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The Honorable Frank E. Cuthbertson
Hearing Date: June 25, 2010
Hearing Time: 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re:
MCUBE PETROLEUM, INC., a Washington
corporation;
BASILAM PETROLEUM, LLC, a
Washington limited liability company;
DISKI PETROLEUM, LLC, a Washington
limited liability company;
HALMAHERA - REMBANG, LLC, a
Washington limited liability company;
LARAMIE PETROLEUM, INC., a
Washington corporation; and
ORNA INTERNATIONAL, LTD, a British
Virgin Islands company.

Case No. 09-2-08315-6

NOTICE OF ERRATA

TO: THE CLERK OF THE COURT;
AND TO: ALL PARTIES AND THEIR COUNSEL.

William L. Beecher, in his capacity as Receiver for the entities identified in the caption above, by and through his counsel, hereby notifies the Court and all parties that page 13, lines 4 and 6 incorrectly indicate that payments total \$5.2 million, instead of \$2 million. The paragraph should read:

The total of payments made by MCube to the Trust after the date of receipt of the Loftis Report was just over ~~\$5~~2 million. This amount constitutes a likely recovery on behalf of the Receivership Estate. The recovery would not be cumulative. In other words, if the Trust was compelled to disgorge ~~\$5~~2 million based on the disclosures in the Loftis Report, this amount would be deemed to include the

1 disgorgement of profit. The extent to which the Receivership Estate would be
2 entitled to a greater recovery is dependent on two issues: (1) was inquiry notice
3 had by the Trust at a date earlier than the date of issuance of the Loftis Report; and
4 (2) to what extent would pre-judgment interest be awarded.

A true and correct copy of the corrected page 13 is attached hereto.

DATED this 25th day of May, 2010.

BRAIN LAW FIRM PLLC

By: 

Paul E. Brain, WSBA #13438

1119 Pacific Avenue, Suite 1200

Tacoma, WA 98402

Tel: 253-327-1019

Email: pbrain@paulbrainlaw.com

Counsel for William L. Beecher, Receiver

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CERTIFICATE OF SERVICE

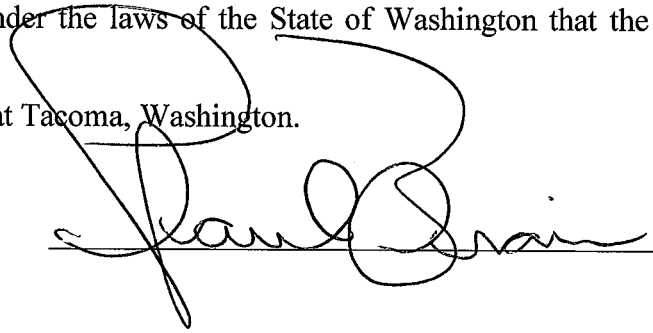
I hereby certify that I have this 25th day of May, 2010, served a true and correct copy of the foregoing document upon counsel of record, via the methods noted below, properly addressed as follows:

Counsel for Smith Alling Lane PS:

Thomas F. Gallagher	<input checked="" type="checkbox"/>	Pierce County Superior Court LINX
The Law Offices of Watson & Gallagher PS	<input type="checkbox"/>	Hand Delivery
2748 Milton Way, Suite 212	<input type="checkbox"/>	U.S. Mail (first-class, postage prepaid)
Milton, WA 98354	<input type="checkbox"/>	Facsimile
	<input checked="" type="checkbox"/>	Email

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of May, 2010, at Tacoma, Washington.



1 only money that MCube ever took in was from investors. The entirety of the funds paid out to
2 investors, supposedly from operating revenues, was from other investors.

3 The total of payments made by MCube to the Trust after the date of receipt of the Loftis
4 Report was just over \$2 million. This amount constitutes a likely recovery on behalf of the
5 Receivership Estate. The recovery would not be cumulative. In other words, if the Trust was
6 compelled to disgorge \$2 million based on the disclosures in the Loftis Report, this amount
7 would be deemed to include the disgorgement of profit. The extent to which the Receivership
8 Estate would be entitled to a greater recovery is dependent on two issues: (1) was inquiry notice
9 had by the Trust at a date earlier than the date of issuance of the Loftis Report; and (2) to what
10 extent would pre-judgment interest be awarded.

11 The latter issue had not been addressed by Washington Courts. However, other authority
12 under the UFTA suggests that if pre-judgment interest is awardable, it would commence to run
13 as of the date of assertion of the fraudulent conveyance claim, not as of the date of the fraudulent
14 transfer itself. Whether pre-judgment interest is awardable, the date of commencement of pre-
15 judgment interest and the applicable interest rate are all in dispute.

16 **B. Even Innocent Transferees Can Be Compelled to Disgorge Profits Received**
17 **From a Ponzi Scheme.**

18 The basic principles here are, once again, well established:

19 Where causes of action are brought under UFTA against Ponzi scheme investors,
20 the general rule is that to the extent innocent investors have received payments in
21 excess of the amounts of principal that they originally invested, those payments
are avoidable as fraudulent transfers:

22 The money used for the [underlying investments] came from investors gulled by
23 fraudulent representations. [The defendant] was one of those investors, and it
24 may seem "only fair" that he should be entitled to the profits on trades made with
25 his money. That would be true as between him and [the Ponzi scheme operator].
26 It is not true as between him and either the creditors of or the other investors in
27 the corporations. He should not be permitted to benefit from a fraud at their
28 expense merely because he was not himself to blame for the fraud. All he is
being asked to do is to return the net profits of his investment—the difference
between what he put in at the beginning and what he had at the end.