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

In re	§	
	§	**CASE NO. 09-34784-SGJ**
ONDOVA LIMTITED COMANY,	§	**Chapter 11**
	§	
Debtor	§	

JEFFREY BARON'S OBJECTION TO MUNSCH HARDT'S REQUEST FOR INTERIM PAYMENT OF PROFESSIONAL FEES AND EXPENSES

TO THE HONORABLE TRACY C. G. JERNIGAN UNITED STATES BANKRUPTCY JUDGE:

Jeffrey Baron hereby files this Objection to Munsch Hardt's Request for Interim Payment of Professional Fees and Expenses, and for cause, would respectfully show.

I.

REQUEST FOR EVIDENTIARY HEARING

1. The objections stated herein cannot be adequately adjudicated at a 15 minute hearing, which the undersigned counsel understands is all that is set for Monday, December 22, 2014, at 1:30 p.m. Jeffrey Baron hereby requests an evidentiary hearing on the Request for Interim Payment of Professional Fees and Expenses.

II.

INTRODUCTION

2. Recently, the Supreme Court of the United States denied the Cross-Petition for Writ of Certiorari filed by Sherman, Trustee and Vogel, Receiver, in their "last ditch" attempt to

overturn the Fifth Circuit's decision in *Netsphere, Inc. v. Baron,* 703 F.3d 296 (5th Cir. 2012).[1] The *Netsphere* decision is now final and no longer subject to appeal.

3. As a result of the now final and non-appealable *Netsphere* decision, the Third Amended Joint Plan of Liquidation filed by the Receiver and the Trustee on November 12, 2012, and confirmed by the Court on November 20, 2012, BK ECF Docs 924 and 948, is moot. According to Ray Urbanik, lead lawyer for Munsch Hardt, the Ondova bankruptcy estate is administratively insolvent. DC ECF Doc 1299, 40-1.[2]

4. Two adversary proceedings have been filed by Baron in the Ondova Case. The first is Adversary No. 14-03081, filed by Baron against Sherman, Trustee on June 8, 2014. In Adversary 14-03081, Baron is seeking recovery of the settlement proceeds held by the Trustee regarding the River Cruise Investments, Ltd. transaction and the $330,000 security deposit placed with Sherman, Trustee pursuant to this Court's Order Directing Establishment of Security Deposit. BK ECF Doc 446. The second is Adversary No. 14-03121, filed by Baron against Sherman, Trustee, Munsch Hardt and Liberty Mutual Insurance Company on October 6, 2014, asserting claims for breach of contract, fraud, malicious prosecution and gross negligence on the

[1] *Vogel v. Baron*, __ S.Ct. __, 83 U.S.L.W. 3085, 2014 WL 3728638 (Nov. 3, 2014). Contrary to Munsch Hardt's report, Baron did not appeal the *Netphere* decision. Schepps and Payne did so purportedly on behalf of Novo Point and Quantec, notwithstanding that their authority to represent these entities has been challenged by Baron and others in the district court. *See* ECF Docs 1414, 1416 and 1423 in Civil Acton No. 3:09-cv-0988-L, in the United States District Court for the Northern District of Texas - Dallas Division. After Vogel and Sherman filed a Cross-Petition for Writ of Certiorari, Baron made a request to file a Cross Petition of his own, but such request was denied because it was not timely. As usual, Munsch Hardt's report distorts the truth, and attempts to cast Mr. Baron in the worst light possible.

[2] Documents filed in the *Netsphere v Baron* case, pending in the Civil Acton No. 3:09-cv-0988-L, in the United States District Court for the Northern District of Texas - Dallas Division, shall be referred to herein as "DC ECF Doc ___ ". Documents filed in the In re Ondova Limited Company case, Case No. 09-34784-SGJ, in the United States Bankruptcy Court for the Northern District of Texas - Dallas Division, shall be referred to herein as "BK ECF Doc ___ ".

part of Sherman, Trustee and his attorneys, Munsch Hardt. Both adversary proceedings have been abated by this Court.

5. Baron, along with Novo Point, LLC and Quantec, LLC (the "LLCs"), have filed a state court lawsuit against Vogel, Receiver, Gardere Wynne, Sherman, Trustee and Munsch Hardt on November 24, 2014, Cause No. DC-14-13755, encompassing claims and causes of action based on the wrongful institution of the receivership against Jeffrey Baron and the LLCs, and multiple breaches of fiduciary duty and gross negligence on the part of the Receiver and his counsel during the course of the now defunct receivership. Plaintiffs in said lawsuit have offered to abate the lawsuit once service has been effected. A true and correct copy of the Original Petition in said lawsuit is attached hereto and incorporated herein by reference as **Exhibit "1"**.

6. Munsch Hardt's attempt to paint a "happy face" on this disastrous case is absurd. The abject waste of estate assets of Ondova is nothing short of astonishing. The decisions made by Munsch Hardt (a) to breach the Global Settlement Agreement by failing to dismiss the district court case, after entities related to Jeffrey Baron fully paid substantial consideration to Sherman, Trustee (b) to place Jeffrey Baron in receivership, and (c) spend millions of dollars held by Ondova and earmarked for payment of Unsecured Creditors to pay Munsch Hardt's hefty fees defending their actions before the district court and the court of appeals was improvident, constituted multiple breaches of fiduciary duties owed to the Ondova bankruptcy estate, and constituted gross negligence.

7. Instead of seeking this Court's guidance and Jeffrey Baron's participation in November 2010, regarding whether a receiver should be appointed, Sherman, Trustee and his Munsch Hardt lead counsel, Ray Urbanik, made the unilateral decision to place Baron into receivership. To accomplish this Urbanik and Sherman conspired with Vogel to *ex parte* Judge

Furgeson in the most egregious abuse of Baron's constitutional rights imaginable. These lawyers presented to Judge Ferguson and then later to the Fifth Circuit Court of Appeals with a host of lies to support the invocation of one of the most extreme remedies available, receivership, **including misrepresenting that this Court had recommended the receivership.**

8. Had this Court been given the opportunity to deal with the problem, many other remedies of less extreme harshness could have been fashioned short of a receivership, including additional security deposits to cover the additional expenses Baron was allegedly causing the Ondova Estate to incur, contempt or sanctions. Baron and related entities had already placed over $2,000,000 with the Ondova Estate, and certainly would have placed further funds with the estate to avoid the receivership.[3] Ultimately, the result of this improvident course of action was to flush down the toilet $5,448,523.33 in cash out of Baron's estate over a period spanning twenty-two months, consisting of (a) $1,397,490.18 in attorney fees and expenses paid to Sherman, Trustee, and his lawyers, Munsch Hardt, in connection with Receivership Matter, $379,761.18 of which was paid out of the Receivership Estate, and $1,017,729.00 of which was paid out of the Ondova Bankruptcy Estate, and (b) $4,051,033.15 in attorney fees and expenses paid to and Vogel Receiver, and his professionals, including Gardere Wynne and the Dykema firm, over a period of less than twenty-four months. *See* paragraphs __ and __, infra.

9. Not one attorney fee creditor, for whose benefit the Trustee argues the receivership was created, has been paid one nickel. Not one Ondova Unsecured Creditor, for whose benefit the Global Settlement Agreement was negotiated, signed, approved by this Court

[3] Four months later, in March 2011, the Receiver had collected from Baron close to $1,900,000 and from the LLCs an additional $600,000. DC ECF ___. All of this money was spent on attorney fees paid to Sherman, Trustee, Vogel, Receiver and their respective horde of lawyers.

and consummated, has been paid one nickel. Other than the normal and ordinary operating expenses of Ondova, the only other parties who have been paid in this case are the Trustee and his lawyers, Munsch Hardt. A summary of the fees and expenses paid to the Trustee and Munsch Hardt follows:

	Fees Awarded	Expenses Awarded	Total Amount Awarded	Date of Award	Total Amount Paid
1st MH Interim Fee App Order	$301,067.50	$7,095.48	$308,162.98	05/27/2010	$308,162.98
2nd MH Interim Fee App Order	$369,904.50	$6,530.66	$376,435.16	07/10/2010	$376,435.16
3rd MH Interim Fee App Order	$328,605.50	$5,656.82	$334,262.32	12/02/2010	$334,262.32
4th MH Interim Fee App Order	$425,595.50	$11,688.73	$437,284.23	04/28/2011	$437,284.23
5th MH Interim Fee App Order	$307,551.00	$18,427.35	$325,978.35	09/01/2011	$325,978.35
6th MH Interim Fee App Order	$369,499.50	$9,778.95	$379,278.45	12/20/2011	$155,000.00
7th MH Interim Fee App Order	$229,529.50	$9,301.76	$238,831.26	05/11/2012	$170,000.00
8th MH Interim Fee App Order	$182,797.50	$7,565.68	$190,363.18	09/18/2012	$100,000.00
9th MH Interim Fee App Order	$387,264.95	$12,350.55	$399,615.50	12/20/2012	$00.00
Trustee's First Application	$150,000.00	00.00	$150,000.00	12/22/2010	$150,000.00
Trustee's Second Application	$174,632.50	00.00	$174,632.50	12/23/2011	$174,632.50
TOTALS:	$3,226,447.95	$88,395.98	$3,314,843.93		$2,531,755.54

10. This case is administratively insolvent, primarily due to the improvident actions of the Trustee and his counsel, Munsch Hardt, going back to the beginning of the third quarter of 2010. Not only will the Unsecured Creditors get zero distribution in this case, Munsch Hardt's recovery of administrative fees and expense to date is disproportionate to the recovery of other creditors holding allowed administrative claims. This Court must order disgorgement, not pay more fees to Munsch Hardt.

11. By any calculous, the request by Munsch Hardt must be denied. The Confirmed Plan is moot and must be set aside.

12. As this Court knows, the Fifth Circuit Court of Appeals has set an exacting standard by which bankruptcy courts must judge all attorney fees for persons representing the bankruptcy estate in the *Matter of Pro-Snax Distributors, Inc*., 157 F.3d 414, 426 (5th Cir. 1998). In *Pro-Snax,* the Fifth Circuit "determined . . . that the stricter test is the appropriate measure," requiring a showing that the services rendered "represented an identifiable, tangible, and material benefit to the estate." *Id.* In adopting the stricter test, the Fifth Circuit clearly rejected the "reasonableness" test, to-wit: whether the services were objectively beneficial toward the completion of the case at the time they were performed. *Id.* Munsch Hardt has failed to satisfy the test adopted by the Fifth Circuit in *Pro-Snax*. The instant request by Munsch Hardt must be denied *instanter.*

III.

STATEMENT OF FACTS

A. The Netsphere, Inc., et al, v. Baron, et al, District Court Case

13. Jeffrey Baron and his related entities, including Ondova Limited Company ("*Ondova*"),[4] entered into a joint venture with Munish Krishan and his related entity, Netsphere, Inc.. (collectively, the "*Netsphere Parties*"), to build an internet search engine and to own and operate a large portfolio of internet domain names. After the Netsphere parties allegedly embezzled over $8 million dollars from the joint venture, the joint venture failed and litigation ensued.

[4] Ondova is a domain name registration company that maintains necessary information for the operation of domain names on the internet.

14. After filing numerous failed lawsuits, beginning in November 2006, the Netsphere Parties filed another lawsuit against Baron and Ondova, on May 28, 2009, in the United States District Court for the Northern District of Texas, Dallas Division, Cause No. 3:09-CV-988-L ("Netsphere DC Case").

B. The Ondova Chapter 11 Case

15. On July 27, 2009, Ondova, a company indirectly owned by Jeffrey Baron, filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 09-34784-SGJ ("Ondova Bankruptcy Case"). On September 17, 2009, Daniel J. Sherman was appointed as Chapter 11 Trustee for Ondova ("Sherman, Trustee" or the "Ondova Trustee").

C. The Global Settlement Agreement

16. Around February 2010, Baron, the Netsphere Parties, and the Ondova Trustee commenced negotiations with respect to a global settlement intended to resolve the Netsphere DC Case, the Ondova Chapter 11 Case, and other related cases then being litigated. In June 2010, the parties reached a global settlement, which was documented in a Mutual Settlement and Release Agreement (the "GSA").[5]

17. The GSA was intended to provide Baron a fresh start, to pay Ondova's administrative and unsecured debts, to resolve the Ondova Chapter 11 Case through a conversion or dismissal, to return control of Ondova to Baron,[6] and, most importantly for Baron, to resolve the Netsphere DC Case and other lawsuits through dismissals and/or joint stipulations of

[5] Baron gave up tremendous concessions in the GSA, including giving up over $4 million in money that the Netsphere parties agreed to pay in their Memorandum of Understanding and tens of millions of dollars of intellectual property.

[6] *See* Jan 4, 2011 transcript in DC at p. 222:11-12 (Sherman: "negotiations were to pay the debts and return the keys back to Baron").

dismissal with prejudice. The GSA allowed Baron's affiliated companies to retain over 230,000 income producing internet domain names and provided additional revenue through other provisions of the GSA.

18. The GSA also provided for payments to the Ondova Trustee in the amount of $1.75 million, which, along with other funds on hand, was to provide sufficient funds to pay 100% all allowed administrative priority and unsecured claims against the Ondova Bankruptcy Estate.[7] .The GSA annexed four agreed orders of dismissal and/or joint stipulations of dismissal with prejudice, which were executed by the parties and delivered to the Munsch Hardt. Munsch Hardt was directed to file the dismissals and/or joint stipulations of dismissal with prejudice promptly after the receipt of same. In fact, Munsch Hardt filed all of them except for the Joint Stipulation of Dismissal With Prejudice as to Netsphere DC Case, which was the primary consideration flowing to Baron under the GSA.

19. On July 2, 2010, the Ondova Trustee filed a motion for approval of the GSA in the Ondova Chapter 11 Case. Several hearings occurred during the month of July, and on July 29, 2010, this Court approved the GSA.

20. As part of the GSA, entities related to Baron provided for the payment of the Ondova Allowed Administrative, Priority and Unsecured Claims in full, through the Ondova Estate. At that point—September 2010—Sherman, Trustee held over $2 million in cash and more than $700,000 in receivables at market value (BK ECF Doc 506, at p 6.) to pay $800,000 in unsecured claims, mostly attorney claimants. Instead of taking care of the business of the

[7] In September 2010, after receiving payment under the GSA the Ondova Trustee held over $2 million in cash to pay 100% of all administrative claims and 100% if the approximate $800,000 in scheduled unsecured claims (*See* transcript of hearing in this Court 10-8-2010, Docket. 535 at 66:21-22). Ondova should have emerged from bankruptcy with approximately $1 million in cash to finance its ongoing operations.

Ondova Bankruptcy Estate, which included the dismissal of the Netsphere DC Case, with prejudice, paying the Ondova administrative, priority and unsecured creditors (through a plan of reorganization or otherwise), closing the Ondova Chapter 11 case and returning Ondova to Baron's control, Sherman, Trustee and Munsch Hardt sought to have Baron placed into a receivership, without seeking the advice and consent of this Court or providing notice to Baron or his counsel. They then proceeded to waste $379,761.18 of Receivership assets and $1,017,729.00 of Ondova Bankruptcy Estate asset in an unsuccessful defense of the Receivership they instituted before the district court and the Fifth Circuit Court of Appeals. This constitutes just the fees and expenses incurred by Munsch Hardt through September 30, 2012. No further fee applications have been filed in over 26 months by either Munsch Hardt or the Trustee, and one can only assume that these lawyers are scared to death at the prospect of reporting to this Court the fees and expenses that have yet to be applied for.

21. Instead of paying the lawyer-creditors, Sherman began aggressively soliciting new claims from other lawyers that had formerly represented parties in the Netsphere litigation, including Baron. Instead of setting a bar date within which creditors could file administrative claims,[8] and waiting for the bar date expire, Sherman actively solicited lawyers, who had not made claims against Ondova and who had no contractual right to recover from the Ondova estate, to make additional claims in the Ondova bankruptcy for "substantial contribution" to the Ondova estate. Sherman even recruited these lawyers to assist his solicitation of more lawyers. (See affidavits of Blake Beckham and Jay Kline). Sherman eventually succeeded in getting two to make claims in the Ondova Bankruptcy case (see application of Pronske, Taylor, etc. in

[8] A bar date of November 25, 2009, for Unsecured and Priority Claims was set by the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines (BK ECF Doc 3).

Ondova Bankruptcy case.), but certainly not the dozens of lawyers he represented to this Court, the district court and the Fifth Circuit that Baron was "hiring and firing" without paying them, causing, allegedly, numerous lawyers to file substantial contribution claims. These representations were, at best, false and misleading. In the end, after all of the vehement exhortations of Sherman, Trustee and his attorney, Urbanik, only one attorney/law firm made a claim which was allowed by the Court, Gerrit Pronske and his firm, and the Trustee did not even object to this claim, which was defensible, and should not have been allowed.

22. At the point in time Sherman decided to place Baron into a receivership, there was enough funds in the Ondova bankruptcy estate to pay in full all Administrative Claims, Priority Claims and Unsecured Claims and still have approximately $1 million surplus. If Sherman and Urbanik had simply set an administrative claim bar date and proceeded to resolve the Ondova estate's claims through a plan of reorganization, all creditors would have been paid in full and Ondova would have been returned to Baron pursuant to the agreement of the Trustee.

D. The Show Cause Hearing Conducted by the Court

23. Beginning in September 2010, various parties, including Gerrit Pronske ("Pronske"), Baron's former attorney who had negotiated the GSA on Baron's behalf, Sherman, Trustee and his attorney, Urbanik, commenced an effort to persuade this Court that:

a. Baron had breached or was intending to breach the GSA,

b. Baron was transferring assets outside the jurisdiction of the court, and

c. Baron was a vexatious litigant because he was allegedly hiring, firing, and failing to pay numerous attorneys, who were lining up outside of this Court's courtroom to make substantial contribution claims.

Such representations were false, and intentionally misleading.

24. On September 15, 2010, this Court held a status conference at which Pronske alleged that Baron was engaging in fraudulent and criminal activities designed to "hide assets offshore." Sherman's attorney, Urbanik, joined Pronske in making these false and misleading statements. Later, when Sherman, Trustee and Vogel, Receiver attempted to support such allegations before the Fifth Circuit Court of Appeals, the Circuit Court found no record support for such representations; in other words, the representations were false.[9]

25. At the hearing on September 15, 2010, this Court expressed concern that there was a deadline of September 15, 2010, for Baron to identify a new Trustee and Protector for the Village Trust, and that Baron, to date, had not succeeded in accomplishing same, and did not have a compelling explanation for why this had not been accomplished. However, Baron promptly satisfied this requirement.

26. On September 16, 2010, Court entered an Order Directing Establishment of Security Deposit, where Baron was directed to transfer to Sherman, Trustee the sum of $330,000 as a security deposit to be held by Sherman, Trustee to insure against potential breaches of the GSA by Baron. Baron made such deposit. Baron was compliant, not recalcitrant. As of this date, four years later, neither Sherman nor Urbanik have brought before the Court any motion or pleading claiming that breaches of the GSA were caused by Baron. In fact, when placed under oath, Sherman admitted that Baron did not breach any obligations.[10]

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[9] In *Netsphere*, the Circuit Court completely debunked these oft-repeated accusations stating that "[n]either the trustee nor the receiver . . . pointed to record evidence that Baron failed to transfer the domain names in accordance with the agreement," that "there [was] no record evidence brought to [the court's] attention that any discrete assets subject to the settlement agreement were being moved beyond the reach of the court," and that the court could not "find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's jurisdiction." 703 F.3d at 307–8.

[10] BK ECF Doc 932, Transcript of Hearing November 14, 2012 at 58.

E. The issuance of a show cause order against Baron and Report and Recommendation to the District Court

27. On September 17, 2010, this Court issued an order commanding Baron to appear and show cause why he was not in contempt of the bankruptcy court's order approving the GSA, which directed the parties to fulfill all of their respective obligations under the GSA. Baron was also ordered to show cause why this Court should not make a report and recommendation to the district court in the Netsphere DC Case to appoint an equity receiver over Baron, pursuant to 28 U.S.C. §§ 754 and 1692, to seize Baron's assets and perform Baron's obligations under the GSA should Baron fail to comply with his obligations under the GSA.

28. On September 22, 2010, this Court commenced a three-day evidentiary hearing at which evidence was adduced from Baron and other parties, including Sherman, Trustee, regarding the extent to which the GSA had been consummated. This Court obviously did not find that Baron was guilty of breaching the GSA or moving assets offshore, because no order was entered finding or concluding that Jeffrey Baron was in contempt.

29. On October 13, 2010, after the contempt hearings were concluded, the Court issued a Report and Recommendation to the district court. This Court did not recommend the appointment of a receiver. Specifically, the Court recommended the appointment of Peter Vogel ("Vogel"), who was then serving as a special master in the Netsphere DC Case, to mediate the administrative expense claim of attorneys who might make such claims against the Ondova bankruptcy estate.

30. On October 19, 2010, the district court entered an order adopting the bankruptcy court's Report and Recommendation. On the same date, the district court, following the recommendation of this Court, appointed Vogel as mediator to mediate attorney fee disputes between Baron and certain former counsel.

31. Baron complied with the district court's order to mediate the former attorneys' alleged claims. However, Sherman, Trustee and Vogel immediately commenced making false claims that Baron was not cooperating with the mediator and was obstructing the mediation efforts. In support of his ex parte motion for the appointment of a receiver, Sherman, Trustee and his attorney, Urbanik, argued that because Baron was violating the district court's mediation order, the district court needed to "appoint Vogel as the receiver in essence to make sure that a mediation of those attorneys' fees claims occurred." (DC ECF 410, Transcript of DC hearing on December 17, 2010 at 69) These allegations were totally false[11].

32. Later, when confronted under oath, Sherman admitted that the mediation failed because the former lawyers refused to mediate, not Baron. Both Sherman and Vogel knew this, but deliberately misled the district court into believing that it was Baron who had caused the mediation to fail.

F. Munsch Hardt and Sherman hatch the receivership in retaliation for Baron contesting Munsch Hardt's Fee Application, and Vogel aided and abetted their scheme

33. The idea of placing Jeffrey Baron into a receivership was conceived by Raymond Urbanik ("Urbanik"), lead lawyer for Sherman, Trustee, when, on November 19, 2010, Baron objected to the Third Fee Application filed by Munch Hardt in the Chapter 11 proceeding of Ondova.[12] That same day, Munsch Hardt lawyers began drafting the motion to put Baron into

[11] Sherman admitted under oath that these assertions were not true (Transcript from hearing in this Court, November 14, 2012 at 58)

[12] At the point in time Sherman decided to place Baron into a receivership, there were enough funds in the Ondova bankruptcy estate to pay in full all Administrative Claims, Priority Claims and Unsecured Claims. If Sherman and Urbanik had simply set an administrative bar date and proceeded to resolving the Ondova estate's claims through a plan of reorganization, all creditors would have been paid in full.

receivership, and on n November 23, 2010, Urbanik and Sherman conferred with Vogel[13] for 2½ hours, planning the institution of the receivership. (DC ECF 467-7 at p. 2,3).

34. The next day, November 24, 2010, instead of coming to this Court to allow this Court to consider whether a receivership was prudent or necessary, Munsch Hardt and Sherman had an ex parte meeting with Judge Furgeson, sometime before 1:15 p.m. (DC ECF Doc 467-7, at pp 2-3). However, the district court's docket does not reflect that a hearing ever occurred. It was an off-the-record, secret hearing, unreported to the public.

35. Later that day, Munsch Hardt filed an Unsworn Emergency Motion for Appointment of Receiver (the "Receivership Motion") (DC ECF Doc 124). The metadata information on the pdf version of the Receivership Motion filed with PACER shows that the motion was **created at 2:07 p.m**.[14] According to the PACER time stamp, the motion was **filed at 3:40 p.m. CST**.

36. At 3:54 p.m. Urbanik sent an email to ICANN, the international internet registry, in which he reported that, at **1:15 p.m. CST**, the Receivership Order had been signed by the district court and Vogel had been appointed receiver.[15]

37. In other words, Urbanik and Sherman obtained entry of the Receivership Order two and one-half hours before they filed the Receivership Motion, at an ex parte, unreported hearing, without notice to Baron and his attorneys. After his ex parte hearing with Judge Ferguson at around 1:15 pm, Urbanik went back to his office and created the Receivership Motion in pdf form at 2:07 p.m. He then electronically filed it with the district court at 3:40 p.m.,

[13] At the time, Vogel was a mediator appointed by the district court.

[14] This can be independently verified by downloading a copy of the Receivership Motion from PACER, going to "Properties" in the "File" tab of Adobe Acrobat.

[15] DC ECF Doc 721, 4-7.

nearly 2 ½ hours after the Receivership Order had been signed by the district court and Vogel had been appointed receiver.

38. The Receivership Motion was unverified, was unsupported by any declarations or affidavits, and was filed as an emergency motion, notwithstanding that there were no emergency circumstances that existed or that were reported in the motion. No transcript of any hearing or meeting in chambers with Judge Ferguson exists. No notice was given. No hearing appears on the docket. These events are both extraordinary and troubling.

39. Sherman and Munsch Hardt made numerous material misrepresentations to mislead Judge Furgeson into imposing the receivership. They represented to Judge Furgeson that 1) Baron had fired Martin Thomas, did not pay him and had filed a grievance against him; 2) Ondova did not have enough funds to terminate the bankruptcy because of Baron's "crazed" and "vexatious" behavior; 3) Baron breached the GSA;[16] 4) Sherman was saddled with approximately $1 million in substantial contribution claims allegedly being made by "two dozen lawyers,"[17] all of which were allegedly caused by Baron, and that if Baron were not stopped by the imposition of receivership, the amount would uncontrollably skyrocket. (DC ECF Doc___, Hearing in DC, January 4, 2011 at p 212).

40. Clearly believing these fraudulent representations, Judge Furgeson imposed the receivership and rejected all of Baron's efforts to terminate it.

[16] A few weeks prior, Mr. Urbanik admitted to this court: "The current status is that parties are all complying with settlement agreement provisions in terms of payments and other activities, so there has been no problem." (BK ECF Doc 527, Transcript of Hearing October 28, 2010, P. 6 lines18-20)

[17] Later, Sherman/Urbanik told Judge Furgeson that there were "six claims for substantial contribution". (Transcript of DC hearing held May 8, 2014, Docket 1298 at 103:17-18)

41. Upon appointment of Vogel as Receiver, Vogel immediately confiscated all of Baron's funds, ultimately reported by Judge Furgeson at approximately $2 million.[18] Vogel then seized Baron's legal documents (DC ECF Doc 137 at p 10-13) and fired Baron's "AV" rated trial counsel. *Id.* Sidney B. Chesnin.

42. On December 1, 2010, Vogel accompanied Sherman to the bankruptcy court, where Vogel announced that he had supplanted Baron and his interests, and withdrew Baron's objection to Munsch Hardt's fee application. (DC ECF Doc 233, Transcript of DC hearing on January 4, 2011 at p. 48).

43. Then, on December 2, 2010, Vogel's attorneys, Gardere Wynne, sent Baron an email in which Baron was threatened as follows:

> The Receiver is furthermore instructing you as follows: First, you are expressly prohibited from retaining any legal counsel. Should you retain any legal counsel, the Receiver may move the Court to find you in contempt of the Receiver Order. (DC ECF Doc 1357-1).

44. Incredibly, Vogel then instructed Baron that Vogel, himself, was appointed by the court to be Baron's lawyer[19] and mandated that Baron's request to the court for counsel was denied.[20]

G. Baron promptly appealed the receivership orders and all fee orders, expeditiously prosecuted the appeals, and never acquiesced in the payment of Receivership expenditures.

45. Baron immediately appealed the Receivership Order (DC ECF Doc 136), and over the course of the next two years, filed ten additional appeals plus one petition for writ of

[18] According to Judge Ferguson, by March 2011, Vogel had confiscated approximately $1,900,000 in Baron's personal cash, and about $600,000 of the LLCs' cash. DC ECF Doc 638.

[19] At an on-the-record meeting with Baron, Vogel proclaimed "I am the counsel for Jeff Baron. And that is what the judge said." (DC ECF Doc 1357-4, at p.3 Lines 5-6).

[20] In response to request for Baron to have counsel, Vogel stated: "Fine. You requested. Request denied." (DC ECF Doc 1357-4, at p.3 Lines 9, 10).

mandamus promptly appealing from numerous orders entered by the district court, predominantly dealing with the award of fees and expenses to Vogel, Receiver, Sherman, Trustee and their respective professionals. In total, approximately 80 orders were appealed, 69 were reversed, and one was dismissed. These eleven appeals and one original proceeding were consolidated, and resolved on December 18, 2012, when the Fifth Circuit released its opinion in *Netsphere*.

C. Baron was Branded as a "Vexatious Litigant" in Retaliation for Objecting to the Fee Applications of Munsch Hardt, Sherman, Trustee, Gardere and Vogel, Receiver and Appealing the Receivership Order and Fee Orders

46. Munsch Hardt branded Baron as a "vexatious litigant" because he contested Munsch Hardt's fee application, appealed the Receivership Order, objected to the fee applications filed in the Netsphere DC Case by Sherman, Trustee, Vogel, Receiver[21] and their respective retinue of professionals, and because he appealed 69 unfavorable and improvident decisions of the district court, which were reversed by the Fifth Circuit in *Netsphere*.

H. False Statements by Sherman, Trustee and Vogel, Receiver

47. In their desperation, Sherman and Vogel resorted to proffering to the Fifth Circuit and the district court a litany of falsehoods, which included unsupported accusations that Baron was "held to be in contempt of court orders," had "defrauded creditors," was "secreting assets offshore,". Engaged in "tax evasion", transferring funds to "a secret Swiss account"[22], had "breached the global settlement agreement," and had "hired and fired dozens of lawyers."

[21] Peter Vogel is a partner in Gardere.

[22] DC ECF 233 transcript of January 4, 2011 hearing in DC at 221-222

48. In *Netsphere*, the Fifth Circuit Panel completely debunked most of these oft-repeated accusations, stating that "[n]either the trustee nor the receiver . . . pointed to record evidence that Baron failed to transfer the domain names in accordance with the agreement," that "there [was] no record evidence brought to [the court's] attention that any discrete assets subject to the settlement agreement were being moved beyond the reach of the court," that the court could not "find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's jurisdiction," and that "no clear order [of contempt] existed." *Netsphere*, 703 F.3d at 307–08, 311.

49. Vogel and Sherman also made false representations that this Court had recommended the institution of the receivership. As an example, in his Fee Application, Vogel stated that:

> Based on the recommendation of the Honorable Stacey Jernigan, judge in the Ondova Bankruptcy (In re Ondova Ltd. Co., No. 09-34784), on November 24, 2010 Mr. Daniel J. Sherman, Trustee in the Ondova Bankruptcy, filed an Emergency Motion of Trustee for Appointment of a Receiver Over Jeffrey Baron.
>
> (DC ECF Doc 1233) (Receiver's 4/17/2013 Fee Application).

50. Munsch Hardt made similar false representations to the Fifth Circuit:

> On November 24, 2010 the Trustee, acting in part on a recommendation from the Bankruptcy Judge,[23] requested that the District Court create a receivership to take control of Baron's assets to prevent continued disruption of the Bankruptcy and District Court proceedings.
>
> (*See* Response of Trustee to Motion for Stay in the *Netsphere* appeal, at pp 2-3, a true and correct copy of which is attached hereto as **Exhibit "2"**).

51. These false representations were intended to, and in fact did, mislead the panel in *Netsphere,* which adopted these false statements as findings when it held:

[23] There was no recommendation of this nature.

> "In the present case, no party "provoked" the receivership. **The bankruptcy court recommended a receiver, and the trustee then moved in district court for the appointment as recommended**."

Netsphere, 703 F.3d at 312.[24] (emphasis added).

52. To provoke the receivership, Munsch Hardt also falsely represented that Baron had "fired his bankruptcy counsel" and "breached the settlement agreement," conditions that this Court said might lead to a future recommendation for appointment of a receiver. Indeed, Sherman's own testimony demonstrated that these representations were specious, at best. (BK ECF Doc 933, Transcript from hearing in this Court, November 14, 2012 at 58). Further, the *Ondova* docket sheets reflect that there were no substitutions of counsel or appearances of new counsel from and after this Court entered the Report and Recommendation on October 12, 2010.

I. Sherman, Trustee never filed any motions with this Court or the district court to enforce litigation abuse prevention statutes and rules against Baron

53. Like wounded banshees, Munsch Hardt, Sherman and Vogel and his counsel complained repeatedly and relentlessly about Baron's alleged bad behavior, but never once filed a single motion requesting that this Court or the district court determine that Baron's counsel violated 28 U.S.C. § 1927, or that Baron and/or his counsel engaged in conduct sanctionable under Federal Rule 11, or that they engaged in the kind of conduct that would justify the imposition of the inherent power of a district court to sanction litigants under *Chambers v. Nasco, Inc.,*[25] or to have Baron designated as a "vexatious litigant" under Chapter 11 of the

[24] These repeated, false representations evoked behavior of the district court exemplified by statements such as: "I gather that Mr. Baron is worth lots of money. But it may be that we sell all the domain names. We may sell all of his stock. We may cash in all of his CD's, and we may seize all of his bank accounts. . . . But you know, this kind of litigation is eventually going to bring Mr. Baron to a penurious condition. No way around it." (DC ECF Doc 394, Transcript of DC Hearing held February 10, 2011 at p. 46).

[25] 501 U.S. 32 (1991).

Texas Civil Practice & Remedies Code.[26] Baron has never been held to be in contempt of any order of this Court.[27] The point here is that in the absence of any record citations to "bad behavior" on Baron or his counsel's part, and in the absence of even one attempt to have these issues properly adjudicated under any of the available litigation abuse prevention statutes and rules, these allegations cannot be, and never should have been, taken seriously.

54. Sherman, Trustee, Munsch Hardt and Vogel invoked a receivership over Baron, one of the most extreme of remedies available under law, without even giving this Court the courtesy of reviewing or approving of such actions. Neither did they attempt a lesser sanction under one or more of the litigation abuse prevention statutes and rules. It is universally understood and agreed by all courts and commentators that the least obnoxious sanction available to curb the conduct in question is the one that should be employed.

J. Vogel, Sherman and their legal professionals intentionally perpetuated the Receivership when it was obvious that there were adequate funds to pay all claims and terminate the Receivership

55. For three years, Vogel, Sherman and their respective legal counsel consistently obstructed and thwarted all attempts to terminate the receivership. The examples below are a small sample of such malicious efforts.

56. In December, 2010, the Receiver reported the following:

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[26] The purpose of a "vexatious litigant "designation is to prevent litigants who file repeated frivolous lawsuits, as plaintiff, to continue doing so, as explained by this court in *Baum v. Blue Moon Ventures, LLC*, 513 F.3D 181, 189 (5th Cir. 2008). Baron has not been accused of filing a single lawsuit. Instead he has only been defending. The fact that he was forced to hire numerous lawyers to defend against the multitude of complex proceedings brought against him in numerous jurisdictions, does not meet the standards required by this court for "vexatious litigant" determination.

[27] The panel in *Netsphere I* recognized this fact ("At oral argument in the appeal, it seemed conceded that no clear order existed"). *Netsphere,* 703 F.3d at 311. This Court held a hearing on its Order to Show Cause Why Jeffrey Baron Should Not be Held Contempt, spanning several days, where Baron was subjected to examination by this Court and numerous lawyers and law firms (*See* Docket Sheets in Ondova Case for September –October 2010. No contempt was found and no order holding Baron in contempt was every entered. (*Id.*).

> "As described above, in December 2010, the Receiver successfully ***identified*** 32 accounts totaling approximately $3.9 million (combining cash, stocks, IRAs, etc.), approximately $3 million of which is attributable to Mr. Baron's individual accounts (the "Baron Funds"), and approximately $900,000 of which is attributable to accounts in the names of Quantec, LLC and Novo Point, LLC (the "LLC Funds")."

DC ECF Doc 321, at pacer page 29.[28]

57. In addition, on March 2, 2011, Judge Furgeson entered an Order to Show Cause.

DC ECF Doc 338. The order provided:

> "BEFORE THE COURT is the Receiver's Report ofWork Performed in January 2011 (Docket No. 321). In this report the Receiver notes that in December 2010 he identified 32 accounts totaling approximately $3.9 million. *See* Docket no. 321 at 29. Approximately $3 million of which is attributable to Mr. Baron's individual accounts (the "Baron Funds"), and approximately $900,000 of which is attributable to accounts in the names of Quantec, LLC and Novo Point, LLC (the "LLC Funds"). *Id.* Additionally, it is reported that thus far the Receiver has gained access to 20 out of the 25 accounts containing the Baron Funds, totaling approximately $1.9 million. *Id.* at 3 L The cash accounts total approximately $950,000, and the non-cash accounts (stocks, IRAs, etc.) total approximately $970,000. *Id.* Also, the Receiver reports that he has received several declarations from former Baron attorneys for unpaid claims. *Id.* at 93. So far the total for unpaid attorney claims is $926,160.53. *ld* at 97.
>
> Based upon this information, the Court ORDERS the Receiver to show cause why it should not order the Receiver to place the monies it has gained access to in the registry of the Court and terminate the receivership over Baron. The primary purpose of the Court's Receivership Order, was to gain access to Baron's funds to ensure that the unpaid attorneys claims against him could be resolved so that the bankruptcy action could be closed and the parties' settlement could be complied with. It appears that the Receiver has gained access to an amount that will likely cover all of the outstanding unpaid attorneys' claims. The Court appreciates the hard work of the Receiver, but must acknowledge the substantial expense to the receivership estate in keeping the receivership in place. Ifthe Receiver does not agree that the receivership should be terminated at this time, the Court ORDERS the Receiver to submit an outline of what steps will need to be taken before the receivership can come to a close, including the likely costs associated with the

[28] This Receiver Report shows that Baron had the financial wherewithal to solve any financial problems the Trustee and Munsch Hardt might have been able to prove to this Court in November 2010, that Baron allegedly caused. However, the Court was deprived of any opportunity to consider the appropriate relief, and now the situation is disastrous. All of this was caused by the improvident decision the Trustee and Munsch Hardt to unilaterally bypass this Court and place Baron in Receivership without this Court's advice and consent.

> continuation ofthe Receivership. The Receiver shall respond to the Court's Order to Show Cause no later than Monday, March 21, 2011.
>
> It is so Ordered."

58. At a hearing on the order to show cause, Sherman through his counsel, Munsch Hardt, objected to the district court's show cause order and the district court's proposal to terminate the receivership. Munsch Hardt and Sherman vehemently objected to terminating the receivership, arguing that Baron was too crazy and vexatious for the district court to risk terminating the receivership, alleging, for example that "during the bankruptcy case Mr. Baron hired and fired twenty lawyers," and that "the bankruptcy case [was] close to being wrapped up." (DC ECF Doc 409, Hearing in DC held March, 11, 2011 at 13:2-3, 13:8-10). Again, such representations were blatantly false.[29]

59. Meanwhile, Vogel and its counsel, Gardere, had filed motions to sell more of the LLCs' assets and to liquidate Baron's exempt IRA accounts, which it averred should be done to obtain even more money. Based largely on these false, self-serving arguments, the district court reversed course and decided to allow the receivership to continue indefinitely.

60. Responding to Vogel and Sherman's claim that they required additional money to terminate the receivership, Baron offered another solution, requesting that the district court grant Baron permission to obtain a loan in order to fund the claims against the receivership, in order to end it. (DC ECF Doc 508). The district court initially granted Baron's request on May 9, 2011 (DC ECF Doc 588), but true to form, Vogel and Gardere objected to Baron's attempt to resolve the Receivership, moving the district court to reconsider the order. Again, the district court reversed itself based on Vogel and Sherman's relentless urging.

K. The Fees of the Trustee, the Receiver and their Counsel in the Receivership

61. On April 17, 2013, the Receiver filed an application requesting approval of the fees and expenses of Receiver, the fees and expenses of former general counsel for the Receiver, Gardere Wynne Sewell, LLP, the fees and expenses of the Receiver's current general counsel, Dykema Gossett PLLC, and the fees and expenses of numerous other professionals. (DC ECF Doc 1233 and exhibits).

62. In all, fees and expenses were requested as follows:

Claimant	Total Amount Requested	Amount Previously Paid	Amount Owed
Peter S. Vogel, Receiver	$1,250,680.00	$708,926.00	$527,576.00
Gardere Wynne Sewell, LLP	2,010,832.22	1,479,571.05	531,290.27
Dykema Gossett, PLLC	1,550,776.00	1,136,170.64	354,777.69
13 law firms outside of Texas	19,559.41	19,559.41	0.00
Thomas Jackson	69,007.50	69,007.50	0.00
Joshua Cox	61,968.75	53,235.60	8,733.15
James Eckels	64,787.50	61,637.50	3,150.00
Jeffrey Harbin	13,913.62	13,913.62	0.00
Gary Lyon	16,462.50	16,462.50	0.00
Grant Thornton, LLP	121,390.53	109,301.53	12,089.00
Martin Thomas	95,285.52	95,285.52	0.00
Damon Nelson	306,262.92	287,962.92	18,300.00
Matt Morris	54,572.50	0.00	54,572.50
Total	$5,635,498.97	$4,051,033.15	$1,510,488.61

(*Id.*, at 2-3).

63. On April 17, 2013, Sherman, Trustee filed his fee application requesting a total amount of $1,219,775.68, consisting of $1,203,329.50 in professional fees and $16,446.18 in reimbursable expenses, of which $379,761.18 had already been paid by the Receiver. (DC ECF Doc 1229, at 6). At this point, in the post-Receivership period from December 2010, to

September 30, 2012, Sherman, Trustee's attorneys, Munsch Hardt, have racked up roughly $2,878,056.42 in fees and expenses, of which a total of $1,393,759.53 has been paid, $379,751.18 from the Receivership, and $1,014,008.35 from the Ondova Estate.

	Period Covered	Total Amount Requested	Total Amount Awarded	Date of Award	Total Amount Paid
4th MH Interim Fee App in Ondova Case	12/1/2010 to 1/31/2011	$263,020.00[30]	$263,020.00	04/28/2011	$263,020.00
5th MH Interim Fee App in Ondova Case	2/1/2011 to 5/31/2011	$325,978.35	$325,978.35	09/01/2011	$325,978.35
6th MH Interim Fee App in Ondova Case	6/1/2011 to 9/30/2011	$379,278.45	$379,278.45	12/20/2011	$155,000.00
7th MH Interim Fee App in Ondova Case	10/1/2011 to 1/31/2012	$238,831.26	$238,831.26	05/11/2012	$170,000.00
8th MH Interim Fee App in Ondova Case r	2/1/2012 to 5/31/2012	$190,363.18	$190,363.18	09/18/2012	$100,000.00
9th MH Interim Fee App in Ondova Case	6/1/2012 to 9/30/2012	$399,615.50	$399,615.50	12/20/2012	$00.00
Trustee's First Fee App in Receivership	11/24/2010 to 3/31/2011	$379,761.18	$379,761.18		$379,761.18
Trustee's Second Fee App in Receivership	4/1/2011 to 9/30/2012	$701,208.50	$00.00	N/A	$00.00
TOTALS:		$2,878,056.42	$2,176,847.92		$1,393,759.53

64. The total amount Munsch Hardt spent on the Receivership Matter was $2,098,698.68 as per the fee applications filed by Munsch Hardt, as follows:

	Period Covered	Total Amount Requested for Receivership Matter
4th MH Interim Fee App in Ondova Case	10/1/2010 to 1/31/2011	$263,020.00
5th MH Interim Fee App in Ondova Case	2/1/2011 to 5/31/2011	$190,833.50
6th MH Interim Fee App in Ondova Case	6/1/2011 to 9/30/2011	$83,553.00
7th MH Interim Fee App in Ondova Case	10/1/2011 to 1/31/2012	$147,423.00
8th MH Interim Fee App in Ondova Case r	2/1/2012 to 5/31/2012	$92,992.00
9th MH Interim Fee	6/1/2012 to	$239,907.50

[30] Since this Fourth Fee App spanned a period from 10/1/2010 to 1/31/2011, the amount shown is the amount attributable to the "Baron Receivership" in the Fourth MH Interim Fee Application. BC ECF Doc 569, at 15.

App in Ondova Case	9/30/2012	
Trustee's First Fee App in Receivership	11/24/2010 to 3/31/2011	$379,761.18
Trustee's Second Fee App in Receivership	4/1/2011 to 9/30/2012	$701,208.50
TOTALS:		$2,098,698.68

Munsch Hardt incurred $2,098,698.68 on the Baron Receivership matter in a little over 22 months, which could have been totally avoided by simply having gone to this Court in November 2010 and requested a status conference with notice to Baron. Not to "beat a dead horse", but Baron was compliant not recalcitrant. From the date of approval of the GSA in late July 2010, Baron had done everything requested of him by this Court, perhaps not as quickly as this Court would have liked, but he accomplished every task required of him.[31] Whatever else the Trustee could have expected of Baron in November 2010, was never communicated to Baron or to this Court. This entire **RECEIVERSHIP DEBACLE** was an unmitigated disaster caused by the Trustee and his counsel, Munsch Hardt, and was totally avoidable by the Trustee. It has resulted in not one attorney fee creditor, for whose benefit the Receivership was instituted, receiving one nickel in the Receivership, and not one Unsecured Creditor receiving a nickel in the Ondova Bankruptcy Case. It has ruined Baron financially. His assets have evaporated during the failed administration of Vogel, Receiver, and Munsch Hardt was the architect of the Receivership, and supported, if not demanded, the perpetuation of the Receivership, even when Judge Furgeson tried to put an end to it, *sua sponte,* on at least two occasions.

L. **The Advisory on Past and Pending Receiver Disbursements.**

[31] This Court held a three-day show cause proceeding against Baron, and if this Court had believed that Baron was torpedoing the GSA, it would have certainly held him in contempt or ordered the Trustee to institute a receivership against Baron, but the Court did not do so. The record reflects that the Court asked Baron for two things during the course of these hearings: (a) recommend a new protector and trustee appointed for the Village Trust; and (b) put up a security deposit of $330,000. Baron responded to both requests expeditiously. He was compliant not recalcitrant, and this Court can review the transcripts and documents in the file from that point forward to November 24, 2010, and will find nothing to the contrary.

65. On January 2, 2013, two weeks after the issuance of the *Netsphere* opinion, the district court, issued, *sua sponte*, an *Advisory on Past and Pending Receivership Disbursements* ("*Advisory*") in the Netsphere DC Case. (DC ECF Doc 1138). Among other things, the district court specifically stated and concluded the following:

- All payments to the Trustee or Trustee's counsel would be entirely disgorged and must be paid back to the Receivership.

(*Id.* at 2).

M. The district court enters the Receivership Fee Order.

66. On May 29, 2013, the District Court entered its *Order on Receivership Professional Fees* ("*Receivership Fee Order*"). (DC ECF Doc 1287). Insofar as the Trustee was concerned, the Receivership Fee Order differs from the Advisory (DC ECF Doc 1138) in the following respects:

Applicant	Advisory	Receivership Fee Order
Ondova Bankruptcy Trustee	Disgorgement of all prior payments, and no award of unpaid fees and expenses	No disgorgement of prior payments, and no award of unpaid fees and expenses

67. Of the Sherman, Trustee fee application requesting a total amount of $1,219,775.68, the district court denied the fee request other than the previous award of $379,761.18, and the this award has now been appealed to the Fifth Circuit Court of Appeals, and disgorgement has been requested.[32] All of the fees awarded to the Receiver and his counsel, past and present, are on appeal as well, and disgorgement has been requested.

[32] *See* Fifth Circuit Case No. 13-10696. The briefing on this appeal has been concluded.

IV.

ARGUMENT AND AUTHROITIES

68. As this Honorable Court is aware, the Fifth Circuit Court of Appeals has set the standard by which bankruptcy courts must judge all attorney fees for persons representing the bankruptcy estate. The Court quite clearly set a tough standard in *Matter of Pro-Snax Distributors, Inc.*, 157 F.3d 414,426 (5th Cir. 1998). The Court said, "We determined today that the stricter test is the appropriate measure." *Id.* That stricter test the Court defined as requiring a showing that the services rendered "represented an identifiable, tangible, and material benefit to the estate." *Id.* In adopting the stricter test, the Fifth Circuit clearly rejected the "reasonableness" test, to-wit: whether the services were objectively beneficial toward the completion of the case at the time they were performed. *Id.*[33]

69. The facts surrounding Munsch Hardt's fee application are similar to those in *Pro-Snax* and other cases in this circuit such as *In re Weaver*, 336 B.R. 115, 125 (Bankr. W.D.Tex.2005), where fees are rejected for not inuring a benefit to the estate. In *Pro-Snax*, attorney fees were sought for a plan of reorganization, for which the bankruptcy court found that there was support among some creditors (cite) . Nevertheless, the court declined to permit the approval of attorney fees for pursuing the plan after the plan was not ultimately consummated *Id.*

[33] While some bankruptcy courts such as *In re Broughton Ltd. Partnership*, No. 10-42327 (Bankr. N.D. Tex. 2012), have attempted to construct a hybrid analysis in an apparent attempt to circumvent *Pro Snax*, the Fifth Circuit has rejected this view, criticizing its misapplication: "By contrast, in *In re Broughton* characterized *Pro-Snax* as a practical "problem" and contorted *Pro-Snax* to conclude that it permits a fee award to "a professional [who] was justifiably pursuing a legitimate, realizable goal of the fiduciary client." *In Re Woerner*, 758 F. 3d 693, 707 (5th Circuit 2014).

70. Here, at the moment the Fifth Circuit was deliberating the receivership appeal, Urbanik was frantically billing away, attempting to consummate a plan based on and dependent upon the doomed receivership. Irrespective of whether Sherman and his counsel engaged in fraud to provoke the receivership, they knew or should have known, during the course of briefing on appeal, that the receivership was based on a faulty premise and would ultimately be reversed. Accordingly, even under the *Broughton* "hybrid" analysis Munsch Hardt's fees for prosecuting a liquidating plan,[34] that brought no benefit to the estate, and was not, at the time the fees were being incurred, calculated to realize a tangible material benefit to the estate cannot be rationally justified.

71. Munsch Hardt's billing of $181,252.00 for mediation is also not allowable. While Munsch Hardt justifies the fees by averring that it worked hard at a settlement, the fact is that Munsch Hardt played an obstructive role, objecting to every reasonable proposal made by the parties. Indeed, even though it had no dog in the fight, Munsch Hardt objected to the settlement agreement reached between Baron and the petitioning creditors which was presented to this court. Munsch Hardt's fees billed for its participation in settlement discussions did not benefit the estate at all.

72. Likewise, Munsch Hardt's fees in prosecuting the sale of <servers.com> did not provide a benefit to the estate because the fees incurred exceeded the amount recovered for the estate. In fact Munsch Hardt billed $_____ to date, and received $_____ in proceeds from the sale of <servers.com>.

[34] Munsch Hardt includes fees for "asset sales" as part of its advocacy for the liquidating plan and sale of related assets.

73. The Fifth Circuit recently held that, correctly read, 11 U.S.C. § 330(a) does not authorize compensation for counsel's defense of a fee application. *In re Asarco, LLC,* 751 F.3d 291, 299 (5th Cir. 2014). The Fifth Circuit reasoned that fees for the defense of a fee application are not reasonably likely to benefit the estate or necessary to case administration. *Id.* In this case, the fees and expenses incurred by Munsch Hard in the defense of the Receivership and the 59 fee orders awarding fees to Sherman, Trustee and his attorneys and the Receiver and his attorneys are non-compensable. Under *Asarco.*

74. Moreover, the Ondova Bankruptcy Estate is administratively insolvent. The fees and expenses of the Trustee and his counsel, Munsch Hardt, that have been applied for and awarded through September 2012, amount to $3,314,843.93. Of that amount, $2,531,755.54 has been previously paid, leaving a balance due of $783,088.39. Of the $783,088.39 previously awarded but remaining unpaid, Munsch Hardt is asking the Court for a $200,000.00 payment.[35]

75. This does not include the fees and expenses of Munsch Hardt or the Trustee for which no applications have been filed covering the period October 1, 2012 to November 30, 2014. The Court has no information as to the amount of fees and expenses incurred by Munsch Hardt during the last 26 months of this case. This is an egregious lapse on the part of Munsch Hardt, and an intentional effort on the part of Munsch Hardt to avoid its duties as a fiduciary of the estate to disclose the incurred but un-applied for fees and expenses over the past 26 months. Munsch Hardt is asking this Court and the creditors to make decisions based on information that is incomplete. This is inconsistent with the duties of full disclosure by fiduciaries engaged by a bankruptcy estate.

[35] Munsch Hardt's calculation of the amount due is $783,455.39 versus $783,088.39, as calculated by Baron. In the scheme of things, the difference, $367.00, is *de minimis*.

V.

CONCLUSION

76. If the Court awarded Munsch Hardt $200,000, there would be $742,870.81 left in the Ondova Bankruptcy Estate, as per the latest MOR filed by the Trustee for November 2014. BK ECF Doc 1181, at 5. This includes two assets as to which Baron contests Ondova's ownership in Adversary 14-03081, such assets being (a) the $330,000 security deposit made by Baron in October 2010, and (b) the River Cruise settlement amount of approximately $350,000, which the Trustee by order of this Court is holding in escrow subject to the ownership claims of Baron. In addition, there are other administrative claims which have been previously awarded in this case. Principal among them are the Substantial Contribution Claims which Munsch Hardt reported in the Amended Disclosure Statement to be **allowed claims** in the amount of $431,447.07. BK ECF Doc 829, at 7.

77. The Court can do the math, but it is clear that there is a substantial shortage of assets available for the satisfaction of administrative claims. The Ondova Estate is administratively insolvent, and it is likely that Munsch Hardt will be called upon to disgorge fees so that all administrative creditors can at least be treated on a *pari passu* basis with Munsch Hardt. Under these circumstances, it would be improper to allow Munsch Hardt to remove another $200,000 from this administratively insolvent estate.

78. Additionally, this Court and the creditors should not be expected to "fly blind" without knowing the amount of fees and expenses incurred by the Trustee and Munsch Hardt for which applications have not been filed. As well, the Trustee should be required to account to this Court for the amount of administrative and priority claims outstanding. While Baron has pieced

together the information in this objection as best he can, only the Trustee and his accountants know for sure the true financial picture of the Ondova Estate.

Respectfully submitted this 18th day of December 2014.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served by electronic transmission to all registered ECF users appearing in the case on this 18th day of December 2014.

/s/ Leonard H. Simon