

The Honorable Frank E. Cuthbertson
Hearing Date: January 20, 2012
Hearing Time: 9:00 a.m.
Without 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 TO CREDITORS AND INTERESTED PARTIES OF HEARING ON RECEIVER'S MOTION TO APPROVE SETTLEMENTS, DISALLOW CERTAIN CLAIMS AND FOR OTHER RELIEF

TO: THE CLERK OF THE COURT
AND TO: THE HONORABLE FRANK E. CUTHBERTSON
AND TO: ALL PARTIES-IN-INTEREST

Hearing Date: Friday, January 20, 2012
Hearing Time: 9:00 a.m.
Response Due: Tuesday, January 17, 2012
Location: Pierce County Superior Court
Judge Cuthbertson, Department 21
930 Tacoma Avenue South, Tacoma, WA 98402

1 PLEASE TAKE NOTICE that William L. Beecher, in his capacity as Receiver for the
2 entities identified in the above-captioned Receivership proceeding (the "Receiver"), will be
3 filing a Motion with the Court seeking: (1) approval of the settlements with certain defendants
4 in the adjunct proceeding: Beecher v. Aboulhosn, et al., Pierce County Superior Court Case
5 No. 10-2-07692-7; (2) disallowance of the claims identified in Appendix 1 hereto; (3) approval
6 of voluntary dismissals of certain Aboulhosn Defendants outlined herein; (4) dismissal of the
7 Aboulhosn action; and (5) approval of professional compensation.

8 **A. Settlements.**

9 The Receiver will be seeking approval of the following settlements reached with the
10 following Aboulhosn Defendants:

- 11 1. Michael J. Chiasson and Mary Sheila Noe. The Chiasson Defendants received
12 total profits of \$66,034.99 on investments in Diski and Basilam. The Chiasson
13 Defendants have agreed to settle the claims of the Receiver by paying to the
14 Receiver \$1,000 and abandoning their \$104,589.69 claim submitted in this
15 Estate. The Receiver has determined that the Chiasson Defendants do not
16 possess any assets and are unable to tender any additional funds to this Estate.
17 The controlling factor in this case was the capacity of the Chiasson Defendants to
18 satisfy a Judgment in the event the matter was to proceed to trial. In this regard,
19 the Receiver was provided with and reviewed financial information regarding the
20 Chiasson Defendants substantiating that they would lack the capacity to satisfy
21 any Judgment ultimately obtained. The Receiver considers the settlement terms
22 to be fair and reasonable under this circumstance. The Chiasson Defendants have
23 made an investment in Hal-Rem and will retain the rights to a pro-rata share of
24 any future distribution made in connection with the PSCs, if any.
- 25 2. Jared Robert Lake. Mr. Lake received total profits of \$30,689.63 on investments
26 in Diski and Basilam. Mr. Lake has agreed to settle the claims of the Receiver by
27 abandoning his \$33,812.50 claim submitted in this Estate. The Receiver has
28 determined that Mr. Lake does not possess any assets and is unable to tender any
funds to this Estate. The controlling factor in this case was the capacity of
Mr. Lake to satisfy a Judgment in the event the matter was to proceed to trial. In
this regard, the Receiver was provided with and reviewed financial information
regarding Mr. Lake substantiating that he would lack the capacity to satisfy any
Judgment ultimately obtained. The Receiver considers the settlement terms to be
fair and reasonable under this circumstance. Mr. Lake has made an investment in
Hal-Rem and will retain the rights to a pro-rata share of any future distribution
made in connection with the PSCs, if any.
3. Carl Malone and Elizabeth Serrette. The Malone Defendants received total
profits of \$49,616.18 on an investment in Diski. The Malone Defendants have

1 agreed to settle the claims of the Receiver by paying to the Receiver \$10,000.
2 The Receiver has determined that the Malone Defendants do not possess any
3 assets and are unable to tender any additional funds to this Estate. The
4 controlling factor in this case was the capacity of the Malone Defendants to
5 satisfy a Judgment in the event the matter was to proceed to trial. In this regard,
6 the Receiver was provided with and reviewed financial information regarding the
7 Malone Defendants substantiating that they would lack the capacity to satisfy any
8 Judgment ultimately obtained. The Receiver considers the settlement terms to be
9 fair and reasonable under this circumstance.

10 4. Juan D. Walker. Mr. Walker received total profits of \$30,752.63 on investments
11 in Diski and Basilam. Mr. Walker has agreed to settle the claims of the Receiver
12 by abandoning his \$33,812.50 claim submitted in this Estate. The Receiver has
13 determined that Mr. Walker does not possess any assets and is unable to tender
14 any funds to this Estate. The controlling factor in this case was the capacity of
15 Mr. Walker to satisfy a Judgment in the event the matter was to proceed to trial.
16 In this regard, the Receiver was provided with and reviewed financial
17 information regarding Mr. Walker substantiating that he would lack the capacity
18 to satisfy any Judgment ultimately obtained. The Receiver considers the
19 settlement terms to be fair and reasonable under this circumstance. Mr. Walker
20 has made an investment in Hal-Rem and will retain the rights to a pro-rata share
21 of any future distribution made in connection with the PSCs, if any.

22 5. David Wegener. Mr. Wegener received total profits of \$18,413.77 on
23 investments in Diski and Basilam. Mr. Wegener has agreed to settle the claims
24 of the Receiver by paying to the Receiver \$1,500. The Receiver has determined
25 that Mr. Wegener does not possess any assets and is unable to tender any funds to
26 this Estate. The controlling factor in this case was the capacity of Mr. Wegener
27 to satisfy a Judgment in the event the matter was to proceed to trial. In this
28 regard, the Receiver was provided with and reviewed financial information
regarding Mr. Wegener substantiating that he would lack the capacity to satisfy
any Judgment ultimately obtained. The Receiver considers the settlement terms
to be fair and reasonable under this circumstance.

With respect to the Settling Defendants who have elected to waive all or some of their
Claim in this Receivership Action, those Defendants who made an investment in Halmahera -
Rembang LLC will retain the rights to a pro-rata share of any future distribution made in
connection with the Orna International Ltd. and Halmahera Petroleum Ltd. Production Sharing
Contracts, if any.

All payments made in conjunction with a "Ponzi" scheme are presumptively fraudulent
conveyances. With respect to a "good faith" recipient of payments from a Ponzi scheme, the
Receiver is entitled to recover only "profits." The Receiver has developed no information which

1 would allow recovery of any amounts from the Settling Defendants in excess of the "profits"
2 each received from their Diski Petroleum LLC and/or Basilam Petroleum LLC investments.
3 While it is possible that such information could be developed, it is unlikely and the costs to do
4 so significant.

5 These settlements take into consideration the cost and risk of continuing litigation. In the
6 case of the Chiasson, Lake and Walker Defendants, they are residents of Texas and California
7 respectively, a factor which would significantly increase the cost of enforcing any Judgment
8 obtained against them. These costs would not be collectible against the Chiasson, Lake and
9 Walker Defendants.

10 The controlling factor in each case was the capacity of the Settling Defendants to satisfy
11 a Judgment in the event the matters were to proceed to trial. In this regard, the Receiver was
12 provided with and reviewed financial information regarding the Settling Defendants
13 substantiating that the amount agreed to be paid in settlement was appropriate in light of all the
14 settlement factors. The Receiver considers the settlements to be fair and reasonable.

15 **B. Disallowance of Claims.**

16 The Receiver will be seeking the disallowance of the Claims outlined in Appendix 1
17 hereto.

18 **C. Voluntary Dismissal.**

19 The Receiver will be seeking the voluntary dismissal of his claims against the following
20 Aboulhosn Defendants:

- 21 1. Harold & Margaret Agner;
- 22 2. Daniel P. Alston;
- 23 3. George J. Atwater;
- 24 4. Scott A. Caldwell;
- 25 5. Robert W. Cryan;
- 26 6. Dennis J. Loeb;
- 27 7. Joel S. Manalang;
- 28 8. James W. Miller;
9. Michael O'Brien;
10. J. Kevin and Joan E. Peterson;
11. John G. and Pamala J. Theriault; and
12. Daren S. and Shelly J. Wright.

1 **D. Final Dismissal of the Aboulhosn suit.**

2 The Receiver will be seeking the final dismissal of the Aboulhosn suit.

3 **E. Professional Fees.**

4 **1. Aboulhosn Settlements.**

5 The Receiver will be seeking approval for the payment of professional compensation
6 arising from the settlements outlined above. The total payment to this Estate from the
7 settlements is \$12,500, and professional compensation arising from the settlements is as follows:
8 (1) \$1,875 to Brain Law Firm PLLC; (2) \$1,875 to Anderson Law Firm PLLC; and (2) \$375 to
9 the Receiver. Net proceeds to this Estate from the settlements will be \$8,375.

10 **2. Compensation on Waiver and Disallowance of Claims.**

11 The Receiver's election to no longer pursue claims precludes counsel from earning fees
12 by completing the litigation. The election to terminate the litigation and resolve remaining
13 clawback claims through the claims allowance mechanism is, therefore, an event which triggers
14 a fee obligation under the approved fee agreement. RCW 7.60.220 provides the Receiver with
15 the authority to estimate and allow claims where liquidation of the claim would delay
16 completion of the administration of this Estate. The Receiver proposes to liquidate the claim for
17 professional compensation based on the additional benefit/distribution to allowed creditors.

18 The benefit to creditors arising from claims waivers in the Aboulhosn litigation is
19 quantifiable as follows:

20 1. The total current claims against this Estate are \$42,184,625.11. After deduction
21 of the waived/disallowed claims of Diski/Basilam investors (\$1,060,517.55
22 waived + \$3,939,469.85 disallowance here = \$4,999,987.40), total claims will be
\$37,184,637.71.

23 2. The Receiver is proposing to make an interim distribution of \$1,200,000. As a
24 result of the claim waivers/disallowance obtained by counsel, creditors will
25 receive a distribution 13.45% greater than before the waivers and disallowed
26 claims, or \$161,400. To illustrate the calculation, before reduction for waivers
27 and disallowed claims, a creditor with a \$500,000 claim held a 1.19% "share" in
the total value of the claims. After the reduction, however, that creditor's "share"
rose to 1.34% of the total value of the claims. This increased the value of
claimant's claim by 13.45%.

28 3. Pursuant to compensation agreements previously approved by this Court, the
Receiver proposes to pay professional compensation based on the increased

1 benefit to the creditors – 30% to counsel or \$48,420, and 3% to the Receiver or
2 \$4,842. The funds to counsel would be payable \$43,578 to Brain Law Firm
3 PLLC and \$4,842 to Anderson Law Firm PLLC.

4 The ultimate distribution to individual creditors will change as a result of further claims
5 analysis and/or the liquidation of the remaining assets of this Estate. Any involvement of
6 counsel in the claims analysis process unrelated to Aboulhossn or Diski/Basilam would not result
7 in additional compensation because those benefits would be unrelated to the Aboulhossn
8 litigation. To the extent that counsel's activities in other areas generate further returns to this
9 Estate, additional compensation to professionals could be paid.

10 The professional fees are based on fee agreements already approved by the Court. Total
11 professional compensation, including the contingent component of the compensation to the
12 Receiver, is based on a total contingent fee, including fees to the Receiver, of 33%. This is a
13 standard rate for this market area.

14 **F. Objections.**

15 Any party desiring further information regarding this Notice may request same from the
16 Clerk of the Court or from the undersigned counsel.

17 IF YOU OPPOSE the Motion, you must file your written response with the Clerk of the
18 Court, serve two copies on the Judge's chambers and deliver copies to the undersigned
19 NOT LATER THAN THE RESPONSE DATE, which is **January 17, 2012**.

20 IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion,
21 GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER NOTICE, and
22 strike the hearing.

23 DATED this 16th day of December, 2011.

24 BRAIN LAW FIRM PLLC

25
26 By: 

27 Paul E. Brain, WSBA #13438

28 Counsel William L. Beecher, Receiver

APPENDIX 1

Investor	Diski-Basilam Profit	Claim	Claim Adjusted to 5%	Difference Between Diski-Basilam Profit and Adjusted Claim
Totals: \$ 1,538,497.21 \$ 3,939,469.85 \$ 196,973.49				
DISALLOWED CLAIMS				
Allen, David	\$ 11,763.01	\$ 150,000.00	\$ 7,500.00	\$ 4,263.01
Brangle, Stephen M	\$ 23,526.02	\$ 200,000.00	\$ 10,000.00	\$ 13,526.02
Castellano, John	\$ 11,763.01	\$ 50,000.00	\$ 2,500.00	\$ 9,263.01
Cole, Peter T	\$ 318,840.68	\$ 28,800.00	\$ 1,440.00	\$ 317,400.68
Cooke - Kevin Cooke & Katherine Allen	\$ 11,763.01	\$ 87,772.66	\$ 4,388.63	\$ 7,374.38
Davis, Aaron R	\$ 11,763.01	\$ 150,000.00	\$ 7,500.00	\$ 4,263.01
Gordon, Adam / Production Services NW Inc	\$ 151,689.81	\$ 137,000.00	\$ 6,850.00	\$ 144,839.81
Gordon, Robert A	\$ 266,926.88	\$ 100,000.00	\$ 5,000.00	\$ 261,926.88
Gouveia, Mark D & Jeanette Casey	\$ 16,928.76	\$ 87,072.13	\$ 4,353.61	\$ 12,575.15
Harris Living Trust / Harried Enterprises LP	\$ 23,532.02	\$ 200,000.00	\$ 10,000.00	\$ 13,532.02
Jefferson, Donald & Beverly	\$ 23,526.02	\$ 228,977.29	\$ 11,448.86	\$ 12,077.16
Kais, Bill	\$ 5,881.52	\$ 75,000.00	\$ 3,750.00	\$ 2,131.52
Keybo Entertainment / Mike Ireland	\$ 35,452.48	\$ 250,000.00	\$ 12,500.00	\$ 22,952.48
Kirkpatrick, Dennis / Hoyt Jr Entertainment	\$ 56,716.18	\$ 600,000.00	\$ 30,000.00	\$ 26,716.18
Koschene, Paul A & Mary Anne	\$ 122,758.38	\$ 375,266.67	\$ 18,763.33	\$ 103,995.05
Lake, Kevin	\$ 30,689.61	\$ 61,750.00	\$ 3,087.50	\$ 27,602.11
Lieuallen, Brian	\$ 199,232.36	\$ 100,000.00	\$ 5,000.00	\$ 194,232.36
M2J Capital Holdings LLC / International Marketing / James Hofeditz	\$ 11,763.01	\$ 60,000.00	\$ 3,000.00	\$ 8,763.01
Martinez - Christian Martinez & Holly Sue Ives	\$ 11,763.01	\$ 86,000.00	\$ 4,300.00	\$ 7,463.01
Otani, Todd W & Annette	\$ 24,705.20	\$ 40,000.00	\$ 2,000.00	\$ 22,705.20
Ponio, Allan	\$ 12,299.96	\$ 114,891.10	\$ 5,744.56	\$ 6,555.41
Ponio, Luz V & Reynaldo N	\$ 23,526.02	\$ 1,700.00	\$ 85.00	\$ 23,441.02
Rosbach, Dale F & Margaret A	\$ 11,763.01	\$ 95,000.00	\$ 4,750.00	\$ 7,013.01
Ruch, Robin / Ruch Trust / Fire Chief / Bear Creek	\$ 47,052.04	\$ 300,000.00	\$ 15,000.00	\$ 32,052.04
Sanchez, Hector & Margaret K	\$ 49,616.18	\$ 274,600.00	\$ 13,730.00	\$ 35,886.18
Staudte, Scott & Carin Byckowski-Staudte	\$ 11,493.01	\$ 35,640.00	\$ 1,782.00	\$ 9,711.01
White Mountain Sports Inc. Profit Sharing Plan	\$ 11,763.01	\$ 50,000.00	\$ 2,500.00	\$ 9,263.01