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

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|---|---|---|
| **JEFFREY BARON,** | § | |
| | § | **CIVIL ACTION NO. 3:13-cv-03461-L** |
| ***Respondent,*** | § | |
| | § | |
| ***vs.*** | § | **(Bankruptcy Case No. 12-37921)** |
| | § | |
| **ELIZABETH SCHURIG, *et. al*.,** | § | |
| | § | |
| ***Movants*.** | § | |
| | § | |

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**BARON'S OBJECTION TO MOVANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL**

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

NOW COMES, Jeffrey Baron ("Baron") and files this Objection to Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione's (together, the "Movants" or "Petitioning Creditors") Emergency Motion for Stay Pending Appeal (the "Motion") [Dkt. 56], and in support thereof would respectfully show this Court as follows:

## ARGUMENT & AUTHORITIES

### I. INTRODUCTION

1. After having been paid over $3 million dollars, the Petitioning Creditors are asking this Court to reward them with a stay pending appeal—an appeal, which by the Petitioning Creditors' own admission, is partly necessary due to the obvious tactical mistakes they made in attempting to collect their alleged attorney fee claims against Jeff Baron. Prominent among these foreseeable errors in judgment was the decision to lobby for a receiver to be appointed in *Netsphere, Inc. v. Baron*, pending before this Court[1] for the purpose of marshaling Mr. Baron's personal assets to pay their contingent, unliquidated, and disputed attorney fee claims. As a result of this error, from November 24, 2010 forward, Jeffrey Baron was involuntarily placed in "financial lockdown," stripped of all his personal assets, including all of his assets exempt from his creditors' claims under Texas law—IRA accounts and 401k accounts—and the assets of two entities owned by a trust to which he and an unconnected diabetes research non-profit are beneficiaries, Quantec, LLC and Novo Point, LLC. Moreover, Mr. Baron was deprived of the right to engage counsel to defend himself against the actions

[1] *Netsphere, Inc. v. Baron*, Civil Action No. 3:09-cv-0988-L; in the United States United States District Court for the Northern District of Texas, Dallas Division.

taken by the Petitioning Creditors and the Receiver, as evidenced by email dated December 2, 2010, from the Receiver's attorney, Barry Golden (A true and correct copy is attached as exhibit A). Two years later, and after the payment of at least $5,200,000 in fees and expenses incurred by the Receiver and his attorneys, funded with Baron's assets, the Fifth Circuit found that the appointment of the Receiver was an abuse of discretion. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 302 (5th Cir. 2012). The Court reasoned:

> A receiver may be appointed for a secured creditor who has legitimate fears his security may be dissipated; "an unsecured simple contract creditor has, in the absence of a statute, no substantive right, legal or equitable, in or to the property of his debtor." . . . Establishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority." *Netsphere, Inc. v. Baron*, 703 F.3d 296, 308 (5th Cir. 2012) (quoting *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923)).

2. Within two hours of the Fifth Circuit's issuance of the *Netsphere, Inc. v. Baron* opinion on December 18, 2012, the Petitioning Creditors chose to ignore the Fifth Circuit's admonition to liquidate their claims in state court and filed an involuntary bankruptcy proceeding against Mr. Baron. The overarching purpose, as stated by Creditors' counsel, Gerrit Pronske, was to keep Mr. Baron from moving assets from the reach of Petitioning Creditors. Doc. 56, ¶ 12 at 5. Specifically, Petitioning Creditors assert:

> The Petitioning Creditors filed a Chapter 7 Involuntary Petition against Alleged Debtor on the Petition Date out of concern that the Alleged Debtor might divert assets from the jurisdiction of the United States Courts and beyond the reach of creditors with significant claims against the Alleged Debtor.
>
> *Id.*

3. However, this was precisely the abuse of process condemned by the Fifth Circuit. Nevertheless, Petitioning Creditors intentionally took action designed to circumvent, emasculate, and defy the decision of the Fifth Circuit even before the Court issued its Mandate. Clearly, Petitioning Creditors (several of whom are bankruptcy lawyers) are fearful of taking their claims

before a state court where a jury will likely reject their claims and grant Jeff Baron substantial relief on his counterclaims—their mission was to keep Jeff Baron's personal assets frozen and to continue to deprive him of his "day in court," where he might have an impartial trial by a court and jury with respect to the attorney fee claims being asserted against him and his claims against the attorneys.

4. To say the claims of the Petitioning Creditors were disputed is an understatement. Petitioning Creditors were paid in full, over $3 million, in accordance with their agreements. Some of the Petitioning Creditors even had settlement agreements with Mr. Baron that fully settled their claims for fees against Baron.

5. Petitioning Creditors' attempted to prove up their claims in the involuntary proceeding by arguing the claims were "liquidated, and non-contingent" by virtue of the May 18, 2011 Fee Order. This illustrates their legitimate fear of a full blown trial on the merits. This Court's ruling that the May 18, 2011 Fee Order had no preclusive effect and simply applied bedrock legal principles that Petitioning Creditors chose to ignore in their quest to continue a freeze on Jeff Baron's assets and keep him in financial lockdown for as long as possible. Petitioning Creditors' current motion ignores the equities posed by the facts in this case. All of Jeff Baron's assets, including assets not even the subject of dispute in the *Netsphere* case, were seized, held and liquidated at great cost to Jeff Baron in an illegal receivership. Petitioning Creditors appear to ignore that, if they had meritorious claims, they could have pursued Mr. Baron in state court----- their lawful remedy.[2]. Instead, their insistence on pursuing receivership

[2] Four of the petitioning creditors had fee disputes against Baron that were initiated, but none received any judgments in their favor.

and then bankruptcy has ironically resulted in payment of millions to dozens of other lawyers but not one penny to these alleged creditors.

6. Although Petitioning Creditors' make the "remand" versus "render" issue the centerpiece of their complaints about this Court's Amended Memorandum Opinion and Judgment (Dkt. Nos. 52 and 53, respectively), they inexplicably failed to file a motion for rehearing pursuant to Federal Rule of Bankruptcy Procedure 8015, where the Court might have had the opportunity to correct the alleged error more expediently and efficiently than filing an appeal to the Fifth Circuit.[3] If the Court grants a stay pending appeal, this decision has the benefit to Petitioning Creditors of prolonging the litigation in the hope that Baron is unable to simultaneously defend himself in the Fifth Circuit and the bankruptcy court without adequate access to his own resources.

7. A motion for rehearing was clearly the Petitioning Creditors' adequate remedy at law, which the Petitioning Creditors could have pursued, but consciously chose not to. Instead, the Petitioning Creditors now "throw themselves on the mercy of this Court" requesting equitable, injunctive relief in the form of a stay, while they spend the next year to two years appealing this Court's Amended Memorandum Opinion and Judgment all the while liquidating Baron's assets in the bankruptcy court. Given the Fifth Circuit's previous mandate and this Court's rulings, the real question at this juncture is: *how quickly can this Court return to Mr. Baron his personal assets and unfreeze his exempt IRA and other retirement accounts*. It is not

[3] Baron does not believe the Court erred in effectively rendering a Judgment.

whether Mr. Baron's assets should be tied up for another two years, or two more seconds, to reward the Petitioning Creditors for their tactical mistakes.[4]

8. Employing every "trick in the book," the Petitioning Creditors have continued to avoid and short-circuit the inevitable trial on the merits before a judge and jury in order to prove up their attorney fee claims, an avenue where Jeff Baron might be afforded his minimum due process rights under the Fourth and Fourteenth Amendment to the United States Constitution, his right to a trial by jury, and his right to be represented by counsel of his choosing. However, the cost to Jeff Baron continues to grow. Mr. Baron has been separated from his as*sets for over two years, including his exempt property. His assets have been depleted by the substantial fees and expenses* of the Receiver and his counsel in excess of $5,200,000. The Fifth Circuit issued a mandate directing a prompt return of Mr. Baron's assets to him more than ten months ago. Yet, this has not occurred. To the contrary, the Receiver and his attorneys continue to "rack up" fees and expenses in a head-long effort to side with the Petitioning Creditors and deprive Mr. Baron of his personal assets, including property exempt from creditors' claims under Texas law.

9. The Petitioning Creditors allege in their Motion for Stay that Mr. Baron will remove and secrete away his personal assets without a *status quo* stay. Yet such allegations are not supported by any affidavits or declarations attached to the Motion for Stay, nor were such allegations ***ever*** supported by any credible evidence. This frivolous assertion was previously made to the Fifth Circuit, which squarely rejected Gerrit Pronske's claim that Jeff Baron was moving assets off shore to evade the Court's jurisdiction; instead, holding that there was no evidence that "any discrete assets subject to the settlement agreement were being moved beyond

[4] With the sweep of a pen, this Court can and should *sua sponte,* order the Receiver to unfreeze Jeff Baron's exempt property IRA and Retirement Accounts within twenty-four hours.

the reach of the court." *Netsphere, Inc. v. Baron*, 703 F.3d at 307. This argument flies in the face of the Fifth Circuit's holding and appears to be made vexatiously to mislead this Court.

10. The Petitioning Creditors allege in their Motion for Stay that Mr. Baron will not be harmed by the imposition of a stay pending appeal. Simply stated, this assertion ignores the last three years of litigation designed to freeze Mr. Baron's assets while the Petitioning Creditors misused the receivership process to avoid state court litigation. Such a stay will unjustifiably continue the freeze on Mr. Baron's assets and deprive Mr. Baron of the funds he *desperately* needs to defend himself against the claims of the Petitioning Creditors. Granting a stay, however, effectively continues the freeze on Mr. Baron's assets, which is contrary to the mandate of the Fifth Circuit in *Netsphere, Inc. v. Baron*. In *Netsphere*, the Fifth Circuit ***directed*** the return of Mr. Baron's personal assets. For this reason alone, the Petitioning Creditors' Motion should be denied.

## II. MOVANTS' PROCEDURAL DEFICIENCIES

11. Movants are all attorneys, mainly bankruptcy attorneys, and are represented by reputable law firms. However, while Movants seemingly followed all procedural rules in their presentations to the bankruptcy court and before other Judges of this District, Movants appear to flaunt the rules in the way they are proceeding with their appeal.

12. In addition to the deficiencies identified in this Court's Order at Dkt. 58, Movants failed to discuss or otherwise Meet and Confer prior to filing their Motion as required by Local Rule 7.1. Indeed, with this Motion, Movants failed to include the required Certificate of Conference.

13. Local Rule 7.1 further requires a brief to accompany a Motion for Stay, which was also neglected by Movants, whom squeezed their arguments into a 24-page "Emergency Motion."

14. Movants 24-page Emergency Motion filed several weeks after this Court's Order also fail to include a table of contents and table of cases, as required for documents exceeding 10-pages by Local Rule 7.2.

15. Such procedural deficiencies and errant legal positions urged by Movants do little more than deplete resources; yet, they graphically illustrate the point Baron has tried to make for the last several years—Movants seek to obtain money they have not earned by following the rules *only* when it suits them, and by making conclusory accusations that fail when closely examined.

## III. MOVANTS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL

16. The decision to grant or deny a motion for stay pending appeal lies in the sound discretion of the court, subject to an abuse of discretion standard of review. *See Arnold v. Garlock*, 278 F.3d 426, 438–39 (5th Cir. 2001). Courts in the Fifth Circuit use four factors to evaluate a motion to stay: (1) the movant's likelihood of success on the merits, (2) irreparable harm to the movant if the stay is not granted, (3) substantial harm to other parties if the stay is granted, and (4) the public interests implicated in granting or denying the stay. *Id.*, 278 F.3d at 438–39. As correctly identified by the Trustee in opposition to Baron's earlier Motion for Stay, a Movant's failure to satisfy any *one* of the four prongs identified herein defeats a motion to stay. (NDTX 3:13-cv-03461-O, Doc. 9-1, pg. 4) (citing *Smith v. Schmidt*, 2007 U.S. Dist. LEXIS

41901, *12 (S.D. Tex June 8, 2007) (*citing In re Texas Equip. Co., Inc.*, 283 B.R. 222, 227 (Bankr. N.D. Tex. 2002)); *see also Arnold*, 278 F.3d at 438–39.

17. Thus, even if Movants raise serious legal questions and make a substantial case on the merits, Movants must show that the remaining *Ruiz* equities "weigh heavily" in favor of granting a stay. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981).

**A. Movants Erroneously Assert that the Law of the Case Is Applicable**

18. In an interlocutory order, this Court suggested in a footnote that the Attorneys Fee Order was not affected by the Fifth Circuit Court of Appeals. (Order Denying Appellant's Emergency Motion for Stay Pending Appeal of Order for Relief and Order Appointing Interim Trustee, p. 4, n.1) [Dkt. 22]. Movants' argument that the "law of the case" doctrine precluded this Court from making a contrary finding hinges on this footnote. Movants are wrong.

19. The law of the case doctrine, as formulated in the U.S. Court of Appeals for the Fifth Circuit, generally precludes reexamination of issues of law or fact decided on appeal***, either by a district court on remand or by the appellate court itself on a subsequent appeal***. *USPPS Ltd. v. Avery Dennison Corp*., 647 F.3d 274, 282 (5th Cir. 2011). Thus, Movants' arguments are misplaced as to scope, where the doctrine applies only to issues that were decided in a ***former proceeding***. *Morrow v. Dillard*, 580 F.2d 1284, 1290 (5th Cir. 1978). This circumstance clearly does not apply in the instant case, where the District Court revisited its own interlocutory order—not a final order on remand or decided on appeal to the Fifth Circuit.

20. Moreover, the law of the case doctrine does not operate to prevent a district court from reconsidering prior rulings. While the rule yields to adequate reason, where courts are guided to revisit prior decisions of its own or of a coordinate court in circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice, ***a court has***

***the power to revisit prior decisions of its own in any circumstance***. *See Zarnow v. City of Wichita Falls Tex.*, 614 F.3d 161, 171 (5th Cir. 2010); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817, 831 (1988)).

21. The Fifth Circuit has, accordingly, rejected the argument that the law of the case doctrine precludes the reversal of prior, interlocutory, orders. *Zarnow*, 614 F.3d at 171. Such orders properly within the court's jurisdiction leave it free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law. *Id.* (addressing a district court's decision to reverse its summary judgment determination on remand).

22. As such, the law of the case doctrine is inapplicable to the instant case because the Court's footnote in a prior order was not made *after* the court had been divested of jurisdiction and on remand, or otherwise by the appellate court on a subsequent appeal; Baron's Motion for Stay Pending Appeal of Order for Relief and Order Appointing Interim Trustee was an interlocutory matter still under the Court's jurisdiction.[5]

**B. <u>No Remand Is Required</u>**

23. Movants argue that a reversal on a summary judgment would normally yield a remand for trial on the merits, is only partially true. The involuntary bankruptcy proceedings can hardly be equated to a "normal" proceeding given the history of the case and the fact that jury trials and other due process rights are routinely accorded debtors in state court

24. The bankruptcy code is clear—a contested involuntary petition can survive a motion to dismiss only if the petitioning creditors' claims are not contingent as to liability or the

[5] Indeed, Baron's Motion for Reconsideration was pending at the time the Order for Relief was reversed

subject of a bona fide dispute. 11 U.S.C. § 303(b)(1), (h)(1). If the alleged debtor controverts the Petitioning Creditors' claims in a timely fashion, the bankruptcy court must decide whether the creditors' claims are the subject of a bona fide dispute and, if they are, must dismiss the petition. The standard for determining whether there is a bona fide dispute is analogous to a reverse summary judgment standard. If there is a genuine issue of a material fact that bears upon Baron's liability, then the petition must be dismissed. The bankruptcy court erred, as a matter of law, when it denied Baron's Motion to Dismiss, and this Court correctly reversed the Order for Relief *and* interlocutory orders, at Baron's urging, on appeal.

25. In addition, the proceedings in the bankruptcy court support a determination that no remand should be issued. Unlike other proceedings, *the bankruptcy court is a court of equity where the judge alone determines both fact and law in preparing its findings and final orders*. Here, with respect to liability and bona fide dispute issues, the bankruptcy court judge considered the same facts and evidence for <u>both</u> the Summary Judgment and Order for Relief.

26. This Court sits as an appellate court to the bankruptcy court. 28 U.S.C. §§ 158 and 1334. Although appellate courts are generally reluctant to decide mixed questions of law and fact in the first instance, there are exceptions that apply in the instant case. It is well established that appellate courts will decide mixed questions of fact and law, where, as in the instant case, no further development of facts is required in order to resolve the mixed question and where a remand is neither necessary nor prudent. *Miles v. Great N. Ins. Co*., 634 F.3d 61, 66 (1st Cir. 2011) (citations omitted).

27. In *Miles*, the First Circuit quoted its decision in *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc. Id*. at 66–67 which has particular relevance to this case.

> [I]it is not ordinarily the province of appellate courts to make findings of fact or to resolve, in the first instance, mixed questions of law and fact. <u>Yet, where only</u>

> one resolution of a predominantly fact bound question would, on a full record, be sustainable, courts of appeals can, and often should, decline to remand where there has been an error committed."
>
> *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc*., 982 F.2d 633, 642 (1st Cir. 1992) (emphasis supplied).

The *Miles* Court declined "to remand where, once the court of appeals decided the correct rule of law, the district court's preexisting findings of fact rendered the result obvious." *Miles,* 634 F.3d at 67 (citing *Societe Des Produits*, 982 F.2d at 642).

28. The Fifth Circuit essentially adopted the same standard. When the court is "sufficiently informed as to the district court's rationale, and the record contains undisputed facts which support the court's ruling, a remand for findings of fact and conclusions of law is unnecessary." *Silver Star Enters. v. M/V Saramacca*, 19 F.3d 1008, 1014 n. 11 (5th Cir. 1994) (citing *Armstrong v. Collier*, 536 F.2d 72, 77 (5th Cir. 1976) ("stating that a remand for failure to comply with Fed.R.Civ.P. 52(a) is not required if a complete understanding of the issues may be had without the aid of separate findings"); 9 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2577 (1971)).

29. The Ninth and Eighth Circuits have rendered opinions with similar language. *See, e.g., Matter of Beverly Hills Bancorp*, 752 F.2d 1334, 1338 (9th Cir. 1984) (citations omitted) (stating "[a]lthough remand generally is required for findings of fact, remand is not necessary when the trial court fails to make such findings and the facts in the record are undisputed"); *Talley v. United States Postal Serv*., 720 F.2d 505, 508 (8th Cir. 1983) (*citing Swanson & Youngdale, Inc. v. Seagrave Corp*., 561 F.2d 171, 173 (8th Cir. 1977); *Sbicca-Del Mac, Inc. v. Milius Shoe Co*., 145 F.2d 389, 400 (8th Cir. 1944); *Armstrong*, 536 F.2d at 77 (stating "[a]lthough Rule 52 of the Federal Rules of Civil Procedure requires the district court in a non-jury case to make findings of fact and state separately its conclusions of law, compliance with

the rule is not a jurisdictional requirement for appeal. The appellate court may decide an issue without remand if 'the record itself sufficiently informs the court of the basis for the trial court's decision on the material issue' … or when the facts with respect to a particular issue are undisputed").

30. The whole argument over whether this Court should have remanded the case to the bankruptcy court is, by the Petitioning Creditors' own admission, largely moot. In their Motion, the Petitioning Creditors summarize evidence they offered at the trial regarding the fees that were allegedly owed to them, allegedly giving the Petitioning Creditors standing under 11 U.S.C. § 303. (Mot. pp. 7–10). This evidence was in addition to the evidence supporting the Petitioning Creditors' summary judgment. Because Petitioning Creditors had an opportunity to present this evidence, in addition to relying on a partial summary judgment, the Petitioning Creditors are not entitled to have the case remanded for a "third bite" at the proverbial apple. *See Myore v. Principi*, 323 F.3d 1347, 1352–53 (Fed. Cir. 2003) (insufficient evidence presented to overcome presumption warrants reversal, without a remand).

31. Thus, if the facts are undisputed and the lower court's rationale is sufficiently conveyed, this Court's remand on a discrete issue concerning Movant's summary judgment motion is unnecessary.

## IV. MOVANTS FACE NO IRREPARABLE HARM

32. Citing no law and providing no evidence, Movants continue to rehash old arguments that were presented and rejected by the Fifth Circuit in Baron's Receivership, claiming they face irreparable harm because they believe Baron has a history of "removing [his own] assets from the jurisdiction of the United States…" (Mot. at ¶ 46). As discussed above, this frivolous assertion was previously made and rejected by the Fifth Circuit. *Netsphere, Inc. v.*

*Baron*, 703 F.3d at 307. Moreover, Baron has neither been accused nor convicted of any crime. He is a U.S. citizen with property rights that should not be held and slowly depleted by the proverbial *greedy lawyers*.

33. Without presenting anything substantive, Movants' conclusory statements concerning Barons trusts are just that—conclusory and defamatory statements that are not sufficient to satisfy their burden to show irreparable harm. This is particularly true when Movants have no standing or claim to Baron's property or the trusts. Moreover, this Court held, as a matter of law, that it is Baron whom would suffer irreparable harm if he is forced to continue in an involuntary bankruptcy while an appeal is pending, holding "[t]he Court finds that Appellant [Baron] has established that he may suffer irreparable harm … because the liquidation of his assets may be non-reversible." (Dist. Ct. Order Denying Baron's Motion for Stay, 3:13-cv-03461-O, Doc. 22 at pg. 14).

## V. BARON FACES SUBSTANTIAL HARM IF STAY IS GRANTED

34. "The general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment." *Dixie Carriers, Inc. v. Channel Fueling Services, Inc.*, 843 F.2d 821, 824 (5th Cir. 1988) (citing *De Beers Consolidated Mines v. United States*, 325 U.S. 212 (1945) (civil action under RICO for treble damages).

35. Despite this rule, Movants have sought, and have been mostly successful, in divesting Baron of assets to defend against their vexatious litigation tactics since the beginning of the illegal receivership. Baron lost his freedom and millions of dollars to the Receiver's lawyers and others in the illegal receivership. During this period, Baron was inexplicably told by the receiver that he would be held in contempt and ostensibly jailed if he dared to hire a lawyer

to fight against the receivership. Baron persevered and ultimately defeated the Receivership as an abuse of discretion.Ironically, the receivership was recommended by the same bankruptcy judge that issued Baron's Order for Relief to involuntary bankruptcyThen, before the mandate issued in *Netsphere, Inc. v. Baron*, the Petitioning Creditors caused Baron's assets to continue to be "locked down" and frozen in a bankruptcy proceeding which this Court ruled was improper.

36. If this Court has determined that Baron faces *irreparable* harm if forced into bankruptcy while an appeal is pending, it follows that he would suffer *substantial* harm, particularly where here Petitioning Creditors have failed to file a bond either when the forced Baron into bankruptcy or on appeal.

37. At this juncture, the Petitioning Creditors are asking this Court to "*temporarily*" maintain this unacceptable status quo so they may spend a year, more or less,[6] appealing this case to the Fifth Circuit. As set out in their Motion, the Petitioning Creditors allegedly require a stay for the simple reason that they elect*ed* not to file a motion for rehearing during the 14 days this Court still has jurisdiction to modify the judgment. *See* Fed. R. Bankr. P. 8015 (regarding the time for filing motions for rehearing). If a motion for rehearing were filed, the status quo that has existed since the date of the Order for Relief would have continued as a matter of course. Instead, the Court is now powerless to modify its Judgment and order the remand that the Petitioning Creditors desire. If a remand is what the Petitioning Creditors really wanted, the only place they can urge such relief is the Fifth Circuit.

[6] As of September 30, 2013, the median time from a notice of appeal to disposition at the Fifth Circuit was 9.3 months. *See* Administrative Office of the U.S. Courts, U.S. Court of Appeals – Judical Caseload Profile at 14, *available at* http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/appeals-fcms-profiles-september-2013.pdf&page=13.

38. The Petitioning Creditors should not be rewarded for a litigation strategy, mistake, or calculated decision that will now entail an appeal to the Fifth Circuit when they could have, but failed to aske this Court for a remand. If the Petitioning Creditors are allowed to continue to deprive Baron of his property rights, Baron will again face substantial harm, and probably complete dissipation of his assets by the receiver and involuntary bankruptcy trustee, harm not only to his property, but also to his ailing health[7]. Such harm would be totally unjustified. *See Dixie Carriers, Inc.*, 843 F.2d at 824.

39. Moreover, given the reversal of the Order of Relief, Baron may seek attorney fees and damages for the more than two hundred thousand dollars in attorney fees he incurred in fighting the involuntary bankruptcy. A stay would preclude Baron from expeditiously collecting these funds and, as asserted by the Trustee in an earlier proceeding, "any suggestion that further delay in payment causes no harm fails to take into account the time value of money." *See Public Service Company of New Hampshire*, 116 B.R. 347, 350 (Bankr. D.N.H. 1990) ("…delay caused to creditors receiving their payments is also significant harm warranting denial of a stay.")." (Trustee Resp., Doc. 9-1, pg. 9).

## VI. GRANTING A STAY WILL NOT SERVE THE PUBLIC INTEREST

40. The burden rests squarely on Movants to establish that granting a stay will serve the public interest. However, Movants have not made a sufficient showing of the public interest asserted in their Motion. After having been collectively paid in excess of $3.1 million prior to the initiation of the illegal receivership, Movants are hard pressed to show that the public interest

[7] Baron has submitted affidavits in the District and bankruptcy court with supporting doctor reports.

would be served by allowing them to continue to milk a cash cow over disputed claims until it runs completely dry.

41. This Court correctly gave deference to the intent and mandate of the Fifth Circuit Court of Appeals, which clearly articulated a public interest in the *Netsphere* decision—to expeditiously return assets wrongfully seized in a receivership to the rightful owners. Petitioning Creditors' back door attempt to circumvent the higher court's decision serves no public interest. *Mr. Baron has been deprived of the use of his assets long enough.* Further delay will simply continue a process of destroying assets that were built by Mr. Baron's efforts, and which have been needlessly squandered in repeated, vexatious attempts to freeze his assets and extract a litigation advantage in a bankruptcy court that clearly advocated that Mr. Baron's assets be frozen and sold off to pay lawyer claims despite the clear mandate of the Fifth Circuit. Although a court of equity, the power of bankruptcy courts must, at some point, have limits. It is in the public interest to apply the law of the case doctrine, or principles of collateral estoppel where, as here, the Fifth Circuit held that Jeffrey Baron should be released from "financial lockdown."

## VII. CONCLUSION

The Fifth Circuit mandated that Baron's assets be given back to him expeditiously. The Petitioning Creditors have done everything in their power to frustrate implementation of the mandate. This Court should, once and for all, inform the Petitioning Creditors that the mandate of the Fifth Circuit will be implemented. Based on the foregoing, Jeffrey Baron Objects to the Movants' Motion for Stay and prays that this Court overrules the Motion and grant Baron any further relief to which he may show himself justly entitled.

Dated: January 31, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving ECF Notices in the above-captioned case on January 31, 2014.

/s/ Stephen R. Cochell