

SCHEDULE P

WES-L  
March 9/93

(V-12-468736 006)

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNA GOLDSMITH

Plaintiff

- and -

POSEIDON CONCEPTS CORP., A. SCOTT DAWSON, MATT MACKENZIE,  
LYLE MICHALUK and HARLEY L. WINGER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

Date November 27, 2012

Issued by

*Sagaria*  
M. Sagaria  
Registrar

Local Registrar

Address of 393 University Ave. - 10th Fl.  
court office Toronto ON M5G 1E6

**TO:** Poseidon Concepts Corp.  
645-7th Avenue SW, Suite 1200  
Calgary, Alberta T2P 4G8  
Canada

**AND TO:** A. Scott Dawson  
Poseidon Concepts Corp.  
645-7th Avenue SW, Suite 1200  
Calgary, Alberta T2P 4G8  
Canada

**AND TO:** Lyle Michaluk  
Poseidon Concepts Corp.  
645-7th Avenue SW, Suite 1200  
Calgary, Alberta T2P 4G8  
Canada

**AND TO:** Harley L. Winger  
Poseidon Concepts Corp.  
645-7th Avenue SW, Suite 1200  
Calgary, Alberta T2P 4G8  
Canada

**AND TO:** Matt Mackenzie  
Poseidon Concepts Corp.  
645-7th Avenue SW, Suite 1200  
Calgary, Alberta T2P 4G8  
Canada

**DEFINED TERMS**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
  - (a) "**ABCA**" means the *Business Corporations Act (Alberta)*, RSA 2000, c B-9, as amended;
  - (b) "**AIF**" means Annual Information Form;
  - (c) "**AR**" means accounts receivable;
  - (d) "**CJA**" means the *Ontario Courts of Justice Act*, RSO 1990, c C-43, as amended;
  - (e) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired PSN's Securities on or before November 14, 2012, other than the **Excluded Persons**;
  - (f) "**CPA**" means the *Ontario Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
  - (g) "**Dawson**" means the defendant, A. Scott Dawson;
  - (h) "**Defendants**" means PSN and the **Individual Defendants**;
  - (i) "**Excluded Persons**" means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;
  - (j) "**IFRS**" means International Financial Reporting Standards;
  - (k) "**Individual Defendants**" means Dawson, MacKenzie, Michaluk and Winger, collectively;
  - (l) "**Impugned Documents**" (each being an **Impugned Document**) means, collectively, the Q3 2011 financial statements, filed November 8, 2011; the Q3

2011 MD&A, filed November 8, 2011; the 2011 financial statements, filed March 22, 2012; the 2011 MD&A, dated March 22, 2012; the AIF filed March 29, 2012; the Q1 2012 financial statements, filed May 9, 2012; the Q1 2012 MD&A filed May 9, 2012; the Q2 2012 financial statements filed August 8, 2012; the Q2 2012 MD&A, filed August 8, 2012 and the *Prospectus*;

- (m) "MacKenzie" means the defendant, Matt MacKenzie;
- (n) "MD&A" means Management's Discussion and Analysis;
- (o) "Michaluk" means the defendant Lyle Michaluk;
- (p) "New Open Range" means, Open Range Energy Corp, the successor to Open Range;
- (q) "Open Range" means Open Range Energy Corp, the predecessor company of PSN and New Open Range;
- (r) "*OSA*" means the *Securities Act*, RSO 1990 c S.5, as amended;
- (s) "Plaintiff" means the plaintiff, Joanna Goldsmith;
- (t) "Prospectus" means the prospectus dated January 26, 2012;
- (u) "PSN" means the defendant, Poseidon Concepts Corp.;
- (v) "Representation" means the statement, express or implied, that PSN's financial statements fairly presented its financial position, financial performance and cash flows;
- (w) "Securities" means PSN's common shares, notes or other securities, as that term is defined in the *OSA*;
- (x) "SEDAR" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;

- (y) "Securities Legislation" means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (z) "TSX" means the Toronto Stock Exchange; and
- (aa) "Winger" means the defendant, Harley L. Winger.

## CLAIM

### 2. The Plaintiff claims:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class;
- (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;

- (d) A declaration that PSN is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) On behalf of all of the Class Members who purchased PSN's common shares in the distribution to which the Prospectus related:
  - (i) rescission; or
  - (ii) in the alternative, and as against all of the Defendants, general damages in the sum of \$51,000,000;
- (f) On behalf of all Class Members, general damages in the sum of \$200 million;
- (g) A declaration that Winger, Dawson and Michaluk were unjustly enriched;
- (h) A constructive trust, accounting or such other equitable remedy as may be available as against Winger, Dawson and Michaluk;
- (i) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (j) Prejudgment and post judgment interest;
- (k) Costs of this action plus, pursuant to s 26(9) of the CPA, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (l) Such further and other relief as to this Honourable Court may seem just.

### **The Parties**

#### *The Defendants*

- 3. PSN is an oil and natural gas service and supply company formed pursuant to the ABCA.

4. PSN is a successor of Open Range. On November 1, 2011, Open Range completed a reorganization transaction. As a result of this reorganization, PSN became an independent entity carrying on the energy service and supply business. New Open Range is the successor to the Open Range business other than that which became PSN.
5. At all material times, PSN was a reporting issuer in all provinces of Canada. At all material times, PSN's shares were listed for trading on the TSX under the ticker symbol "PSN," and also traded on alternative stock exchanges in Canada. PSN Securities also trade in Frankfurt and over-the-counter in the United States.
6. On January 26, 2012, PSN issued the Prospectus. The Individual Defendants signed the Prospectus. The Prospectus, with its overallotment, issued to the public a total of 6,347,000 common shares at a price of \$13.00 per share for gross proceeds of \$82,511,000.
7. The Prospectus incorporated various documents by reference, including PSN's Q3 2011 financial statements and MD&A, both of which are Impugned Documents. False statements made in documents incorporated into the Prospectus are false statements made in the Prospectus and render the Prospectus false and misleading.
8. As a reporting issuer in Ontario, PSN was required to issue and file with SEDAR:
  - (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

- (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, an MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

9. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

10. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

11. At all material times Michaluk was the Chief Executive Officer ("CEO") and a director of PSN. Previously, he had been the Chief Financial Officer ("CFO") of Open Range. Michaluk is "a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning."

12. At all material times MacKenzie was the CFO of PSN.
13. At all material times Dawson was Chairman of the board of directors of PSN and a director. Previously, he had been the CEO of Open Range. He is currently the CEO of New Open Range. Dawson is a member of PSN's audit committee.
14. At all material times Winger was a director of PSN. Winger was a director of Open Range and is a director of New Open Range.

*The Plaintiff*

15. Goldsmith is an individual residing in British Columbia who purchased PSN shares before November 14, 2012.

**Factual Allegations**

16. As a reporting issuer in Ontario, PSN files various reports for the benefit of the market and the Class. Prior to November 14, 2012, PSN represented that:

- (a) its internal controls over routine and non-complex accounting transactions were functioning adequately:

The Corporation evaluated the design of its internal controls over financial reporting as at [end of period]. During this evaluation the Corporation identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly at [end of period];

- (b) it had a policy for evaluation of its AR:

**Allowance for Doubtful Trade Receivables**

Poseidon evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant. This process involves a high degree of judgment and estimation and frequently involves significant dollar amounts. Accordingly, the Corporation's results of operations could be affected by adjustments to the allowance due to actual write-offs that differ from estimated amounts;

- (c) its financial statements were prepared in accordance with IFRS; and
- (d) it had not taken an allowance for doubtful AR.

17. AR is not a "complex" or "non-routine accounting transaction."

18. Pursuant to IFRS, if PSN recorded an allowance for doubtful AR, it was required to disclose that it took that allowance and the amount of that allowance. PSN did not disclose such an allowance. PSN did not take an allowance.

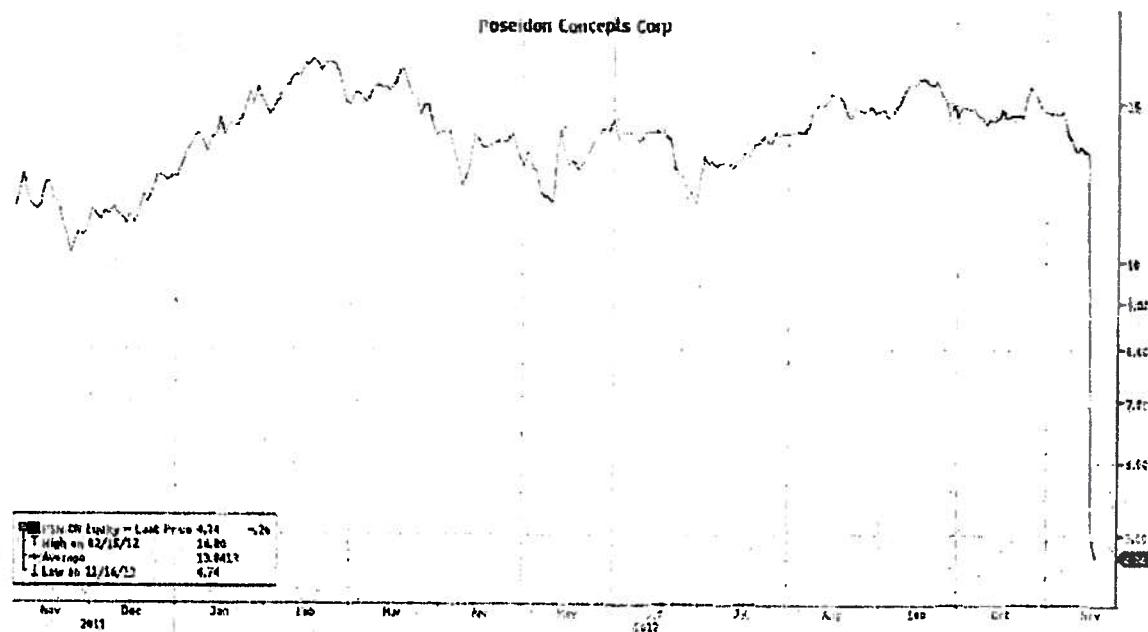
19. On November 14, 2012, PSN revealed for the first time that its internal controls were ineffective and that it had materially overstated its AR. On that date, it reported financial and operating results for the three and nine months ending September 30, 2012 (Q3 2012), and PSN:

- (a) recorded a charge of \$9.5 million for uncollectible debt, reducing its AR asset and taking a charge to its net income;
- (b) reported significant increase in the size of its AR portfolio, to \$125.5 million (net of the \$9.5 million write-off) including \$36 million past due (outstanding for more than 120 days);
- (c) reported that "Based on the payment experience and financial condition of its customer base, Poseidon anticipates collection progress on the amounts due, but

both the timing and magnitude of ultimate collections remain risks" (previously, in the Q2 2012 MD&A, PSN had falsely stated that it "does not anticipate any material collection issues on the amounts due");

- (d) introduced a credit policy to mitigate the problems with doubtful receivables: "The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established";
- (e) reported that it "concluded that its internal controls over financial reporting were not completely effective as at September 30, 2012"; and
- (f) disclosed that only 38% of its AR portfolio was due from investment grade parties.

20. As a result of these disclosures, PSN's share price plummeted and the Class Members lost hundreds of millions of dollars. On November 14, PSN common shares had closed at \$13.22. On November 15, after the Defendants belatedly revealed the truth, PSN shares fell 62.2% to \$5.00 on extraordinarily high volume, and did so as a result of the disclosure of the truth:



21. On or about November 16, 2012, Michelle-Louise Rye, an employee of PSN, provided further detail on PSN's AR:

As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue, since this was brought to our attention in late Q3 just prior to releasing our results we have been diligently trying to resolve outstanding accounts of customers. Regardless, we are focused on a long term strategy, not short term results.

22. PSN authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye communicated to the market and investors on behalf of PSN. Statements by Michelle-Louise Rye with regard to PSN are statements of PSN.

#### **PSN Was Required to Take AR Allowances**

23. Pursuant to its "Allowance for Doubtful Trade Receivables" policy and IFRS, PSN was required to record an allowance against its AR where "a thorough review of collection

experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors" required it.

24. Through this allowance, PSN would ensure that it was not recording an asset for accounts that it would not collect. If it did not record this allowance, as its own policies and IFRS required, PSN's assets, and thus balance sheet, would be inflated, false and materially misleading. Additionally, if it did not record this allowance, its net income figure would be materially overstated, false and misleading. 

25. PSN was required to take an AR allowance due to, among other things:

- (a) the age of its AR;
- (b) the size of its AR;
- (c) the rate by which its AR increased;
- (d) the amount of its AR that was past due;
- (e) the rate by which its past due AR increased;
- (f) the fact that only 38% of its total accounts receivable portfolio was due from investment grade parties;
- (g) the ongoing "receivables problem"; and
- (h) the fact that PSN was a successor to Open Range, that Dawson, Michaluk and Winger were involved in Open Range's allowance policy and the implementation of the same, and that *Open Range took AR allowances*.

26. The Defendants monitored the amount, timing and quality of the AR at all material times. For example, the Defendants were aware of the amount, timing and quality of PSN's AR in part because, pursuant to the terms of PSN's \$50 million credit facility, the availability

of credit was "dependent in part on the amount, timing and quality of the Corporation's accounts receivable."

27. Under the terms of the facility, a "material impairment or aging of accounts receivable or a reduction of the credit worthiness of the debtor . . . could materially reduce . . . the bank credit available to the Corporation and possibly caus[e] a portion of such bank debt to be required to be repaid." Any issues with the facility could affect PSN's ability to fund ongoing operations.
28. Dawson and Michaluk were the CEO and CFO, respectively, of Open Range, predecessor to PSN. In that role, both had overseen the implementation of Open Range's allowance for doubtful trade receivables policy.
29. Winger was a director of Open Range. In that role, he approved of its financial statements.
30. Winger, Dawson and Michaluk were involved in the process by which Open Range took allowances against AR.
31. Open Range was required to, and had, recorded allowances against its AR, in the following amounts:

Period	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q3 2008	\$9.38 million	\$523,000	Nil
Q4 2008	\$18.46 million	\$785,000	Nil
Q1 2009	\$4.45 million	\$785,000	Nil

Period	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q2 2009	\$1.76 million	\$1.05 million	Nil
Q3 2009	\$2.99 million	\$1.05 million	Nil
Q4 2009	\$10.50 million	\$949,000	\$94,000
Q1 2010	\$9.20 million	\$949,000	Nil

32. New Open Range, the successor to Open Range (other than the business that became PSN), had AR, some or all of which was inherited from Open Range. The largest portion of that AR was due from "Oil and natural gas marketing companies." New Open Range, and the business that would become New Open Range, "historically [had] not experienced any collection issues with its oil and natural gas marketers." Open Range and New Open Range "transact[] with creditworthy customers."

#### **False and Misleading Statements**

33. In each of the Impugned Documents that is a financial statement, PSN recorded an AR asset:

Period	Accounts Receivable at Period End
2011 Annual	\$53.6 million
Q1 2012	\$83 million
Q2 2012	\$118.6 million
Q3 2012	\$125.5 million

34. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR, and the AR was thus overstated and false, as was PSN's reported assets and shareholders' equity.

35. In each of the Impugned Documents that is a financial statement or MD&A, PSN reported net income:

Period	Net Income
Q4 2011	\$18.7 million
Q1 2012	\$ 29.64 million
Q2 2012	\$ 31.18 million
Q3 2012	\$ 7.83 million

36. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR. Accordingly, PSN's net income was overstated and false.

37. In each of the Impugned Documents that is an MD&A, PSN stated that it had "identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly." This statement was false and misleading because, as it would later admit, "its internal controls over financial reporting were not completely effective," it had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem."

38. In the 2011 MD&A, PSN represented that it (then and in the future) evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant.

This statement was false and misleading because, as it would later admit, PSN lacked "a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions," did not establish Credit limits for each customer, had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem," and had taken no steps, prior to "in late Q3" 2012, to "diligently . . . resolve outstanding accounts of customers." PSN did not "evaluate[] its trade receivables" sufficiently, as required or at all, and did not "thorough[ly] review [its] collection experience, current aging status of the customer accounts, [or] financial condition of the Corporation's customers."

39. Had PSN properly implemented and followed its claimed "Allowance for Doubtful Trade Receivables" policy and IFRS, it would have taken an allowance against its AR, would not have misstated its AR, and would not have misstated its net income or reported inflated assets.

40. In the AIF dated April 26, 2012, which is an Impugned Document, PSN falsely stated that it "assesses the credit worthiness of its customers and monitors accounts receivable on a regular, ongoing basis." This statement was false and misleading because, as it

would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”

41. In the Q2 2012 MD&A, which is an Impugned Document, PSN falsely stated that “Management conducts frequent detailed reviews of the accounts receivable amounts outstanding as part of its ongoing credit risk assessment procedures.” This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”
42. The truth of each of the statements particularized in this section are material facts and were required to be disclosed in the Prospectus, but were not. Accordingly, the Prospectus was materially false and misleading.
43. As a result of the forgoing, the Representation was false in that PSN’s financial statements did not fairly present its financial position, financial performance and cash flows.

**Winger, Dawson and Michaluk Sell Securities**

44. Winger, Dawson and Michaluk sold securities of PSN prior to November 14, 2012:

- (a) on November 14, 2011, Winger sold a total of 238,464 Poseidon shares indirectly held in the public market for gross proceeds of \$2.64 million;
- (b) on November 14, 2011, Winger sold a total of 75,523 Poseidon shares directly held in the public market for gross proceeds of approximately \$860,000;
- (c) on November 14, 2011, Dawson sold 1,000,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$11 million;
- (d) on November 14, 2011, Michaluk sold 675,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$7.46 million;
- (e) on February 9, 2012, Winger sold 30,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$480,000;
- (f) on February 9, 2012, Winger sold 30,000 Poseidon shares directly held in the public market for gross proceeds of \$486,000;
- (g) on February 27, 2012, Dawson sold a total of 400,032 Poseidon shares directly held in the public market for gross proceeds of \$6.36 million; and
- (h) on February 27, 2012, Dawson sold a total of 400,032 Poseidon shares in the public market for gross proceeds of \$6.36 million.

**Claims***Statutory Liability for Misrepresentations in the Prospectus Pursuant to Section 130 of the OSA*

45. As against PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus

and during the distributions to which the Prospectus related, the Plaintiff asserts the cause of action found in s 130 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

*Negligence Simpliciter*

46. As against the Defendant PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts negligence simpliciter.
47. PSN and, by virtue of their position of authority and responsibility within PSN, each of the Individual Defendants, owed a duty to ensure that the Prospectus made full, true and plain disclosure of all material facts relating to the securities offered thereby, or was materially accurate and complete.
48. The reasonable standard of care expected in the circumstances required the Defendants to prevent the distributions to which the Prospectus related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectus or in the documents incorporated therein by reference.
49. Accordingly, the Defendants have violated their duties to those Class Members who purchased pursuant to the Prospectus.
50. PSN and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure the maintenance of adequate internal controls to ensure that PSN's disclosure documents fairly and fully presented the business and affairs of PSN on a timely basis.

51. Had the Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectus related, then securities regulators likely would not have issued a receipt for the Prospectus, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of PSN's shares.

*Unjust Enrichment as against Winger, Dawson and Michaluk*

52. As a result of the Representation and the other misrepresentations particularized above, PSN's shares traded, and were sold by Winger, Dawson and Michaluk, at artificially inflated prices.
53. Winger and Dawson were enriched by their wrongful acts and omissions and the Class Members who purchased PSN shares from such Defendants suffered a corresponding deprivation.
54. There was no juristic reason for the resulting enrichment of Winger, Dawson and Michaluk.
55. The Class Members who purchased PSN shares from Winger, Dawson and Michaluk are entitled to the price they paid to such Defendants for such shares.

*Statutory Liability for Misrepresentations Pursuant to Part XXIII.1 of the OSA*

56. The Plaintiff pleads the claim found in Part XXIII.1 of the *OSA*, and, if required, the equivalent sections of the Securities Legislation other than the *OSA*, against all Defendants.
57. Each of the Impugned Documents is a core document within the meaning of the Securities Legislation.

58. As particularized above, each of the Impugned Documents contains one or more misrepresentations.
59. PSN is a responsible issuer within the meaning of the Securities Legislation. Dawson, Michaluk and Winger are directors of PSN and were at all material times. Michaluk and MacKenzie are officers of PSN and were at all material times.
60. Michaluk and MacKenzie authorized, permitted or acquiesced in the release of the Impugned Documents. Michaluk and MacKenzie falsely certified the accuracy of the Impugned Documents. Michaluk and MacKenzie caused the Impugned Documents to be released through instructing PSN employees to release the Impugned Documents, among other things.

*Negligent Misrepresentation*

61. On behalf of all Class Members who acquired PSN's Securities in the secondary market, the Plaintiff pleads negligent misrepresentation for all of the Impugned Documents.
62. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. The Representation was untrue for the reasons particularized elsewhere herein.
63. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase PSN securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase PSN securities.

64. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of PSN's publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.
65. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed PSN's AR. The Defendants breached that duty by making the Representation as particularized above.
66. The Plaintiff and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of PSN, and suffered damages when the falsity of the Representation was revealed.
67. Alternatively, the Plaintiff and the other Class Members relied upon the Representation by the act of purchasing PSN securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of PSN. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of PSN's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiff and Class Members.

*Vicarious Liability*

68. In addition to their direct liability, PSN is vicariously liable for the acts and/or omissions of each of their respective officers, directors, partners and/or employees as set out above.

**The Relationship between PSN's Disclosures and the Price of Its Securities**

69. The issuance of the Impugned Documents directly affected the price of PSN's Securities. The Defendants were aware at all material times of the effect of PSN's disclosure

documents upon the price of its securities. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

70. PSN routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. PSN provided either copies of the Impugned Documents or links thereto on its website. PSN maintains a website in part to communicate with the Class and prospective investors.
71. PSN regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time PSN communicated that new material information about its financial results to the public it directly affected the price of PSN Securities.
72. PSN was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase PSN Securities in such reports were based, in whole or in part, upon that information.
73. PSN Securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which PSN Securities traded promptly incorporated material information from PSN's disclosure documents about PSN's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by PSN, as well as by other means.

**Real and Substantial Connection with Ontario**

74. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other thing:

- (a) PSN is a reporting issuer in Ontario;
- (b) PSN securities trade on the TSX which is located in Toronto, Ontario;
- (c) the Impugned Documents were disseminated in Ontario;
- (d) a substantial proportion of the Class Members reside in Ontario; and
- (e) a substantial portion of the damages sustained by the Class were sustained in Ontario.

**Service Outside of Ontario**

75. The Plaintiff may serve the Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because it is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

**Relevant Legislation**

76. The Plaintiff pleads and relies on the *Courts of Justice Act*, RSO 1990, c C.43, the *CPA* and the Securities Legislation, all as amended.

**Place of Trial**

77. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

78. The Plaintiff will serve a jury notice.

November 27, 2012

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Lawyers for the Plaintiff

CV-12-46873600cp

JOANNA GOLDSMITH  
Plaintiff

POSEIDON CONCEPTS CORP. et al.  
And  
Defendants

Court File No.:

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto  
Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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**Justice****Québec** **Bordereau de transmission par télécopieur****Direction des services judiciaires de la métropole****DGA - Métropole**

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Montréal (Québec) H2Y 1B6

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CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
NO

500-06-000633-129

(Class Action)  
SUPERIOR COURT

---

**Marian Lewis**, residing at 33 Maywood, Apt 409, Pointe-Claire, Quebec, H9R 6B9;

Petitioner

V.

**POSEIDON CONCEPTS CORP.**, a legal person established pursuant to the Business Corporations Act (Alberta), having a principal establishment at 645-7<sup>th</sup> Avenue SW, Suite 1200 Calgary, Alberta, T2P 4G8;

and

**A. Scott Dawson**, Poseidon Concepts Corp., 645-7<sup>th</sup> Avenue SW, Suite 1200 Calgary, Alberta, T2P 4G8;

and

**Lyle Michaluk**, Poseidon Concepts Corp., 645-7<sup>th</sup> Avenue SW, Suite 1200 Calgary, Alberta, T2P 4G8;

and

**Harley L. Winger**, Poseidon Concepts Corp., 645-7<sup>th</sup> Avenue SW, Suite 1200 Calgary, Alberta, T2P 4G8;

and

**Matt Mackenzie**, Poseidon Concepts Corp., 645-7<sup>th</sup> Avenue SW, Suite 1200 Calgary, Alberta, T2P 4G8.

Defendants

**MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN  
TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT  
("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Article 1002 C.C.P. and following and 225.4 QSA and following)**

---

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES AS FOLLOWS:**

**General Presentation**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings

- "**ABCA**" means the *Business Corporations Act (Alberta)*, RSA 2000, c B-9, as amended;
- "**AIF**" means Annual Information Form;
- "**AR**" means accounts receivable;
- "**Class**" and "**Class Members**" mean all persons or entities (other than the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate families of the individual named defendants) who purchased or otherwise acquired, PSN's Securities on or before November 14, 2012, and who are resident in Quebec or who were resident in Quebec at the time of their acquisition of those securities and who are not precluded from participating in a class action by virtue of Article 999 of the Quebec Code of Civil Procedure, RSQ, c C-25;
- "**Dawson**" means the defendant, A. Scott Dawson;
- "**Defendants**" means **PSN** and the **Individual Defendants**;
- "**Excluded Persons**" means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and

assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;

- “**IFRS**” means International Financial Reporting Standards;
- “**Individual Defendants**” means **Dawson, MacKenzie, Michaluk and Winger**, collectively;
- “**Impugned Documents**” (each being an **Impugned Document**) means, collectively, the Q3 2011 financial statements, filed November 8, 2011; the Q3 2011 MD&A, filed November 8, 2011; the 2011 financial statements, filed March 22, 2012; the 2011 MD&A, dated March 22, 2012; the AIF filed March 29, 2012; the Q1 2012 financial statements, filed May 9, 2012; the Q1 2012 MD&A filed May 9, 2012; the Q2 2012 financial statements filed August 8, 2012; the Q2 2012 MD&A, filed August 8, 2012 and the **Prospectus**;
- “**MacKenzie**” means the defendant, Matt MacKenzie;
- “**MD&A**” means Management’s Discussion and Analysis;
- “**Michaluk**” means the defendant Lyle Michaluk;
- “**New Open Range**” means, Open Range Energy Corp., the successor to **Open Range**;
- “**Open Range**” means Open Range Energy Corp., the predecessor company of **PSN** and **New Open Range**;
- “**QSA**” means the *Securities Act*, chapter V-1.1, as amended;
- “**Plaintiff**” means the plaintiff, Marian Lewis;
- “**Prospectus**” means the prospectus dated January 26, 2012;
- “**PSN**” means the defendant, Poseidon Concepts Corp.;
- “**Representation**” means the statement, express or implied, that **PSN**’s financial statements fairly presented its financial position, financial performance and cash flows;
- “**Securities**” means **PSN**’s common shares, notes or other securities, as that term is defined in the **QSA**;

- "**SEDAR**" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- "**Securities Legislation**" means, collectively, the *Securities Act*, RSQ c V-1.1, as amended, the *Securities Act*, RSO 1990 c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- "**TSX**" means the Toronto Stock Exchange; and
- "**Winger**" means the defendant, Harley L. Winger.

2. The Petitioner wishes to institute a class action on behalf of the following group, of which he is a member (the "Class"):

"All persons or entities (other than the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate families of the individual named defendants) who purchased or otherwise acquired, PSN's Securities on or before November 14, 2012, and who are resident in Quebec or who were resident in Quebec at the time of their acquisition of those securities and who are not precluded from participating in a class action by virtue of Article 999 of the Quebec Code of Civil Procedure, RSQ, c C 25."

or such other group definition as may be approved by the Court.

## THE PARTIES

### The Petitioner

3. The Petitioner purchased 200 shares of PSN at \$13.20 per share, the whole as appears from the notice of purchase dated January 18, 2012, a copy produced herewith as **Exhibit P-1**;

## The Defendants

4. The PSN is an oil and natural gas service and supply company formed pursuant to the *ABCA*;
5. PSN is a successor of Open Range. On November 1, 2011, Open Range completed a reorganization transaction. As a result of this reorganization, PSN became an independent entity carrying on the energy service and supply business. New Open Range is the successor to the Open Range business other than that which became PSN;
6. At all material times, PSN was a reporting issuer in all provinces of Canada. At all material times, PSN's shares were listed for trading on the TSX under the ticker symbol "PSN," and also traded on alternative stock exchanges in Canada. PSN Securities also trade in Frankfurt and over-the-counter in the United States;
7. On January 26, 2012, PSN issued the Prospectus. The Individual Defendants signed the Prospectus. The Prospectus, with its overalotment, issued to the public a total of 6,347,000 common shares at a price of \$13.00 per share for gross proceeds of \$82,511,000;
8. The Prospectus incorporated various documents by reference, including PSN's Q3 2011 financial statements and MD&A, both of which are Impugned Documents. False statements made in documents incorporated into the Prospectus are false statements made in the Prospectus and render the Prospectus false and misleading;
9. As a reporting issuer in Quebec, PSN was required to issue and file with SEDAR:
  - within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
  - within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
  - contemporaneously with each of the above, an MD&A of each of the above financial statements; and
  - within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point

in time in the context of its historical and possible future development.

10. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future;
11. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically;
12. At all material times, Michaluk was the Chief Executive Officer ("CEO") and a director of PSN. Previously, he had been the Chief Financial Officer ("CFO") of Open Range. Michaluk is "a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning";
13. At all material times, MacKenzie was the CFO of PSN;
14. At all material times, Dawson was Chairman of the board of directors of PSN and a director. Previously, he had been the CEO of Open Range. He is currently the CEO of New Open Range. Dawson is a member of PSN's audit committee;
15. At all material times Winger was a director of PSN. Winger was a director of Open Range and is a director of New Open Range;

## THE FACTS

16. As a reporting issuer in Quebec, PSN files various reports for the benefit of the market and the Class. Prior to November 14, 2012, PSN represented that:
  - (a) its internal controls over routine and non-complex accounting transactions were functioning adequately:  
The Corporation evaluated the design of its internal controls over financial reporting as at [end of period]. During this evaluation the Corporation identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that

may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly at [end of period];

(b) It had a policy for evaluation of its AR:

#### Allowance for Doubtful Trade Receivables

Poseidon evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant. This process involves a high degree of judgment and estimation and frequently involves significant dollar amounts. Accordingly, the Corporation's results of operations could be affected by adjustments to the allowance due to actual write-offs that differ from estimated amounts;

(c) its financial statements were prepared in accordance with IFRS; and

(d) it had not taken an allowance for doubtful AR.

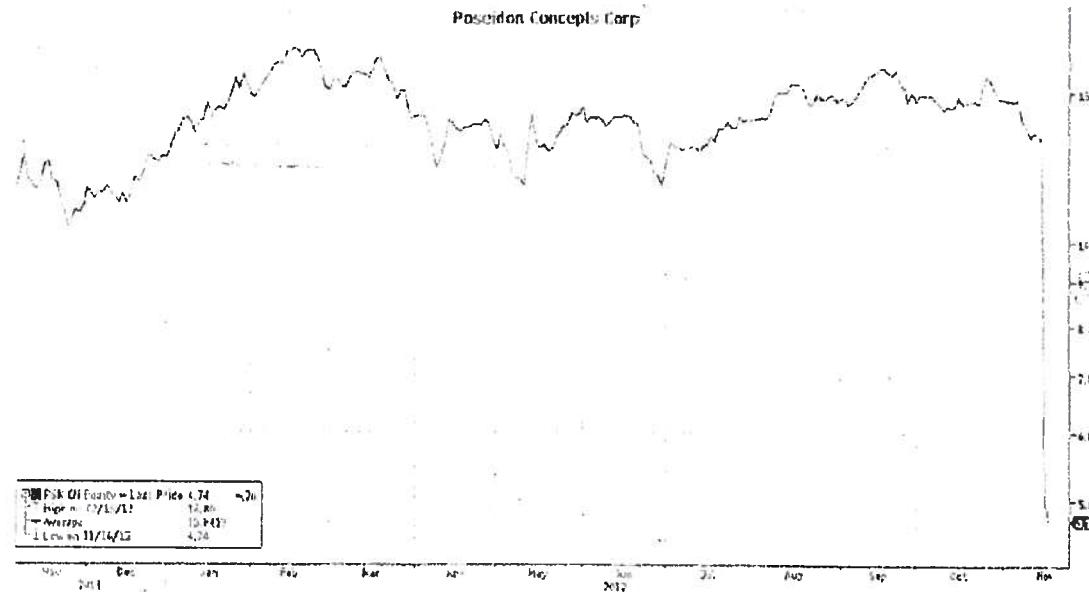
17. AR is not a "complex" or "non-routine accounting transaction";

18. Pursuant to IFRS, if PSN recorded an allowance for doubtful AR, it was required to disclose that it took that allowance and the amount of that allowance. PSN did not disclose such an allowance. PSN did not take an allowance;

19. On November 14, 2012, PSN revealed for the first time that its internal controls were ineffective and that it had materially overstated its AR. On that date, it reported financial and operating results for the three and nine months ending September 30, 2012 (Q3 2012), and PSN:

- (a) recorded a charge of \$9.5 million for uncollectible debt, reducing its AR asset and taking a charge to its net income;
- (b) reported significant increase in the size of its AR portfolio, to \$125.5 million (net of the \$9.5 million write-off) including \$36 million past due (outstanding for more than 120 days);
- (c) reported that "Based on the payment experience and financial condition of its customer base, Poseidon anticipates collection progress on the amounts due, but both the timing and magnitude of ultimate collections remain risks" (previously, in the Q2 2012 MD&A, PSN had falsely stated that it "does not anticipate any material collection issues on the amounts due");
- (d) introduced a credit policy to mitigate the problems with doubtful receivables: "The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation, only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established";
- (e) reported that it "concluded that its internal controls over financial reporting were not completely effective as at September 30, 2012"; and
- (f) disclosed that only 38% of its AR portfolio was due from investment grade parties.

20. As a result of these disclosures, PSN's share price plummeted and the Class Members lost hundreds of millions of dollars. On November 14, PSN common shares had closed at \$13.22. On November 15, after the Defendants belatedly revealed the truth, PSN shares fell 62.2% to \$5.00 on extraordinarily high volume, and did so as a result of the disclosure of the truth;



21. On or about November 16, 2012, Michelle-Louise Rye, an employee of PSN, provided further detail on PSN's AR:

"As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue, since this was brought to our attention in late Q3 just prior to releasing our results. we have been diligently trying to resolve outstanding accounts of customers. Regardless, we are focused on a long term strategy, not short term results."

22. PSN authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye communicated to the market and investors on behalf of PSN. Statements by Michelle-Louise Rye with regard to PSN are statements of PSN;

#### **PSN Was Required to Take AR Allowances**

23. Pursuant to its "Allowance for Doubtful Trade Receivables" policy and IFRS, PSN was required to record an allowance against its AR where "a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors" required it;

24. Through this allowance, PSN would ensure that it was not recording an asset for accounts that it would not collect. If it did not record this allowance, as its own policies and IFRS required, PSN's assets, and thus

balance sheet, would be inflated, false and materially misleading. Additionally, if it did not record this allowance, its net income figure would be materially overstated, false and misleading;

25. PSN was required to take an AR allowance due to, among other things:
  - (a) the age of its AR;
  - (b) the size of its AR;
  - (c) the rate by which its AR increased;
  - (d) the amount of its AR that was past due;
  - (e) the rate by which its past due AR increased;
  - (f) the fact that only 38% of its total accounts receivable portfolio was due from investment grade parties;
  - (g) the ongoing "receivables problem"; and
  - (h) the fact that PSN was a successor to Open Range, that Dawson, Michaluk and Winger were involved in Open Range's allowance policy and the implementation of the same, and that *Open Range took AR allowances*.
26. The Defendants monitored the amount, timing, and quality of the AR at all material times. For example, the Defendants were aware of the amount, timing and quality of PSN's AR in part because, pursuant to the terms of PSN's \$50 million credit facility, the availability of credit was "dependent in part on the amount, timing and quality of the Corporation's accounts receivable";
27. Under the terms of the facility, a "material impairment or aging of accounts receivable or a reduction of the credit worthiness of the debtor . . . could materially reduce . . . the bank credit available to the Corporation and possibly caus[e] a portion of such bank debt to be required to be repaid." Any issues with the facility could affect PSN's ability to fund ongoing operations;
28. Dawson and Michaluk were the CEO and CFO, respectively, of Open Range, predecessor to PSN. In that role, both had overseen the implementation of Open Range's allowance for doubtful trade receivables policy;

29. Winger was a director of Open Range. In that role, he approved of its financial statements;
30. Winger, Dawson and Michaluk were involved in the process by which Open Range took allowances against AR;
31. Open Range was required to, and had, recorded allowances against its AR, in the following amounts:

Period	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q3 2008	\$9.38 million	\$523,000	Nil
Q4 2008	\$18.46 million	\$785,000	Nil
Q1 2009	\$4.45 million	\$785,000	Nil
Period	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q2 2009	\$1.76 million	\$1.05 million	Nil
Q3 2009	\$2.99 million	\$1.05 million	Nil
Q4 2009	\$10.50 million	\$949,000	\$94,000
Q1 2010	\$9.20 million	\$949,000	Nil

32. New Open Range, the successor to Open Range (other than the business that became PSN), had AR, some or all of which was inherited from Open Range. The largest portion of that AR was due from "Oil and natural gas marketing companies." New Open Range, and the business that would become New Open Range, "historically [had] not experienced any collection issues with its oil and natural gas marketers." Open Range and New Open Range "transact[] with creditworthy customers";

#### **False and Misleading Statements**

33. In each of the Impugned Documents that is a financial statement, PSN recorded an AR asset;

Period	Accounts Receivable at Period End
2011 Annual	\$53.6 million
Q1 2012	\$83 million
Q2 2012	\$118.6 million
Q3 2012	\$125.5 million

34. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR, and the AR was thus overstated and false, as was PSN's reported assets and shareholders' equity;
35. In each of the Impugned Documents that is a financial statement or MD&A, PSN reported net income:

Period	Net Income
Q4 2011	\$18.7 million
Q1 2012	\$ 29.64 million
Q2 2012	\$ 31.18 million
Q3 2012	\$ 7.83 million

36. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR. Accordingly, PSN's net income was overstated and false;
37. In each of the Impugned Documents that is an MD&A, PSN stated that it had "identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly." This statement was false and misleading because, as it would later admit, "its internal controls over financial reporting were not completely effective," it had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem";
38. In the 2011 MD&A, PSN represented that it (then and in the future)

evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial

condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant.

This statement was false and misleading because, as it would later admit, PSN lacked "a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions," did not establish "Credit limits . . . for each customer," had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem," and had taken no steps, prior to "in late Q3" 2012, to "diligently . . . resolve outstanding accounts of customers." PSN did not "evaluate[] its trade receivables" sufficiently, as required or at all, and did not "thorough[ly] review [its] collection experience, current aging status of the customer accounts, [or] financial condition of the Corporation's customers";

39. Had PSN properly implemented and followed its claimed "Allowance for Doubtful Trade Receivables" policy and IFRS, it would have taken an allowance against its AR, would not have misstated its AR, and would not have misstated its net income or reported inflated assets;
40. In the AIF dated April 26, 2012, which is an Impugned Document, PSN falsely stated that it "assesses the credit worthiness of its customers and monitors accounts receivable on a regular, ongoing basis." This statement was false and misleading because, as it would later admit, PSN lacked "a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions," did not establish "Credit limits . . . for each customer," had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem," and had taken no steps, prior to "in late Q3" 2012, to "diligently . . . resolve outstanding accounts of customers";
41. In the Q2 2012 MD&A, which is an Impugned Document, PSN falsely stated that "Management conducts frequent detailed reviews of the accounts receivable amounts outstanding as part of its ongoing credit risk assessment procedures." This statement was false and misleading because, as it would later admit, PSN lacked "a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions," did not establish "Credit limits . . . for

each customer," had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem," and had taken no steps, prior to "in late Q3" 2012, to "diligently . . . resolve outstanding accounts of customers";

42. The truth of each of the statements particularized in this section are material facts and were required to be disclosed in the Prospectus, but were not. Accordingly, the Prospectus was materially false and misleading;
43. As a result of the forgoing, the Representation was false in that PSN's financial statements did not fairly present its financial position, financial performance and cash flows;

#### **Winger, Dawson and Michaluk Sell Securities**

44. Winger, Dawson and Michaluk sold securities of PSN prior to November 14, 2012:

- a) on November 14, 2011, Winger sold a total of 238,464 Poseidon shares indirectly held in the public market for gross proceeds of \$2.64 million;
- b) on November 14, 2011, Winger sold a total of 75,523 Poseidon shares directly held in the public market for gross proceeds of approximately \$860,000;
- c) on November 14, 2011, Dawson sold 1,000,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$11 million;
- d) on November 14, 2011, Michaluk sold 675,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$7.46 million;
- e) on February 9, 2012, Winger sold 30,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$480,000;
- f) on February 9, 2012, Winger sold 30,000 Poseidon shares directly held in the public market for gross proceeds of \$486,000;
- g) on February 27, 2012, Dawson sold a total of 400,032 Poseidon shares directly held in the public market for gross proceeds of \$6.36 million; and

h) on February 27, 2012, Dawson sold a total of 400,032 Poseidon shares in the public market for gross proceeds of \$6.36 million.

### **The Defendants Fault**

#### *Statutory Liability for Misrepresentations in the Prospectus Pursuant to Section 217 of the QSA*

45. As against PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts the cause of action found in s 217 of the *QSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *QSA*;

#### *Statutory Liability for Misrepresentations Pursuant to Title VIII, Chapter II, Division II of the QSA*

46. The Plaintiff pleads the claim found in Title VIII, Chapter II, Division II of the *QSA*, and, if required, the equivalent sections of the Securities Legislation other than the *QSA*, against all Defendants;
47. Each of the Impugned Documents is a core document within the meaning of the Securities Legislation;
48. As particularized above, each of the Impugned Documents contains one or more misrepresentations;
49. PSN is a responsible issuer within the meaning of the Securities Legislation. Dawson, Michaluk and Winger are directors of PSN and were at all material times. Michaluk and MacKenzie are officers of PSN and were at all material times;
50. Michaluk and MacKenzie authorized, permitted or acquiesced in the release of the Impugned Documents. Michaluk and MacKenzie falsely certified the accuracy of the Impugned Documents. Michaluk and MacKenzie caused the Impugned Documents to be released through instructing PSN employees to release the Impugned Documents, among other things;

#### *The Defendants violated the Duties they owed to the Members of the Group*

51. PSN and, by virtue of their position of authority and responsibility within PSN, each of the Individual Defendants, owed a duty at law and under provisions of the *QSA* and article 1457 of the *Civil Code of Québec* to

ensure that the Prospectus made full, true and plain disclosure of all material facts relating to the securities offered thereby, or was materially accurate and complete;

52. The reasonable standard of care expected in the circumstances required the Defendants to prevent the distributions to which the Prospectus related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectus or in the documents incorporated therein by reference;
53. Accordingly, the Defendants have violated their duties to those Class Members who purchased pursuant to the Prospectus;
54. PSN and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure the maintenance of adequate internal controls to ensure that PSN's disclosure documents fairly and fully presented the business and affairs of PSN on a timely basis;
55. Had the Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectus related, then securities regulators likely would not have issued a receipt for the Prospectus, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of PSN's shares;
56. As a result of the Representation and the other misrepresentations particularized above, PSN's shares traded, and were sold by Winger, Dawson and Michaluk, at artificially inflated prices;
57. The Class Members who purchased PSN shares from Winger, Dawson and Michaluk are entitled to the price they paid to such Defendants for such shares;
58. On behalf of all Class Members who acquired PSN's Securities in the secondary market, the Plaintiff pleads plead a fault in violation of the general private law duty of diligence owed to them in the circumstances accordingly with article 1457 of the *Civil Code of Québec* for all of the Impugned Documents;
59. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. The Representation was untrue for the reasons particularized elsewhere herein;
60. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase PSN securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class

Members would rely reasonably and to their detriment upon such documents in making the decision to purchase PSN securities;

61. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of PSN's publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents;
62. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed PSN's AR. The Defendants breached that duty by making the Representation as particularized above;
63. The Plaintiff and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of PSN, and suffered damages when the falsity of the Representation was revealed;
64. Alternatively, the Plaintiff and the other Class Members relied upon the Representation by the act of purchasing PSN securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of PSN. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of PSN's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiff and Class Members;
65. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and in the best interests of the Petitioner and the Class. The Defendants conduct failed to meet the requirements imposed by the duty not to harm others by reason of wrongful conduct under the *Civil Code of Québec*;

#### *Vicarious Liability*

66. In addition to their direct liability, PSN is vicariously liable for the acts and/or omissions of each of their respective officers, directors, partners and/or employees as set out above;

#### **The Relationship between PSN's Disclosures and the Price of Its Securities**

67. The issuance of the Impugned Documents directly affected the price of PSN's Securities. The Defendants were aware at all material times of the

effect of PSN's disclosure documents upon the price of its securities. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press;

68. PSN routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. PSN provided either copies of the Impugned Documents or links thereto on its website. PSN maintains a website in part to communicate with the Class and prospective investors;

69. PSN regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time PSN communicated that new material information about its financial results to the public it directly affected the price of PSN Securities;

70. PSN was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase PSN Securities in such reports were based, in whole or in part, upon that information;

71. PSN Securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which PSN Securities traded promptly incorporated material information from PSN's disclosure documents about PSN's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by PSN, as well as by other means;

#### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

72. The composition of the Class makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:

- The number of persons included in the class is estimated to be several thousand;
- The names and addresses of persons included in the class are not known to the Petitioner (but are likely to be known to Defendants);

- All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.

73. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:

- Did the Defendants authorize or issue false and/or misleading public information?
- Did the Defendants Misrepresentations cause the share price of PSN's stock to be artificially inflated?
- Did the Defendants therefore commit a fault towards the Petitioner and the Class Members, thereby engaging their liability?
- What prejudice was sustained by the Petitioner and the Class Members as a result of the Defendants faults?
- Are the Defendants jointly responsible for the damages sustained by each of the Class Members?

74. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

75. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

76. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** the Petitioners' action against the Defendants, under the cause of action contained in, section 217 of the *QSA*, Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Quebec*;

**CONDAMN** Defendants to pay to the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioner on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

77. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
  - The Class Members reside everywhere in the Province of Quebec;
  - The Petitioner's lawyers have an office in the District of Montreal.
78. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members for the following reasons:
  - She understands the nature of the action;
  - She is available to dedicate the time necessary for an action to collaborate with Class Members; and
  - Her interests are not antagonistic to those of other Class Members.
79. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** leave under the cause of action contained in, section 217 of the *QSA*, Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Quebec* and the bringing of a class action in the form of a Motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Class herein described as:

"All persons or entities (other than the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate families of the individual named defendants) who purchased or otherwise acquired, PSN's Securities on or before November 14, 2012, and who are resident in Quebec or who were resident in Quebec at the time of their acquisition of those securities and who are not precluded from participating in a class action by virtue of Article 999 of the Quebec Code of Civil Procedure, RSQ, c C-25."

or such other group definition as may be approved by the Court.

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendants authorize or issue false and/or misleading public information?
- b) Did the Defendants' Misrepresentations cause the share price of PSN's stock to be artificially inflated?
- c) Did the Defendants therefore commit a fault towards the Petitioner and the Class Members, thereby engaging their liability?
- d) What prejudice was sustained by the Petitioner and the Class Members as a result of the Defendants faults?
- e) Are the Defendants jointly responsible for the damages sustained by each of the Class Members?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the Petitioners' action against the Defendants, under the cause of action contained in, section 217 of the QSA, Title VIII, Chapter II, Division II of the QSA and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the *Civil Code of Quebec*,

**CONDAMN** Defendants to pay to the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioner on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**DECLARE** that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of a notice to the Class Members in accordance with article 1006 C.C.P.;

**REFER** the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

**THE WHOLE** with costs, including the costs of all publications of notices.

Montreal, December 3<sup>rd</sup>, 2012

Siskinds, Desmeules, Avocats  
SISKINDS, DESMEULES, AVOCATS  
(Me Samy Elnemr)  
Lawyer for the Petitioner

## SCHEDULE I

### NOTICE TO DEFENDANT

Take notice that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal located at 1, Notre-Dame East, Montreal, Quebec, H2Y 1B6 within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on February 12<sup>th</sup>, 2013 at 9h00 a.m. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Montreal, December 3<sup>rd</sup>, 2012

Siskinds, Desmeules, avocats  
SISKINDS, DESMEULES, AVOCATS  
(Me Samy Elnemr)  
Lawyers for the Petitioner

