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KEVIN STOCK
COUNTY CLERK
NO: 09-2-08315-6

The Honorable Frank E. Cuthbertson

Hearing Date: December 17, 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

**MOTION FOR PAYMENT OF
EXPENSES OF CREDITORS SIMON
AND TRUSTS**

I. RELIEF REQUESTED

Creditors Geoffrey Simon, The Shakespeare Trust and The Ventnor Trust (collectively, "Simon") request that this court allow and approve for payment expenses incurred by Simon in efforts to preserve assets of MCube Petroleum, Inc. and its related entities ("MCube") for administration and application to payment of the creditors' claims by the Receiver, William Beecher. The actions undertaken by Simon to investigate, locate, seek and negotiate the sale of assets have aided the Receiver's efforts to preserve assets and administer the MCube estate, and have potentially benefited all creditors by recovery of \$339,500 for the estate, plus a free carried

1 residual interest in one of the estate’s contracted oil and gas assets. Simon requests that the sum
2 of \$38,416.18 be paid to him as reimbursement, as detailed in the Declaration of Geoffrey
3 Simon submitted with this motion.

4 **II. STATEMENT OF FACTS**

5 In December, 2009 an agreement was reached and in February, 2010 the agreement was
6 approved by the court to allow the Receiver to sell a portion of the interest held by Orna
7 International Limited - a company formed in the British Virgin Islands and wholly owned by
8 MCube (“Orna”) - in the Production Sharing Contract (“PSC”) for the Rembang Oil and Gas
9 Block in Indonesia (the “Asset”). The sale of the Asset, when completed, would result in a
10 payment to the Receiver of \$159,500, and also satisfy debts of MCube to its Indonesian
11 employees – thereby reducing the creditors’ claims to the receivership estate by a further
12 \$180,000.

13 This potential value for the receivership estate was created through the efforts of Simon,
14 who identified a willing purchaser of the Asset (“the Purchaser”), contacted the Receiver and
15 gained the Receiver’s cooperation, and helped obtain the written and signed Farm-In Agreement
16 (“FIA”) with the Purchaser which defined the potential sale (“the Transaction”). Had Simon not
17 participated in the Transaction, it is likely that the FIA could not have been timely prepared and
18 signed by the Receiver and the Purchaser. In order to enable the Transaction to occur, at a time
19 when the Receiver lacked funds to seek a sale and make the international travel needed to bring
20 it to completion, Simon undertook the work at his own risk of not receiving compensation, to try
21 and make this substantial recovery for the MCube estate of which he is a creditor.

22 The tasks undertaken by Simon to prepare for and arrange the Transaction included but
23 were not limited to three trips from London to Jakarta, Indonesia (the first via Seattle) and one
24 trip from London to Seattle, as detailed in the Declaration of Geoffrey Simon.

25 The primary objective of the first trip was to meet in Jakarta with officials of
26 BPMIGAS—the issuer of the PSC on behalf of the Indonesian Government (“GOI”) - in order
27 to ascertain the status of the Asset and GOI’s detailed requirements for its preservation. This
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1 trip included, by way of preparation, a stop-over in Seattle en route to Jakarta in order to
2 ascertain the status of MCube subsequent to the seizure of its assets.

3 The primary objectives of the second and third trips to Jakarta were to negotiate with the
4 Purchaser and to further deal with BPMIGAS in order to preserve the Asset. During these trips
5 Simon also met with local creditors of MCube, which led to Simon's recommendation to the
6 Receiver that Orna be included in the MCube receivership in order to prevent these creditors
7 from endangering the Asset.

8 The primary objective of the trip to Seattle was made in order to present to the MCube
9 directors, shareholders and stakeholders an early offer for the Rembang and Halmahera PSCs.

10 In addition to travelling to Jakarta, Simon carried on with the negotiations with the
11 Purchaser, and liaised with the Receiver and MCube's attorneys, from his office in London, by
12 means of email and, when necessary, phone.

13 Once agreement was reached and signed with the Purchaser, Simon served as liaison
14 between the Purchaser, the Orna Directors and the Receiver. Most recently, Simon has assisted
15 and advised the Orna Directors with regard to their initiatives to obtain from GOI an extension
16 to the Rembang and Halmahera PSCs and permission to assign part of the Rembang PSC
17 interest to the Purchaser. The extensions and permission referred to are essential to the
18 preservation of the MCube assets.

19 **III. ISSUE PRESENTED**

20 Is Simon entitled to reimbursement for expenses incurred while investigating the
21 existence of and seeking to preserve MCube assets – actions that resulted in a potential sale
22 which would provide a common benefit for all creditors of the receivership estate?

23 **IV. EVIDENCE RELIED UPON**

24 This motion is supported by the Declaration of Geoffrey Simon.
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V. LEGAL AUTHORITY AND ARGUMENT

A. The Receivership Statute Permits Reimbursement of Creditor Expenses Incurred for the Discovery and Preservation of Estate Assets.

RCW 7.60.060(1) permits the Receiver to incur or pay expenses “incidental to the receiver’s preservation and use of the property with respect to which the appointment applies, and otherwise in the performance of the receiver’s duties, including the power to pay obligations incurred prior to the receiver’s appointment...” Coupled with the authority granted to the Receiver by RCW 7.60.180(1) to employ professionals “to represent or assist the receiver in carrying out the receiver’s duties...” the Receiver is entitled, with court review and approval, to reimburse Simon for the expenses incurred in efforts to locate, preserve and arrange for the sale of this Asset of MCube.

Simon identified the Purchaser, assisted with negotiating the Transaction, advised and supported the directors and attorneys of Orna over the Transaction and other matters, and reported to the Receiver, in order to assist the Receiver’s potential recovery of \$339,500 and a residual interest in Orna for the Receiver to administer.

B. The Expenses Claimed by Simon are Reasonable.

Examination of the requested reimbursement illustrates that the expenses are described in detail as to time and nature. The Declaration of Simon describes the need for the incurring of the expenses claimed, and confirms that none of the time spent by Simon was included as an expense for which reimbursement is sought – all expenses claimed are for actual, out of pocket costs incurred by Simon in his efforts.

The total expenses of \$38,416.18 claimed by Simon include \$33,016.18 being the out of pocket costs required for his trips to Jakarta and Seattle, plus \$5,400 for approximately \$150

1 monthly towards the phone calls required to be made from London to Jakarta and London to
2 Seattle and Tacoma over the 36-month period from November 2007 through October 2010.

3 C. “Common Fund” Doctrine Also Supports Payment to Simon.

4 When a litigant creates a fund from which creditors are paid, in addition to the litigant, or
5 the efforts of a creditor result in preservation of an asset for the benefit of creditors generally, the
6 creditor whose actions resulted in the benefit to creditors can recover their costs and attorney’s
7 fees under the “common fund” theory. The type of “common fund” for which a creditor can
8 receive reimbursement encompasses more than creation of a fund for payment; it also includes
9 preservation of assets and the conferring of a “substantial benefit on an ascertainable class.”
10 *Seattle Trust & Savings Bank v. McCarthy*, 94 Wn.2d 605, 612-13, 617 P.2d 1023 (1980).
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12 Here, Simon’s efforts resulted in the Receiver’s receipt of valuable information
13 concerning MCube assets, allowing the Receiver to take steps quickly to secure the Asset, move
14 towards selling it and potentially apply its value in payment of creditors of the estate. The
15 efforts of Simon conferred a benefit upon an ascertainable class, the creditors of the MCube
16 receivership estate.
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19 **VI. CONCLUSION**

20 The efforts of Simon have provided the Receiver with valuable information, advice,
21 resources and a contract benefiting the MCube estate and its creditors. The Receiver has the
22 authority, with this court’s approval, to reimburse the professional fees and costs of persons who
23 assist in the location and preservation of estate assets, whether the work is performed before or
24 after commencement of the receivership. Assuming that the Receiver supports the application of
25 Simon, the court should authorize Simon’s payment as requested. If some items of
26 reimbursement requested are objected to by the Receiver or its creditors, the court should
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1 determine, based upon the Declaration of Simon, whether the requested reimbursements
2 challenged contributed to the Receiver's recovery of assets for the estate and the benefit of all
3 creditors of the estate.

4 Dated this 16th day of November, 2010

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6 DAVID S. KERRUISH, PS.

7 By 

8 David S. Kerruish, WSBA No. 11090
9 Attorneys for Creditor Simon