

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:)	
)	Chapter 15
POSEIDON CONCEPTS CORP.,)	Case No. 13-15893-HRT
Debtor in Foreign Proceeding.)	

In re:)	
)	Chapter 15
POSEIDON CONCEPTS LTD.,)	Case No. 13-15894-HRT
Debtor in Foreign Proceeding.)	

In re:)	
)	Chapter 15
POSEIDON CONCEPTS LIMITED)	Case No. 13-15895-HRT
PARTNERSHIP,)	
Debtor in Foreign Proceeding.)	

In re:)	
)	Chapter 15
POSEIDON CONCEPTS INC.,)	Case No. 13-15896-HRT
Debtor in Foreign Proceeding.)	

***EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINING ORDER AND, AFTER NOTICE AND
A HEARING, PRELIMINARY INJUNCTIVE RELIEF, PURSUANT
TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE***

PricewaterhouseCoopers Inc. (“PWC”), as the court-appointed monitor (the “Monitor”) and authorized foreign representative of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. (collectively referred to as the “PC Debtors”) in the proceeding pending in the Court of Queen’s Bench of Alberta, Canada (the “Canadian Proceeding”) under the Companies’ Creditors Arrangement Act (the “CCAA”), by and through its undersigned counsel, Rothgerber Johnson & Lyons LLP respectfully files this application (the “Application”) pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order to show cause with temporary

restraining order substantially in the form attached hereto, and scheduling a hearing on the Monitor's request for a preliminary injunction (the "Preliminary Injunction Hearing").

PRELIMINARY STATEMENT

On April 9, 2013, the PC Debtors instituted the Canadian Proceedings by filing applications for the commencement of reorganization proceedings pursuant to the CCAA. On April 9, 2013, the Court in the Canadian Proceeding granted an initial order (the "CCAA Order") for relief, staying any proceeding or enforcement process against the PC Debtors or their assets. Further, all rights and remedies of any entity, whether judicial or extra-judicial, are stayed and suspended against the PC Debtors and their assets.¹

Upon entry of the CCAA Order, the Monitor promptly filed a petition (the "Petition") pursuant to section 1515 of the Bankruptcy Code for entry of an order recognizing the Canadian Proceeding as a foreign main proceeding. Until the Court rules on the Petition, there is nothing in place to prevent creditors from taking actions against the PC Debtors in the United States.

Accordingly, the Monitor files this Application, pursuant to Sections 105(a) and 1519 of the Bankruptcy Code, to temporarily enjoin creditors from taking any actions against the PC Debtors, their assets and the Monitor. The Monitor believes the granting of the relief sought in this Application will assure an economical, expeditious, and equitable administration of the PC Debtors' estates. Without such relief, the PC Debtors will be exposed to an imminent risk of voluminous litigation and other actions against the estates, their assets and the Monitor, which would result in a "race to the courthouse" among creditors and other parties-in-interest. The Monitor submits that such actions would result in immediate and irreparable harm and loss to the PC Debtors and would cause substantial damage to its restructuring capabilities for which there is no adequate remedy at law.

¹ A copy of the CCAA Order is attached hereto as Exhibit 1.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and 11 U.S.C. §§ 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).

BACKGROUND²

I. The Structure and General Operations of PC

The entities seeking protection in the Canadian Proceeding and under Chapter 15 of the Bankruptcy Code are the PC Debtors.

Poseidon Concepts Corp. (“PC Canada”) is a corporation formed under the laws of Alberta, Canada with its principal place of business located in Calgary, Alberta, Canada. Its shares are publically traded on the Toronto Stock Exchange under the symbol PSN-T. Poseidon Concepts Ltd. is a corporation formed under the laws of Alberta Canada and a wholly-owned subsidiary of PC Canada. Poseidon Concepts Inc. (“PC Inc.”) is a Delaware corporation that is wholly-owned by PC Canada. Poseidon Concepts Limited Partnership is a partnership organized under the laws of Alberta, Canada. The registered office of each of the PC Debtors is in Alberta, Canada.

The corporate operations of the PC Debtors are directed and controlled through their parent company, PC Canada. Most key corporate decision making, as well as the bank accounts and accounting and cash management systems of the PC Debtors, are directed and controlled at the parent level by PC Canada. In addition, all of the PC Debtors’ officers are employed by PC Canada. Not only are the PC Debtors’ operations, management and asset ownership based in

² The facts stated in this Petition are supported by the Declaration of Leigh Cassidy In Support of: (I) Petition for Recognition As a Foreign Main Proceeding; and (II) Application for Order to Show Cause With Temporary Restraining Order and Preliminary Injunctive Relief, attached hereto as Exhibit 2.

Canada, so is their funding. The lead secured creditor is Toronto-Dominion Bank, which is located in Toronto, Canada. The participating bank lenders are HSBC Canada, National Bank of Canada and Bank of Nova Scotia.

II. Business Operations of PC

Headquartered in Calgary, Alberta with operations throughout Western Canada and the United States, the PC Debtors are providers of large-volume modular tanks to the oil and gas industry in North America. PC Canada is the parent company that owns, operates and funds the subsidiaries. Of its two remaining members of the Board of Directors, one resides in Canada and the other in the United States. Leigh Cassidy is president of Whitewater Inc. (a consultant to the PC Debtors), which provides financial consulting services for PC Canada. Collectively, the PC Debtors employ approximately 20 people: 8 in Canada and 12 in the U.S.

PC Canada is the pioneer of large-volume modular fluid tanks, with a fleet of 416 PC Canada-owned rental units. These tanks range in size from 4,500 barrels (“bbls”) to 41,000 bbls, and are provided on a rental basis to support customers’ on-site fluid management needs (the “Tanks”). Highly portable and quick to assemble, the Tanks average two to four truckloads and less than a day to set up. PC Canada leases 324 of the Tanks to PC Inc. for use by customers in the U.S., scattered among seven states (Colorado, Texas, Pennsylvania, North Dakota, Montana, Utah, and Oklahoma). The remaining 92 Tanks are in Canada.

In addition to the Tanks, PC Canada also owns 27 Volcano™ E-Z Heat heaters (the “Heaters”). The Heaters circulate heating fluid through piping and radiators placed inside the Tanks, which enables the fracturing fluids to achieve and maintain the desired temperature and intended viscosity. Like the Tanks, PC Canada leases 20 of the Heaters to PC Inc., which then

rents them to U.S. customers. The remaining 7 Heaters are leased by PC Canada to customers in Canada.

Almost all of the creditors are located in Canada and the United States. Of the 151 creditors, 75 are located in the U.S., 67 in Canada, 4 in Australia, 3 in Ireland, and 1 in Luxembourg.

III. Events Leading to the Commencement of the Canadian Proceeding

On November 14, 2012, PC Canada announced earnings significantly lower than the market expected. This caused the shares to plummet 62% in one day. A class action lawsuit was filed in late November. On December 27, 2012, a Special Committee of the Board of Directors was established by PC Canada to, among other things, review and address various issues arising from the restatement of certain accounts receivable and the company's evolving business plan. In order to assist the Special Committee in its review, it engaged the services of Norton Rose Canada LLP as its legal counsel, who in turn retained Ernst & Young Inc. Based on the recommendation of the Special Committee and the interim report of its advisors, PC Canada determined, on a preliminary basis, that:

- a. Approximately \$95 million to \$106 million (subject to detailed quantification) of the PC Canada's \$148.1 million in revenue for the 9 months ended September 30, 2012 should not have been recorded as revenue in the financial statements; and
- b. As a result of recording the foregoing revenues, approximately \$94 million to \$102 million (subject to detailed quantification) of the company's \$125.5 million in accounts receivable as of September 30, 2012 should not have been recorded in the financial statements as accounts receivable.

Based on the foregoing, the decision was made to seek protection under the insolvency laws of Canada and the United States in order to stabilize operations of the PC Debtors and seek a strategic investor or buyer.

IV. The Canadian Proceeding

The CCAA is a Canadian federal Act³ that affords financially troubled corporations the opportunity to restructure their financial affairs through a formal process commonly known as a “Plan of Arrangement.” The process is commenced by applying to the Canadian court for protection under the CCAA. The Canadian court will then issue an initial order, giving the debtor thirty (30) days of protection from its creditors to allow for the preparation of the Plan of Arrangement.

Pursuant to the initial order, a monitor is appointed for the debtor. The monitor is an independent third party appointed by the court to monitor the company’s ongoing operations and assist with the filing and solicitation of voting on the Plan of Arrangement. The monitor’s duties also include reporting to the Court on any major events that may impact the viability of the company and notifying creditors and shareholders of any meetings relating to the CCAA proceedings.

On April 9, 2013, the PC Debtors instituted the Canadian Proceeding by filing applications for the commencement of reorganization proceedings pursuant to the CCAA. On April 9, 2013, the Canadian Court entered the CCAA Order.

Pursuant to the CCAA Order, a stay is in place in Canada which prohibits any proceeding or enforcement process against the PC Debtors or their assets. (Exhibit 1, ¶ 13). Further, all rights and remedies of any entity, whether judicial or extra-judicial, are stayed and suspended against the PC Debtors and their assets. (*Id.* at ¶ 14).

³ The Court in *In re Fracmaster, Ltd.*, 237 B.R. at n. 3 noted that “[t]he CCAA is a Canadian federal statute which provides a statutory system, roughly equivalent to the Chapter 11 process in the United States, whereby corporations which are insolvent may seek court protection from creditor actions as they attempt to restructure their financial affairs, usually by way of a plan of arrangement or compromise with creditors.”

The Canadian Court appointed PWC as the Monitor of the Canadian Proceedings under the CCAA Order. (Exhibit 1, ¶ 23). The Monitor's role in the Canadian Proceedings is to supervise the property and business affairs of the PC Debtors, and the PC Debtors are obligated to cooperate with the Monitor in this respect. (*Id.* at ¶¶ 23, 24).

The CCAA Order also requests “the aid and recognition of any court...to give effect to this Order and to assist [the PC Debtors], the Monitor and their respective agents in carrying out the terms of this Order.” (Exhibit 1, ¶ 55). The CCAA Order also provides that “[e]ach of [the PC Debtors] and the Monitor be at liberty and is hereby authorized and empowered to apply to any court..., wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order. . . .” (Exhibit 1, ¶ 56).

V. The Chapter 15 Cases

Concurrently with filing this Application, the Monitor filed the Petition in order to recognize the Canadian Proceeding as a foreign main proceeding. By filing the Petition, the Monitor wishes to obtain relief in substantially the same form provided in the Canadian Proceeding, and allow for the proper and necessary communication and coordination between the Canadian Proceeding and this case to ensure the orderly, fair and efficient restructuring or liquidation of the PC Debtors.

VI. The PC Debtors' Intended Actions

The PC Debtors believe the ability to carry on their operations will add value in restructuring and/or selling the business as a going concern. The PC Debtors expect over the coming weeks to pursue the recapitalization or sale of their assets.

RELIEF REQUESTED

The Monitor hereby respectfully requests: (i) the immediate entry of a temporary restraining order (the “TRO”): (a) staying execution against the PC Debtors’ assets; (b) prohibiting all persons from commencing or continuing any litigation or any other proceeding, including, without limitation, appeals, mediation, or any other judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever, or taking any other actions against or involving the PC Debtors, the Monitor (in its capacity as foreign representative of the PC Debtors) or the PC Debtors’ property in the United States (the “Property”); and (c) entrusting the administration or realization of the PC Debtors’ Property to the PC Debtors; and (ii) scheduling the Preliminary Injunction Hearing. Such relief will ensure that, inter alia, the Property will not be improperly attached, disposed of, or otherwise withheld by creditors or other parties.

BASIS FOR RELIEF REQUESTED

The rapid increase in cross-border insolvencies over the last decade spawned multiple efforts by insolvency organizations and the international community to devise better legal frameworks for addressing these cross-border insolvencies. Aaron L. Hammer and Matthew E. McClintock, *Understanding Chapter 15 of the United States Bankruptcy Code: Everything You Need to Know About Cross-Border Insolvency Legislation in the United States*, LAW AND BUSINESS REVIEW OF THE AMERICAS, Spring 2008. In response, Congress enacted Chapter 15 of the Bankruptcy Code as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Chapter 15 incorporates the Model Law on Cross-Border Insolvency (the “Model Law”) promulgated by the United Nations Commission on International Law (“UNCITRAL”). 11

U.S.C. § 1501(a). It is intended to promote “cooperation between the United States courts, trustees, examiners, debtors and debtors in possession and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor’s assets; and the facilitation of the rescue of financially troubled businesses.” *In re Oversight & Control Commission of Avanzit, S.A.*, 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008) (quoting *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund*, 374 B.R. 122, 126 (Bankr. S.D.N.Y. 2007)).

Section 1519 of the Bankruptcy Code allows a representative petitioning for recognition of a foreign proceeding to obtain interim relief, including:

- (1) staying execution against the debtor’s assets;
- (2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (3) any relief referred to in paragraph (3), (4) or (7) of section 1521(a).

11 U.S.C. § 1519(a).

The Monitor submits that the relief permitted under section 1519 and requested herein is absolutely necessary to ensure an economical, expeditious and equitable administration of the PC Debtors’ estates. The absence of such relief will leave the PC Debtors vulnerable in the United States to litigation and other actions by creditors or other parties against the PC Debtors, their Property and the Monitor to enforce their respective rights. Should parties-in-interest take such actions against the PC Debtors, the certain result would be immediate and irreparable injury, loss

and damage to the PC Debtors and their restructuring efforts, for which there is no adequate remedy at law.

The CCAA Order entered in the Canadian Proceeding protects the PC Debtors and their assets from actions of creditors during the critical early stages of the restructuring process. The CCAA Order and papers submitted in conjunction therewith, establishes that the PC Debtors are currently insolvent and unable to pay their debts as they become due. The Monitor is concerned that these facts may cause creditors to seek prejudgment attachments and other remedies against the PC Debtors and their assets in the United States. Indeed, the PC Debtors hold substantial assets in the United States, including equipment used in their business operations and accounts receivable. Until the Petition can be heard by this Court, these substantial assets are largely unprotected from creditors, and will remain as such unless the TRO is entered. Litigation relating to such actions would distract the PC Debtors and the Monitor from the restructuring efforts in the Canadian Proceeding and disrupt this case as well. Accordingly, the relief requested herein will allow the PC Debtors and the Monitor to focus on the orderly review and restructuring of the PC Debtors' business in the Canadian Proceeding.

The Monitor also believes that there is a substantial likelihood that it will be successful in establishing that the Canadian Proceeding is a foreign main proceeding because: (i) the Canadian Proceeding is a foreign proceeding, as defined in the Bankruptcy Code; (ii) the Monitor is a proper and authorized foreign representative as defined in the Bankruptcy Code; and (iii) Canada is the center of the PC Debtors' main interests.⁴

The relief requested herein will not cause undue hardship to any party in interest, or at least any hardship is outweighed by the benefits of the relief requested. Indeed, the entry of the

⁴ As further support for the substantial likelihood of the Petition's success, the Monitor references and incorporates the Petition.

TRO would actually benefit the PC Debtors' creditors by ensuring an equitable and orderly distribution of assets, and will prevent the "race to the courthouse" that could ensue if the relief requested herein is not entered. *See In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y.) (stating that failing to issue a restraining order against creditors could, *inter alia*, "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors.").

Furthermore, the Court in the Canadian Proceeding respectfully requests that the United States' courts aid and recognize the CCAA Order and to make such orders and provide such assistance as necessary to give effect to the CCAA Order. (Exhibit 1, ¶ 55). The Monitor believes that the entry of the TRO and preliminary injunction are necessary to accommodate this request.

The relief requested herein has been granted in other Chapter 15 cases, and is therefore appropriate in these cases. *See e.g., In re North America Steamships Ltd.*, Case No. 06-13077 (Bankr. S.D.N.Y.) (granting similar relief after finding that: (i) the foreign representative established a substantial likelihood of success in establishing that the debtor is subject to a foreign main proceeding; and (ii) the debtor's assets were subject to attack and piecemeal dissipation which would result in immediate and irreparable harm for which the debtor would have no adequate remedy at law); *see also In re Hollinger Inc., et al.*, Case No. 07-11029 (Bankr. D. Del.); *In re Bear Stearns High-Grade Structured Credit Strat. Master Fund, Ltd.*, Case No. 07-12383 (Bankr. S.D.N.Y.); *In re Afinsa Bienes Tangibles S.A.*, Case No. 07-10675 (Bankr. S.D.N.Y.); *In re Hatteras Reinsurance Ltd.*, Case No. 06-11304 (Bankr. S.D.N.Y.).

REQUEST FOR WAIVER OF BANKRUPTCY RULE 7065(c)

The Monitor respectfully requests that Rule 7065(c) of the Federal Rules of Bankruptcy Procedure, incorporating Rule 65(c) of the Federal Rules of Civil Procedure, be waived. Security for the TRO is unnecessary in this matter, as the TRO will merely temporarily extend the reaches of the CCAA Order, and will therefore only subject parties-in-interest to the same restraints imposed in the Canadian Proceeding.

HEARING DATE AND NOTICE

The Monitor also respectfully requests that this Court set the date and time for the Preliminary Injunction Hearing and a hearing on the Petition (the "Hearing Dates"). If no objections to this Application are filed by the date ordered for such objections, the Monitor requests that the Court enter the proposed order granting the preliminary injunction without a hearing.

The Monitor proposes that once the Hearing Dates have been scheduled by the Court, notice will be given as reasonable and appropriate under the circumstances in the Canadian Proceeding and in the United States and in accordance with Bankruptcy Rule 2002(q) and other applicable rules. Specifically, the Monitor proposes serving appropriate notice of the Hearing Dates, copies of the Application, TRO, Petition and related documents upon all parties-in-interest that are entitled to notice within two days of the entry of the TRO. The Monitor believes that such notice and service is reasonable and proper under the circumstances and no other or further notice is necessary or appropriate.

The Monitor shall serve notice of this Application on the Office of the United States Trustee through the Court's ECF filing system, by facsimile, and by overnight courier. Due to

the harm that could result to the PC Debtors before adverse parties can be heard in opposition to the TRO, the Monitor believes that no further notice is required under the circumstances.

CONCLUSION

For the foregoing reasons, the Monitor respectfully requests that this Court: (i) enter an order granting a temporary restraining order substantially in the form attached hereto; (ii) schedule the Preliminary Injunction Hearing; and (iii) grant such other and further relief as this Court deems just and proper.

Dated: April 12, 2013

Respectfully Submitted,

PRICEWATERHOUSECOOPERS INC.,
as Monitor and authorized foreign representative
of the PC Debtors

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