

April 24 2009 2:48 PM

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

9 In Re:

10 MCUBE PETROLEUM, INC., a Washington
11 corporation;

12 BASILAM PETROLEUM, LLC, a
13 Washington limited liability company;

14 DISKI PETROLEUM, LLC, a Washington
limited liability company; and

15 HALMAHERA - REMBANG, LLC, a
16 Washington limited liability company.

Case No.

**PETITION FOR DISSOLUTION AND
RECEIVERSHIP**

17
18 **I. INTRODUCTION AND RELIEF REQUESTED**

19 Petitioners Thomas Neu and Michael Hinrichsen (collectively "Petitioners"), in their
20 capacities as creditors of MCube Petroleum, Inc. ("MCube") and as current Directors of MCube,
21 petition this Court for an Order dissolving MCube pursuant to RCW 23B.14.300(3)(b).¹ The
22 grounds for this Petition are that MCube is incapable of satisfying any of its debts, including the
23 obligations owed to Messrs. Neu and Hinrichsen, and has acknowledged in writing its incapacity
24 to do so.

25 Petitioners also hereby petition this Court, pursuant to the provisions of RCW 7.60.020
26 and RCW 23B.14.320, for an Order appointing a general Receiver for MCube and its various

27
28 ¹ The current members of the MCube Board of Directors (the "Board") were elected after and had no involvement
in the fund-raising activities by MCube or its subsidiaries identified herein. The role of these current Directors has
been to determine whether any portion of the investments made can be salvaged.

1 subsidiaries: Basilam Petroleum, LLC (“Basilam”), Diski Petroleum, LLC (“Diski”), and
2 Halmahera - Rembang, LLC (“Hal-Rem”) (collectively the “Subsidiaries”).

3 Simply put, MCube was a Ponzi scheme. Approximately 300 investors² in MCube and
4 the various Subsidiaries were induced to invest through promises of high rates of return to be
5 paid through fictitious revenue generated from the sale of oil and gas from oil and gas fields
6 located in Indonesia. However, the substantial returns paid to earlier investors were paid solely
7 with the proceeds of illegal sales of securities, because neither MCube nor any of the
8 Subsidiaries generated any revenues other than by sales of securities. The revenues purportedly
9 being earned by the sale of oil and gas were in fact a complete fabrication.

10 The outstanding shares of MCube, which has approximately 87 shareholders, were
11 issued under circumstances that would render the issuance of the shares void or voidable. A
12 substantial number of shares were issued after incorporation without consideration and,
13 therefore, on terms different from the offering to outside investors, in violation of applicable
14 securities laws. Sales of shares to outsiders were made in repeated violation of applicable
15 securities laws. At this point, it is unclear whether MCube actually has any valid shareholders.

16 At this time, MCube has no assets of value. MCube’s ability to satisfy the claims of
17 defrauded investors depends on the recovery of wrongful transfers under the provisions of
18 Washington’s Fraudulent Conveyance Act, Chap. 19.40 RCW (the “Act”). Appointment of a
19 Receiver would allow claims of all creditors to be asserted by the Receiver under
20 RCW 7.60.060(1)(f), rather than in piece-meal litigation by the individual creditors themselves.

21 Based on a review of the financial records of MCube, the United States Attorney has
22 alleged that MCube and the Subsidiaries raised about \$65 million through the sale of securities.
23 Of that amount, approximately \$38 million was returned to creditors, which included amounts
24 paid as dividends to shareholders, return of principal and profit to creditors in the Subsidiaries,
25 and \$11.8 million paid to lenders. The total amount of transfers potentially constituting
26 recoverable fraudulent conveyances is estimated to be \$17 million.

27 ² Each investor, by virtue of having been defrauded, is a creditor of MCube. In addition, many of the investments
28 were in the form of convertible promissory notes. The terms are used interchangeably depending on the context in
which they are used herein.

1 In the event this Court determines that appointment of a Receiver is appropriate, the
2 following additional relief is requested:

- 3 1. An Order appointing William L. Beecher as Receiver, approving the terms of
4 employment of the Receiver, and determining the amount of the Receiver's
5 bond;
- 6 2. An Order appointing Special Counsel to the Receiver to initiate litigation over
7 already-identified claims and to investigate the existence of additional claims or
8 assets;
- 9 3. An Order approving the terms of a litigation cost funding arrangement; and
- 10 4. An Order establishing notice procedures for future action by the Receiver.

11 **II. STATEMENT OF THE CASE**

12 **A. The MCube Ponzi Scheme.**

13 MCube was incorporated as a Washington corporation on May 5, 2005. The principal
14 "assets" of MCube were ownership interests in the Subsidiaries. MCube was also the manager
15 of each Subsidiary. The principal/founding shareholders of MCube, which include Robert
16 Miracle and various of his family members, are currently under indictment for federal crimes
17 committed in conjunction with its fund-raising activities.

18 The Subsidiaries each supposedly held rights to the production of oil and gas from
19 various oil and gas fields in Indonesia. The Diski and Basilam fields involved had previously
20 produced oil and gas, but the fields were no longer producing. The Halmahera and Rembang
21 fields were both remote and both were only in the initial stages of exploration.

22 The Diski offering commenced in December 2005 and involved the sale of
23 64 membership units for a total purchase price of \$3.2 million. MCube retained 46% of the
24 Diski LLC Units and was the manager of the Diski. In 2006 and 2007, Diski investors received
25 \$3.17 million over and above the amount of principal they had invested.

26 The Basilam offering commenced in March 2006 and raised \$3.95 million. MCube
27 retained 48% of the Basilam LLC Units and was the manager of the Basilam. Basilam investors
28 received payments that exceeded their investment by \$929,000.

1 The largest offering was the Hal-Rem offering, which commenced in May 2006 and
2 continued in one form or another into 2007. The investment took the form of both LLC Units
3 and promissory notes convertible to LLC Units. The Hal-Rem offering raised approximately
4 \$15 million. Substantial funds were distributed to Hal-Rem investors, although the total amount
5 has not yet been determined. Finally, various membership units were distributed for a variety of
6 other purposes, as discussed further below.

7 As set forth in the Indictment of Robert Miracle (*see* Declaration of Paul E. Brain filed
8 herewith ("*Brain Dec.*") at Ex. 1), the evidentiary record establishes that, to facilitate sales of
9 securities, the principals of MCube simply fabricated financial records and banking records to
10 show millions of dollars in revenue from oil and gas sales when, in fact, no oil or gas production
11 was actually taking place. MCube never realized any operating income of any kind. Proceeds
12 of sales of securities to later investors were used to make substantial returns to prior investors,
13 thereby creating the image of a profitable company with profitable subsidiaries.

14 In late May 2006, the Securities Administrator of Washington State initiated an
15 investigation of the activities of MCube by issuing a subpoena and warning letter. While a copy
16 of the warning letter has not been located, a cease and desist order (*Brain Dec.* at Ex. 2) was
17 entered on December 12, 2006. Final Findings and Conclusions on the investigation were
18 entered on April 10, 2007 ("*Final Findings,*" *Brain Dec.* at Ex. 3). The Final Findings detail
19 numerous violations of both the registration and disclosure provisions of Washington's
20 Securities Act, Chap. 21.20 RCW. However, it would appear that the Securities Division's
21 investigation did not focus on the use of the proceeds raised through securities sales, unlike the
22 Indictment. Thus, the Securities Division's action was based on completely different and
23 additional material misrepresentations.

24 Read together, the Indictment and Final Findings establish definitively that MCube and
25 the Subsidiaries were a Ponzi scheme. A Ponzi scheme is a financial fraud that induces
26 investment by promising extremely high, risk-free returns, usually in a short time period, from
27 an allegedly legitimate business venture. The fraud consists of funneling proceeds received
28 from new investors to previous investors in the guise of profits from the alleged business

1 venture, thereby cultivating an illusion that a legitimate profit-making business opportunity
2 exists and inducing further investment. *In re United Energy Corp.*, 944 F.2d 589, 590 n. 1 (9th
3 Cir. 1991).

4 As in a typical Ponzi scheme, the projected return for a Diski investor was \$572,300 for
5 each \$50,000 unit purchased. For Basilam, the project return was \$324,000 per each \$50,000
6 unit purchased. The projected return for a Hal-Rem investor on a \$100,000 unit was
7 \$4.4 million. (See *Brain Dec.* at Ex. 4).

8 **B. Transfers of Funds Obtained in a Ponzi Scheme are Fraudulent**
9 **Conveyances.**

10 In general, transfers of proceeds of a Ponzi scheme are fraudulent conveyances because
11 the funds are obtained by actual fraud. For a good overview of the applicable law, see
12 *In re Bayou Group, LLC*, 396 B.R. 810 at 842-852 (2008). Washington’s version of the
13 Uniform Fraudulent Conveyance Act, Chap. 19.40 RCW, is identical to the New York version
14 discussed in this opinion. RCW 7.60.060(1)(f) grants to a Receiver the power to “pursue in the
15 name of the receiver any claim under Chapter 19.40 RCW assertable by any creditor of the
16 person over whose property the receiver is appointed, if pursuit of the claim is determined by the
17 receiver to be appropriate.”

18 The relevant provisions of Washington’s Fraudulent Conveyance Act create a defense
19 for “good faith” transferees. See, RCW 19.40.081(b)(2). In sum, good faith is determined by an
20 objective standard. Good faith is generally lacking, however, where the transferee is on notice
21 of facts that would cause a reasonable person to conduct further inquiry, and where a diligent
22 inquiry would have discovered the improper purpose. *In re Bayou Group, LLC*, 396 B.R. at
23 844-845.

24 The Uniform Fraudulent Conveyance Act is normally construed to provide that profits
25 paid to an investor in a Ponzi scheme may be recovered irrespective of good faith. See, e.g.,
26 *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008); accord, *In re Bayou Group, LLC*, 396 B.R. 810.
27 If good faith is lacking, even principal may be recovered.

1 **C. Diski, Basilam, and Hal-Rem.**

2 Investors in Diski and Basilam received a return of about \$4.1 million over and above
3 their initial investment. Under the controlling authority, the amount of these transfers would
4 bear interest at the statutory rate as liquidated sums. Estimated interest to date would be in
5 excess of \$1 million. Recovery of these transfers would be an immediate focus of the
6 Receiver's activities.

7 It is not known whether any Hal-Rem investors received a distribution in excess of the
8 initial investment. However, this would be the subject of investigation by the Receiver.

9 **D. Rusnak Family Trust.**

10 Another immediate focus of the Receiver's activities would be transactions surrounding
11 the acquisition of the "assets" of Hal-Rem, two Production Sharing Agreements ("PSA") for
12 remote oil fields located in Indonesia. The PSA were purportedly purchased for \$10 million.
13 The funds used to purchase the PSA were borrowed from the Paul P. Rusnak Family Trust, a
14 California entity (the "Trust"). Paul Rusnak is the owner of the Rusnak Auto Group. The
15 Rusnak Auto Group operates Rolls Royce, Bentley, Volvo, Jaguar, Audi, Mercedes and Porsche
16 dealerships in Southern California.

17 The Trust loan documents are attached as Exhibit 5 to the *Brain Dec.* The Trust loan has
18 a six-month term and bears interest at 24%. The consideration for this loan also included
19 membership units in Hal-Rem worth \$7.5 million and 5 million shares of MCube common
20 stock. This would have constituted 5% of the authorized shares of MCube at that time.

21 The actual payment schedule to the Trust is shown in Exhibit 6 to the *Brain Dec.*
22 Between April 20, 2006 and May 22, 2007, the Trust was paid \$10.8 million, consisting of
23 \$10 million return of principal, \$711,000 in interest, and a \$98,500 dividend payment. All of
24 these payments are fraudulent conveyances under the applicable law because the source of each
25 was proceeds of illegal sales of securities as part of a Ponzi scheme. The only issue for
26 resolution in an action to recover these transfers would be the existence of a good-faith defense.

27 In commercial loan transactions, there is a direct correlation between the cost of the
28 borrowing to the borrower and the degree of risk the lender perceives in the loan. Loans at the

1 high end of risk/cost are called “hard money” loans, characterized by high interest rates, high
2 loan fees and short repayment schedules. The Trust loan is very “hard” money, indeed. A 24%
3 interest rate would be more common in unsecured consumer debt than a commercial transaction
4 fully secured by the assets of the borrower. The securities transferred to the Trust as equity
5 compensation had a face value in excess of 75% of the loan amount.

6 The terms are reflective of a company that is incapable of obtaining financing from any
7 kind of conventional source. Given that the Trust loan was fully secured by MCube’s rights to
8 payment, including revenues from Diski and Basilam, the Trust was obviously aware that
9 MCube was incapable of obtaining/borrowing from any other source and that there was
10 substantial risk of non-payment of the Trust loan. The fact that MCube was supposedly
11 generating millions of dollars in operating revenue from oil and gas sales is hard to reconcile
12 with an inability to obtain financing on more favorable terms.

13 Based on the actual payment schedule to the Trust (*Brain Dec.* at Ex. 6), the July 2006
14 payment was not made according to the terms of the Loan Agreement. The payment was split
15 into two pieces, with principal and interest paid a week apart. Again, this staggered payment
16 would be inconsistent with MCube supposedly generating millions of dollars in operating
17 revenue from oil and gas sales.

18 In conjunction with the Trust loan, Victoria Pearson, Mr. Rusnak’s daughter and a
19 beneficiary of the Trust, as well as a licensed attorney, was appointed to MCube’s Board.
20 Presumably, Ms. Pearson’s role included keeping an eye on her family’s significant investment
21 in MCube. A copy of the June 9, 2006 Board Minutes relating to Ms. Pearson’s election is
22 attached as Exhibit 7 to the *Brain Dec.*

23 As previously discussed, in late May 2006, the Securities Division instituted an
24 investigation of securities sales by MCube and the Subsidiaries. On August 9, 2006, the Board,
25 including Ms. Pearson, met in executive session to discuss the investigation. (*Brain Dec.* at
26 Ex. 8). MCube and the Subsidiaries did not curtail any fund-raising activities as a result of this
27 executive session. There is no evidence that anyone acting on behalf of the Trust engaged in any
28 further inquiry. Obviously, it would certainly not have been in the best interests of the Trust for

1 MCube and the Subsidiaries to cease fund-raising activities if, as the evidence suggests, the
2 Trust was aware that MCube had no other sources of repayment of the Trust debt. A total of
3 \$5.355 million was paid to the Trust after August 9, 2006. (*Brain Dec.* at Ex. 6).

4 MCube later sought to retain the law firm of Davis Wright Tremaine LLP (“Davis
5 Wright”) to act as securities counsel. In this regard, the Board received a proposed engagement
6 letter from Davis Wright on September 25, 2006. (*Brain Dec.* at Ex. 9). On the first page, the
7 letter discusses providing representation to MCube in conjunction with rescission offers.

8 A rescission offer is a mechanism for avoiding civil liability for violation of
9 Washington’s Securities Act (Chap. 21.20 RCW) arising under RCW 21.20.430(4)(b):

10 No person may sue under this section if the buyer or seller receives a written
11 rescission offer, which has been passed upon by the director before suit and at a
12 time when he or she owned the security, to refund the consideration paid together
13 with interest at eight percent per annum from the date of payment, less the
amount of any income received on the security in the case of a buyer, or plus the
amount of income received on the security in the case of a seller.

14 In other words, a seller of securities in violation of Washington’s Securities Act can avoid
15 liability by buying the securities back. The fact that the Board was contemplating a rescission
16 offer presupposes that it had already been determined that violations of Washington’s Securities
17 Act had occurred.

18 On September 26, 2006, MCube and the Trust entered into a Forbearance Agreement,
19 which allowed MCube to postpone payments under the Loan Agreement. (*Brain Dec.* at
20 Ex. 10). As part of the consideration for a two-month delay in payments, the Trust received
21 Hal-Rem LLC Units having a face value of \$2.5 million.

22 At a Board Meeting on October 6, 2006, the status of the Securities Division
23 investigation was once again discussed. (*Brain Dec.* at Ex. 11). The Davis Wright engagement
24 was discussed at this same meeting. By this time, each Board member (which included
25 Ms. Pearson) would have been aware of the need to make a rescission offer. With respect to the
26 Trust, this would certainly constitute inquiry notice, at a minimum, that the source of prior
27 payments could be proceeds of illegal securities sales. A total of \$3.57 million was paid to the
28 Trust after October 6, 2006. (*Brain Dec.* at Ex. 6).

1 At the end of October 2006, MCube hired attorney Jack Loftis as new general counsel to
2 address the securities issues. On November 19, 2006, Mr. Loftis issued a report in which he
3 concluded that the sales of securities by MCube and the Subsidiaries had violated applicable
4 securities regulations in a variety of ways, and further recommended that all securities sales
5 cease immediately (the "Loftis Report"). (*Brain Dec.* at Ex. 12). On that same date, a copy of
6 Loftis Report was e-mailed to Ms. Pearson at vpearson@rusnakgroup.net, the offices of the
7 Rusnak Auto Group and, presumably, the Trust. Mr. Loftis' employment with MCube was
8 terminated shortly thereafter.

9 Mr. Loftis' investigations did not extend to the financial dealings of MCube and the
10 Subsidiaries. His conclusions concerned violations independent of the violations arising from
11 the direct misrepresentation of corporate income.

12 The Securities Division issued a Cease and Desist Order to MCube and the Subsidiaries
13 on December 12, 2006. (*Brain Dec.* at Ex. 2). Even then, MCube and the Subsidiaries
14 continued to raise funds, with \$1.75 million being paid to the Trust after the date of the Order.
15 (*Brain Dec.* at Ex. 6). Depending on when inquiry notice occurred, the value of the claims
16 against the Trust would appear to be between \$2.25 million and \$7.5 million, excluding statutory
17 interest.

18 **E. Other Assets.**

19 It is unknown whether other assets exist that could be used to satisfy the claims of the
20 creditors. However, there are potential claims for breach of fiduciary duty that could be asserted
21 against officers and former directors of MCube.

22 **F. Proposed Course of Action.**

23 MCube's current Board, acting in conjunction with attorneys from the law firm of Smith
24 Alling Lane P.S. and Mr. Beecher, has already conducted substantial investigation into the
25 potential claims referenced above. Subject to approval of this Court, Smith Alling
26 Lane P.S. would be retained as special counsel to:

- 27 1. Initiate litigation to recover transfers made to the Trust;
- 28

2. Identify and document recoverable transfers made to Diski and Basilam investors and, as directed by the Receiver, initiate proceedings to recover those transfers;
3. Assist the Receiver, as requested, to review financial, banking and other records of MCube and the Subsidiaries to identify other assets/claims; and
4. Assist the Receiver, as requested, to evaluate claims against MCube and the Subsidiaries.

For its services, Smith Alling Lane P.S. would be paid a contingent fee equal to 30% of the gross proceeds of recovery for all services provided to the Receiver. The proposed contingent fee agreement is attached as Exhibit 13 to the *Brain Dec.*

MCube and the Subsidiaries are without assets to fund costs of the receivership or the proposed litigation. This would include the costs of retaining a forensic accountant, a practical necessity in cases of this kind.

MCube has been able to negotiate a funding mechanism with certain of the investors that will make \$77,500 available to be applied toward litigation costs, subject to this Court's approval of a Funding Agreement. Under the Funding Agreement, the investors agreeing to advance costs would be entitled to receive a return of their costs advanced, plus, as compensation for the advance, 6.5% of the gross proceeds realized from the total recovery. Despite extensive discussions with possible lenders, this arrangement is the only source of funding for costs offered to MCube. (*See Brain Dec.* at ¶ 26). A copy of the form Funding Agreement and a list of the funding investors are attached as Exhibits 14 and 15, respectively, to the *Brain Dec.*

III. EVIDENCE RELIED UPON

This Petition is based upon the following Declarations filed herewith:

1. Declaration of Paul E. Brain;
2. Declaration of Receiver William L. Beecher;
3. Declaration of Thomas Neu; and
4. Declaration of Michael Hinrichsen.

1 **IV. DISCUSSION**

2 **A. Dissolution is Authorized and Appropriate.**

3 All of the available evidence suggests that MCube and the Subsidiaries existed solely as
4 a vehicles for fund-raising through the illegal sales of securities. There is no evidence that either
5 MCube or any of the Subsidiaries ever conducted any legitimate business activities.

6 There is no meaningful way to seek shareholder consent to a dissolution of MCube. The
7 majority shareholders of MCube are the same persons who are under Federal indictment.

8 At present, MCube is exposed to creditor claims potentially in excess of \$65 million.
9 MCube has certain contract rights under the PSA for the Rembang and Halmahera fields.
10 MCube is substantially in arrears of its obligations under these PSA with no visible means to
11 cure the defaults. There is no evidence that the PSA have any asset value to MCube and the
12 Subsidiaries. As evidenced in the Neu and Hinrichsen Declarations filed herewith, MCube has
13 acknowledged, in writing, its incapacity to satisfy creditor claims as required under
14 RCW 23B.14.300(3)(b).

15 **B. Appointment of a Receiver is Authorized and Appropriate.**

16 Following the filing of a Petition for Dissolution under the provisions of
17 RCW 23B.14.300, a Court is authorized to appoint a Receiver under RCW 23B.14.320:

18 A court in a judicial proceeding brought under RCW 23B.14.300 may appoint
19 one or more general receivers to wind up and liquidate the business and affairs of
20 the corporation, or, if the corporation is not yet dissolved, may appoint one or
21 more custodial receivers to manage its business and affairs. The court shall hold
22 a hearing, after notifying all parties to the proceeding and any interested persons
23 designated by the court, before appointing a general or custodial receiver. The
24 hearing, and any resulting receivership, shall be conducted in accordance with
25 Chapter 7.60 RCW.

26 RCW 23B.14.320 dovetails with the provisions of RCW 7.60.025:

27 A receiver may be appointed by the superior court of this state in the following
28 instances, ...:

(u) In any action in which the dissolution of any public or private entity is
sought, in any action involving any dispute with respect to the ownership or
governance of such an entity, or upon the application of a person having an

1 interest in such an entity when the appointment is reasonably necessary to protect
2 the property of the entity or its business or other interests.

3 ***

4 (nn) In such other cases as may be provided for by law, or when, in the
5 discretion of the court, it may be necessary to secure ample justice to the parties.

6 Dissolution and the appointment of a Receiver are clearly appropriate here. MCube and the
7 Subsidiaries are without assets, have no prospects of conducting any legitimate business
8 activities, and are facing millions of dollars in creditor/investor claims.

9 The only rational and efficient way to administer and resolve creditor/investor claims in
10 this case is to consolidate collection in the hands of a single individual. There are approximately
11 300 creditors/investors in at least five different investment vehicles. This has created a
12 substantial internal conflict in that, for example, Hal-Rem investors, whose funds were used to
13 pay earlier Hal-Rem, Diski or Basilam investors, would all have claims against those earlier
14 investors.

15 Litigation of these claims on an individual basis would simply be chaos, not to mention a
16 huge waste of judicial resources and personal resources of the litigants. Appointment of a
17 Receiver to wind up the affairs of MCube and the Subsidiaries and to pursue creditor/investor
18 claims on a consolidated basis is clearly the most efficient method for realization on these claims
19 and resolution of competing claims. Likewise, appointment of a Receiver is the most
20 appropriate mechanism for determining what, if any, additional assets may be available to
21 satisfy creditor claims. Accordingly, Petitioners hereby request entry of the proposed Order
22 granting the requested relief.

23 DATED this 24th day of April, 2009.

24 SMITH ALLING LANE, P.S.

25 By 

26 Paul E. Brain, WSBA #13438

27 Mark B. Anderson, WSBA #25895

28 Attorneys for Petitioners