problems are the result
17 of him being A vexatious litigant or something else?

18 A I have no opinion.

19 MR. BARRETT: Okay.

20 THE COURT: Thank you very much, Mr. Chesnin.

21 THE WITNESS: Your Honor, may I remain in the
22 room for the remainder of the hearing?

23 THE COURT: You may. Do we have any other
24 lawyer witnesses that I could get through here right now?
25 Did you want to call Mr. Pronske?

11:53 1

MR. BARRETT: Yes, sir, Judge.

2

THE COURT: Did you notify Mr. Pronske?

3

MR. BARRETT: We cross-designated Mr. Pronske.

4

THE COURT: Did anyone contact Mr. Pronske?

5

MR. ROOSIEN: I may be able to help the Court.

6

The Court requested at the end of the last hearing that we

7

advise the lawyers as to when they could arrive, and we

8

did contact Mr. Pronske and suggested the time of two

9

o'clock this afternoon. So I don't believe he would be

10

available until then. We also made an effort to

11

communicate with Mr. Schepps on that subject and failed in

12

terms of following the rest of the Court's instructions.

13

THE COURT: Do we have any other lawyers that

14

are here that somebody has asked to be called as a

11:54 15

witness?

16

MR. BARRETT: Not other than the lawyers in the

17

courtroom, your Honor.

18

THE COURT: You mean the lawyers at counsel

19

tables?

20

MR. BARRETT: Yes, that's correct.

21

THE COURT: Of course, the lawyers at counsel

22

table will be called at the end of the presentation. So

23

who do you plan to call between now and then?

24

MR. BARRETT: May I have one moment?

25

THE COURT: You may. By the way, before you

11:54 1 call any lawyers that are at counsel table, you need to
2 proffer what you think will be the testimony.

3 MR. BARRETT: Yes, sir.

4 THE COURT: So you have no other witnesses
5 besides the lawyers at counsel table?

6 MR. BARRETT: That's correct. Other than
7 Mr. Pronske and the lawyers at counsel table.

8 THE COURT: Okay.

9 MR. BARRETT: I'm sorry. I do have a
10 Dr. William Tetford. He's not here yet, but he's a
11 psychologist, and he won't take more than about ten
12 minutes.

13 THE COURT: Well, I'm sure we'll see Mr. Baron
14 this afternoon, and we'll reconvene at 1:45. Thank you
11:55 15 very much.

16 (Recess)

17 THE COURT: We're ready to proceed.

18 MR. GOLDEN: Your Honor, before we proceed,
19 early in the day I told you at a break I could get you
20 revised orders for fee applications, and I have those.

21 THE COURT: Good. If you will hand those to
22 Mr. Frye, he can hand them up to me.

23 Who will be your next witness, Mr. Barrett?

24 MR. BARRETT: Gerritt Pronske.

25 THE COURT: He's not supposed to be here until

13:52 1

two.

2

MR. ROOSSIEN: That's correct, your Honor.

3

MR. BARRETT: No problem. We will call

4

Dr. Tetford at this time.

5

WILLIAM TETFORD

6

DIRECT EXAMINATION

7

BY MR. BARRETT

8

Q Sir, would you state your full name for the

9

record.

10

A William Howard Tetford, Junior.

11

Q Okay, Dr. Tetford. How are you employed or what

12

do you do for a living?

13

A I am retired from Southern Methodist University

14

as a professor emeritus of psychology. I still have a

13:54 15

private practice in psychology which I have had since

16

1972.

17

Q What is your educational background, sir?

18

A I have a Bachelor of Science degree in physics

19

from Davidson College in North Carolina in 1958. A Master

20

of Science from University of Nevada at Reno, 1961.

21

Q Do you have a CV with you?

22

A Yes, sir.

23

MR. BARRETT: Approach the witness?

24

THE COURT: Yes, sir.

25

BY MR. BARRETT

13:54 1 Q Go ahead. What other credentials?

2 A I have a Master of Arts in psychology from Emery
3 University in Atlanta in 1966 and a doctoral in psychology
4 from Emery in 1967.

5 Q What sort of work experience do you have in
6 psychology, sir?

7 A Well, I taught physics for a while before, but
8 the first time I was teaching psychology was at Oberlin
9 College, a little school in Cleveland, Ohio, from 1967 to
10 1969, and then I came back to SMU in the psychology
11 department running the same laboratory I had run for the
12 physics department in 1969. And I taught there until my
13 retirement in 1997.

14 Q In psychology?

13:55 15 A Occasionally, I filled in with the physics
16 department if they were shorthanded. I would teach one
17 course.

18 Q Are you published, sir?

19 A Published about thirty-five or so articles in
20 the refereed professional literature and then a good many
21 in scientific -- Well, popular press, newspapers and that
22 sort of thing.

23 Q Do you serve on any boards?

24 A I have served on the Clinical Advisory Board of
25 the Suicide and Crisis Prevention Center in Dallas for

13:56 1 about ten years.

2 Q How many times have you testified in the past as
3 an expert witness, if any?

4 A Probably roughly a hundred times in trial and
5 maybe twice that many at depositions.

6 MR. BARRETT: We will proffer the witness as an
7 expert.

8 THE COURT: He would be proffered as an expert.
9 Mr. MacPete.

10 MR. MACPETE: I object. I think we need
11 something more explicit than I'm an expert in psychology.
12 I don't know what the purpose is, but I object to his
13 being qualified as an expert until we have an
14 understanding of what he's going to testify about from a
13:57 15 subject standpoint.

16 THE COURT: Tell me that, Mr. Barrett. What is
17 the purpose of Dr. Tetford's testimony. He does certainly
18 seem to have the qualifications necessary to testify as an
19 expert in psychology. But I think it would help to know
20 what the issue is.

21 MR. BARRETT: I agree. Dr. Tetford is going to
22 testify I would proffer as to the defendant's mental
23 state, as to any irreparable injury that may have occurred
24 as a result of the receivership on the defendant, and
25 those are the issues. They are psychological issues.

13:57 1

THE COURT: How long has Dr. Tetford seen Mr. Baron?

2

3

MR. BARRETT: I believe he has seen him twice. Put him through a battery of standardized tests and done clinical interviews as well.

4

5

6

THE COURT: For how long? How long a period?

7

8

MR. BARRETT: I was going to get into that, Judge.

9

THE COURT: Just tell me.

10

MR. BARRETT: Hours.

11

12

THE COURT: I'm sorry. When did he start seeing him?

13

MR. BARRETT: During the pendency of this case.

14

13:58 15

THE COURT: Since the receivership has been in place?

16

MR. BARRETT: That's correct, your Honor.

17

18

THE COURT: Well, I guess what I am curious about is he's not -- knows nothing about his experience in litigation over these last several years, so forth and so on. He's just saying that because of the receivership he suffered some emotional trauma? Is that it?

19

20

21

22

MR. BARRETT: That's correct.

23

24

THE COURT: What about the emotional trauma of all the litigation and so forth before then?

25

MR. BARRETT: He's going to testify to that as

13:58 1 well as after then.

2 MR. GOLDEN: I renew my objection. I don't
3 think the witness is actually competent to testify about
4 what change there has been in Mr. Baron's mental state
5 because he hasn't been Mr. Baron's physician or
6 psychologist until after the receivership was put in
7 place. So in other words, if the purpose of the testimony
8 is to say the receivership has caused an injury to Mr.
9 Baron, we don't have a baseline of what Mr. Baron was like
10 before the receivership to compare against what he's like
11 now. There is no way to establish any causation. This
12 witness is not competent to establish any causation
13 between what Mr. Baron's mental condition may be today in
14 conjunction with the receivership because there is no
13:59 15 baseline comparison.

16 THE COURT: I would tend to agree that there is
17 no baseline comparison. But I will allow the testimony.
18 Again, we've got about three hours. How long do you plan
19 for Dr. Tetford to testify?

20 MR. BARRETT: About five minutes, Judge.

21 THE COURT: Okay. You may go ahead.

22 BY MR. BARRETT

23 Q Dr. Tetford, what sort of examinations did you
24 perform upon Mr. Baron?

25 A Clinical interview, asked about his background.

14:00 1 And I gave him four standardized test. The Minnesota
2 Multiphasic Personality Inventory. The Rorschach ink blot
3 techniques, the Beck Depression Inventory and the Beck
4 Anxiety Inventory.

5 Q What are those tests designed to do?

6 A The last two are basically screening
7 instruments. You wouldn't make a diagnosis based on them,
8 but I gave them to confirm what seemed to be showing up in
9 the other two tests. The other two, the Minnesota
10 Multiphasic and Rorschach ink blot will pick up a wide
11 range of different psychological problems.

12 Q What did they pick up?

13 A That Mr. Baron was severely depressed. That was
14 the major thing that came out in all the tests.

14:01 15 Q To the point of almost being suicidal?

16 A Yes.

17 Q Is it fair to say he's right on that edge?

18 A I would say so, yes.

19 Q And do you believe that anything and everything
20 that occurs to him is pushing him closer and closer to
21 that edge?

22 A I would certainly say so. I also reviewed some
23 of his medical records in addition to the tests that I
24 performed, and his MD recommended that he not be placed in
25 any sort of stressful situation, and I concurred with

14:01 1

that.

2

MR. GOLDEN: Your Honor, I object. That calls for hearsay, and I ask the last testimony about what was in the medical records be struck.

5

MR. BARRETT: Your Honor, he's an expert. He can review hearsay medical records.

7

THE COURT: He can. I can't give any credence to it without seeing the physician himself, but he can do that. That physician is not here to be cross-examined.

10

BY MR. BARRETT:

11

Q Okay. Dr. Tetford. Now, does in fact Jeffrey have a heart condition?

13

A Seems to be, yes.

14

14:02 15

MR. GOLDEN: Excuse me, your Honor, I have to object again because now we're asking a psychologist who's not a medical doctor about Mr. Baron's medical condition as opposed to his psychological condition, and anything this witness says will be hearsay without any expertise to testify to it.

20

THE COURT: Sustained.

21

BY MR. BARRETT

22

Q Now, Dr. Tetford, did you clinically evaluate Mr. Baron?

24

A Yes.

25

Q Did you talk about the impact of this

14:02 1 receivership on Mr. Baron?

2 A Yes, I did.

3 Q And do you believe that this receivership has
4 had a substantial and irreparable effect on Mr. Baron?

5 A I do.

6 MR. ROOSSIEN: I object to that. I don't
7 believe an adequate predicate has yet been laid. The
8 doctor has not looked at enough information to be an
9 expert on that subject. There has been no development of
10 any baseline to determine a causation.

11 THE COURT: I'll sustain that. You need to lay
12 a better foundation.

13 MR. BARRETT: Okay.

14 BY MR. BARRETT

14:03 15 Q Dr. Tetford, we've talked previously to this
16 hearing; is that right?

17 A That's true, yes.

18 Q Is it true that it would be virtually impossible
19 to put a dollar amount value on the effect that the
20 receivership itself has had on Jeff Baron?

21 A That's correct.

22 MR. GOLDEN: I object again. There is no
23 foundation for that. This witness couldn't possibly have
24 any knowledge about how to quantify such a thing, and I
25 agree with Mr. Roossien's objection earlier.

14:04 1

MR. ROOSSIEN: I move to strike that.

2

THE COURT: It will be stricken.

3

BY MR. BARRETT:

4

Q Have you testified previously in cases involving damages?

5

6

A Yes.

7

Q And have you testified as an expert in quantifying damages?

8

9

A Yes.

10

Q And are you capable of quantifying damages?

11

A Certain types of damages, yes.

12

Q And do you believe you are capable of quantifying damages in this case?

13

14

A No, I don't believe this could be quantified in monetary terms.

14:04 15

16

Q The receivership itself?

17

A That's correct.

18

Q The damage it has caused to Jeff?

19

MR. ROOSSIEN: Your Honor, he has exceeded the question and asked about whether or not it's possible. I move to strike the last part of that answer, and I object for the reasons previously stated.

20

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MR. BARRETT: Your Honor, I don't know what possible predicate I could lay other than what I have done.

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14:05 1 THE COURT: The problem I think the lawyers are
2 bringing to my attention is the fact that Mr. Baron has
3 been involved in multiple, multiple -- Hear me out.
4 Multiple, multiple, multiple lawsuits. He's hired -- I
5 don't know how to count but somewhere between fifteen and
6 twenty lawyers who he has dealt with over time. There has
7 been a bankruptcy. There have been all of these events
8 that are not being a part of this analysis at all. And
9 just to come in and say, well, there is a receivership and
10 just by itself, this receivership has caused all of these
11 problems for Mr. Baron is absolutely without context.
12 There is no context to it at all. And so it has no
13 evidentiary weight at all. That's the whole problem. By
14 the way, the other problem is if Mr. Baron is suicidal, I
14:06 15 need to know what steps are being taken to have him placed
16 in some kind of an institutional setting to protect him
17 from these suicidal impulses. That's a matter of serious
18 concern. You as his counsel would seem with your duties
19 to him as lawyers to certainly review what necessarily
20 needs to be done to protect him from himself.

21 MR. BARRETT: I consider it a serious matter.

22 THE COURT: It is serious. I'm hearing right
23 now the man is about to commit suicide.

24 MR. BARRETT: I don't believe that's the case,
25 Judge.

14:07 1 THE COURT: That sounds like the case. It
2 sounds like the case right here. If that's the situation,
3 as an officer of the Court, as a judge, I probably have to
4 notify someone. I don't know. I have never had this
5 experience happen, but notify someone of his suicidal
6 tendencies and since he is in my Court order a battery of
7 examinations. We're talking about something very serious
8 here. So what steps have you taken to protect Mr. Baron
9 from himself? Can you tell me that?

10 MR. BARRETT: Well, I can question this witness,
11 Judge, and I don't believe this witness will say that he
12 needs to be institutionalized.

13 THE COURT: Okay. Dr. Tetford, do you believe
14 that the witness -- that Mr. Baron is able to protect
14:08 15 himself at this time? Your testimony seemed very stark
16 about his mental state.

17 THE WITNESS: I would say, your Honor, that his
18 mental state is very severe. I would not say that he's on
19 the verge of suicide. I did recommend that he begin a
20 course of psycho-therapy with someone, and I recommended
21 it to him and to his attorneys.

22 THE COURT: That sounds like wise counsel. Has
23 that been done?

24 MR. BARRETT: It hasn't, your Honor. We would
25 have to seek approval from the trustee, of course.

14:08 1 THE COURT: From the trustee in bankruptcy?

2 MR. BARRETT: I'm sorry. The receiver.

3 THE COURT: Well, I will tell you right now
4 funds will be made available, and I think I need to have a
5 report this week that he has begun a course of treatment,
6 and whatever funds are necessary to cover that treatment
7 will be paid as well as Dr. Tetford's expenses.

8 MR. BARRETT: Thank you, your Honor.

9 THE COURT: But I would expect that I would
10 receive a report this week that a treatment regime is in
11 place and that all fees, all expenses, will be sent to the
12 receiver.

13 MR. BARRETT: Thank you, sir.

14 BY MR. BARRETT

14:09 15 Q I forgot where we were, but if I may go beyond
16 the last question I asked. Dr. Tetford, you are certainly
17 not saying you cannot quantify damages beyond the
18 receivership or prior to the receivership, correct?

19 A That's correct.

20 Q And in fact, you could quantify those kinds of
21 damages, correct?

22 A I'm not quite clear on your question.

23 Q Could you quantify damages over the long term?

24 A Not really, no.

25 Q Could you quantify them after the receivership

14:10 1 was lifted?

2 A I could estimate the amount of expense that he
3 might have for psychotherapy from then on, but that would
4 be about it.

5 MR. BARRETT: We pass the witness.

6 THE COURT: Mr. Roossien, any questions?

7 MR. ROOSSIEN: I think I do have a few.

8 THE COURT: Certainly.

9 BY MR. ROOSSIEN:

10 Q Dr. Tetford, it indicates in your CV that you
11 have worked with over a thousand clients involved in the
12 legal system in some capacity. Is that right?

13 A That's correct.

14 Q And a lot of those are criminal cases?

14:10 15 A Yes.

16 Q Have you ever been involved in a situation where
17 someone was accused of being a vexatious litigant?

18 A I believe once in domestic court and I think one
19 other -- a similar sort of thing that had to do with
20 trying repeatedly to get protective orders issued.

21 Q And do you remember the underlying psychological
22 conditions in those cases that caused that to take place?

23 A Both clients to the best of my recollection were
24 very upset about what was going on, sure.

25 Q Was there an underlying psychological disorder

14:11 1 that led them to abuse the legal process?

2 A Not that I recall, no.

3 Q In examining Mr. Baron, did you have an
4 opportunity to come to a conclusion as to whether he is
5 suffering from a psychological disorder?

6 A Yes.

7 Q What is that?

8 A Severe depression.

9 Q Severe depression is not a condition that
10 appears overnight?

11 A Not overnight but it can come on very quickly.

12 Q Ordinarily, that would be something that would
13 be a personality disorder?

14 A No, it's not classified as a personality
14:12 15 disorder. There is a whole separate category in the
16 Diagnostic Manual for a personality disorder.

17 Q I assumed I was using that term at the time. Do
18 you assume Mr. Baron has a personality disorder as would
19 be classified in the DSM?

20 A No, I do not.

21 Q Were you aware, Doctor, that shortly after this
22 action was filed back in May of 2009, in fact, within the
23 space of about three weeks, Mr. Baron had to be admonished
24 by this Court with regard to his conduct before the Court?

25 A I was not aware of that, no.

14:13 1 Q And were you aware -- That was on June 19. By
2 July 1, there was another status conference and again
3 Mr. Baron had to be admonished. Were you aware of that?

4 MR. BARRETT: Objection. Relevance.

5 THE COURT: Well, I think what Mr. Roossien is
6 doing is actually creating the predicate for the ability
7 of the doctor to make any opinions regarding the matters
8 testified to. So I will overrule the objection.

9 BY MR. ROOSSIEN:

10 Q And were you also aware that eight days later at
11 a hearing Mr. Baron was again admonished for his behavior
12 before this Court?

13 A No.

14 Q Were you aware that there was a motion put
14:14 15 forward for Mr. Baron's contempt with regard to the orders
16 of this Court and on the eve of the hearing on that motion
17 Mr. Baron elected to file a bankruptcy?

18 A No, I was not.

19 Q How many lawyers were you told that Mr. Baron
20 had retained and had released?

21 A That's not a subject that came up.

22 Q Would you believe, Doctor, that there might be
23 an excess of forty lawyers who have come and gone from
24 this Court and other courts in the last five years in some
25 litigation that Mr. Baron has been involved in?

14:14 1 A If you are saying it, I would certainly believe
2 it, yes.

3 Q Is there anything that Mr. Baron told you that
4 would lead you to believe that was the case? Give you any
5 hint of that?

6 A No, he did not go into that.

7 Q Were you provided with the medical records from
8 the treating physician who has been working with
9 Mr. Baron?

10 A I have received medical records from a treating
11 physician. I'm not sure that's the only one.

12 Q How far back did they go?

13 A December of last year, as I recall.

14 THE COURT: When you say last year, 2009?

14:15 15 THE WITNESS: I'm sorry. 2010.

16 THE COURT: So over the last month.

17 BY MR. ROOSIEN:

18 Q Do you know how long that medical doctor had
19 been treating Mr. Baron?

20 A No, I don't.

21 Q Do you know whether or not Mr. Baron has been
22 receiving medical assistance -- psychological medical
23 assistance prior to December of 2010?

24 A I have a list of the medications that he was
25 taking at that time. Now, how far back they started, I

14:16 1 don't know.

2 Q And what were the medications that he was
3 taking, Doctor?

4 A I would have to get the list out but essentially
5 the major ones were a variation of Paxil which is an
6 anti-depressant and an anti-anxiety drug.

7 Q What was the name of his medical doctor?

8 A I would have to look in my records.

9 Q That might be helpful.

10 A Dr. Martin Reagan.

11 Q I'm interested to know where Dr. Reagan is
12 located.

13 A It says Trinity Marsh Medical Clinic on Trinity
14 Mills Road in Dallas.

14:17 15 THE COURT: Do you have in the records the
16 diagnoses that gave rise to the prescription of these
17 particular drugs?

18 A Yes, I do.

19 Q What does it say?

20 A Heart palpitations, anxious state, insomnia,
21 hypertension, thrombocytopenia which is not enough
22 platelet's in the blood. Seizures, nausea with vomiting,
23 hyperpotassemia, which is low potassium, and an enlarged
24 prostate, and he is being referred for cardiovascular
25 screening to a Dr. Borla.

14:18 1 Q And I guess I was really looking to see if there
2 is an underlying diagnoses of any psychological
3 conditions. Is that reflected at all?

4 A Well, the depression and the anxiety.

5 Q I mean like a disorder of some kind.

6 A I'm not sure what you are driving at.

7 Depression is a disorder as defined in the Diagnostic and
8 Statistical Manual.

9 THE COURT: Doctor, help me with this.

10 Depression is not a personality disorder?

11 THE WITNESS: No.

12 THE COURT: How would you label that disorder?

13 Not a disorder, just a condition?

14 THE WITNESS: It's a condition, and it generally
14:19 15 can be caused by both a physiological condition within the
16 client and with environmental circumstances from the
17 outside.

18 THE COURT: Okay.

19 THE WITNESS: But it is considered a treatable
20 or curable condition because insurance companies will pay
21 off on it as opposed to, say, sociopathy which is
22 considered to be a personality disorder and the insurance
23 companies won't pay for that.

24 THE COURT: So if there is a diagnoses of
25 personal disorders, insurance companies won't pay for

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that. That's inherent in the personality

THE WITNESS: That's true. It's like a condition you were born with.

THE COURT: Thank you.

MR. ROOSSIEN: Thank you, Judge. That's actually very helpful.

BY MR. ROOSSIEN:

Q As I understand, you have done a fair amount of work in criminal cases determining whether or not someone has mental capacity?

A Yes.

Q And in your opinion, does Mr. Baron know exactly what he's doing?

A I would say that he would certainly pass the screening test for competency to stand trial, yes.

MR. ROOSSIEN: Pass the witness.

THE COURT: Thank you very much. Anything from you, Mr. MacPete?

MR. MACPETE: Yes, sir.

CROSS EXAMINATION

BY MR. MACPETE:

Q You said you conducted the MMPI and the Rorschach test, correct?

A Yes.

Q And those tests don't diagnose personality

14:21 1 disorders per se, correct?

2 A Oh, yes, they will diagnose personality
3 disorders.

4 Q They will give you an indication, right?

5 A They will give you an indication and in some
6 cases enough to actually make a diagnoses on.

7 Q And tell the Court what personality disorders
8 were indicated by Mr. Baron's MMPI testing.

9 A I saw no indications of a personality disorder
10 as we were defining them here.

11 Q What about with respect to the Rorschach test?

12 A Same thing.

13 Q No personality disorders indicated at all?

14 A No.

14:21 15 Q So as far as those tests indicated, Mr. Baron is
16 as normal as anybody else in this courtroom?

17 A Apparently.

18 Q Now, in doing your examinations of Mr. Baron and
19 forming the conclusions you testified to on direct, were
20 you aware that at one of the hearings in this courtroom
21 his Honor, Judge Ferguson, actually lectured Mr. Baron
22 about the powers of the District Court?

23 A I'm sorry. About the powers of the District
24 Court?

25 Q That's right.

14:22 1 A No, I was not aware of that.

2 Q Did Mr. Baron tell you, in fact, that the Court
3 in essence threatened him if he didn't obey the Court's
4 orders the Court could alternatively fine him a million
5 dollars a day or put him in jail for six months or
6 eighteen months?

7 A No.

8 Q Do you think that would be a significant thing
9 to know in determining how much of Mr. Baron's depression
10 was caused by that as opposed to the receivership?

11 A It certainly indicates that there was depression
12 present at the time this was going on.

13 Q Did Mr. Baron also tell you that in a bankruptcy
14 hearing prior to the receivership the bankruptcy judge,
14:23 15 Judge Jurnigan, found that Mr. Baron had caused the
16 bankruptcy case to be filed for an improper purpose?
17 Namely, to avoid the contempt hearing that has been talked
18 about here a few minutes ago?

19 A No.

20 Q Would that be a fact you would need to know in
21 trying to determine whether or not the depression he is
22 suffering today is related to the receivership or not?

23 A That certainly would.

24 Q Did Mr. Baron tell you at some time prior to the
25 receivership he had been hospitalized in the emergency

14:23 1 room as a result of anxiety he had about the hearing?

2 A No.

3 Q Would that be a significant factor in
4 determining whether or not the depression is caused by the
5 receivership or events that occurred before then?

6 A I would like to have seen those medical records,
7 yes.

8 MR. MACPETE: Thank you. Nothing else.

9 THE COURT: Yes, Mr. Golden.

10 CROSS EXAMINATION

11 BY MR. GOLDEN:

12 Q Doctor, during the original examination by
13 Mr. Barrett, he asked is Mr. Baron depressed, and you said
14 yes, and he said almost suicidal, and you said yes.

14:24 15 A I would say there is some indications of
16 suicidal behavior, yes.

17 Q Not suicidal?

18 A No in the sense that I think he ought to be on
19 the suicide watch, no.

20 Q In what sense?

21 A I feel like he should receive treatment for some
22 of the ideations that he's having at this time.

23 Q Is it your testimony that Mr. Baron was
24 depressed before the receivership?

25 A There is no way for me to know that. The fact

14:24 1 that he tells me about the way he's been feeling, it seems
2 to have gotten precipitately worse fairly recently.

3 Q I'm not talking about better or worse. I'm
4 talking about when the depression started. Is it your
5 opinion that Mr. Baron suffered depression prior to the
6 receivership?

7 A Some of the things you said, yes, I would say he
8 was depressed but not this depressed.

9 Q So he was depressed before the receivership, and
10 he is depressed since the receivership, correct?

11 A Much more so, yes.

12 Q And you cannot testify that the causation of the
13 original depression was because of the receivership?

14 A Not the original causation but the precipitous
14:25 15 increase in it, I would say yes.

16 Q How depressed was Mr. Baron before the
17 receivership?

18 A I can't say that for certain, but I can say I
19 don't believe he was this depressed because I don't see
20 how he could have functioned.

21 Q He's at the point now where he can't function?

22 A Very close. He tripped the index in the
23 Rorschach test indicating he was having problems in
24 performing his day-to-day activities.

25 Q And it's your testimony that he should not be

14:26 1

institutionalized?

2

A No, I don't think I would say that.

3

Q You came up with a treatment plan for Mr. Baron,

4

correct?

5

A No, I was not asked to do that. I recommended

6

that he receive treatment from a professional

7

psychologist.

8

Q What is the point of the treatment?

9

A To get at the cause of the depression and try

10

and alleviate it.

11

Q And if your recommendation for treatment is

12

correct and if the treatment succeeds, then the depression

13

will go to a lower level than it is right now, correct?

14

A That's correct.

14:26 15

MR. GOLDEN: Thank you.

16

THE COURT: Dr. Tetford, did you have give Mr.

17

Baron or his lawyers some names to choose from as far as

18

treatment?

19

THE WITNESS: I did recommend one or two, yes,

20

sir.

21

THE COURT: And you have certainly charged us

22

for your services, correct?

23

THE WITNESS: Mr. Baron has insurance which I

24

haven't gotten around to filing on. I haven't had time to

25

yet.

14:27 1 THE COURT: Well, if there is anything beyond
2 that insurance, we have a receiver here who has money, and
3 we will pay you your full fee.

4 THE WITNESS: Thank you.

5 THE COURT: You would agree with my instructions
6 to his lawyers that he see someone this week and begin a
7 course of treatment. Is that correct?

8 THE WITNESS: Definitely.

9 THE COURT: Well, I'm sure that would happen.

10 MR. MACPETE: Your Honor, may I ask one more
11 question?

12 THE COURT: You may.

13 CROSS EXAMINATION

14 BY MR. MACPETE:

14:27 15 Q Doctor, when you were talking about how
16 depressed Mr. Baron was and how there has been a
17 precipitous increase in his depression due to the
18 receivership, the only information you had about what his
19 depression was like before the receivership was the
20 information that Mr. Baron gave you, correct?

21 A That and I don't believe the current level of
22 depression could have been sustained for very long
23 previously.

24 MR. MACPETE: Thank you.

25 THE COURT: Thank you very much. Dr. Tetford,

14:28 1 thank you for being here. As I say, your services will be
2 reimbursed. And I would suggest, Mr. Barrett, that you
3 work with Dr. Tetford to make sure that if he has any
4 charges not paid by insurance that those matters be
5 submitted to the receiver.

6 MR. BARRETT: Yes, sir, I will. In fact,
7 Dr. Tetford, let me give you one of my cards, and I'll
8 make sure that you were reimbursed.

9 THE WITNESS: May I be excused?

10 THE COURT: You sure may. We thank you for
11 being here.

12 MR. BARRETT: May I call the next witness? We
13 call Gerritt Pronske.

14 THE COURT: Mr. Pronske, welcome. If you will
14:29 15 please come up.

16 THE COURT: Mr. Pronske, if you will approach
17 the witness stand, and Mr. Frye will swear you in.

18 (Sworn)

19 THE COURT: Mr. Pronske, I realize you
20 represented Mr. Baron. We have had three other lawyers in
21 court who have been witnesses and represented Mr. Baron.
22 My view is that Mr. Barrett by the course of his
23 examination of these lawyers has asked for attorney-client
24 information. Of course, if he wishes to do so on behalf
25 of Mr. Baron -- he's Mr. Baron's agent -- he can waive the

14:30 1 attorney-client privilege. My view is in every instance
2 he has asked questions that certainly waive the
3 attorney-client privilege by asking about communications
4 the lawyer has with the client. He has the right to do
5 that as Mr. Baron's attorney. I'm doing this on a
6 witness-by-witness basis. He may not ask you questions
7 about your communications with Mr. Baron. And he may not
8 waive the attorney-client privilege, and so it will remain
9 intact as far as any further examination. But if he does
10 open that issue up -- He can't open it up with you and
11 then stop everybody else from asking those related
12 questions. So we will take it a step at a time, but I
13 depend want you to know my view is the attorney-client
14 privilege has been waived as to the other lawyers who have
14:30 15 testified, and we'll see if it's waived with you.

16 THE WITNESS: Thank you.

17 BY MR. BARRETT:

18 Q Mr. Pronske, would you state your name for the
19 record?

20 A Gerritt Pronske.

21 Q And how are you presently employed?

22 A I'm an attorney with Pronske and Patel, PC.

23 Q And were you so employed back on or about July
24 23rd of 2010? Maybe long before that?

25 A Yes, sir.

14:31 1 Q And how were you employed in connection with
2 Jeff Baron?

3 A The law firm represented Jeff Baron
4 individually.

5 Q And did you represent Mr. Baron personally?

6 A Yes, sir.

7 Q And who did you represent Mr. Baron on behalf
8 of?

9 A I don't understand the question. I have
10 represented Mr. Baron.

11 Q Personally in any and all matters that were
12 pending?

13 A There wasn't really a limitation, but the
14 primary purpose for my representation was in connection
14:32 15 with matters related to bankruptcy issues. I'm a
16 bankruptcy lawyer.

17 Q So you are a bankruptcy attorney, and you
18 represented him in the bankruptcy?

19 A Essentially that's correct, yes.

20 Q Now, did you have a written contract with
21 Mr. Baron?

22 A No.

23 Q Why is that?

24 A None was requested.

25 Q Is it your practice to have a written contract

14:32 1 with clients?

2 A I do sometimes, and I don't sometimes.

3 Q It's a good practice to have a written contract,
4 isn't it?

5 A It can be. I haven't found the lack of a
6 contract ever to have been a problem prior to this case.

7 Q So you have never had a client complain that if
8 you didn't have a written contract and there is a variance
9 in what they believe the agreement was versus what you
10 believe the agreement was?

11 A That's correct.

12 Q Now, what was your contractual agreement, in
13 fact, with Mr. Baron on or about the time that you started
14 representing him?

14:33 15 A The initial contractual engagement was reached
16 with -- Actually it wasn't negotiated by Mr. Baron. It
17 was negotiated by Elizabeth Schurig in a conference call
18 that Mr. Baron was on. But the primary negotiation was
19 with Elizabeth Schurig. My request was that we represent
20 him with our normal hourly rates and that we be paid a
21 seventy-five thousand dollar retainer up front against
22 which we would bill. That was the initial terms of the
23 engagement.

24 Q So it's your testimony that the seventy-five
25 thousand dollars paid up front was for a retainer, not to,

14:34 1 quote, wind up the bankruptcy?

2 A There is no question about that.

3 Q And certainly that was the issue with Jeff
4 Baron, as he claims, this was a flat fee that was paid to
5 wind up the bankruptcy.

6 A I have never heard that position being raised
7 until I saw it in a pleading, one, and two, you mentioning
8 it today. That's the only times I have heard that.

9 THE COURT: What kind of pleading, Mr. Pronske?

10 THE WITNESS: It was the pleading that was filed
11 in the state court prior to our -- We had filed a motion
12 to withdraw from the bankruptcy case because we were not
13 being paid. And there was a hearing on our withdrawal
14 which was being opposed, and there was a concern that we
14:34 15 were going to raise attorney-client privilege issues. So
16 an hour and a half before the hearing in front of Judge
17 Jurnigan, there was a lawsuit filed against us,
18 essentially a temporary restraining order, to prevent us
19 from disclosing information to Judge Jurnigan, and we
20 found out about the hearing about an hour and a half
21 before the hearing was supposed to be held, and we filed a
22 removal of that action to Judge Jurnigan prior to the
23 hearing being held in state court, and the hearing in
24 front of Judge Jurnigan did go forward at 1:30, and she
25 ordered me to testify to what I was going to testify to,

14:35 1

and that was the pleading

2

Q We'll get there in a minute, Mr. Pronske. But
3 did you send out invoices regularly to Mr. Baron?

4

A No, I did not.

5

Q Why is that, sir?

6

A Because what I did instead -- And Mr. Baron knew
7 this. I apprised him as to where we were in the billing
8 during the case--

9

Q Let me stop you.

10

THE COURT: Wait, wait. Let him finish.

11

MR. BARRETT: Your Honor, this is a multifarious
12 answer.

13

THE COURT: Wait, wait, wait. There is
14 multifarious questions, but I have never heard -- Are you
15 saying he's not responding to your question?

14:36

16

MR. BARRETT: Objection. Nonresponsive. I'm
17 trying to take this one at a time.

18

THE COURT: Okay. We'll go forward. It seems
19 very responsive to me.

20

MR. BARRETT: He's being very responsive, but
21 I'm trying to break it down one issue at a time. That's
22 the problem.

23

THE COURT: Well, you will have the opportunity
24 to give full answers. We're not going to break it down
25 one at a time without him having the opportunity to fairly

14:36 1 answer. That's not fair to the witness. Ask your
2 question.

3 BY MR. BARRETT

4 Q You said you did not provide monthly invoices to
5 him?

6 A That's correct.

7 Q Why was that?

8 A What I was doing instead, I got behind on all of
9 my monthly invoices actually with all of my clients. I
10 have six lawyers at my firm, and during the middle of our
11 settlement process, I had three lawyers leave in one week,
12 two of them to have a baby within two days of each other,
13 and one actually left the firm. So I was very busy for a
14 three-month period, kind of on my own, and so what I did
14:37 15 was I apprised Mr. Baron on a regular basis of where we
16 were. I let him know when we were out of the retainer. I
17 let him know when we were up to sixty thousand dollars.

18 Q Let me stop you. Did you apprise him in
19 writing?

20 A No.

21 Q Did you document it in e-mails?

22 A Yes, there were some.

23 Q Do you have any of those e-mails?

24 A No. I wasn't asked to bring those today.

25 Q Have you ever submitted those e-mails to anyone

14:38 1 showing that you apprised Mr. Baron that the attorneys'
2 fees were getting larger and larger?

3 THE COURT: Excuse me for my question. I guess
4 I don't understand the question. He has e-mails back and
5 forth with his client and you are asking him if he showed
6 those e-mails to anybody in the world? I don't understand
7 the question. Why would a lawyer just, say, pick somebody
8 off the street and say "Let me show you the e-mails I have
9 with my client"?

10 MR. BARRETT: Well, there have been allegations,
11 Judge --

12 THE COURT: That he has done that?

13 MR. BARRETT: He just said he has heard
14 allegations that there was a seventy-five thousand dollar
15 flat fee.

16 THE COURT: I am sorry. I am completely lost in
17 your cross examination right now. I don't understand it.

18 MR. BARRETT: All right. I will move on.

19 THE COURT: Okay.

20 BY MR. BARRETT

21 Q But you didn't bring those with you, correct?

22 A That's correct.

23 THE COURT: Did you contact the witness and ask
24 him to bring the e-mails?

25 MR. BARRETT: No, we did not, your Honor.

14:39 1

THE COURT: Okay.

2

BY MR. BARRETT

3

Q Now, in July -- On or about July 23rd -- Well, when did you enter into your agreement with Mr. Baron?

5

A If you have my fee application that I filed with the bankruptcy court, it would have the exact date. It was somewhere in the neighborhood of August of 2009, but the better answer to that question would be to look at the billing statement that is on that fee application because it has the first date.

10

11

Q August 2009 is a ballpark?

12

A It's a ballpark, right.

13

Q And it was not until July 23rd, 2010 that you sent him your first invoice, correct?

14

14:40 15

A I think that's right. Not July 23rd. It was earlier than that but not by much earlier. I think it was actually in June.

16

17

18

MR. MACPETE: Your Honor, I have a copy of Mr. Pronske's fee application if that would be helpful for anybody.

20

21

THE COURT: I don't know if it should be entered in evidence, but maybe you could let Mr. Pronske see it so that he could have it in front of him.

22

23

24

MR. BARRETT: Approach the witness, your Honor?

25

THE COURT: You may.

14:41 1

BY MR. BARRETT

2

Q Let me show you what's been marked as Movant's Exhibit Number 3 and ask you if you recognize that would document.

3

4

A Yes, I do.

5

6

Q Is that a copy of the invoice that you sent Mr. Baron?

7

8

A It is a copy of an invoice I sent him. I'm not sure if it's the -- I sent him an e-mail like this twice, and I'm not sure if this is the first or second one.

9

10

Q This particular e-mail is dated July 23rd, 2010; is that correct?

11

12

A Yes. Actually if you show that to me, I think I can tell you whether that's the first or second. I just remembered something.

14:42 15

16

This is the first e-mail.

17

MR. BARRETT: I would move to admit Baron Number 3, your Honor.

18

19

MR. MACPETE: Your Honor, could I see that?

20

MR. GOLDEN: No objection.

21

THE COURT: It's admitted.

22

23

MR. BARRETT: May I use this exhibit, your Honor?

24

25

THE COURT: Certainly. If you wouldn't mind letting the witness look over your shoulder.

14:43 1

BY MR. BARRETT

2

Q Mr. Pronske, this invoice to Jeff indicates this is your firm's bill and that the total outstanding is \$217,452.

3

4

5

A Actually it says two hundred seventeen thousand.

6

7

Q Four hundred fifty-two dollars less ten thousand dollars, correct?

8

A Correct.

9

Q So leaving the total balance at \$195,452?

10

11

12

13

A At that time. And that's the reason I knew this is the first one because the second one had an amount of two hundred forty-one thousand dollars. So it was higher than this.

14

14:44 15

Q And the second one was what? Within a month of this?

16

17

A You would have to show me. That sounds about right.

18

Q Very soon after this one, correct?

19

A Within a month.

20

Q So you have no contract with Mr. Baron --

21

THE COURT: Would it be appropriate to say he has no written --

22

23

BY MR. BARRETT:

24

25

Q You have no written contract with Mr. Baron. You send him no invoices for almost a year, and then you

14:44 1 sent him a bill for two hundred thousand dollars. Is that
2 your testimony, sir?

3 A With the addition, I told you I regularly told
4 him where we were with the billing, and I have four
5 specific examples that I recall that I can be very
6 detailed about, but I regularly apprised him where we
7 were, and he had a full understanding and promised to pay
8 all during the process.

9 Q Okay. Now, when you didn't get your money from
10 Jeff Baron, you were more than a little bit mad, weren't
11 you?

12 A More than a little bit mad is very subjective.
13 I was shocked. And the reasons he was telling me I knew
14 were not true.

14:45 15 Q Did you ever say you are going to use a scorched
16 earth policy against Jeff Baron?

17 A Not that I recall. But if you can show me I
18 said that -- I don't recall saying that. That's not
19 something that's in my normal vocabulary.

20 Q But you wouldn't deny it?

21 A I would have a hard time saying I would use
22 those words. That's not in my vocabulary, and that's not
23 the normal way that I practice law. But if you have
24 something showing I said it, you know, I was very unhappy
25 that I had spent three months working almost one hundred

14:46 1 percent of my practice time at a time when my time was
2 very scarce in my law firm. And Jeff Baron repeatedly
3 promised I was going to be paid, and then he told me there
4 wasn't enough money. So I was very, very unhappy.

5 Q But you did receive seventy-five thousand from
6 him?

7 A A year earlier which ran out in January or
8 February, and the bulk of the billing started in the
9 beginning of January 2010 when the retainer was gone.

10 Q You did use a scorched earth policy against him,
11 didn't you?

12 A I take issue with that.

13 Q Let's talk about that. First of all, you filed
14 a motion to withdraw?

14:47 15 A That's correct.

16 Q And you made some allegations in that motion
17 that are very inflammatory?

18 A You and I may disagree on what's inflammatory.
19 If you want to tell me what I said, I may agree.

20 Q Didn't you say I have to withdraw because I just
21 learned of some possible criminal conduct that Jeff Baron
22 may be engaging in and my ethical obligations cause me to
23 have to withdraw and then you subsequently did?

24 A Did not say that. Absolutely did not say that.

25 THE COURT: Well, surely if there is a motion on

14:47 1 file, let's look at the motion.

2 A I didn't say I had to withdraw because of that.
3 I said I needed a quick hearing on withdrawal because he
4 was planning on moving money offshore so no creditors
5 could reach that money. So that's the details. I needed
6 a quick hearing because I knew there were things about to
7 happen with money that would put them out of the United
8 States potentially not to be reached by creditors.

9 BY MR. BARRETT:

10 Q And you didn't say specifically that you
11 believed there were possible criminal actions on the part
12 of Jeff Baron and that caused you some ethical problems
13 that you had to withdraw at that time?

14 A Absolutely not.

14:48 15 THE COURT: Can we look at the motion to
16 withdraw?

17 A The reason for which withdrawal had nothing to
18 do with that. The reason for withdrawal was he told me he
19 had no money to pay me.

20 MR. BARRETT: May I have a second, your Honor?

21 THE COURT: Yes.

22 THE COURT: By the way, of course, the
23 attorney-client privilege has been waived.

24 MR. LYON: Your Honor, Docket 419.

25 THE COURT: On the bankruptcy docket?

14:49 1 MR. LYON: Yes, sir

2 THE WITNESS: It's the motion to expedite.

3 THE COURT: Appreciate you being back there,
4 Mr. Lyon. What about the motion to expedite?

5 MR. LYON: 423.

6 BY MR. BARRETT:

7 Q Mr. Pronske, you don't specifically recall in
8 that motion --

9 THE COURT: We're talking about the motion to
10 expedite?

11 MR. BARRETT: The motion to expedite, your
12 Honor. Sorry. Motion for expedited hearing on emergency
13 motion to withdraw.

14 BY MR. BARRETT

14:50 15 Q You don't recall in that motion specifically
16 that you stated that you and/or your firm has "recently
17 learned that Baron intends to hide his assets offshore as
18 early as September 15th of 2010. Thus, the hearing will
19 need to move forward expeditiously to prevent Mr. Baron's
20 unlawful activities"?

21 A I think that's exactly what I just said a minute
22 ago.

23 Q So you essentially said that he had committed
24 criminal conduct here?

25 A Why don't you read that again and ask me the

14:51 1 question again.

2 Q Thus, the hearing will have to move forward
3 expeditiously to prevent Mr. Baron's unlawful activities?

4 A At a future date. I knew that he was going to
5 be moving money offshore for the sole purpose of the
6 Courts of United States not having jurisdiction over that
7 money. And that was the reason that Mr. Baron filed a
8 lawsuit against me, a restraining order, preventing me
9 from saying that in Judge Jurnigan's court, and later
10 Judge Jurnigan ordered me to testify what I knew about
11 that which I did.

12 Q And when you testified in Judge Jurnigan's
13 court, you led her to believe that Jeff Baron was
14 secreting assets offshore in the Cook Islands, didn't you?

14:51 15 THE COURT: Do we have a transcript of what he
16 testified to?

17 MR. BARRETT: I have it right here.

18 THE COURT: You may approach Mr. Pronske and
19 show him his testimony.

20 MR. BARRETT: Just for identification purposes,
21 I am going to mark this Movant's Number 5.

22 THE COURT: 4.

23 BY MR. BARRETT:

24 Q Mr. Pronske, do you recall back on September
25 22nd of 2010 testifying in front of the Honorable Stacy

14:52 1 Jurnigan?

2 A I don't think I was testifying. I think I was
3 at the podium as a lawyer trying to get my motion to
4 withdraw approved.

5 Q Okay. And do you recall, in fact, making some
6 representations to Judge Jurnigan?

7 A I recall making representations to Judge
8 Jurnigan, yes.

9 Q And do you recall essentially stating to the
10 Court at that time -- and by the way, Mr. Pronske, you
11 had --

12 MR. BARRETT: Your Honor, may I say it from here
13 or should I step back to the podium if I have just a
14 couple of questions for Mr. Pronske?

14:53 15 THE COURT: If they are unrelated to the
16 transcript of the hearing, surely return to the podium.

17 MR. BARRETT: Okay.

18 BY MR. BARRETT

19 Q By the way, Mr. Pronske, you yourself helped
20 negotiate this transfer of assets in the Cook Islands from
21 one trustee to the other trustee, didn't you?

22 A No, I didn't.

23 Q Oh, really, you didn't?

24 A That's what I said.

25 Q So you didn't help in negotiating that

14:54 1 settlement agreement?

2 A First of all, I strongly advised Mr. Baron on
3 probably a weekly basis not to move money to foreign
4 jurisdictions, told him in my opinion it did not work and
5 he would be very, very familiar with all the admonishments
6 I gave him not to do that and the reasons why. And he
7 would remember I cited for him California cases and
8 Florida case where defendants had been put in jail for
9 contempt for not repatriating assets, and therefore, I
10 didn't believe the concept worked. I tried to find
11 alternatives. I advised him to see tax lawyers to set up
12 other alternatives including partnerships and family
13 partnerships that would be legal in United States
14 jurisdictions. I thought those would work. I thought
14:55 15 moving assets to foreign jurisdictions does not work and
16 would subject him to problems from the federal courts,
17 from the Internal Revenue Service and the bankruptcy
18 court.

19 Q Okay.

20 A And I told him not to do it, and no, I did not
21 negotiate any of those things. And he would, I'm sure,
22 remember every bit of that.

23 Q So Dean Ferguson didn't finish up the settlement
24 agreement that you drafted?

25 THE COURT: Wait a minute. There has been a non

14:56 1 sequitur here. I understood you were talking to him about
2 the setting up of the trustee offshore.

3 MR. BARRETT: Yes, sir. And he said he didn't
4 participate in the settlement agreement which essentially
5 agreed upon all of those transfers.

6 THE COURT: I'm sorry. I missed that.

7 MR. BARRETT: He said that he had nothing to do
8 with that settlement agreement which is in direct conflict
9 with Mr. Ferguson's testimony.

10 THE COURT: I'm sorry. I missed that. I heard
11 him say he didn't have anything to do with the transfer
12 from one trustee to another. I didn't hear him say he had
13 nothing to do with the settlement agreement. Let's just
14 ask him. Mr. Pronske, did I not hear you correctly?

14:57 15 THE WITNESS: No, your Honor, you heard me
16 correctly.

17 THE COURT: Did you have anything to do with the
18 settlement agreement itself?

19 THE WITNESS: Almost every one of the one
20 hundred twenty-five pages, yes.

21 BY MR. BARRETT:

22 Q So you did have something to do with the
23 settlement agreement?

24 A Every day for about four months. So yes.

25 Q And the settlement agreement essentially set all

14:57 1

of this up?

2

A No.

3

Q It doesn't?

4

A No.

5

Q So in the settlement agreement there is no

6

reference to the trust in the Cook Islands?

7

A There is reference to the current trust that was

8

in the Cook Islands resigning, and there was a reference

9

to something new being set up, but it had not been set up

10

by the time I withdrew.

11

Q But everybody knew what was going on?

12

A I don't understand that question.

13

THE COURT: I'm sorry that I'm lost here. There

14

is a difference between removing one trustee in the Cook

14:58 15

Islands and appointing another trustee and hiding assets

16

offshore. You seem to be joining them together.

17

MR. BARRETT: Well, there is a reason for that,

18

Judge.

19

THE COURT: I have completely lost your train of

20

thought right now.

21

MR. BARRETT: Let me clarify right now.

22

THE COURT: That would be helpful.

23

BY MR. BARRETT:

24

Q Sir, in fact, did you later after you approved

25

that settlement agreement and helped to draft that

14:58 1 settlement agreement -- did you later represent in front
2 of Judge Jurnigan that you thought that Jeff Baron was
3 possibly going to engage in illegal activities?

4 A I believed that he was going to be moving assets
5 to a jurisdiction that would be beyond the jurisdiction of
6 the creditors in the United States and the federal courts
7 in the United States. And I may have characterized that
8 as improper and illegal. That's what I would have been
9 referring to.

10 Q And do you stand by that today?

11 A Absolutely.

12 Q And is that based on something Jeff Baron told
13 you apparently?

14 A What?

14:59 15 Q What is that based on, your statements in there?

16 A My knowledge that he was working with a trustee
17 in the Cook Islands. I don't remember the name of the
18 person, but I knew it at the time. And there was
19 testimony about it at that September 22nd, 2010 hearing.
20 But that person was being used to transfer assets
21 offshore. And I knew that more from looking at the web
22 site after I withdrew as counsel, looking at the web site
23 of that trustee and the attorney in the United States that
24 was assisting because it was very clear on the web site
25 that's what they were doing, and that was the purpose for

15:00 1 their being involved.

2 Q Are you talking about that you looked at the web
3 site and saw the different addresses of the trustee?

4 A That's not what I was looking for.

5 Q I'm sorry.

6 A I'm talking about there was an attorney involved
7 in Dallas. I think he was on Oak Lawn. I can't remember
8 his name. But he was being used -- And this is after I
9 withdrew. He was being used to set up the trust in the
10 Cook Islands, and then there was the name of the trustee
11 and the trust in the Cook Islands which I looked up, and
12 it appeared their sole purpose because they for lack of
13 better words bragged about the fact that if you set the
14 trust up with us it will not be subject to the

15:00 15 jurisdiction of the United States. So I knew this was
16 that type of trust, and I knew that Mr. Baron had the
17 intention to try to find a trustee in a jurisdiction that
18 would not be reachable by the Courts of the United States.

19 Q Okay.

20 A And that's what I told Judge Jurnigan at that
21 hearing. And the reason we told the judge that is we
22 wanted our hearing expedited because we were concerned
23 that money was going to get moved and that we were going
24 to be unable to protect our interests after the money was
25 in another jurisdiction, and that's what resulted in Judge

15:01 1 Jurnigan forcing Mr. Baron to put three hundred thirty
2 thousand dollars in the trustee's account as sort of a
3 secure fund in the United States.

4 Q Now, what specifically did you learn that caused
5 you to file an expedited emergency motion?

6 A I learned that Mr. Baron was working with that
7 particular trustee in the Cook Islands to set that trust
8 up.

9 Q Wait a second. You hadn't had any contact with
10 Mr. Baron in months, had you?

11 A I wouldn't say that I hadn't had contacts with
12 him in -- Let's be specific.

13 Q When is the last time you had contact with
14 Mr. Baron?

15:02 15 A It would have been somewhere towards the very
16 end of July.

17 Q July of when?

18 A Of 2010. And our motion to withdraw I think --
19 Well, I have the motion to expedite in front of me. It
20 was probably filed in August, maybe September. It was
21 filed September the 9th.

22 Q All right.

23 A And the motion to withdraw was filed prior to
24 that.

25 Q So two months. You haven't had contact with

15:02 1 him?

2 A Month and a half, yes.

3 Q Month and a half and all of a sudden there is
4 something that happens that causes you to have some sort
5 of an emergency that you learn of that that you have to
6 have an expedited hearing. What is that fact?

7 A The fact that I knew Mr. Baron was trying to
8 move his assets offshore outside the jurisdiction of the
9 United States. And as I said, we had numerous discussions
10 about that.

11 Q Let me stop you there. You had been
12 representing Mr. Baron for months, and you knew everything
13 that was going on with these trusts, correct?

14 A No, I didn't know everything that was going on
15:03 15 with these trusts. If you want to be more specific. I
16 can't testify I knew everything that was going on. That's
17 not correct.

18 Q Well, you are a diligent lawyer, correct?

19 A Yes.

20 Q And you were spending a lot of your time on this
21 case?

22 A Yes.

23 Q And you were trying to learn as much as possible
24 about the structure of the Village Trust and how it
25 operated, correct?

15:03 1 A No, that's definitely not correct.

2 Q Well, tell me what you were trying to get up to
3 speed on?

4 A That's a very difficult question, as I'm sure
5 most lawyers that work on this case could also testify to.
6 This is one of the most conflicted settlements. I think
7 there were sixteen lawyers actively involved in it, and I
8 think every one of those sixteen would say this is one of
9 the most complicated transactions they have ever been
10 involved in. There was a very complicated organizational
11 chart that included the trusts, but that's not something
12 that I needed to know backwards and forwards, the
13 structure of all of this. There were other issues that
14 were -- take a look through the hundred-and-whatever-page
15:04 15 document. It didn't really deal much with that issue.

16 Q Fair enough. What issue is it -- Again, I'm
17 driving at what specific issue was it that you learned in
18 the month and a half that you had no contact with Jeff
19 Baron that caused you to need an emergency motion to
20 withdraw and come in and become an adverse witness against
21 Jeff and say, Judge, I learned of criminal activity
22 against my client that is going on right now. What was
23 it?

24 MR. MACPETE: I object to the question as
25 mischaracterizing the testimony of the witness. He

15:05 1 repeatedly denied he accused Mr. Baron of criminal
2 activity.

3 THE COURT: There is nothing in the files I see
4 that says criminal activity. Activity can be illegal, but
5 not criminal. If you find something in the files that
6 says criminal, please show it to me because I haven't
7 heard or seen anything about it. I'm talking about the
8 word "criminal." Mr. Barrett, you used the word
9 "criminal" all the time.

10 MR. BARRETT: Yes, sir.

11 MR. MACPETE: Your Honor, when Mr. Barrett was
12 looking I was curious what the Court's end time is today
13 given we're now at three o'clock.

14 THE COURT: That's a good question. How much
15:06 15 more time do you need with Mr. Pronske?

16 MR. BARRETT: Probably thirty minutes, Judge.

17 THE COURT: So you have almost no time for any
18 other witnesses. 3:30 we're going to hear from Mr. Baron.
19 It sounds like to me this is your last witness. Is that
20 right?

21 MR. BARRETT: Yes, him and Mr. Baron.

22 THE COURT: I'll give you twenty minutes to
23 conclude.

24 MR. BARRETT: Thank you, Judge.

25 BY MR. BARRETT

15:07 1 Q Now, Mr. Pronske, you sent a bunch of e-mails
2 recommending the Cook Islands trustee, didn't you?

3 A No, I didn't. I wouldn't know who to recommend.
4 That was not part of my function.

5 THE COURT: If you have those e-mails, perhaps
6 you could show them to Mr. Pronske, and he can familiarize
7 himself with them.

8 MR. BARRETT: Yes, sir, I'm going through them
9 right now. This is Exhibit 6.

10 THE COURT: What was Exhibit 5? I've got Mr.
11 Chesnin's e-mails are 1 and 2. Mr. Pronske's e-mails
12 about the fees are 3, and Mr. Pronske's presentation to
13 withdraw is 4.

14 MR. BARRETT: So this must be 5.

15:09 15 THE COURT: What is 5?

16 MR. BARRETT: 5 is an e-mail from Mr. Pronske to
17 Ms. Elizabeth Schurig.

18 BY MR. BARRETT:

19 Q Let me show you what's been marked as Movant
20 Exhibit 5 and ask you if you recognize that.

21 A Yes, I do.

22 Q Is that an e-mail from yourself to Elizabeth
23 Schurig?

24 A It is.

25 Q And in fact, does that indicate, from you to Ms.

15:09 1 Schurig that you all may have found an alternative trustee
2 for the Cook Islands?

3 A It does. And this is a completely different
4 situation and time frame. This is in April before any of
5 the discussions you are talking about, about moving assets
6 offshore. This was a situation where Elizabeth Schurig
7 who was the lawyer for the trust and the trustee and
8 Mr. Baron had had a clash because Mr. Baron didn't want to
9 pay her anymore and didn't want to pay her numerous sets
10 of attorneys including the Holman Summers (phonetic) firm
11 and Craig Capua's law firm and one other law firm, and
12 they wanted to quit and not be involved anymore and needed
13 an alternative trustee for the trust that was already set
14 up, and so I contacted a lawyer that's actually in the
15:10 15 courtroom today.

16 Q Who would that be?

17 A Mr. Martin Thomas, who knew of lawyers or
18 trustee that worked in the Cook Islands because of a
19 client, and I needed and I asked him who would be an
20 alternative trustee, and he gave me that name. This was
21 before the structure and the assets were being moved.
22 This trust had already appeared, and the United States had
23 already broken its jurisdictional issues, and this was
24 basically appointing a new trustee over a trust that the
25 United States already had jurisdiction over. The other

15:11 1 action is completely --

2 Q Mr. Pronske, I guess I'm not understanding.
3 What trust would this alternative trustee with Ms. Schurig
4 have you been regarding?

5 A Ms. Schurig represented the Village Trust.

6 Q The Village Trust, right. And that's the same
7 trust the settlement agreement refers to when it's talking
8 about finding a new trustee?

9 A What I learned after I withdraw as counsel is
10 that the assets were going to be moved to another trust
11 with a new trustee who I don't remember the name of with
12 the lawyer in Dallas that officed on Oak Lawn that I don't
13 recall the name of, and this was going to be basically
14 moving it to a different trust with a different trustee to
15:11 15 reset it up to make it be shielding itself from the
16 liabilities of creditors in the United States. The old
17 trust had already submitted to the jurisdiction of the
18 United States Court. So this was going to be a new
19 situation. That's what caused my concern -- We had no
20 concern that we were going to be able to reach assets of
21 the Village Trust because they had already appeared in
22 various proceedings. The concern was there was going to
23 be a new trust in the Cook Islands that was going to be
24 properly formed, and there would be no way to reach the
25 assets of that trust. And that was in a time frame of

15:12 1 September 2010. This e-mail is from April.

2 Q That's from what?

3 A April 15th, 2010.

4 Q What about March 30th?

5 A Well, that would have been even earlier than
6 this.

7 Q Okay.

8 A The problems between Mr. Baron and Ms. Schurig
9 arose prior to that where there was a very significant
10 problem where she was not getting paid what she wanted,
11 and she was joined very carefully to the trustee in the
12 Cook Islands, and they were both going to quit.

13 Q What about July 9th, 2010?

14 A I don't know.

15:13 15 MR. BARRETT: Approach the witness?

16 THE COURT: What exhibit is this?

17 MR. BARRETT: 6.

18 THE COURT: This is another Pronske e-mail?

19 BY MR. BARRETT:

20 Q Let me show you that and ask you if you
21 recognize that.

22 A Yes, I remember this pretty well actually.

23 Q Does that surprise you?

24 A No.

25 Q That is an e-mail from Elizabeth Schurig dated

15:14 1

Friday, July 9th, 2010?

2

A I think you are right, yes.

3

THE COURT: That's not a Pronske e-mail?

4

MR. BARRETT: No, it's not. It's an e-mail from

5

Elizabeth Schurig to Mr. Pronske.

6

A And yes, I did say -- Do you want to ask me that

7

question?

8

Q No, sir.

9

THE COURT: Go ahead and ask your next question.

10

BY MR. BARRETT:

11

Q And certainly that references the Village Trust,

12

does it not?

13

A I think it does. She represented the Village

14

Trust. That was her client.

15:15 15

Q And attached is an e-mail to the trustee,

16

correct? Attached is an e-mail to the trustee?

17

A From who?

18

Q Her.

19

MR. MACPETE: I object on hearsay grounds.

20

We're talking about an e-mail Ms. Schurig drafted, not

21

Mr. Pronske.

22

THE COURT: Is that the --

23

MR. BARRETT: I'm not offering it.

24

THE COURT: So that won't be Exhibit 6. Exhibit

25

6 will be another exhibit.

15:16 1 BY MR. BARRETT

2 Q Does that indicate that the trustee fees are
3 estimated at a certain amount?

4 THE COURT: I'm sorry. I'm lost. What trustee
5 are we talking about.

6 MR. BARRETT: The trustee for the Village Trust,
7 your Honor.

8 THE COURT: I have completely lost the train
9 again. Why are we -- Why are we dealing with this
10 particular exhibit? I don't know.

11 MR. BARRETT: I'll withdraw the exhibit. I'll
12 just withdraw the exhibit. I think it is confusing,
13 Judge.

14 THE COURT: You and I are on the same wavelength
15:17 15 there.

16 BY MR. BARRETT:

17 Q Now, Mr. Pronske, you would agree with me, would
18 you not, that going over to the bankruptcy court and
19 representing essentially that Mr. Baron has been engaged
20 in wrongdoing or is getting ready potentially to move
21 assets offshore and that you have just learned about this
22 information and it's an emergency would be alarming to
23 Judge Jurnigan. Would you agree with that?

24 A I don't know that I would use the word
25 "alarming." She's a seasoned, extremely competent,

15:17 1 intelligent bankruptcy judge, and my intention wasn't to
2 alarm her but to inform her that there were rights that
3 were about to be taken away from us because of the
4 circumstances.

5 Q Do you think she was alarmed by it?

6 A I think that she reacted to it with appropriate
7 temperament and as a reaction to that and many other
8 things that were brought to her attention that concerned
9 her greatly -- including there were over twenty-five
10 lawyers that hadn't been paid and which she thought may
11 involve theft of services -- she put a fund of three
12 hundred thirty thousand dollars aside to be in compliance
13 with the settlement agreement. I can't say she was
14 alarmed. It was in front of her, and she reacted
15:18 15 appropriately.

16 Q Was any money ever moved offshore?

17 A Well, it's interesting you ask. I saw the
18 e-mail chain the day the receiver was appointed, and the
19 receiver requested the trustee not to move or spend any
20 assets and the trustee in the Cook Islands immediately
21 responded back they were completely beyond the
22 jurisdiction of the United States. I will tell you that
23 what I was concerned about and what I told Judge Jurnigan
24 was happening happened.

25 Q That's a legal agreement. Whether there is a

15:19 1 treaty between the Cook Islands, that's a legal issue?

2 A It's a legal issue, and sir, it's also very much
3 a strategic issue. The reason the assets are put where
4 there is no treaty is so that there will be no
5 jurisdiction so the creditors of the United States cannot
6 reach those assets. So it's a mixed bag.

7 Q But that has nothing to do with moving assets
8 offshore from the United States?

9 A It effectively does.

10 Q It's the opposite?

11 A It's really not.

12 Q So in your mind that was the same as moving
13 assets offshore. That was one in the same thing?

14 A It was moving assets from a trust that had
15 submitted to the jurisdiction of the United States to a
16 new trust that was being formulated in the Cook Islands
17 that would not be subject to the jurisdiction of the
18 United States. That's as clear as I can be.

19 Q Do you know the purpose for moving the trust?

20 A Yes, I do.

21 Q What was it?

22 A The primary purpose was to shield the assets
23 from the jurisdiction of the United States and to make
24 sure that no creditors -- especially possible litigants
25 that John MacPete might represent in the future -- would

15:20 1 have the ability to recover against those assets because
2 they would be away from the jurisdiction of the United
3 States.

4 Q Well, that would be absolutely totally,
5 absolutely illegal, would it not?

6 A If that's what you tell me.

7 Q Wouldn't that be illegal?

8 A I think it does what it's intended to do which
9 is to put the assets out of the jurisdiction of the United
10 States.

11 Q Do you believe that would be illegal or not?

12 A I'm not sure I'm qualified to answer that. Yes,
13 I did use the word illegal in the motion to expedite. So
14 I suppose that's what I meant. But I certainly think
15:21 15 there is a host of serious problems with it, and

16 illegality would be one.

17 Q And you would have known about that the entire
18 time you were dealing with Mr. Baron?

19 A That's not true. I knew about the trust that
20 had submitted to the jurisdiction of the United States.
21 As I said, I counseled him I can't tell you how many times
22 not to move assets beyond the reach of the creditors in
23 the United States because I didn't think it would work and
24 would cause serious problems.

25 Q But yet you signed off on the settlement

15:21 1 agreement?

2 A I did.

3 Q And you could have withdrawn that --

4 THE COURT: Let him finish his answer. You
5 signed off on the settlement agreement. And you were
6 about to say something else.

7 A The settlement agreement does not provide for
8 the transfer of assets beyond jurisdiction of the United
9 States. What it provides for, if you want to know, is the
10 current lawyers quit saying they wouldn't work with
11 Mr. Baron because he wouldn't pay anybody and it required
12 a new mechanism be set up. And as of the time, I withdrew
13 that mechanism was not set up, and in fact, that mechanism
14 was not formalized until probably around the time I filed
15:22 15 my motion to expedite and I learned that was being

16 formulated with a Cook Islands trust and a Cook Islands
17 trustee, and that's what caused us to file that expedited
18 motion.

19 Q You are saying "mechanism." Is there anything
20 illegal about transferring from one trust to another?

21 A It's really out of my area to tell you whether
22 that's illegal or not. I think there is serious problems
23 with it.

24 Q You put that in your motion, didn't you?

25 A Yes, I did.

15:23 1 Q And that was certainly alarming, correct?

2 A It wasn't intended to alarm, and I don't know
3 how it was taken.

4 Q And you got up and told Judge Jurnigan in a
5 hearing when Mr. Baron was there that Mr. Baron was doing
6 all of these things, didn't you?

7 A After they asserted attorney-client privilege
8 and the judge ordered me to tell what I knew about it, I
9 did.

10 Q And that was alarming to Judge Jurnigan?

11 A I can't say that it was alarming because I can't
12 crawl inside her head. I know that she heard those facts
13 and made a reasonable decision based upon the facts in
14 front of her. That's all I can say.

15:23 15 Q Are you a bankruptcy attorney?

16 A Yes.

17 Q Are you familiar with the Bankruptcy Code?

18 A Yes.

19 Q Are you familiar with Rule 903, Title 11?

20 A Refresh me as to what the rule says.

21 THE COURT: You have about five minutes.

22 BY MR. BARRETT:

23 Q It's for a report and recommendation to a
24 district court, that somebody be authorized?

25 A Yes, I'm familiar.

15:25 1 Q In fact, was Peter Vogel authorized to negotiate
2 the attorneys' fees in this case?

3 A Yes.

4 Q And did he do that?

5 A No. When you say this case, do you mean my
6 adversary with Mr. Baron.

7 Q Yes.

8 A Okay.

9 Q And could that possibly have resolved this
10 mediation?

11 MR. MACPETE: Object to speculation. He can't
12 know whether it would or not.

13 THE COURT: You said the process didn't work.

14 THE WITNESS: The process never got completed.

15:25 15 Mr. Baron didn't want to use Mr. Vogel as a mediator and
16 said they were going to file a motion for consideration
17 and oppose that and ask me to consider other mediators.
18 My position is I will mediate with anybody. In fact, I
19 like to mediate with somebody I like, and we found Joyce
20 Lindauer, and we filed a motion with Judge Jurnigan
21 appointing Ms. Lindauer, and it took over a month to get
22 the order to allow that to go forward. We scheduled
23 September 10th at nine o'clock in the morning to do the
24 mediation, and the receiver was appointed prior to the
25 mediation going forward. So the mediation never happened.

15:26 1

BY MR. BARRETT:

2

Q Did you ever receive a copy of the notice of withdrawal of the transmittal of reference? That's what it was called. It's really the report and recommendation to the Court.

3

A I'm not sure I saw that.

4

MR. BARRETT: May I approach the witness, your Honor?

5

THE COURT: Okay. You have two or three minutes. He has never seen it.

6

7

MR. BARRETT: I better save this for another witness.

8

9

THE COURT: Save it for Mr. Baron.

10

MR. BARRETT: Yes, I better do that.

15:27 15

BY MR. BARRETT:

16

Q Would you agree with me, sir, if you misrepresented things to Judge Jurnigan that's a serious matter?

17

18

A Of course.

19

20

Q And if you had a conflict of interest at the time that you went into court and were an adversary to Jeff Baron, that's a serious matter?

21

22

A You know, I'm not sure I would -- All of these are serious matters, but I'm not sure I would agree with you that there was anything improper with going to request

23

24

25

15:27 1 to withdraw as counsel, and I don't think there was
2 anything that would have been improper to tell the Court
3 because that motion was opposed -- to the court why we
4 needed that on an expedited basis. We were about to lose
5 our rights to recover any money. And I think the
6 disciplinary rules back up everything we did along those
7 lines. And we certainly researched that.

8 Q Okay. Real quickly. I know you have your
9 problems with Jeff Baron, but would you agree with me
10 there have been a lot of problems with the attorneys in
11 this case in addition to the problems with Mr. Baron?

12 A Well, that's a difficult question to answer. I
13 would say that this was a very difficult negotiation and
14 that every party that was involved had very specific
15:28 15 interests and very specific things that they were trying
16 to accomplish, and it was a very difficult negotiation.

17 MR. BARRETT: That's all I have.

18 THE COURT: Mr. Roossien may have a few
19 questions. Do you, sir?

20 MR. ROOSSIEN: Yes, your Honor.

21 THE COURT: How much time do you need,
22 Mr. Roossien? Twenty minutes?

23 MR. ROOSSIEN: That should be sufficient.

24 THE COURT: I want to try to get Mr. Pronske off
25 if I can at four or at least by four.

15:29 1 MR. ROOSSIEN: Your Honor, I went ahead and
2 marked the motion for expedited hearing as Respondent
3 Number 51. May I approach the witness, your Honor?

4 THE COURT: You may.

5 BY MR. ROOSSIEN:

6 Q Mr. Pronske, are you familiar with Exhibit 51?

7 A Yes, sir.

8 Q Are the statements in it true?

9 A Yes, sir.

10 Q That's all I have on that.

11 MR. ROOSSIEN: I'll ask the Court to take a look
12 at Exhibit 1 which is in our binder. If I may approach.

13 THE COURT: You may.

14 BY MR. ROOSSIEN:

15:30 15 Q Mr. Pronske, can you tell me what Exhibit 1 is?

16 A It's an organizational chart of all the various
17 entities that are ultimately beneficially owned by
18 Mr. Baron that work together to manage and operate the
19 domain name business.

20 Q Is this a structure that was in place at the
21 time you were negotiating the settlement agreement?

22 A I'm looking at it in a detailed manner. The one
23 that we used that I recall was not -- let's say as pretty
24 as this one. But I think it was the same one, and it
25 would definitely be the same structure, yes.

15:30 1 MR. ROOSIEN: We offer Exhibit 1.

2 MR. MACPETE: Your Honor, I object on the
3 grounds of hearsay. I think this witness doesn't actually
4 have knowledge to be able to testify to that structure,
5 and in fact, the witness' testimony about what the
6 structure represents is actually inaccurate -- sorry
7 Gerritt -- but there are the entities on that piece of
8 paper that relate to my clients that are not entities --
9 or Mr. Baron's entities. So I have to object to the
10 entry.

11 THE COURT: Well, I think your objection goes
12 less to the admissibility, and I will certainly let you
13 clarify any matters you wish to on the exhibit

14 MR. ROOSIEN: So it is admitted?

15:31 15 THE COURT: It is.

16 BY MR. ROOSIEN:

17 Q I'll let you clarify. On the left side is the
18 Village Trust.

19 A And then the MMSK Trust.

20 Q Who is that?

21 A That's Mr. MacPete's client. I sort of lumped
22 them together.

23 Q You understand the underlying litigation before
24 Judge Ferguson is essentially a business divorce relating
25 to these two entities relating to the operation of the

15:32 1 domain names industry. So the MMSK and the Village Trust
2 are the two at the top of the chart. The MMSK Trust, the
3 beneficial interest is with Munish Krishan and those
4 entities that Mr. MacPete represents, and the Village
5 Trust is the Baron side of the fence. So he's correct on
6 that.

7 THE COURT: Does that clarify it, Mr. MacPete?

8 MR. MACPETE: Well, I would say that's
9 Mr. Baron's litigation position about what occurred. We
10 don't agree that structure was ever properly consummated
11 and that's what Mr. Baron agreed to in the settlement
12 agreement, that that was never consummated. So as long as
13 it's clear to the Court that this is Mr. Baron's original
14 position about the alleged joint business, I'm fine with
15:32 15 it.

16 MR. ROOSIEN: Judge, I'm simply offering it for
17 the purpose of showing that Mr. Baron was someone who used
18 Cook Islands trusts.

19 THE COURT: I think that's pretty clear from the
20 testimony today.

21 BY MR. ROOSIEN:

22 Q How long have you been practicing, sir?

23 A Twenty-nine years.

24 Q And the triggering event in August that led to
25 you being concerned and asking for an expedited

15:33 1 consideration, was that formation of a whole new set of
2 trusts besides those in Exhibit 1?

3 A That's what I understood. That's correct.

4 Q Have you ever -- During the year that you worked
5 with Mr. Baron, have you ever observed what you would
6 consider to be irrational or behavior on his part?

7 A Well, I'm not a psychiatrist or a psychologist.
8 I think there were a lot of -- I think this is a difficult
9 case for Mr. Baron. And I think that -- You know, I don't
10 know what you mean by irrational, but I think it was a
11 difficult case.

12 Q He was put under extreme pressure, was he not?

13 A Yes.

14 Q And your wife, if I understand it, is degreed in
15:34 15 some manner in psychology?

16 A Yes. She has a Ph.D in psychology.

17 Q Did the behavior you were observing cause you to
18 consult with her as to what you were observing?

19 A Yes.

20 Q The time that you spent with Mr. Baron,
21 particularly you talked about from March forward, would it
22 be fair to say it was pretty extensive and intense as far
23 as the volume of services?

24 A Probability more so than any client I have ever
25 represented.

15:34 1 Q And I think you mentioned it was including the
2 weekends constantly?

3 A Especially the month of June. I think each of
4 the weekends was fully engaged eight to ten hours each
5 Saturday and each Sunday with the settlement negotiations.
6 And that was with all the lawyers.

7 Q That's my next question. What was going on with
8 you and Mr. Baron was also going on with all the other
9 lawyers in the case. Is that correct?

10 A Correct.

11 Q Now, after the settlement was reached and
12 approved by the bankruptcy court in July, did Mr. Baron's
13 attitude toward the settlement almost immediately change?

14 A I would say Mr. Baron always wanted conceptually
15:35 15 or in a big picture way to settle the case. But he was --
16 It was very difficult to get him to agree to most points
17 that we negotiated, as it was difficult with the other
18 side, too. It was a very difficult negotiation amongst I
19 think all the parties and all the lawyers. I will say I
20 think Mr. Baron -- Once the case was settled I heard a lot
21 of things from him that led me to believe that he did not
22 want to go forward with the settlement. And if -- but
23 that didn't start then. It probably intensified then.
24 But that kind of under current was there for the whole
25 time.

15:36 1 Q So this was something that Mr. Baron struggled
2 with during the entire time?

3 A Absolutely. With every issue we had. No matter
4 how large or small an issue.

5 Q Do you believe that Mr. Baron rather than trying
6 to settle up with you simply got new counsel?

7 A Mr. Baron told me on a number of occasions that
8 he intended to pay me, and I have text messages from him
9 around the time I withdrew that says the problem was with
10 the money to pay, not with the issue of whether there was
11 money owing or the services. It was he wanted to stretch
12 the bill out and pay it overtime and he had promised
13 numerous times before that that the bill would be paid
14 immediately and promptly and so that was something I heard
15:37 15 for the first time. I knew there were problems with Mr.
16 Baron not paying a lot of other lawyers. I really didn't
17 think I was going to have that problem, although that was
18 probably more my naivete than anything else.

19 Q And did you advise Mr. Baron along the way as
20 the bill was growing roughly where the bill was?

21 A Yes, I did. And as I said earlier, I remember
22 four times very specifically that we had discussions about
23 where the bill was during the process. But I know that
24 there were more than that, and he was apprised along the
25 way as to where the bill was.

15:38 1 Q And I notice Judge Jurnigan in her report and
2 recommendations, second page, says that "His conduct
3 suggests a pattern of perhaps being motivated by an
4 improper purpose with regard to nonpayment of lawyers."
5 What is your point of view on that?

6 A From what I have seen -- And in fact it seems to
7 have increased geometrically since I have been withdrawn.
8 And from what I know about his situation with not paying
9 numerous other attorneys is that there is a pattern of
10 using attorneys until a bill is submitted and then not
11 paying that bill and getting as much out of that attorney
12 as he can and then finding a problem with what they have
13 done with the intention to not pay that attorney. And I
14 have seen that. I could give you probably at least ten
15:39 15 examples of situations like that that I have seen.

16 Q Let me have you take a look at Exhibit 17.
17 Exhibit 17 is a short list of the substantial contribution
18 claims. What I wanted to ask you about is, your claim one
19 of those listed on Exhibit 17?

20 A Yes, sir.

21 Q And Judge Jurnigan talks about the risk of
22 exposing state administrative claims. Would that include
23 your substantial contribution claim?

24 A Yes.

25 Q So in bankruptcy a substantial contribution

15:40 1 claim is considered an administrative expense, is it not?

2 A Yes.

3 Q And I realize it's not exactly like the
4 trustee's fees, but it falls in that category?

5 A Yes, sir.

6 Q And the judge also talks about whether or not
7 she's concerned that Baron is going to complete his
8 obligations under the settlement agreement, and this is
9 based upon several of the developments in the September
10 time frame she witnessed. By the time we get to
11 September, would it be fair to say by your observation
12 Mr. Baron was indicating he did not want to complete the
13 settlement agreement?

14 A That's what appeared.

15:40 15 Q And would you elaborate on that a little bit?

16 A During the process of settling and after the
17 case was settled, there were continual issues coming up
18 where Mr. Baron said he did not want to go forward with
19 the settlement. And that happened before the settlement,
20 maybe as often as two or three times a week. It was very
21 prevalent during the whole process. It was there with
22 every issue, no matter how small, even if in the big
23 picture it didn't seem to be an impasse. That's what made
24 a lot of the settlement negotiations difficult. And I'm
25 not saying just on his side. It was a difficult

15:41 1 negotiation, as I said. After the settlement was reached,
2 immediately after the settlement was reached, Mr. Baron
3 appeared not to want to go forward with the settlement and
4 was raising issues with problems in the settlement and
5 said he was better off not doing the settlement and
6 believed he was going to be sued by Mr. MacPete in some
7 form or fashion with Mr. MacPete finding clients to
8 represent to litigate against him and thought that was
9 going to be his downfall and demise and thought the
10 settlement hurt him along those lines and wanted to undo
11 the settlement after it was over with.

12 THE COURT: And after the settlement was signed?

13 THE WITNESS: Yes.

14 BY MR. ROOSSIEN:

15:42 15 Q And after it was approved by the bankruptcy
16 court?

17 A Yes.

18 Q It's interesting you mention that about Mr.
19 MacPete. Does Mr. Baron sometimes view the opposing
20 counsel as an enemy?

21 A Oh, yes. There is no question about that.

22 Q He makes things very personal. Is that
23 accurate?

24 A I think Mr. Baron from what he told me he had a
25 lot more problems with Mr. MacPete than he did with

15:42 1 Mr. MacPete's clients.

2 Q Now, in the bankruptcy itself, is it fair to say
3 that most of the claims against Ondova, Mr. Baron's former
4 company, were actually claims made by unpaid lawyers?

5 A Yes, the vast majority of the dollar amount of
6 claims were by lawyers, yes, sir.

7 MR. ROOSIEN: May I ask the Court to take a
8 look at Exhibit 16.

9 BY MR. ROOSIEN:

10 Q What is Exhibit 16?

11 A It appears to be an exhibit that lines out the
12 pre-bankruptcy claims filed by various attorneys that were
13 unpaid by Mr. Baron.

14 Q Okay. Does the total there at the bottom of
15:43 15 just under seven hundred thousand dollars seem about right
16 given your familiarity with bankruptcy?

17 A It does as far as the resolved amounts. They
18 were actually substantially higher than that before they
19 were resolved. In the millions.

20 Q So at present those are debts that Mr. Sherman
21 has to pay for debts to Ondova that were incurred prior to
22 the bankruptcy. Is that right?

23 A That's right.

24 MR. ROOSIEN: I would like to offer 16.

25 THE COURT: 16 and 17 are admitted. Let me

15:44 1 make sure I understand these lawsuits involving Ondova.
2 The trustee is obligated to pay these reasonable fees.

3 MR. ROOSSIEN: Yes, your Honor, these are
4 claims -- I don't want to go too far with that. These are
5 claims that have been asserted against Ondova as part of
6 the bankruptcy proceeding. So when we're talking about
7 unsecured creditors and all of these claims have not been
8 determined, these are the folks on the unsecured
9 creditor's claim list, and I believe one of the matters
10 required to be completed in the bankruptcy, and I'll defer
11 to Mr. Urbanik, but these claims need to be determined and
12 resolved.

13 MR. URBANIK: That is a compilation of the
14 remaining claims of the lawyers. Some were settled in the
15:45 15 settlement agreement. These are ones that are performing
16 a claims analysis. It's possible some of these may be
17 objected to, but this is the current list. Unpaid --

18 THE COURT: By the way, are there funds in the
19 bankruptcy to pay what's required by the settlement?

20 MR. URBANIK: The settlement funds from
21 Mr. MacPete's clients were received, and some other monies
22 were received. So currently the estate has sufficient
23 funds to pay administrative costs at the current date.
24 They keep going up because of the legal work. But to pay
25 unsecured creditors a good dividend. The estate has a

15:46 1 couple of other assets that may be sold, if necessary.
2 But currently the estate is well over a million dollars
3 and still has the three hundred thousand dollars that
4 Judge Jurnigan set aside as a deposit to force Mr. Baron's
5 cooperation with the settlement agreement.

6 THE COURT: Okay.

7 BY MR. ROOSIEN:

8 Q Do you understand, Mr. Pronske, from the
9 trustee's prospective what he was looking for in the
10 settlement was enough money to be able to pay the
11 creditors?

12 A Yes.

13 Q And as your substantial contribution claim comes
14 into view and perhaps others, does that put at risk the
15:46 15 fundamental terms of the settlement?

16 A I wouldn't say actually it puts the settlement
17 at risk. I think it diminishes because it's an
18 administrative claim. It diminishes the amount available
19 for the unsecured creditors and may put in a position
20 where it pays the unsecured creditors less than full.

21 Q Mr. Pronske, you mentioned there were a number
22 of other lawyers out there. That you are aware of out
23 there who could potentially come into court and file
24 substantial contribution claims, can you identify any
25 names off that list?

15:47 1 A Who could potentially file substantial
2 contribution claims?

3 Q Correct?

4 A Possibly Michael Nelson. He was the attorney
5 that was one -- attorneys for one of the substitute
6 trustees who did negotiation in the case.

7 Mr. Ferguson definitely would qualify.

8 There is a lawyer, Robert Garrett, for a million
9 dollars. I have never heard that name and don't know what
10 that amount is.

11 Mr. Hall could because he was definitely
12 involved in the negotiation.

13 Mr. Lyon definitely could. He was involved in
14 the negotiation.

15:48 15 Mr. Cohen was involved in the negotiation and
16 appeared at the court-ordered settlement conference.

17 Mark Taylor definitely could and in fact has
18 filed such a substantial contribution claim. He was the
19 attorney that was involved to litigate on a
20 contingency-fee basis part of the litigation that was
21 settled in the settlement negotiation.

22 Lou Vituio (phonetic) I have never heard of.

23 Ryan Lurich is the Friedman Figer law firm. I'm
24 not sure they would necessarily qualify.

25 Steven Jones, he was the criminal lawyer who

15:49 1 represented Mr. Baron at the beginning of the time I
2 represented Mr. Baron, and I don't believe he would
3 qualify.

4 MR. ROOSSIEN: Your Honor, I would like to offer
5 15 as a demonstrative exhibit to the testimony we just
6 heard.

7 THE COURT: What about the last page, Page 3?
8 Anybody on that page have a substantial contribution claim
9 possibly?

10 THE WITNESS: I'm not sure -- Eric Taub,
11 Elizabeth Schurig, Craig Capua, John Cohen -- those four
12 lawyers represented the Village Trust, and I'm not sure.
13 I really don't have an opinion one way or the other as to
14 whether they would technically qualify under the terms
15:50 15 of -- I think it's 507(d)(5) which is the substantial
16 contribution section. I'm not sure they could, but they
17 potentially could.

18 And I know Mr. Taub has filed a motion with the
19 bankruptcy court to have a substantial amount of
20 attorneys' fees approved.

21 Mr. Broom, I do not think would qualify.

22 Mr. Chesnin, I don't have an opinion.

23 Mr. Eckels, I'm not really sure.

24 And Mr. Cox, I don't know who that is.

25 BY MR. ROOSSIEN:

15:50 1 Q Let me ask this follow-up. With regard to the
2 attorneys you did mention and with whom you are familiar,
3 those are still unpaid counsel that Mr. Vogel has to deal
4 with, correct?

5 A That's correct.

6 Q Now, are you familiar with the special function
7 of the special master and what that is?

8 A Yes, generally.

9 Q And can you tell us generally based on your
10 experience how the position of the special master is
11 comparable to the receiver?

12 A In this case I viewed it as a different role. I
13 saw Mr. Vogel's role in this case as one being primarily
14 facilitating settlement of the parties, hosting settlement
15:51 15 conferences and doing whatever he could to help the
16 parties try to resolve the case. He ended up I think
17 being very important to the process. He sort of was the
18 glue that bound everyone together in trying to get the
19 case settled successfully. As far as the receiver is
20 concerned, I think he has more of an overall function of
21 basically stepping into Mr. Baron's shoes, and so I think
22 those are two completely different roles, at least to me.

23 Q Yes. The special master role is more limited.
24 Is that correct?

25 A Yes.

15:52 1 Q And both positions report directly to the Judge;
2 is that right?

3 A Yes.

4 Q And both of them are in a way the hands and feet
5 of the Court. Is that fair?

6 A I think that's fair.

7 Q And the role of special master, if I recall
8 correctly, Mr. Vogel goes back over a year. Is that
9 right?

10 A Yes.

11 Q More or less the beginning of this case?

12 A Well, I think he became more active, and I'm not
13 really sure of the dates. But around January or February
14 time frame of this year I think is when he seemed to
15:52 15 become much more active, and that's when the hosting of
16 the settlement conference began in the Gardere offices.

17 Q And he has a background in technology, correct?

18 A Yes.

19 Q Pretty extensive background?

20 A Yes.

21 Q Was that helpful to the settlement negotiations?

22 A Yes, it was.

23 Q Does that make him uniquely qualified to deal
24 with the situations presented?

25 A Yes, it was. We couldn't have had a better

15:53 1 person in that role in my opinion.

2 Q As a result, did he also become intimately
3 familiar with the details of this situation?

4 A Yes. Probably not by choice, but yes.

5 Q So at the time that Judge Ferguson was faced
6 with determining who might serve as an appropriate
7 receiver just in terms of qualifications, as you
8 understand them for a receiver, did Mr. Vogel seem like a
9 natural choice?

10 A Yes, Mr. Vogel was someone that all the parties
11 respected, and I think was a very natural choice for the
12 role.

13 MR. ROOSIEN: Nothing further.

14 THE COURT: Mr. MacPete, can you do this in
15:53 15 about ten minutes?

16 MR. MACPETE: I will endeavor to do that.

17 CROSS EXAMINATION

18 BY MR. MACPETE:

19 Q Mr. Pronske, during the time that you
20 represented Mr. Baron, did you have discussions with
21 Mr. Baron about getting your fee paid?

22 A Yes, numerous times.

23 Q And that occurred while you were negotiating the
24 settlement agreement, correct?

25 A Numerous times during that process.

15:54 1 Q And Mr. Baron indicated to you that he was going
2 to pay you for the services you were rendering?

3 A Yes, he did. In fact, it was part of the
4 settlement process actually, yes.

5 MR. BARRETT: Your Honor, I object to asked and
6 answered at this point. We have gone over this matter,
7 and we're on limited time.

8 THE COURT: I'll overrule. But I know
9 Mr. MacPete, you will not repeat these matters.

10 MR. MACPETE: Thank you, your Honor.

11 BY MR. MACPETE:

12 Q In fact, at one point during the settlement
13 agreement, didn't the Chapter 11 trustee suggest the issue
14 of the payment of your fees be included in the settlement
15:54 15 agreement?

16 A Yes.

17 Q And what did you tell the Chapter 11 trustee and
18 myself about whether you wanted that issue to be included
19 in the settlement agreement?

20 A I remember that discussion that was held in the
21 Munsch Hart offices in a conference room. I remember it
22 was at night time. And that was towards the end of the
23 process, and I told him I thought that was unnecessary
24 because Mr. Baron was going to pay me.

25 Q Subsequent to that time and based on the

15:55 1 discussions and conduct of Mr. Baron, have you formed a
2 conclusion about whether he intended to perform those
3 promises he made to you to pay you?

4 A I know my belief.

5 Q What is that belief?

6 A My belief is he did not intend to pay me.

7 Q Let's talk about the substantial contribution
8 issue for a second. You filed an adversary proceeding in
9 Judge Jurnigan's court with respect to recovering your
10 fees against Mr. Baron, correct?

11 A Generally correct, technically not quite right.
12 He filed the lawsuit, as I said earlier, in the state
13 court as a temporary restraining order to prevent us from
14 discussing matters with Judge Jurnigan, and that also
15:55 15 contained a request for a declaratory judgment that we
16 would not be owed any money, and we removed that to the
17 federal court and filed a counter-claim that contained our
18 request for the fees.

19 Q Essentially what that means -- Let me back up.
20 You understand this Court is essentially the district
21 supervisory court for Judge Jurnigan's bankruptcy case,
22 correct?

23 A I understand that.

24 Q And as a result of that, essentially before
25 Judge Ferguson, is it your claim against Mr. Baron

15:56 1 personally and his entities to recover your attorneys'
2 fees?

3 A I think the way the jurisdiction statutes work,
4 I think that's essentially correct.

5 Q And so the Court does have an interest, would
6 you agree, in the disposition of Mr. Baron's assets and
7 whether or not those assets are squandered or sequestered
8 in a jurisdiction outside of this court because your claim
9 is before Judge Ferguson, correct?

10 A I think that's correct, yes.

11 THE COURT: I also have an interest in the
12 matter being resolved in my Court. And apparently, there
13 is a question about whether the matter can ever be
14 resolved if it's left in the hands of Mr. Baron. Would
15:57 15 you agree with that?

16 THE WITNESS: I would agree with that, and I
17 think there is a connection because of the substantial
18 contribution motion which asks for administrative expenses
19 against the bankrupt estate. So I think there is numerous
20 ties to this Court.

21 BY MR. MACPETE:

22 Q Now, one of the things this Court did, his
23 Honor, was to issue a mediation order that attorneys' fees
24 claims were to be mediated with Mr. Vogel. Do you recall
25 that?

15:57 1 A I do.

2 Q Tell this Court what you know about Mr. Baron's
3 compliance or noncompliance with that mediation order.

4 A As I said earlier, Mr. Baron through Martin
5 Thomas, his attorney, told me that they did not want to
6 mediate in front of Mr. Vogel. They had numerous other
7 lawyers that they wanted to have mediate the case. They
8 told me that if -- They wanted me to agree to that, and if
9 I did not agree that they were going to oppose the
10 mediation order and ask for a reconsideration of the
11 mediation order. I asked them who their mediators were,
12 told them I was happy to resolve it with anybody. I
13 really just wanted it to get resolved, and one of the
14 names they gave was Joyce Lindauer, and I know her and
15:58 15 agreed to that but told them -- And this is in writing to
16 Mr. Thomas -- that we would have to have a motion that
17 would approve that by Judge Jurnigan so that we weren't
18 going behind the Court's back, and we did in fact file
19 such a motion for that mediation, and we appeared in front
20 of Judge Jurnigan, and she authorized us to have a
21 mediation in front of Judge Jurnigan. She asked for an
22 order. And we tried to get them to sign that order for I
23 think it was about a month, and the lawyers kept changing,
24 and nobody would sign the order. It got very frustrating.
25 Eventually around the time frame of Thanksgiving --

15:59 1 because I remember I was out of state when I had the
2 ultimate calls on this -- we finally did get Mr. Chesnin
3 to sign an agreed mediation order, and I think within a
4 day or two after that the receiver was appointed.

5 Q Who did you actually understand would be
6 Mr. Baron's counsel that was supposed to be conducting the
7 mediation?

8 A The negotiations about that were with Mr. Broom.
9 He's the one that called me. I remember I was in Colorado
10 at the time, and I spoke with Mr. Broom, and he said add
11 another to the list of lawyers that aren't getting paid.
12 He told me he quit and was very upset about it and I would
13 be dealing with somebody else, and I said, "Stan, I'm not
14 happy to hear that" because I actually worked well with
16:00 15 Mr. Broom, and I told Mr. Broom we really wanted to get
16 this mediation order signed, and he said that he had told
17 Mr. Chesnin that it was essential that order get signed,
18 and he thought it would get signed quickly, and in fact,
19 it did, and then the receiver was appointed within a day
20 or two of that.

21 Q Would it be fair to say that no motion was ever
22 filed with Judge Ferguson asking him to reconsider or
23 vacate his order that those issues be mediated with
24 Mr. Vogel?

25 A That's correct. I think the procedure was to go

16:00 1 through Judge Jurnigan and have her recommend that. I
2 think that was the appropriate procedure.

3 Q Would it be fair to say based on Mr. Baron's
4 statements and his conduct in continually changing counsel
5 during this period of time that Mr. Baron was not
6 complying with the Court's mediation order?

7 A I think that's correct, yes.

8 Q Is it your understanding that this Court has the
9 power to appoint a receiver for the purpose of compelling
10 a party to comply with its orders which are not being
11 complied with?

12 A Yes, I don't think there is any question about
13 that.

14 THE COURT: You can have two minutes. We're
16:01 15 completely running out of time.

16 BY MR. BARRETT

17 Q Sir, are you familiar with the case Griffin
18 versus Lee?

19 A Not sitting here right now, no.

20 THE COURT: Are you talking about the recent
21 Fifth Circuit case?

22 MR. BARRETT: Yes, your Honor.

23 THE COURT: By the way, I misspoke about one
24 thing. I don't think I can do anything about your fees if
25 Mr. Baron doesn't pay you after the receivership is over.

16:01 1 I think you have to go to state court and sue him if
2 that's the way it works. So I want you to know from that
3 point of view you all will have no right to any
4 receivership funds or anything else.

5 MR. BARRETT: Thank you, Judge. I have a
6 question for this witness, and I will bring something up
7 later.

8 BY MR. BARRETT

9 Q Sir, are you familiar that the Fifth Circuit has
10 essentially held that you cannot bring a claim for
11 attorneys' fees in a bankruptcy case?

12 A I don't understand that. I think that's
13 probably overbroad.

14 THE COURT: This is a legal argument. You can
16:02 15 certainly present that to me and argue it legally.

16 MR. BARRETT: Well, Mr. MacPete just brought up
17 the fact that you can go ahead and do this.

18 THE COURT: Well, do you understand that we're
19 talking about substantial contribution claims by the
20 lawyers? Is that case on all fours? It involves
21 substantial contribution claims.

22 MR. BARRETT: It is, Judge.

23 THE COURT: Okay. We'll all look at it.

24 MR. ROOSIEN: I suspect when we all look at it
25 that won't be exactly what it says, but I agree this is a

16:03 1 legal discussion.

2 THE COURT: With all due respect to Mr. Pronske,
3 he's an outstanding lawyer, but I think we will all take a
4 look at that, and for him to read it on the witness stand
5 doesn't make any sense.

6 MR. BARRETT: Fair enough, Judge. But your
7 Honor, I would ask the Court to take a serious look at
8 this case at the earliest possible time.

9 THE COURT: Absolutely.

10 MR. BARRETT: Because it goes to the heart of
11 this matter, and it appears to really resolve this issue.

12 THE COURT: Well, I'll hear from counsel on
13 this. The legal fee issue is not the only issue.

14 MR. BARRETT: It's not.

16:03 15 THE COURT: Because there was a settlement
16 agreement entered into, as I understand it, under the
17 offices of the bankruptcy court, a court under my
18 supervision. I understand that settlement agreement has
19 not been complied with by Mr. Baron. The problem with
20 that is how to bring compliance with an agreement that has
21 been entered into under the auspices of the Court. There
22 are many other problems.

23 MR. BARRETT: Your Honor, I think you have hit
24 on the issue. I frankly think what this hearing should do
25 is hone in on what issues everybody believes that the

16:04 1 settlement agreement hasn't complied with.

2 THE COURT: Well, I mean that's one of the
3 issues. What I have understood from all the witnesses
4 you've called, especially Mr. Ferguson and Mr. Pronske, is
5 they have testified that Mr. Baron has no intention of
6 complying with the settlement agreement that he has signed
7 under the auspices of the bankruptcy court, and Mr. Baron
8 told both of these lawyers "I'm just not going to comply.
9 I'm not going to comply with the agreement that I have
10 signed and that a bankruptcy court has facilitated." So
11 I'm sitting here thinking that, you know, this case will
12 never end because no matter what Mr. Baron signs or agrees
13 to, it doesn't mean anything to him. I only have a
14 certain ability to enforce my orders other than
16:05 15 incarcerating. I have never taken that step because I
16 think that's the most serious step of all, but I am
17 sitting here hearing the witnesses you have called as your
18 witnesses that have said he's not going to comply with
19 anything. It's unfortunate. But what is a court to do
20 when he told his lawyers that he's not going to comply
21 with a settlement agreement that he signed through long
22 hours of negotiation, that has been entered into under the
23 auspices of a bankruptcy court and he's still not going to
24 comply with his own agreements. We'll talk about this
25 later, but this is a matter of deep concern.

16:06 1 MR. BARRETT: It is. It's the issue in the
2 case, I think.

3 THE COURT: The issue is I could have put him in
4 detention for contumacious behavior which is there is no
5 question it was contemptuous. But I tried a less severe
6 method of resolving this case. As far as I'm concerned
7 from what I have heard from his own lawyers, from their
8 mouth, from his own statements, he has no intention of
9 complying with the settlement agreement that he signed.
10 It's unfortunate. How do we get that done? I have no
11 earthly idea. I'll hear from good lawyers about that.
12 But in the meantime I have to take every step I can
13 because so many people have worked so hard in good faith
14 on one side to get this done. And it's clear on one side
16:07 15 there was no good faith despite the earnest attempts of
16 lawyers who in fact over and over again urged Mr. Baron to
17 comply with these agreements and to take reasonable steps
18 in regard to his conduct under the law. And in every
19 instance they have testified that their entreaties to him
20 were completely ignored and he would not take their advice
21 at all. You have certainly opened my eyes with the
22 witnesses you brought before me and the testimony that
23 they have given here. Never in my forty some odd years in
24 law have I ever seen a situation like this under any
25 circumstances at all. This is beyond vexatious

16:08 1 litigation. It's somebody operating without any intention
2 of conducting themselves in good faith. It's a very sad
3 situation.

4 Mr. Baron's psychologist says he's depressed. I
5 think I have a lot of depressed people here that have
6 tried -- good lawyers, decent lawyers, operating in
7 ultimate good faith trying to represent a client. And
8 their efforts have gone to know avail whatsoever. This is
9 all in the record, just to let you know. But that's my
10 deep concern with this case, and now I'm here trying to
11 decide how to best handle this. And you know, I am going
12 to have to hear in a minute about what we need to do about
13 resolving the settlement because you know I can't allow
14 lawyers to negotiate for months, expending probably
16:09 15 millions of dollars representing their clients and have
16 one party with their fingers crossed behind their back the
17 whole time. Very unfortunate. But that is maybe another
18 matter that I have to deal with. Mr. MacPete.

19 MR. MACPETE: Your Honor, one thing in response
20 to your Honor's discussion. I would remind this Court, as
21 I know you are well aware, that the order of the
22 bankruptcy court approving the settlement is a procedural
23 matter that has to occur because the trustee essentially
24 was operating the debtor. But the court order approving
25 the settlement was not an order ordering the settlement.

16:10 1 And I think that's an important distinction. I think your
2 Honor's comments are important, but when we talk about the
3 receivership, the receivership is not being asked to
4 enforce the settlement because the settlement is not an
5 order of the Court.

6 THE COURT: I understand that. I'm talking
7 about the totality of the circumstances. And the totality
8 of the circumstances is this good lawyer and all the other
9 lawyers in this Court who have worked for Mr. Baron in
10 good faith, who have done everything they could to
11 facilitate the bankruptcy in this case and who have made
12 substantial contributions to the bankruptcy -- those good
13 lawyers have gone unpaid and to the detriment of the
14 bankruptcy estate, and that is a deep problem. I don't
16:11 15 know what we're going to do about the settlement. The
16 settlement has great implications for my own Court, and I
17 will have to deal with that.

18 Thank you very much, Mr. Barrett.

19 Thank you, Mr. Pronske. You are excused.

20 THE COURT: Okay. I guess the last witness is
21 Mr. Baron.

22 MR. BARRETT: Yes, your Honor, may I have one
23 moment before we hear Mr. Baron testify?

24 THE COURT: Let me say you know this case is in
25 many ways not so difficult on the receivership issue.

16:12 1 I've got a bankruptcy court that is trying to close a
2 bankruptcy. There are substantial contribution claims by
3 lawyers in that bankruptcy. I am trying to get the -- The
4 bankruptcy is under my supervision, and it's trying to be
5 closed. I have a receiver who has tried to conserve funds
6 and done as good a job as probably humanly possible under
7 all the circumstances. I have a trustee who has worked
8 incredibly hard in this case and been very well
9 represented by very competent counsel. I just want to get
10 this matter closed. This receivership is not going on
11 forever. It's not going on for very long. But everybody
12 wants to fight about everything in this case. This
13 receivership could be over tomorrow if we could just get
14 sufficient funds to make sure that the bankruptcy court is
16:13 15 appropriately funded in such a way that it could be
16 closed. But you know, everything with Mr. Baron, of
17 course, takes forever, and so there we are. By the way,
18 how much funds has the receiver collected to this date?

19 MR. BARRETT: Do we know how much funds we need?

20 THE COURT: I'm asking the receiver how much
21 they have collected in this case. My guess is -- And
22 maybe Mr. Urbanik you can help me. I see the figures here
23 which may be substantial contributions probably go to
24 about a million one or two.

25 So that's -- you are probably going to have to

16:14 1 put another million dollars into the bankruptcy or
2 something.

3 MR. URBANIK: Your Honor, they could reach a
4 million dollars. You have heard throughout the day the
5 substantial contribution motions are sort of this
6 unexpected delay and development. If Mr. Sherman had
7 known we would have to pay all of these other lawyers, he
8 wouldn't have settled at a million fifty. He would have
9 settled at million three, four. We didn't know they
10 wouldn't pay all of these lawyers. Almost two dozen
11 lawyers haven't been paid --

12 THE COURT: Almost twenty lawyers I guess.

13 MR. URBANIK: Yes. So we never anticipated it.
14 The motions could drag on a long time. No one expected
16:14 15 Baron to settle these at the mediations with Mr. Vogel.
16 It looked like a long multi-year period. There is five or
17 six state court suits. Some in front of Judge Hoffman,
18 Judge Ginsberg. This has turned into utter chaos because
19 Baron didn't pay the attorneys. So when Broom quit, when
20 Martin Thomas quit, we had no choice but to seek a
21 receivership. It was turning into an absolute chaos
22 caused by this "ever changing cavalcade of lawyers," as
23 Judge Jurnigan stated. It's at least a million five in
24 attorneys' fees, and we're working with Mr. Vogel, and we
25 would like to have this wrapped up in six months.

16:15 1 THE COURT: We could have it wrapped up a lot
2 quicker if we could have the funds.

3 MR. SCHEPPS: You said you could knock out this
4 receivership tomorrow. Could we quantify that?

5 THE COURT: I would say two and a half million
6 dollars. Do you think so?

7 MR. URBANIK: Yes, your Honor, that would cover
8 it.

9 MR. GOLDEN: Well, your Honor, that's a good
10 segue into answering your question about the funds the
11 receiver has been able to access so far, and as a preface
12 I will say we have filed a November receiver report, and
13 we're planning to file our December receiver report in
14 about a week. And attached to that we will have a chart
16:16 15 about the funds that we have accessed, the funds we have
16 located but not yet accessed and what we need to do to
17 access it.

18 For purposes of giving you an update right now,
19 the Jeff Baron personal assets that the receiver has
20 accessed total one million eighty-eight thousand dollars.
21 But keep in mind, your Honor, this is money including
22 checking, stock, money markets, CD's. So it's some money
23 that with regard to the CD's, I don't know if we're going
24 to use that.

25 MR. VOGEL: And the IRA.

16:17 1 THE COURT: I'm not sure I understand what you
2 mean. You have access but --

3 MR. GOLDEN: Nevermind. The CD's actually have
4 nothing. What we have accessed in cash, checking, stock
5 and money market. We would have to discuss with you, your
6 Honor, before we would cash out Mr. Baron's stock, not the
7 CD's. We have also located a number of other assets that
8 we haven't been able to access yet, although for some of
9 them we have them frozen. Those involve checking,
10 savings, money market and a number of IRA's and the IRA's
11 raise the same issue of the stock of whether the Court is
12 going to give us the authority to use that particular type
13 of fund to pay off.

14 THE COURT: Well, you have to apply to me about
16:17 15 the stock. In other words, make application to me about
16 the stock.

17 MR. GOLDEN: That's right. Preferably we would
18 like to pay everything with the checking account.

19 THE COURT: Sure.

20 MR. GOLDEN: But if it gets down to it, we
21 might have to have the hard choices of using an IRA or
22 selling a domain name or something that's not as easy to
23 do as a checking account. The amount of Baron assets that
24 we have located yet not accessed total 1.69 million
25 dollars. So to the extent that we can get access to those

16:18 1 funds that we have already located, then we're going to be
2 in a position to have over that two and a half number you
3 mentioned. We're on the way.

4 MR. MACPETE: Keep in mind the issue here is not
5 about necessarily having money for the attorneys. If you
6 recall from the last hearing, there are three independent
7 bases that support the Court's receivership order. The
8 first is stopping his vexatious conduct. And if he is
9 allowed to hire attorneys that interfere with the process
10 in this court and the bankruptcy court, that vexatious
11 conduct is going to continue. Obviously Mr. Vogel
12 representing Mr. Baron as the receiver is going to act in
13 Mr. Baron's best interest, but he's not going to engage in
14 vexatious litigation conduct. That has nothing to do with
16:19 15 the amount of money that may be available to pay the
16 lawyers.

17 THE COURT: I agree with that.

18 MR. MACPETE: The second point was to stop this
19 ongoing fraud that appears to be occurring, and that's
20 where Mr. Baron hires attorneys and gets them to work for
21 a period and replaces them with another attorney when they
22 are no longer willing to work for free. And if he is
23 returned his assets and able to engage counsel, he can
24 continue in that pattern of conduct. And third was to
25 enforce the orders of this Court. And obviously when he

16:19 1 was able to hire and fire lawyers and manage his own
2 affairs, he was not complying with the Court's orders
3 about hiring and firing counsel, and there is an order
4 from your Honor and Judge Jurnigan. And not complying
5 with the mediation order. And those are the three bases
6 that support this Court continuing the receivership. And
7 none of those actually have anything to do with how much
8 money might be available to pay all of these lawyer claims
9 when they are ultimately decided.

10 THE COURT: I understand what you are saying.
11 But my view is if I can close the bankruptcy, close the
12 settlement, dismiss this case, dismiss all the other
13 cases, at that point I have no need to have a
14 receivership.

16:20 15 MR. MACPETE: Absolutely, your Honor, you are
16 totally correct.

17 THE COURT: And so that's my goal. But the
18 problem I have is as you say. If Mr. Baron continues to
19 have access to funds, he would continue to really subvert
20 the judicial process. It will be subverted because there
21 will be another lawyer and another lawyer and another
22 lawyer. None of these good lawyers knew what had happened
23 behind them or past them. So they come in thinking there
24 has been a conflict and I'll go on and help Mr. Baron get
25 his work done. But of course, when I received the request

16:21 1 for the preliminary or emergency request for receivership,
2 all of those matters were clearly before me. What I am
3 now doing is having a clear hearing so that Mr. Baron can
4 make his presentation. I think at this point if there is
5 no need for an emergency -- furtherance of the emergency
6 receiver, I can vacate that. But clearly based upon the
7 testimony I received today from Mr. Baron's own lawyers,
8 it's clear that this conduct is much worse than I had
9 understood. As bad as I had understood it to be, it was
10 much worse than I understood.

11 This really goes beyond vexatious conduct. So
12 I'm just going to make everybody sure. I'm not talking
13 about keeping the receivership going forever. I'm talking
14 about an effort to prevent any further abuse of the
16:22 15 judicial process which I think has occurred -- clearly
16 from the testimony today has occurred to stop further
17 vexatious litigation which I was neither myself or Judge
18 Jurnigan was able to do, and my other alternative was to
19 incarcerate Mr. Baron in an effort to stop it, and I am
20 always reluctant to do that. And so this is the least
21 serious remedy I could use to stop the matter, and of
22 course, it just came to a point where it was clear that
23 Mr. Baron was not going to comply with the orders of the
24 Court, and the receivership is an effort to stop the
25 parade of lawyers trying to wiggle out of lawful

16:23 1 injunctions from judicial officers. Yes, sir.

2 MR. GOLDEN: Your Honor, one quick comment on
3 the amount of money the receiver is trying to collect in
4 order to pay off all the attorneys' fees. We submitted an
5 order to you at the end of the last hearing which was an
6 order that would compel Mr. Baron to take certain acts to
7 what we call stop the interference.

8 THE COURT: I have that order before me. And
9 once I enter my order on the receivership which is subject
10 to appeal, I will -- I'll consider that motion, and that
11 should be done within the next week.

12 MR. GOLDEN: Well, what we plan to do from that
13 if your Honor signs the order is it would compel Mr. Baron
14 to sign certain letters to certain banks that would give
16:24 15 us access to additional funds and thus take that 1.8
16 million dollars we have and get it way up a lot faster.

17 THE COURT: By the way, Mr. MacPete, maybe you
18 can tell me. What's the status of the settlement that was
19 affirmed by Judge Jurnigan?

20 MR. MACPETE: My clients have fully complied
21 with the settlement. As you heard Mr. Urbanik say, on
22 behalf of the trustee we paid the amount -- actually early
23 the amount we were supposed to pay. The phone cards, as
24 you heard testimony about from Mr. Lyon, is still in
25 breach of agreement. There were payments that were

16:25 1 supposed to be paid to my clients that have not been made
2 for six months.

3 THE COURT: How many?

4 MR. MACPETE: A small amount which is what's so
5 maddening. It's less than twenty-five hundred dollars.
6 And I have been to probably five bankruptcy court hearings
7 in conjunction with Judge Jurnigan's order to show cause
8 why Mr. Baron shouldn't be sanctioned for interference
9 with the settlement agreement to talk about this issue,
10 and it's an issue easy for him to solve. He got paid, and
11 he was knows he has money that belongs to my client, and
12 he hasn't repatriated that money. We paid early, and my
13 clients are saying how come the Court isn't making him do
14 what he's supposed to do. Even twenty-five hundred
16:25 15 dollars. I have not filed an adversary proceeding before
16 Judge Jurnigan for breach of the settlement agreement
17 which I could do which would entitle me to my attorneys's
18 fees under the agreement. But that's only going to create
19 more litigation. And we want that to stop. We haven't
20 done that. We have been patiently waiting for this to
21 stop, number one. And number two is your Honor heard the
22 tax returns were filed in violation of the settlement
23 agreement with the USVI Internal Revenue Service. That's
24 a bell that cannot be unrung. I don't know the damages
25 from that. Hopefully none. But we don't know. Other

16:26 1 than that, the settlement agreement is sort of proceeding
2 apace, and what really needs to happen next is what the
3 Chapter 11 trustee is telling you which is we need to
4 close the bankruptcy. And in order to close the
5 bankruptcy, we have to stop the vexatious conduct
6 occurring in the bankruptcy court and stop the ever
7 increasing parade of lawyers being defrauded and then
8 subsequently turn around and make a claim in the
9 bankruptcy court against the assets that the trustee is
10 trying to use to pay the creditors and all of these
11 lawyers. That's the problem they say. We're never going
12 to be able to close the bankruptcy because we have an ever
13 increasing pool of claimants that are administrative
14 claimants when they make these substantial contribution
16:27 15 claims. Nobody knows whether or not Judge Jurnigan will
16 actually approve those, and as you heard Mr. Pronske say,
17 she may approve some of them. Certainly, Mr. Pronske did
18 contribute a great deal trying to get the settlement
19 effectuated. He had to beg, plead and cajole Mr. Baron
20 kicking and screaming to sign that settlement agreement,
21 and we know he didn't really want to do it. And so I
22 think Mr. Pronske has a legitimate practical claim to say
23 "I benefited the estate because I helped get this
24 settlement," much like the lawyers that settled the
25 previous litigation, clearly contributing to getting the

16:28 1 settlement. That lawyer was clearly instrumental in
2 getting the settlement done. There may be other lawyers
3 that can make similar claims, and that's what the Chapter
4 11 trustee is worried about, that this is going to
5 continue on, and that's why they are saying you have the
6 authority to deal with a vexatious litigant, with this
7 ongoing fraud, with theft of services of lawyers, and you
8 need to do that in part so that we can actually close all
9 of this down and let everybody, including Mr. Baron, go on
10 with their lives, and I know that's what this Court
11 wants -- and probably every other lawyer in this courtroom
12 wants -- is for this bankruptcy case to end and everybody
13 go on with their lives.

14 THE COURT: As I understand it, the settlement
16:28 15 in bankruptcy will end my case. Is that correct?

16 MR. MACPETE: Yes, your Honor, I think once the
17 bankruptcy is concluded, then the dismissal papers that
18 Mr. Urbanik is currently holding in trust, if you will,
19 for my case that I filed in front of your Honor would then
20 be submitted to this Court and your Honor's jurisdiction
21 basically over the bankruptcy, and this case would
22 ultimately go away.

23 THE COURT: Mr. Urbanik.

24 MR. URBANIK: Thank you, I agree with virtually
25 all of what Mr. MacPete has said. The settlement

16:29 1 agreement has components that go on for years, including
2 some payments to the estate and Village Trust. So many of
3 the contractual components are complete. The release that
4 we gave the parties and they gave us is now down the
5 drain. We never anticipated hundreds of thousands of
6 dollars of new claims to show up. It gives rise to a new
7 claim by Mr. Sherman against the Baron parties. There was
8 fraud here. There was fraud here because Baron never
9 intended to pay the lawyers. We didn't know we would have
10 hundreds of thousands of dollars coming into our estate.
11 The negotiation was to pay the debts and give the keys
12 back to Mr. Baron. But that didn't happen. From the day
13 of the settlement agreement, Mr. Pronske advised he was
14 resigning because he hadn't been paid, and the other
16:30 15 lawyers weren't paid. So the releases are down the drain,
16 and the road map for the future is very unclear, very
17 cloudy because we have the new substantial contribution
18 state court motion. Five lawsuits against Baron. The
19 mediation process that collapsed, those were all the
20 reasons that we came to this Court for the receivership
21 because we will never end this bankruptcy case if Baron
22 continued what he was doing. There was no way for us to
23 continue. Mr. Sherman has fiduciary duties to his
24 creditors. And then the funds would have been gone. If
25 we had filed a motion giving them fourteen days' notice,

16:30 1 those funds would be in the Cook Islands or Switzerland.
2 We had evidence of a Swiss bank account that was given to
3 us confidentially. There was no way to give notice to
4 Mr. Baron because the money would have been gone and there
5 was such a long history of asset protection. It's all we
6 heard about, asset protection and tax evasion, and there
7 was no choice but to do this quickly. And we think we
8 made the right decision, and we would ask the Court to
9 deny the state pending appeal and keep Mr. Vogel in and
10 let him get the receivership done and claims off the
11 ground, and we'll close out the bankruptcy estate.

12 MR. MACPETE: Your Honor, one thing I don't
13 agree with Mr. Urbanik on, and I don't think the
14 settlement agreement is abrogated and the releases are
16:31 15 abrogated. That's not the position of my clients. I
16 think there are plenty of representations in the agreement
17 that said people aren't relying on anything. I was there
18 every minute of every negotiation on the settlement
19 agreement. I don't believe there was any representations
20 that Mr. Baron made about whether he was or was not paying
21 his counsel. With respect to that much, I want to be
22 clear that I don't agree with Mr. Urbanik that anybody can
23 wiggle out of this settlement that we have.

24 THE COURT: I don't think Mr. Urbanik is
25 saying -- My understanding is he is saying there are

16:32 1 fiduciary requirements under the settlement agreement.
2 MR. MACPETE: That's correct. One of those
3 requirements is that my client is operating a domain name
4 which is essentially going to be run by us, that Mr. Baron
5 has an interest in and payments are going to be coming to
6 us and to him and his entities over a period of
7 twenty-five years. We have control over that. We have
8 the domain name. We're operating the domain name, and
9 we're collecting the money and paying the money the way
10 we're supposed to, initially to the Chapter 11 trustee and
11 then later the receiver as the representative of Mr. Baron
12 in his trust. And I think, in fact, we have paid off the
13 Chapter 11 trustee's portion, and we were the first to
14 give the receiver money. That fourteen thousand dollars
16:32 15 you heard about last time was actually a payment with
16 respect to this agreement on Poker Star. But I thought I
17 heard Mr. Urbanik say something about the settlement
18 agreement was procured by fraud and somehow the releases
19 are abrogated, and if that's correct, I don't agree with
20 that.

21 THE COURT: I don't think he said that. His
22 view was in the bankruptcy if they had known that the
23 lawyers' services were being procured by fraud and all of
24 these substantial contribution claims would come in, they
25 would have made entirely different kinds of arrangements

16:33 1 to handle these matters and close out the bankruptcy.
2 Because they did not know that, they were not able to make
3 arrangements and not able to close out the bankruptcy the
4 way they should given Mr. Sherman's fiduciary duties to
5 creditors and everyone else in the bankruptcy.
6 Mr. Sherman has certainly undertaken a very difficult job
7 in this case, and I think we all owe him a debt of
8 gratitude. So whether that's -- Judge Jurnigan and I will
9 work out the settlement and its ramifications. But I
10 think everyone understands pretty clear based on what you
11 and Mr. Urbanik have said why the receivership has been
12 necessary in this case.

13 MR. URBANIK: Just for clarification. In no way
14 detrimental comments as to Manilla or Netsphere when I
16:34 15 talked about whether it was procured by fraud. Those
16 parties have fully cooperated in the settlement effort so
17 far. So I wasn't directing to them or Mr. MacPete's
18 clients.

19 THE COURT: I understand. And Mr. MacPete and
20 his clients seem ready, willing and able to maintain the
21 settlement agreement and live by its terms and conditions.

22 Mr. Barrett, you want to call Mr. Baron?

23 MR. BARRETT: I want the Court to know certainly
24 that one of the points that Mr. MacPete brought up is
25 there has been an allegation certainly and that the Court

16:35 1 is concerned about the movant hiring and firing people
2 fraudulently and not paying them, and of course, that
3 would be a concern of myself. And I would represent to
4 the Court that if I'm on this case and I think that if Mr.
5 Schepps is on this case, we have an incentive to wrap this
6 up as soon as possible. And I represent to the Court that
7 I will see to it that that's done. I certainly have I
8 think a good relationship with my client at this point. I
9 understand my client can be difficult sometimes to deal
10 with. But I want to represent to the Court that I'm
11 certainly willing to do that. I want to wrap this up as
12 quickly as possible, too.

13 THE COURT: I appreciate those sentiments
14 completely. I appreciate your representation of Mr.
16:36 15 Baron, and I appreciate the fact that you have -- as an
16 officer of the Court you have called these lawyer
17 witnesses to testify. It's the only conclusion I can
18 reach from their testimony, the only conclusion, is that
19 Mr. Baron's conduct towards his counsel has been
20 fraudulent and that he has procured their services without
21 any intent of finally paying them their just fee and that
22 he is a serial violator of the requirement to deal in good
23 faith with lawyers and parties and so forth. It's an
24 unfortunate -- As I say, I have never seen anything like
25 it in my life. It's very unfortunate.

16:37 1 MR. BARRETT: I'll certainly call my client on
2 this issue. But I guess it concerns me that we haven't
3 had any sort of evidence on how much money the clients are
4 claiming versus how much there may be owed versus how much
5 they have been paid and which lawyers represented Jeff
6 Baron which was a fraction of the number of lawyers versus
7 which lawyers represented Novo Point and which lawyers
8 represented Quantec. This is one of the most complex
9 litigations I have ever seen in my life, and I'm frankly
10 not equipped to handle it, to be honest with you, Judge.

11 THE COURT: Let me say, I tried unsuccessfully.
12 Mr. Baron found no interest in following my orders. I
13 tried to stop the sort of swinging door of lawyers. I
14 told him he couldn't hire a lawyer without my approval.
16:38 15 He did. I told him he had to continue to use particular
16 lawyers. He didn't. There is nothing I could do. The
17 lawyers just kept coming, and it made no difference to
18 Mr. Baron what my orders were. Zero. I have never seen a
19 client like that. And as I say, I don't like to put
20 people in prison, and I went home at night thinking should
21 I put Mr. Baron in custody to try to stop this, but it was
22 obvious I couldn't. So we were coming to a head, and
23 there was going to be a contempt hearing. And based upon
24 everything I knew, it was very clear to me that Mr. Baron
25 was in contempt of my orders. And there was no question

16:39 1 about that. And of course, he waylaid that with a
2 decision to put Ondova in bankruptcy. Judge Jurnigan
3 thought the decision to go into bankruptcy was for an
4 improper purpose. It was clearly in my mind. She thought
5 that as well. And then her efforts to stop the
6 merry-go-round of lawyers was unsuccessful. So over and
7 over and over again we tried. I really didn't see behind
8 the curtain until today. And today I saw behind the
9 curtain, and I saw how abusive, terribly abusive Mr. Baron
10 was to decent honorable lawyers who had no other intent
11 but to help him and to give him guidance and direction so
12 that he wouldn't really do things that were contrary to
13 his own self-interest. What's really bizarre about this
14 is he was always acting at cross purpose to his own best
16:40 15 interest. It's mind boggling. I was glad to hear the
16 professor say that he was competent because normally you
17 think competent people operate in their own best interest.
18 I was glad to hear he was competent. The only problem
19 about hearing that is I had to conclude that everything
20 was intentional, completely intentional. And therefore,
21 all the more egregious. So that's where we are. To me,
22 I'm sure Mr. Baron has paid lawyers. The problem was he
23 wouldn't keep paying them. I have been a lawyer before.
24 You know, I was a lawyer for twenty-four years, and the
25 abuse that was visited on these lawyers is amazing to me.

16:41 1 And I have heard Mr. Ferguson and Mr. Pronske say it was
2 twenty-four hours a day. Five thousand cell phone
3 minutes? You know, I'm stunned. I mean, I am beyond
4 stunned that that would have occurred with Mr. Ferguson.
5 The conduct -- You know, I have heard Mr. Baron testify a
6 couple of times. I'll be glad to hear his side of the
7 story, but I will tell you there is nothing about what
8 these lawyers said that wasn't completely credible in
9 every respect, totally and completely, and I'm sure I am
10 going to hear Mr. Baron say "It never happened that way, I
11 was good to them. I paid them everything. They breached
12 their agreements with me." Etcetera, etcetera. I might
13 believe that if it was one lawyer or maybe two. But not
14 twenty. Somewhere along the line you have to consider
16:42 15 that not twenty lawyers are the problem. So you know,
16 that's where we are. I have heard that Mr. Baron is
17 depressed. And you are going to work this week to have
18 him this week in therapy.

19 MR. BARRETT: Yes, sir.

20 THE COURT: And you are going to get the money
21 from Mr. Golden and the receiver, Mr. Vogel, and I
22 consider that he should be in constant counseling.

23 MR. BARRETT: Understood.

24 THE COURT: Okay. That's good. I don't know if
25 anyone can understand how alarming this day has been and

16:43 1 how alarming the testimony has been about the conduct of
2 Mr. Baron. But it's all on the record. So I'll be glad
3 for Mr. Baron to come up and testify how much money he has
4 paid. I'll hear from him. He may be telling me that
5 every lawyer he has dealt with has been a fraud and he
6 just can't believe that he has had to deal with so many
7 lawyers.

8 MR. BARRETT: For the record, I'm advising
9 Mr. Baron not to testify and he is going to follow my
10 advice.

11 THE COURT: Well, he can assert privileges like
12 the 5th Amendment, and I take it you are asserting the 5th
13 Amendment privilege on his behalf.

14 MR. BARRETT: That's correct.

16:44 15 THE COURT: Okay. It comes over to you.
16 Anything from your point of view?

17 MR. ROOSIEN: No, I believe we were able to
18 cover all the evidence we wanted to put before the Court
19 in the context of the other witnesses.

20 THE COURT: I have Exhibits 1 through 47 here.
21 Is there anything else you would ask me to admit in the
22 book before me?

23 MR. ROOSIEN: I don't believe so, Judge. I
24 think what we have submitted is accounted for.

25 THE COURT: So for the record, the Trustee's

16:45 1 Exhibits 2, 4 through 10, 12 to 41 are admitted

2 MR. ROOSSIEN: Thank you, your Honor.

3 THE COURT: Thank you very much.

4 MR. ROOSSIEN: Exhibit 1 I believe was admitted.

5 THE COURT: And it was and anything you would
6 like to present in that post-hearing I will allow you to
7 do, Mr. MacPete.

8 MR. MACPETE: I would ask Exhibit 1 be admitted
9 for demonstrative purposes because I think Mr. Roossien's
10 purpose in presenting it was to establish that Mr. Baron
11 used the Cook Island trust, and I think he established
12 that through the actual testimony. So I think there is no
13 need to admit the exhibit in evidence other than
14 demonstrative purposes.

16:46 15 MR. ROOSSIEN: And I would suggest for limited
16 purposes.

17 THE COURT: Okay. My plan is to get you an
18 order.

19 MR. MACPETE: Your Honor, just for the record
20 because I know this is going to the Fifth Circuit, I think
21 I need to call Mr. Baron and actually ask him some
22 questions and let him invoke the 5th Amendment because
23 there is an inference that's permitted from that, but I
24 think we have to have a record where somebody has called
25 him and established that.

16:46 1 THE COURT: You are correct.

2 MR. MACPETE: I don't want to waste the Court's
3 time, but if we could do that.

4 THE COURT: That's correct.

5 Mr. Baron, you have been instructed by your
6 lawyer not to answer based upon your 5th Amendment
7 privilege, but you have to invoke that privilege as to
8 each question.

9 (Sworn)

10 THE COURT: And remember your answer to each
11 question is "I refuse to answer based upon my 5th
12 Amendment privilege."

13 JEFFREY BARON

14 DIRECT EXAMINATION

16:47 15 BY MR. MACPETE:

16 Q State your name for the record?

17 A Jeff Baron.

18 Q Mr. Baron, how many lawyers have you actually
19 hired to represent you in this or the related case?

20 THE COURT: You refuse to answer?

21 A Based on what my counsel said, I refuse to
22 answer.

23 BY MR. MACPETE:

24 Q Isn't it true, sir, that in fact you have hired
25 lawyers and promised to pay them without the intent to

16:47 1

perform that promise?

2

A The same answer as I just gave.

3

Q In fact, you did that with respect to

4

Mr. Pronske, correct?

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A Same answer as before.

6

Q And you did that with respect to Mr. Ferguson,

7

correct?

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A Same answer as before.

9

Q And you did that with respect to Mr. Martin,

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correct?

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A Same answer as before.

12

Q And you did that with respect to Mr. Vitullo and

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his law firm?

14

A Same answer.

16:48 15

Q And you did that with respect to Mr. Mark Taylor

16

and his law firm?

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A Same answer as before.

18

Q And you did that with respect to Mr. Lurich and

19

his law firm?

20

A Same answer.

21

Q And you did that with respect to Mr. Rasansky

22

and Ms. Aldous, correct?

23

A Same answer as before.

24

Q Were there any lawyers who you actually intended

25

to perform the promises you made to them to pay them?

16:48 1 A Same answer as before.

2 Q Is it true, Mr. Baron, that you purposely
3 engaged in conduct that was designed to increase the cost
4 of litigation for my clients and the Chapter 11 trustee?

5 A Same answer as before.

6 Q Is it also true that you purposefully have not
7 complied with the Court's order to refrain from engaging
8 counsel except for Friedman and Figer as ordered by Judge
9 Ferguson?

10 A Same answer as before.

11 Q Is it true that you have violated Judge
12 Jurnigan's order not to hire additional counsel for the
13 bankruptcy case?

14 A Same answer.

16:49 15 Q Is it true that you have not complied with Judge
16 Ferguson's order to mediate the attorneys' fees disputes
17 with Peter Vogel?

18 A Same answer as before.

19 Q And is it also true, Mr. Baron, that you
20 submitted a preliminary injunction to this Court dividing
21 up certain domain name assets at a time when you were
22 alleging that those assets were not owned by any of the
23 parties that were signatories to that preliminary
24 injunction?

25 A Same answer.

16:49 1

MR. MACPETE: Nothing further. Thank you.

2

THE COURT: Thank you very much. If anyone wishes -- We're going to get an order so that you can appeal. If anyone wants to submit anything as to briefing authorities or anything else, I will look at your authorities on your Fifth Circuit case. That needs to be submitted within -- by five o'clock Thursday. Give us the citation on your case.

9

MR. ROOSIEN: Your Honor, may Mr. Baron step down?

10

11

THE COURT: Yes, you may step down.

12

MR. BARRETT: Judge, there is no citation. May I give this copy to the Court?

13

14

THE COURT: Give us the style.

16:50 15

MR. BARRETT: Griffin versus Lee, September 24, 2010.

16

17

THE COURT: I'll ask you to give this matter your prompt attention, Mr. Roossien.

18

19

MR. ROOSIEN: Your Honor, I have not viewed the case because it was presented to me this morning.

20

21

However, my colleague has, and my understanding is this is simply a dispute to collect attorneys' fees that had no other basis for jurisdiction. And here what we have is a situation where in the bankruptcy court naturally many of the claims were attorneys' fees claims, and then there

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25

16:51 1 were substantial contribution claims which was allowed by
2 the bankruptcy judge to be made in that context. And so
3 those were naturally before the Court. And in addition,
4 once a receiver is appointed in equity, then all of the
5 affairs of Mr. Baron are before this Court as a matter of
6 that ancillary proceeding. And so for all of those
7 reasons, your Honor, we would distinguish that particular
8 authority.

9 THE COURT: Give me a letter brief, if you
10 would, within forty-eight hours. And you can provide the
11 kind of brief you want to. You may as well, Mr. MacPete.

12 MR. MACPETE: Your Honor, the last thing I would
13 say with respect to the invocation of the 5th Amendment,
14 as your Honor well knows in a criminal case there can be
16:52 15 no inference from the invocation of the 5th Amendment.
16 That's not true in a civil case. In a civil case, this
17 Court is allowed to draw a negative inference from
18 Mr. Baron's invocation of the 5th Amendment and his answer
19 on those three independent bases on which you can appoint
20 a receiver is additional support for appointing the
21 receiver.

22 THE COURT: That's right. You all are going to
23 split the cost of this transcript, and you all are going
24 to order it and make it available. I expect Mr. Baron
25 will enter a relationship with a therapist this week.

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Mr. Vogel will pay any amount of sums available to that therapist to make sure that Mr. Baron has full access to that therapist as that therapist designates.

MR. BARRETT: Yes, sir, your Honor. Do you mind if that's a psychiatrist or psychologist?

THE COURT: I don't mind. Our good professor made some recommendations. If those don't work, I want somebody --

MR. BARRETT: -- that can treat depression.

THE COURT: I understand he's under medication for that right now. So that will be good. My hope is that we can resolve this matter very promptly. I can vacate and dissolve the receivership. There will be funds available to Mr. Sherman and his counsel so that they can close the bankruptcy, and with the receivership in charge of the funds, I don't have to worry about new lawyers coming in this case and continuing to create havoc. Okay, we're in recess.

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing pages 1 through 238 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

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Exhibit R

From: MRTN THMS,NL, SBL,LNDA [mailto:thomas12@swbell.net]
Sent: Friday, February 04, 2011 3:40 PM
To: BLAKLEY, JOHN DAVID; VOGEL, PETER; Corky Sherman; rurbanik@munsch.com
Cc: jeffbaron1@gmail.com; Shawn Phelan; legal@schepps.net; sbroome@broomelegal.com
Subject: Re: Netsphere v. Baron, Cause No. 3:09cv988, US District Court, ND Texas-Jeff Baron Receivership

Mr. Blakely,

Thank you for your concern about my client relationship. However, I have no intention of presenting a "claim" for fees to the Receiver. Although tardy, Jeff Baron had paid all my fees as of the appointment of the Receiver. My relationship with my client is my business and not something that should be presented to the Receiver. I do not need assistance from the Receiver in managing my client relationship. I actually question the jurisdiction supporting the Receiver's consideration of attorney claims. It is regrettable that other attorney's allowed their client relationship to get so far out of control.

I know it was well intentioned but the Receiver now seems to be acting as the small claims court for all attorney claims against Mr. Baron and I really don't understand the basis for that. In my 27 years of practice I have never seen anything like the "system" under which the Receiver is operating. Perhaps I'm just not smart enough to understand it but, for whatever reason, I do not understand it and will not participate in it.

I find Judge Ferguson immensely intelligent, experienced and willing to attempt to solve a very unpleasant problem. But, I'm not sure he had an accurate picture of the problem when he appointed the Receiver. Had I been called to testify, I would have rebutted much of the testimony of the other attorney witnesses.

I do note that since the receiver was appointed, the receiver has not supported my withdrawal as Mr. Baron's bankruptcy counsel. As a result, I have been required to attend every hearing. So, it would seem that the Receiver (not Mr. Baron) owes me \$5,000 per month beginning December 1, 2010.

Martin Thomas

From: "BLAKLEY, JOHN DAVID" <jblakley@gardere.com>
To: "thomas12@swbell.net" <thomas12@swbell.net>
Sent: Wed, February 2, 2011 4:43:15 PM
Subject: Netsphere v. Baron, Cause No. 3:09cv988, US District Court, ND Texas-Jeff Baron

Counsel:

On January 24, 2011, counsel for Peter S. Vogel, Receiver over Jeffrey Baron and Receivership Parties, sent you the attached letter via e-mail. In the letter, the Receiver requested that you complete the form declaration included at the bottom of the letter regarding your potential claim for fees against Mr. Baron and/or Receivership Party(ies) **no later than February 1, 2011.**

The Receiver has not received the requested declaration from you. Therefore, the Receiver requests that you send either (1) your declaration or (2) a response to this e-mail making clear your plans for sending such declaration (i.e., whether you intend to send such declaration, whether you need a further extension, and/or an estimate of when the Receiver can expect to receive the declaration), **no later than 5:00 p.m. Friday, February 4, 2010.**

You may send your declaration electronically.

Thank you.

John David Blakley
Gardere Wynne Sewell LLP

1601 Elm Street, Suite 3000 | Dallas, TX 75201
214.999.4753 direct
214.999.3753 fax
[Gardere](#) | [Bio](#) | [vCard](#)

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Status Conference 7/28/09

2

18:00 1

2

P R O C E E D I N G S :

3

THE COURT: Thank you. Be seated. Welcome.

4

The purpose of this hearing is to have a status conference

5

so that I can keep up with what's going on in the case,

6

and I would like to ask Mr. Frye to call the case. And we

7

can get announcements.

8

MR. FRYE: Netsphere, et al. versus Ondova et

9

al., Number 3: 09-CV-988-F.

10

THE COURT: Can I have announcements for

11

Netsphere.

12

MR. MACPETE: Yes, your Honor. John MacPete,

13

Locke Lord on behalf of plaintiffs.

14

THE COURT: Thank you so much. Can I have

08:06 15

announcements for the defendants.

16

MR. LURICH: Yes, your Honor. Ryan Lurich and

17

Larry Friedman on behalf of defendants.

18

THE COURT: Great. Welcome. And could I have

19

announcements from our special master?

20

MS. ALDOUS: Yes, your Honor, Peter Vogel

21

Special Master.

22

THE COURT: I know we have some motions for

23

contempt. I am going to continue those at least for now.

24

That doesn't mean they won't be considered at a later

25

time. And of course, I will hear any motions presented to

Exhibit S

CASSIDI L. CASEY, CSR, 214-354-3139
UNITED STATES DISTRICT COURT

-----Original Message-----

From: Jim Krause [mailto:jkrause@fflawoffice.com]
Sent: Monday, July 27, 2009 3:06 PM
To: 'jeff@ondova.com'; Carter Boisvert
Cc: Larry Friedman; Ryan Lurich
Subject: RE: Response to Motion

Jeff,

The Court has notified us that there will not be a hearing on the contempt motion tomorrow. Instead, there will be a 'status conference' at 9:00 that Larry and Ryan will attend.

Ryan, Larry and Carter will finalize the response on their own after Ryan gets back tonight, and will likely not file the response until the new hearing time is determined.

--Jim

James Robert Krause, Esq.
Friedman & Feiger, L.L.P. | 5301 Spring Valley Road | Suite 200 | Dallas,
Texas 75254 |
Direct Dial 972-450-7320 | Fax 972-788-2667 | Firm 972-788-1400 |
jkrause@fflawoffice.com

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Paragraph (5)(d) is amended to delete the date “July 2, 2009” and insert in its place the date “July 8, 2009.”

Paragraph (5)(e) is amended to delete the date “July 1, 2009” and insert in its place the date “July 10, 2009” and to delete the date “July 7, 2009” and insert in its place the date “July 15, 2009.”

Paragraph (6) is amended to delete the date “July 2, 2009” in the third sentence and insert in its place the date “July 6, 2009” and to delete the phrase “50% to the Defendants’ designees” in the third sentence and insert in its place the phrase “50% to the trust account of Friedman & Feiger on behalf of Defendants.” Paragraph (6) is further amended to delete the date “July 8, 2009” in the fourth sentence and insert in its place the date “July 13, 2009.” The following sentences are to be added immediately following the third sentence in Paragraph (6): This Court finds that certain funds have been interpled into the underlying state court action. Accordingly, this Court orders that the attorneys’ fees of the Intervenor are to be paid from those funds and the balance of those funds shall be distributed 50% to the Netsphere Parties and 50% to the trust account of Friedman & Feiger on behalf of Defendants. This Court shall later determine against which party the Intervenor’s attorneys’ fees are to be taxed as costs. The funds deposited into the trust account of Friedman & Feiger pursuant to this Order are to be held until further order of this Court, except that Defendants’ counsel may apply the funds on deposit to their outstanding invoices for legal services to Defendants. This Court desires that Friedman & Feiger stay in this case as Defendants’ counsel considering the numerous times that Defendants have replaced their lawyers over the course of this case and in the underlying cases. This Court is concerned that a change in counsel might be for the purpose of delay and in an attempt to impede the judicial process. The Court finds that Friedman & Feiger’s continued representation is necessary to

continue to work towards performance of the Preliminary Injunction and to avoid possible contempt findings. In the event that Defendants elect to terminate Friedman & Feiger, the funds required to be deposited by this order into Friedman & Feiger's trust account are non-refundable. Upon final resolution of this case, Defendants may apply to this Court for an order directing that the balance of any funds deposited into the trust account of Friedman & Feiger pursuant to this Order be returned to Defendants.

The following new Paragraphs (10)-(14) are added immediately following the existing Paragraph (9):

(10) Plaintiffs shall produce the documents that Plaintiffs' counsel agreed to produce in connection with the depositions of Plaintiffs for the preliminary injunction hearing. Plaintiffs shall produce all documents required by this paragraph by Friday July 3, 2009 at 5 p.m. CST at the office of Defendants' counsel.

(11) Defendants shall provide the on-line logins/access codes/passwords for all monetization accounts for any domain names registered at Ondova at any time, specifically including but not limited to, the on-line logins/access codes/passwords for Hitfarm, Fabulous, enom, Oversee.net, Domain Development Corp., Parked.com, Namedrive.com, Domain Sponsor.com, Above.com, and Sedo or provide a detailed explanation to Plaintiffs' counsel as to why Defendants are unable to provide such information.

(12) Defendants shall produce all CSV text files (without limitation) containing the WHOIS information for all of the domain names registered at Ondova sent to Iron Mountain or any other third party data escrow service.

7/1/09 Hearing [Doc#64]

64

10:11 1 restore list. That's the list of names which should be
2 undeleted.

3 THE COURT: Okay.

4 MR. MACPETE: And I would propose consistent
5 with the way this was scheduled before that you would move
6 that to July 7th at 5:00 p.m.

7 THE COURT: Any response from you, Mr. Krause?
8 By the way, are you telling me in a very few
9 days both sides will split \$500,000 less \$17,500?

10 MR. MACPETE: Yes, sir.

11 THE COURT: All of that money -- I am going to
12 change my order. All of that money goes into your trust
13 account, \$250,000 or whatever. It all goes in your trust
14 account, Mr. Krause.

10:12 15 MR. MACPETE: You mean all of his half?

16 THE COURT: Less the attorneys' fees. And that
17 all goes into your trust account. That is a nonrefundable
18 fee. That \$240,000 is a nonrefundable fee. So if Mr.
19 Baron wants to fire you, you just made \$240,000. But if
20 this matter is successfully concluded, then you take
21 your -- By the way, you bill against that every month.
22 You bill against that every month and take money out every
23 month, and if this matter is successfully concluded, then
24 Mr. Baron gets what's left. So that should be an order
25 you prepare. E-mail it to Mr. MacPete and make sure he

is unclear that they have even been acting in Ondova's best interests. Defendants would like to now change Ondova's bankruptcy counsel so that all counsel can work harmoniously towards a unified goal.

II.

Defendants would like approval to employ Gerrit M. Pronske, Esq. with the law firm of Pronske & Patel, P.C. as Ondova's new bankruptcy counsel. Pronske & Patel, P.C. are highly regarded bankruptcy litigators with experience in handling complex bankruptcy matters. Friedman & Feiger, L.L.P. has an excellent working relationship with Pronske & Patel, P.C. and were involved in the process of choosing substitute bankruptcy counsel. This change in bankruptcy counsel will enable Defendants' bankruptcy and litigation counsel to work together towards a unified goal. This change is not sought for purposes of delay but to ensure that justice is served.

WHEREFOR PREMISES CONSIDERED, Jeffrey Baron and Ondova Limited Company respectfully pray that the Court approve hiring Pronske & Patel, P.C. as Ondova's new bankruptcy counsel; and, for such other and further relief, both general and special, at law and in equity, to which Defendants may be justly entitled.

Exhibit U

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB - 4 2011
CLERK, U.S. DISTRICT COURT
By [Signature]
Deputy

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

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

§
§
§
§
§
§
§
§
§
§

v.

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

JEFFREY BARON AND
ONDOVA LIMITED COMPANY,
DEFENDANTS.

ORDER GRANTING THE RECEIVER'S SECOND RECEIVER FEE APPLICATION

BEFORE THE COURT is the Receiver's Second Application for Reimbursement of Fees and Expenses Incurred by the Receiver (Docket No. 259). Having considered the Second Application and the evidence attached thereto, the Court is of the opinion that the Second Receiver Fee Application is well taken and should be GRANTED.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Receiver, and his agents or representatives, are authorized to immediately pay the Receiver \$77,480.00 for the period from December 1, 2010, through December 31, 2010, for services rendered and expenses incurred in carrying out his duties pursuant to the Order Appointing Receiver. Such payment shall be made from the Receiver Assets to which the Receiver has obtained access to date, and specifically funds formerly residing at TD Ameritrade, Account #XXX-XXX236, under Jeffrey Baron's name, and which are now residing at Comerica Bank in Dallas, Texas, Account #XXXXXX5361, under the Receiver's name.

Signed this 4th day of February, 2011.

[Signature]
Royal Furgeson
Senior United States District Judge

Exhibit V

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB - 4 2011
CLERK, U.S. DISTRICT COURT
By [Signature]
Deputy

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

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

§
§
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v.

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

JEFFREY BARON AND
ONDOVA LIMITED COMPANY,
DEFENDANTS.

ORDER GRANTING THE RECEIVER'S SECOND GARDERE FEE APPLICATION

BEFORE THE COURT is the Receiver's Second Application for Reimbursement of Fees and Expenses Incurred by Gardere Wynne Sewell LLP (Docket No. 258). Having considered the Second Application and the evidence attached thereto, the Court is of the opinion that the Second Gardere Fee Application is well taken and should be GRANTED.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Receiver, and his agents or representatives, are authorized to immediately pay Gardere Wynne Sewell LLP \$157,729.41 for the period from December 1, 2010, through December 31, 2010, for services rendered and expenses incurred on behalf of and in assistance to the Receiver in carrying out his duties pursuant to the Order Appointing Receiver. Such payment shall be made from the Receiver Assets to which the Receiver has obtained access to date, and specifically funds formerly residing at Woodforest National Bank, Account #XXXXXXX1261, under Jeffrey Baron's name, and which are now residing at Comerica Bank in Dallas, Texas, Account #XXXXXXX6373, under the Receiver's name.

Signed this 4th day of February, 2011.

[Signature: Royal Furgeson]
Royal Furgeson
Senior United States District Judge

Raymond J. Urbanik
Texas Bar No. 20414050
Jay Ong
Texas Bar No. 24028756
Lee Pannier
Texas Bar No. 24066705
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ATTORNEYS FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE

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

In re: §
§ Case No. 09-34784-SGJ
ONDOVA LIMITED COMPANY, §
§ (Chapter 11)
Debtor. §

TRUSTEE'S MOTION TO MODIFY ORDER

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Daniel J. Sherman (the "Trustee"), the duly-appointed Chapter 11 trustee of Ondova Limited Company and files his *Motion to Modify Order* (the "Motion"), respectfully stating as follows:

I. JURISDICTIONAL BACKGROUND

1. On July 27, 2009 (the "Petition Date"), Ondova Limited Company ("Ondova" or "Debtor") filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby initiating the above-referenced bankruptcy case (the "Bankruptcy Case") and creating the Debtor's bankruptcy estate (the "Estate").

2. On September 17, 2009, the Court entered its order approving the appointment of the Trustee.

3. This Court has jurisdiction over this Bankruptcy Case and this Motion pursuant to

28 U.S.C. §§ 157 and 1334. Such jurisdiction is core under 28 U.S.C. § 157(b)(2). Venue of the Bankruptcy Case before this Court is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are Section 105 of the Bankruptcy Code and Rule 60 of the Federal Rules of Civil Procedures (the "Civil Rules") made applicable through Rule 9024 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

II. BACKGROUND

5. As this Court is aware, this Bankruptcy Case was filed as the result of the pendency of long running and combative litigation commenced prior to the Petition Date (collectively, the "Litigation"). Since his appointment, the Trustee has diligently worked to resolve the Litigation by coordinating, conducting, and participating in "global settlement" efforts between the parties involved in and associated with the Litigation, including Mr. Jeff Baron, former principal of Ondova, Mr. Munish Krishan, principal of Manilla Industries, Inc. and Netshpere, Inc., and various trusts and related entities (collectively, the "Settling Parties"). Such negotiations have been on-going for months and have appeared fruitful at times. In fact, at the June 2, 2010 hearing before this Court, this Court heard detailed reports from the Trustee and certain Settling Parties that the "global settlement" was essentially complete, except for certain "word smithing" issues.

6. Based on those representations, this Court entered an Order on June 3, 2010 [Docket No. 341] (the "June 3 Order") that, among other things, established a deadline for the Trustee to file a Rule 9019 motion for approval of the "global settlement" (the "Deadline"). In the event that the Deadline was not met, the June 3 Order required certain of the Settling Parties to appear at the Trustee's counsel's offices "on Monday, June 14, 2010 at 12 noon, and stay everyday thereafter, through Monday June 21, 2010 at midnight, as convened and required by [the Trustee], for further negotiations to resolve the remaining "word smithing" issues that

preclude settlement" (the "Final Settlement Meeting"). June 3 Order ¶4.

7. Although cautiously optimistic at the time this Court entered the June 3 Order, the Trustee no longer believes that mere "word smithing" will complete the "global settlement". To the contrary, the Trustee now realizes that certain of the Settling Parties are incapable of agreeing to any form of a reasonable "global settlement". Accordingly, the Deadline has not been met. The Trustee believes it now necessary and prudent to end his and the Estate's efforts to effectuate a "global settlement" and to, instead, exercise all of his available rights and remedies on behalf of the Estate. In fact, the Trustee has already commenced those efforts.

III. RELIEF REQUESTED

8. By and through the Motion and pursuant to Civil Rule 60(b)(5) made applicable through Bankruptcy Rule 9024, the Trustee respectfully requests that this Court modify the June 3 Order to vacate the requirement that the Trustee and certain of the Settling Parties participate in the Final Settlement Meeting.

IV. BASIS FOR RELIEF REQUESTED

9. Civil Rule 60(b), as incorporated by Bankruptcy Rule 9024, sets forth the bases upon which a court's order may be modified or vacated. Specifically, Civil Rule 60(b), as incorporated by Bankruptcy Rule 9024 provides that:

"[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reason[]:

...

(5) . . . applying it prospectively is no longer equitable;

....

Fed. R. Bankr. P. 9024; Fed. R. Civ. P. 60(b)(5).

10. The Supreme Court has recognized that Civil Rule 60(b) allows a court to modify its orders "in light of changing circumstances." See *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (stating that "[t]he Rule encompasses the traditional power of a court of equity to

modify its decree in light of changed circumstances.”). Furthermore, the Fifth Circuit has ruled that two elements must be satisfied in order to apply Civil Rule 60(b)(5): (i) the judgment has prospective application; and (ii) it is no longer equitable that it should so operate. *In re Hence*, 2007 WL 4333834 at *10 (Bankr. S.D. Tex. Dec. 5, 2007) (citing *Kirksey v. City of Jackson*, 714 F.2d 42, 43 (5th Cir. 1983)). Courts have "liberally construe Rule 60(b)(5) to do substantial justice where equitable considerations are involved." *In re Burton Securities*, 202 B.R. 411, 418 (S.D. Tex. 1996) (citing *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600-01 (5th Cir. 1980)).

11. Based on the forgoing standards, the June 3 Order should be modified to omit the Final Settlement Meeting. It's the Trustee's belief that the June 3 Order's inclusion of the Final Settlement Meeting no longer makes sense under the circumstances. Specifically, the Trustee unfortunately now realizes, based on his months of dealings with the Settling Parties and work on the "global settlement", that certain Settling Parties are simply incapable of finalizing a reasonable "global settlement". This is despite the very hard work and tremendous dedication of many of the lawyers involved in this case.

12. The Final Settlement Meeting would only waste the Estate's resources, cause the Estate to incur further unnecessary attorney's fees, and waste everyone's time. Thus, the Final Settlement Meeting is no longer beneficial to the Estate and its creditors or any other party that has spent countless hours diligently working towards a "global settlement".

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that this Court: (i) grant this Motion; (ii) modify the June 3 Order to remove the requirement that the Trustee and certain of the Settling Parties participate in the Final Settlement Meeting; and (iii) grant the Trustee such other and further relief to which he has shown himself to be justly entitled.

Respectfully submitted this 14th day of June, 2010.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Raymond J. Urbanik
Raymond J. Urbanik
Texas Bar No. 20414050
Jay Ong
Texas Bar No. 24028756
Lee Pannier
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3800 Lincoln Plaza
500 N. Akard Street
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Telephone: (214) 855-7500
Facsimile: (214) 855-7584

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent to all parties requesting electronic service through the Court's ECF system on June 14, 2010.

/s/ Raymond J. Urbanik

Exhibit X



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Hay G. C. George
United States Bankruptcy Judge

Signed June 16, 2010

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

IN RE: §
§
ONDOVA LIMITED COMPANY, § Case No. 09-34784-SGJ-11
§
Debtor. §

ORDER DENYING TRUSTEE'S MOTION TO MODIFY ORDER [DE # 351] AND
MOTION FOR EXPEDITED HEARING [DE # 352]

On June 3, 2010, this court entered its Order Continuing Hearing on Trustee's Motion to Convert Case [DE # 317] and Verisign's Motion for Allowance and Payment of Administrative Claim [DE # 316], with Conditions Pertaining to a Settlement (the "June 3, 2010 Order"). The June 3, 2010 Order required, among other things, for the principals of Manilla and Netsphere and Jeff Baron, along with their lawyers and the Chapter 11 Trustee (Daniel Sherman), to appear in the offices of Munsch Hardt, in Dallas, Texas on Monday June 14, 2010 at 12 noon through Monday, June 21, 2010 at midnight, as convened and required by the

Trustee, for further negotiations to resolve the remaining "word smithing" issues that precluded finalization of a global settlement agreement pertaining to this case and related litigation (the court specified that this marathon negotiating session would only be necessary if a settlement agreement was not finalized and filed by the Trustee, with a Rule 9019 Motion, by June 9, 2010). The court issued the June 3, 2010 Order after receiving sworn testimony from Jeff Baron and representations from various counsel in open court that indicated that a settlement in principle had been reached, subject only to "word smithing" of certain specific issues in an approximately 100-page settlement document that had been negotiated among the parties and lawyers for weeks. The court heard details of the settlement in principle. The court heard representations that a settlement agreement would likely be filed before the June 9, 2010 deadline given by the court (*i.e.*, the deadline to avoid the required marathon negotiation session). No settlement agreement was filed by June 9, 2010, despite the positive assurances given by counsel. Then, quite unexpectedly, on June 14, 2010, the Trustee filed a Motion to Modify Order [DE # 351] (the "Motion to Modify"), which sought to modify the June 3, 2010 Order, to eliminate the requirement that the parties and lawyers meet face to face between June 14-21, 2010 to hammer out unresolved word smithing issues, along with a Motion for Expedited Hearing [DE #

352] (the "Motion for Expedited Hearing"). The Motion to Modify represents, essentially, that the marathon negotiating session would appear to be an exercise in futility at this point, as a global settlement no longer seems achievable (this, despite what the court heard in sworn testimony and from officers of the court on or about June 3, 2010).

The court having considered the relief requested in the Motion to Modify and the Motion for Expedited Hearing, **finds that the request is not reasonable and there is no good cause to grant either the Motion** to Modify or the Motion for Expedited Hearing. Accordingly, it is hereby

ORDERED that Motion to Modify and Motion for Expedited Hearing are denied. The requirements of the June 3, 2010 Order remain.

###END OF ORDER###

Raymond J. Urbanik
Texas Bar No. 20414050
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Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584

ATTORNEYS FOR DANIEL J. SHERMAN,
CHAPTER 11 TRUSTEE

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

In re: §
ONDOVA LIMITED COMPANY, § Case No. 09-34784-SGJ
Debtor. § (Chapter 11)
§

**FIFTEENTH FEE STATEMENT OF MUNSCH HARDT KOPF & HARR, P.C.,
COUNSEL FOR THE CHAPTER 11 TRUSTEE OF ONDOVA LIMITED COMPANY,
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD DECEMBER 1, 2010 THROUGH DECEMBER 31, 2010**

Munsch Hardt Kopf & Harr, P.C. ("Munsch Hardt"), counsel for Daniel J. Sherman, Chapter 11 Trustee (the "Trustee") of Ondova Limited Company (the "Debtor"), submits its Fifteenth Fee Statement as counsel for the Trustee for the period December 1, 2010 through December 31, 2010 (the "Compensation Period"), pursuant to the *Order Granting Trustee's Motion to Establish Procedures for the Interim Compensation of Professionals* [Docket No. 166] (the "Fee Procedure Order"), a copy of which is attached as Exhibit "A."¹ Below is a summary of fee and expense information for the Compensation Period.

Exhibit Y

¹ Confidential information to protect the bankruptcy estate is redacted.

Name of Applicant: Munsch Hardt Kopf & Harr, P.C.

Authorized to Provide Professional Services to: Daniel J. Sherman, Chapter 11 Trustee

Effective Date of Retention: September 24, 2009

Period for which compensation and Reimbursement is sought: December 1, 2010 through December 31, 2010

Amount of compensation sought as actual, reasonable and necessary: \$158,855.00

Amount of expense reimbursement sought as actual, reasonable, and necessary: \$6,891.06

Total Gross Amount Requested: \$165,746.06

Total Amount Minus 20% Holdback on Professional Fees: \$133,975.06

The following services were rendered by Munsch Hardt in the task categories indicated below.

NO.	TASK CATEGORY	TOTAL HOURS	TOTAL FEES
01	Case Administration	2.50	\$1,187.50
03	Fee Applications	12.10	\$3,916.00
04	Communications with Trustee	1.90	\$902.50
05	Debtor's Operations	6.30	\$2,709.00
14	Claims Analysis/Objections	10.70	\$2,413.00
25	Baron Receivership	406.80	\$147,727.00
	TOTAL	440.30	\$158,855.00

Gary G. Lyon
Oklahoma State Bar No. 005585
Post Office Box 1227
Anna, Texas 75409
Attorney for Jeffrey Baron

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

IN RE: §
§
ONDOVA LIMITED COMPANY, § **CASE NO. 09-34784 sgj-11**
§ **CHAPTER 11**
Debtor. §

**JEFFREY BARON'S LIMITED OBJECTION TO THE
THIRD INTERIM FEE APPLICATION OF MUNSCHE HARDT KOPF & HARR**

TO THE HONORABLE JUDGE OF THE BANKRUPTCY COURT:

COMES NOW, Jeffrey Baron (hereinafter "Baron"), a creditor in the above styled matter, the former principal of the Debtor, and for his limited Objection to the Third Interim Fee Application of Munsch Hardt Kopf & Harr, P.C. (hereinafter "Munsch Hardt") and in support of the limited objection states:

1. In little over one year, Munsch Hardt, as attorneys for the trustee, has been approved for and received over \$670,000 from the estate of the Debtor and now, by application, seeks an additional \$328,605.50 for the months of June through September 30, 2010.
2. Munsch Hardt in its fee application at pp.7-8 correctly cites the relevant case law for award of fees. A Bankruptcy Court is within its rights to conduct an evidentiary hearing on a fee application. *In Re Fibermark, Inc.*, 2005 WL 3242678, Bkrptcy D.Vt. 2005
3. Munsch Hardt has interspersed its timesheets with blanked out entries. Baron

Exhibit Z

would request a copy of the privilege log to back up, ascertain and verify the assertion of privilege.


4. During the pendency of the time period billed, Munsch Hardt assigned 3 partners and 2 associates to handle the bankruptcy of the Debtor company consisting of 1 full time employee and three leased computer servers.
5. The Trustee has recently concluded that the Debtor could not be economically or effectively reorganized in light of the magnitude of administrative claims, consisting of primarily legal fees.
6. The underlying controversies were substantially settled in early summer, 2010 with occasional flare ups over the next month or so. Nonetheless Munsch Hardt's third interim fee bill does not seem to indicate a corresponding reduction and lessening of activity thereafter.
7. To determine whether Munsch Hardt's fee application is reasonable, Baron requests leave to depose Ray Urbanik on the subject of the fee application for a maximum of one and one-half hour.
8. Upon initial review, it appears that the work performed on the bankruptcy matter has been somewhat over-reaching, but that information obtainable from Mr. Urbanik in the proposed deposition would be able to substantiate the necessity of and the amount of work performed by Munsch Hardt.

WHEREFORE, Jeffrey Baron lodges this, his limited objection to the Third Interim Fee Application of Munsch Hardt and requests that the Court order production of a privilege log, order the deposition of Ray Urbanik as set forth above, and continue the hearing on the Third Interim Fee Application subject to the completion of the requested

deposition, and for such other and further relief as the Court may deem necessary and appropriate.

Dated: November 19, 2010

Jeffrey Baron

By: 

Gary G. Lyon, Esq.
Oklahoma State Bar Number 005585
Attorney at Law
Post Office Box 1227
Anna, TX 75409
(972) 977-7221 (telephone)
(214) 831-0411 (facsimile)
E-mail: lyong@bryant.com

CERTIFICATE OF SERVICE

I certify that on 11-19-10, I electronically filed the foregoing document with the Clerk of the Court for the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, using the electronic case filing system of the Court. The electronic case filing system will sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept the Notice as service of this document by electronic means.



GARY G. LYON