

HONORABLE FRANK E. CUTHBERTSON

Hearing Date: June 25, 2010

Hearing Time: 9:00 a.m.

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

In Re:

Case No. 09-2-08315-6

MCUBE PETROLEUM, INC., a Washington corporation;

NOTICE TO CREDITORS AND INTERESTED PARTIES OF HEARING ON RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT WITH THE PAUL P. RUSNAK FAMILY TRUST

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.

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

Hearing Date: Friday, June 25, 2010
Hearing Time: 9:00 a.m.
Response Due: Tuesday, June 22, 2010
Location: Pierce County Superior Court
930 Tacoma Avenue South, Tacoma, WA 98402

PLEASE TAKE NOTICE that William L. Beecher, in his capacity as Receiver for the entities identified in the caption above (hereinafter the "Receiver"), has filed a Motion with the

1 Court seeking entry of an Order approving a settlement with the Paul P. Rusnak Family Trust in
2 the litigation styled *Beecher v. Paul P. Rusnak Family Trust, et al.*, Pierce County Superior Court
3 Cause No. 09-2-12103-1. The settlement agreement for which the Receiver seeks approval calls
4 for the payment of \$2,705,000.00, all cash, by the Paul P. Rusnak Family Trust to the Receiver
5 within thirty days (30) days of Court approval of the settlement. The Receiver is also seeking
6 approval of payment of \$81,150 to the Receiver for professional fees and payment of \$238,325
7 to Litigation Cost Funding Participants, parties who advanced funding for the prosecution of this
8 litigation pursuant to the Litigation Cost Funding Agreement previously approved by this Court.

9 In sum, the claim against the Trust is a claim that loan repayments made to the Trust are
10 recoverable because they were made with the proceeds of fraudulent securities sales. The Trust
11 has asserted a defense that the payments made to it were received in good faith. "Good faith"
12 exists with respect to any given payment if, at the time of receipt, the Trust had no notice of
13 information which would cause a reasonable person to inquire into the source of the payments. If
14 the Trust had information suggesting that the source of the repayments was illegitimate and failed
15 to conduct inquiry, it lacked good faith.

16 The range of reasonable potential recovery in principal amount is \$5.6 million at the
17 upper end, based on a notice date of August 9, 2006. This is the total of payments to the Trust
18 after August 9, 2006. This is the date the MCube Board was informed of an investigation by the
19 Washington Department of Financial Institutions into MCube's securities sales. The
20 investigation, as of August 6, 2006, was not based on allegations of misuse of proceeds of
21 securities sales.

22 The low end of the range is \$700,000, the total of the interest paid to the Trust which
23 would be recoverable irrespective of good faith. Based on all of the information to date, the
24 Receiver does not believe that the recovery to the estate would be limited to this lower amount.

25 It is very likely that the date of distribution of the Loftis Report, November 19, 2006,
26 would be deemed to be the latest date of inquiry notice. The principal issue here is the potential
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1 that the Estate would be awarded an amount in excess of the \$1.75 million paid to the Trust after
2 November 19, 2006.

3 The only other reasonably likely recovery would be based on the August 9, 2006 date. In
4 terms of an award based on a date intermediate between the date of the Loftis Report and the
5 August 9, 2006 Board meeting, there is not a great deal of evidence which is either undisputed or
6 unambiguous that would support an intermediate date. The most likely results here are an award
7 of \$1.75 million or \$5.6 million, without any middle ground.

8 With respect to an August 9, 2006 date, there certainly is some potential that this date
9 would be determined to be the notice date. However, there are numerous unresolved issues of
10 fact as well as facts that would allow a finder of fact to conclude that disclosure of the DFI
11 investigation would not constitute inquiry notice without information establishing the misuse of
12 investor funds. It is unquestionably the case that realization on a claim based on this notice date
13 would involve extensive discovery, trial and an appeal. It is unlikely that creditors of this estate
14 would receive any distribution for a period of years.

15 The proposed settlement amount exceeds the amount recoverable if the Receiver
16 establishes the date of the Loftis Report as the date of inquiry notice by \$1 million. By agreeing
17 to the settlement amount, the Trust has acknowledged a risk that it could be determined to be
18 liable in a greater amount, including some amount of pre-judgment interest. By accepting the
19 settlement amount, the Receiver has eliminated the potential that the Estate would be involved in
20 protracted litigation which might not produce a better result. Accordingly, the Receiver requests
21 that this settlement be approved as fair and reasonable.

22 Any party desiring information as to the details of the proposed settlement may request
23 same from the Clerk of the Court or from the undersigned counsel.

24 IF YOU OPPOSE the motion, you must file your written response with the Clerk of the
25 Court, serve two copies on the Judge's chambers and deliver copies to the undersigned NOT
26 LATER THAN THE RESPONSE DATE, which is **Tuesday, June 22, 2010**.

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

4 DATED this 21ST day of May 2010.

6 ANDERSON LAW FIRM PLLC

7 Mark Anderson by FEB
8 Mark B. Anderson, WSBA #25895 (co-counsel)
9 Counsel for William L. Beecher, Receiver