

This is Exhibit "T" referred to in the Affidavit of
Franz Auer, sworn before me on
the 4th day of May, 2013

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Commissioner for Oaths in and for the
Province of Alberta

Trent J. Kulchar
Barrister & Solicitor

Court File No.:

CD-13-474553

OCL

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

FELIX KUEFLER

Plaintiff

-and-

NATIONAL BANK FINANCIAL INC., BMO NESBITT BURNS INC., CIBC WORLD
MARKETS INC., HAYWOOD SECURITIES INC.,
PETERS & CO. LIMITED, CANACCORD GENUITY CORP., CORMARK SECURITIES
INC., DUNDEE SECURITIES LTD., and FIRSTENERGY CAPITAL CORP.

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 plaintiff, 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.

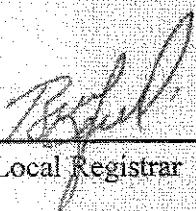
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

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: February 20, 2013

Issued by


Local Registrar

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

TO: National Bank Financial Inc.
Suite 2802, 450 – 1st Street S.W.
Calgary, Alberta T2P 5H1
Canada

AND TO: BMO Nesbitt Burns Inc.
Suite 2200 Dome Tower, 333 - 7th Avenue S.W.
Calgary, Alberta T2P 2Z1
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AND TO: CIBC World Markets Inc.
9th Floor Bankers Hall East
855 2nd Street S.W.
Calgary, Alberta T2P 4J7
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AND TO: Haywood Securities Inc.
301, 808 - 1st Street S.W.
Calgary, Alberta T2P 1M9
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AND TO: Peters & Co. Limited
Suite 2300, Jamieson Place
308 - 4th Avenue SW
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AND TO: Canaccord Genuity Corp.

Suite 2200, 450 - 1st Street S.W.
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AND TO: Cormark Securities Inc.
Suite 1800, 300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4
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AND TO: Dundee Securities Ltd.
Suite 3600, 350 - 7th Avenue S.W.
Calgary, Alberta T2P 3N9
Canada

AND TO: FirstEnergy Capital Corp.
Suite 1100, 311 - 6th Avenue S.W.
Calgary, Alberta T2P 3H2
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) “**ABC**” 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) “**Arrangement**” means the reorganization transaction pursuant to the provisions of the **ABC**, which was effectuated on November 1, 2011, and pursuant to which **Poseidon Concepts** continued as the successor of **Open Range** and its shares started trading on the **TSX**;
- (e) “**CEO**” means Chief Executive Officer;
- (f) “**CFO**” means Chief Financial Officer;
- (g) “**Circular**” means the Information Circular and Proxy Statement of **Open Range** issued in connection with the **Arrangement**, dated September 30, 2011, together with the documents annexed thereto, all of which constituted a single document and were filed as a single document on SEDAR on October 11, 2011;
- (h) “**CJA**” means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (i) “**Class**” and “**Class Members**” mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired **Poseidon Concepts**’ shares that were offered by the **Prospectus** during the period of the distribution to which the **Prospectus** related, other than the **Excluded Persons**;
- (j) “**CPA**” means the Ontario *Class Proceedings Act*, 1992, SO 1992, c 6, as amended;

- (k) "**Dawson**" means A. Scott Dawson;
- (l) "**Defendants**" means the **Underwriters**;
- (m) "**Directors and Officers**" (each being a "**Director**" or "**Officer**") means, collectively, **Dawson, MacKenzie, Michaluk and Winger**;
- (n) "**E&P Business**" means the business involving the exploration for and development of crude oil and natural gas in Western Canada, including all the assets pertaining thereto, which was carried on by **Open Range** and was transferred to **New Open Range** pursuant to the **Arrangement**;
- (o) "**Excluded Persons**" means the **Defendants**, **Poseidon Concepts**, and each of 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 family of a **Director** or **Officer**;
- (p) "**IFRS**" means International Financial Reporting Standards;
- (q) "**MacKenzie**" means Matt MacKenzie;
- (r) "**MD&A**" means Management's Discussion and Analysis;
- (s) "**Michaluk**" means Lyle Michaluk;
- (t) "**New Open Range**" means, Open Range Energy Corp., a successor to **Open Range**;
- (u) "**Offering**" means the distribution of **Poseidon Concepts**' shares pursuant to the **Prospectus**;
- (v) "**Open Range**" means Open Range Energy Corp., the predecessor company of **Poseidon Concepts** and **New Open Range**;
- (w) "**OSA**" means the *Securities Act*, RSO 1990 c S.5, as amended;

- (x) “**Plaintiff**” means the plaintiff, Felix Kuefler;
- (y) “**Poseidon Concepts**” means Poseidon Concepts Corp.;
- (z) “**Poseidon Concepts USA**” means **Poseidon Concepts’** wholly-owned, Colorado-based subsidiary, Poseidon Concepts Inc.;
- (aa) “**Prospectus**” means the short-form prospectus of **Poseidon Concepts**, dated January 26, 2012;
- (bb) “**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;
- (cc) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (dd) “**Special Committee**” means the special committee of **Poseidon Concepts’** board of directors formed in or about December 2012;
- (ee) “**Tank Rental Business**” means the business involving the development and lease of **Tank Systems** and related activities associated therewith, which was carried on by **Open Range** and continued to be carried on by **Poseidon Concepts** following the completion to the **Arrangement**;
- (ff) “**Tank Systems**” means the modular, insulated fluid handling systems developed by **Poseidon Concepts** and used in connection with the **Tank Rental Business**;
- (gg) “**TSX**” means the Toronto Stock Exchange;

(hh) "**Underwriters**" (each being an "**Underwriter**") means the defendants, National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd., FirstEnergy Capital Corp., collectively; and

(ii) "**Winger**" means Harley L. Winger.

CLAIM

2. The Plaintiff claims:

- (a) An order certifying this action as a class proceeding pursuant to s 5(1) of the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) A declaration that the Prospectus contained one or more of the misrepresentations alleged herein, and that, when made, those misrepresentations constituted misrepresentations both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Underwriters are vicariously liable for the acts and/or omissions of their respective officers, directors, employees and partners;
- (d) A declaration that the Underwriters owed a duty of care to some or all of the Class Members, and that they breached that duty of care;
- (e) Compensatory damages on behalf of himself and the Class Members in the sum of \$51,000,000;
- (f) 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;

- (g) Prejudgment and post judgment interest;
- (h) 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
- (i) Such further and other relief as to this Honourable Court may seem just.

**THE PARTIES AND CERTAIN KEY ACTORS
IN THE EVENTS OUT OF WHICH THIS ACTION HAS ARISEN**

Poseidon Concepts

3. Poseidon Concepts is a company formed pursuant to the *ABCA*, and is a successor of Open Range. At all material times prior to the Arrangement, Open Range was a reporting issuer in Canada, and its shares traded on the TSX (ticker symbol: "ONR"). Open Range carried on the E&P Business and the Tank Rental Business.
4. Poseidon Concepts was established in its current form pursuant to the Arrangement on November 1, 2011, and became an independent entity carrying on Open Range's Tank Rental Business, providing fluid handling solutions to the oil and gas exploration and production companies. New Open Range is the successor to Open Range's E&P Business.
5. Poseidon Concepts' shares were first issued and distributed pursuant to the Arrangement to the then holders of the Open Range shares, other than the dissenting Open Range shareholders. For each Open Range share, the Open Range shareholders received one New Open Range share and 0.8839 of a Poseidon Concepts share.
6. In connection with the Arrangement, Open Range issued the Circular providing detailed information about Open Range's, Poseidon Concepts' and New Open Range's

operations, businesses and finances. The Circular was signed by Dawson, who was at the time Open Range's President, CEO and director, and was also approved by Open Range's other directors, including Winger.

7. Following the implementation of the Arrangement, on November 1, 2011, 74,719,827 Poseidon Concepts' shares were issued to investors.
8. Poseidon Concepts' shares started trading on the TSX (ticker symbol: "PSN") on November 4, 2011. At all material times, Poseidon Concepts' shares were listed for trading on the TSX and also traded on alternative trading markets in Canada. Poseidon Concepts' shares also traded in Frankfurt and over-the-counter in the United States.
9. On January 26, 2012, Poseidon Concepts issued the Prospectus. The Prospectus, which was filed with and received by the securities regulators of all Canadian provinces other than Quebec, authorized the issuance and public distribution of Poseidon Concepts' shares at \$13.00 per share. In the Offering, which completed on February 2, 2012, a total of 6,347,000 Poseidon Concepts shares were issued and distributed for gross proceeds of \$82,511,000.
10. The Prospectus incorporated various documents by reference, including:
 - (a) Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, filed on SEDAR on March 22, 2011, which contained, among other information, a summary of accounting policies relevant to Poseidon Concepts' business, including Poseidon Concepts' revenue recognition policy;
 - (b) the Circular;
 - (c) Poseidon Concepts' Q3 2011 Interim Financial Statements;
 - (d) Poseidon Concepts' Q3 2011 MD&A; and

- (e) Poseidon Concepts' Material Change Report filed on SEDAR on January 17, 2012, relating to Poseidon Concepts' updated capital program and financial and operating forecasts for 2012, which contained misrepresentations regarding Poseidon Concepts' 2012 EBITDA guidance.
- 11. Each of Michaluk, MacKenzie, Dawson and Winger (the latter two on behalf of Poseidon Concepts' Board of Directors) signed the Prospectus and certified that it, "together with the documents incorporated [therein] by reference, constitute[d] full, true and plain disclosure of all material facts relating to [Poseidon Concepts' shares]."
- 12. At all material times, Open Range and Poseidon Concepts were reporting issuers in all provinces of Canada. As reporting issuers in Ontario, they were required to issue and file with SEDAR:
 - (a) within 45 days of the end of each quarter, quarterly 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, audited 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;
 - (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; and

(e) contemporaneously with the solicitation by or on behalf of the management of proxies from holders of its voting shares, an information circular.

13. 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.

14. 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. AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

The Directors and Officers

15. Michaluk was Open Range's CFO and Vice-President, Finance. Pursuant to the Arrangement, Michaluk became, and remained at all material times, CEO and a director of Poseidon Concepts. On or about December 27, 2012, Michaluk stepped down as Poseidon Concepts' CEO and director, and assumed the role of the company's Interim CFO. Michaluk is a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning.

16. MacKenzie was appointed as Poseidon Concepts' CFO effective November 1, 2011, and remained in that position until on or about December 27, 2012.

17. Dawson was President, CEO and a director of Open Range. After the completion of the Arrangement, Dawson became Poseidon Concepts' director and Chairman of the board.

He was also a member of the company's Audit Committee. On November 19, 2012, Dawson was appointed Poseidon Concepts' Executive Chairman and, on or about December 27, 2012, he assumed the role of the company's Interim President and CEO.

18. At all material times, Winger was a director of Poseidon Concepts. Prior to the Arrangement, Winger was a member of Open Range's board of directors. Winger is a lawyer in Alberta purporting to specialize in securities law and corporate finance.

The Underwriters

19. The Underwriters are various financial institutions that underwrote the sale of Poseidon Concepts' shares in the Offering.
20. Each of the Underwriters signed the Prospectus and certified that it, "together with the documents incorporated [therein] by reference, constitute[d] full, true and plain disclosure of all material facts relating to [Poseidon Concepts' shares]."
21. In connection with the Offering, the Underwriters earned a total of \$4.13 million in fees. These fees were paid to the Underwriters in substantial part as consideration for their purported due diligence examination of Poseidon Concepts' financials, business and affairs.
22. The Underwriters are expected to act as gatekeepers of the financial market. However, none of the Underwriters conducted a reasonable investigation into Poseidon Concepts in connection with the Offering. None of the Underwriters had reasonable grounds to believe that there was no misrepresentation in the Prospectus and the documents incorporated by reference therein, and that the Prospectus constituted full, true and plain disclosure of all material facts relating to Poseidon Concepts and the Poseidon Concepts' shares that were issued and distributed to the public pursuant to the Offering.

23. In the circumstances of this case, including that Poseidon Concepts was a relatively young business, had adopted an exponential growth strategy, was recording and reporting exponentially growing revenue, and had a growing AR position, a significant part of which was past-due, the Underwriters ought to have exercised heightened vigilance and caution in the course of discharging their duties to investors, which they did not.
24. Had the Underwriters performed the reasonably rigorous due diligence that was expected from them in the circumstances, they would have uncovered the truth as to Poseidon Concepts' accounting, revenue recognition, corporate governance and internal controls, and the Offering would not have happened, or would have happened at a price that reflected the true value of Poseidon Concepts' shares, and the Class Members to whom the Underwriters owed their duties would not have sustained the losses that they sustained on their investments in Poseidon Concepts' shares.

The Plaintiff

25. Kuefler is an individual residing in Alberta who purchased Poseidon Concepts' shares in the Offering. He also purchased Poseidon Concepts' shares in the secondary market before February 14, 2013.

OVERVIEW

Introduction

26. Since its inception in November 2011, Poseidon Concepts adopted an "exponential growth" business strategy to establish its footing in the North American market. By means of the disclosure documents and other materials they provided to investors and other market participants, Poseidon Concepts created the false image of a prosperous, highly profitable and rapidly expanding public company. Within less than a year, however, the illusion of Poseidon Concepts' success exploded.

27. At all material times, Poseidon Concepts and its managers and directors disregarded the policies, procedures and controls that are required from a reporting issuer. Poseidon Concepts reported tens of millions of dollars in phantom revenue that was not recognized in accordance with applicable accounting standards.
28. Poseidon Concepts' true performance and condition came to light in a series of corrective disclosures made on November 14, 2012, December 27, 2012, and February 14, 2013.
29. On February 14, 2013, Poseidon Concepts confirmed that approximately two-thirds of its purported revenue during the first 9 months of 2012 should not have been recognized, that approximately four-fifths of its purported accounts receivable as at September 30, 2012 should not have been recorded, and that the company would restate its financial statements for the first three quarters of 2012. Prior to February 14, 2013, Poseidon Concepts had already written off \$9.5 million of its AR and assets as in bad debt.

The Birth of Poseidon Concepts and the Expansion of its Business into the United States

30. Before the implementation of the Arrangement, Open Range carried on two business divisions: the E&P Business and the Tank Rental Business.
31. Open Range began testing the Tank Systems in Q1 2010, and launched the Tank Rental Business in June 2010. This business was subsequently carried on through an Open Range subsidiary called Poseidon Concepts Limited Partnership – a partnership established under Alberta law on November 5, 2010. On November 9, 2010, Open Range incorporated Poseidon Concepts USA pursuant to the laws of Delaware, and started to gradually enter into the United States market.
32. On September 5, 2011, Open Range's board of directors purportedly determined that the separation of the E&P Business and the Tank Rental Business into two distinct public

companies was in the best interest of the enterprise and fair to its shareholders. Open Range announced the proposed reorganization of Open Range by way of a press release issued and filed on SEDAR on September 6, 2011. In a letter to Open Range's shareholders that accompanied the Circular, Dawson wrote:

On September 5, 2011, the Board of Directors (the "Board") of Open Range, after considering various alternatives to maximize shareholder value, determined that the separation of the E&P Business and the Tank Rental Business into two distinct public companies is in the best interests of Open Range and is fair to its shareholders (the "Open Range Shareholders"). The Board believes that the separation of the businesses will enhance shareholder value by, among other things, enabling each resultant company to achieve greater success by focusing solely on its respective business and providing investors more transparency to more accurately value the resultant companies [...] The resultant company carrying on the Tank Rental Business, namely Poseidon Concepts Corp., will continue to use its first-mover advantage to attempt to increase its market penetration across North America [...]

33. As the company reported on November 1, 2011, the Arrangement received approval of the shareholders and the Alberta Court of Queen's Bench, and was implemented effective November 1, 2011 to separate the E&P Business from "the rapidly growing and highly profitable Poseidon Concepts" Tank Rental Business. The company's intention was to benefit from its alleged "first-mover advantage" to rapidly increase its market penetration across North America.
34. To that end, and contemporaneously with the Arrangement, Poseidon Concepts established a regional management centre in Denver, Colorado in October 2011, which became Poseidon Concepts' United States headquarters.
35. The United States provided a more favourable environment for Poseidon Concepts' contemplated "rapid growth," in part due to the regulatory hurdles and environmental

protections that applied to the use of Poseidon Concepts' Tank Systems in Canada.

Poseidon Concepts develops and rents the product known as Aboveground, Synthetically-lined Wall Storage Systems ("AWSSs"), which are also referred to as "C-Rings." In April 2011, Alberta's Energy Resources Conservation Board (the "ERCB") issued Bulletin 2011-10, advising that:

The ERCB has become aware that certain operators have been using c-rings to store large volumes of fluids associated with hydraulic fracturing operations [...]

Section 8.030 of the *Oil and Gas Conservation Regulations* requires materials that are used, produced, or generated at a well site or facility, other than fresh water or inert solids, to be stored in accordance with ERCB Directive 055: Storage Requirements for the Upstream Petroleum Industry. Currently, c-rings are not classified as tanks and are not an approved storage system under Directive 055. Hence, operators that propose to use c-rings to store fluids other than fresh water or inert solids must first obtain ERCB approval to do so.

The ERCB invited industry's cooperation and assistance in "its assessment and analysis of the use of c-rings as a fluid storage alternative."

36. On October 11, 2011, the ERCB released Directive 055 -Addendum 2011-10-11 (the "Addendum"), setting out the interim requirements for use of C-Rings as a fluid storage alternative, which to date remains in effect. The ERCB determined that C-Rings are appropriate for certain uses specified in the Addendum, provided that the ERCB's requirements are followed, but

Upstream petroleum licensees or approval holders wanting to use AWSSs for other storage purposes must submit an application which details sufficient information to substantiate the applicability and appropriateness of the use with respect to integrity containment (i.e., engineering design and construction details related to the wall and liner system), environmental protection, and safety. AWSSs are not [Aboveground Storage Tanks] and are not considered appropriate for permanent storage.

37. Poseidon Concepts' Tank Systems did not face the same regulatory hurdles in the United States, where the Tank Systems represented an alternative to the conventional industry practice of storing waste water in lined pits. In December 2011, Brad Wanchulak, a senior Poseidon Concepts Vice-President, was quoted in an article in Alberta Oil Magazine titled "New Spin-Off, Poseidon Concepts Eyes U.S. Expansion," stating that while they hoped to see positive treatment from the ERCB, because the ERCB is "very in tune to what producers want to do, and they also have to consider what's best for everybody outside of the industry," Poseidon Concepts' current plans called for expansion into the United States market.

38. Poseidon Concepts soon became a billion-dollar-market-cap company reporting in excess of \$50 million quarterly revenues, the majority of which purportedly originated from its United States operations. The chart below summarizes Poseidon Concepts' quarterly revenues from Q4 2011 through the end of Q3 2012 by geographic breakdown:

Period (as at the end of)	Canadian Revenue	U.S. Revenue	Total Revenue
Q4 2011	\$10.5 million (30.5% of total revenue)	\$24 million (69.5% of total revenue)	\$34.5 million
Q1 2012	\$10.3 million (20% of total revenue)	\$41.8 million (80% of total revenue)	\$52.1 million
Q2 2012	\$3.5 million (6% of total revenue)	\$51.5 million (94% of total revenue)	\$55 million
Q3 2012	\$6.5 million (16% of total revenue)	\$34.5 million (84% of total revenue)	\$41 million
TOTAL	\$30.8 million (17% of total revenue)	\$151.8 million (83% of total revenue)	\$182.6 million

39. As is discussed below, numerous measures, precautions, controls and policies that are required from a reporting issuer were simply disregarded. As a result, the Prospectus was false and misleading in regard to the company's financial results, especially Poseidon Concepts' financial position, financial performance and cash flows.

Poseidon Concepts' Minimum Commitment Arrangements and Revenue Recognition Practices

40. Poseidon Concepts disclosed on February 14, 2013 that its accounting improprieties stemmed from the company's improper revenue recognition practices principally relating to its so called long-term, "take-or-pay," minimum-commitment arrangements.

41. Poseidon Concepts manufactures and rents out the Tank Systems, generating revenue from providing fluid handling services to clients. At all material times, establishing long-term, minimum commitment arrangements with clients represented significant part of Poseidon Concepts' business strategy. At all material times, the greater portion of Poseidon Concepts' Tank Systems was rented out to clients under the purported minimum commitment arrangements.

42. As at Q3 2011, 50% of Poseidon Concepts' 170 tank units were under minimum commitment arrangements. As at year-end 2011, Poseidon Concepts had 240 Tank Systems, 60% of which were under minimum commitment arrangements. Poseidon Concepts' tank fleet increased to approximately 440 units by the end of Q3 2012, the greater part of which was under minimum commitment arrangements.

43. Under the minimum commitment arrangements, Poseidon Concepts delivered the Tank Systems to clients on an understanding that, if the client used the Tank Systems, Poseidon Concepts charged a certain amount but, if the client did not actually or fully use the Tank

Systems, Poseidon Concepts charged a discounted amount that represented the client's "minimum commitment."

44. At all material times, Poseidon Concepts booked revenue from the provision of services to the minimum commitment clients while the Tank Systems were on the client's property but before any money for such services had been deposited or collected from the client, before the price payable by the client was determined and fixed, and/or before revenue was properly evidenced.
45. Poseidon Concepts was required to book revenue only when revenue recognition requirements had been met, including when revenue was fixed, determined and evidenced.
46. Among other requirements for revenue recognition, two documents are relevant: 1) the document known in the industry as a "field ticket"; and 2) the invoice.
47. In the normal course of operation, and before it records any revenue, Poseidon Concepts should provide the client with a "field ticket" after the services have been rendered. When and if other documents are applicable to fix and determine the price and to evidence revenue, Poseidon Concepts was required to ensure that those procedures were followed.
48. The field ticket is a document that sets out in detail the various services provided to the client and the amount that the client should pay for those services. For example, the field ticket sets out the number of, and the duration for which, the Tank Systems were rented to the client; the number of workers engaged in the set-up and tear-down of the Tank Systems; the number of trucks used to move the Tank Systems to and from the client's

property; and the distance driven by such trucks. The client's consultant in the field reviews, approves and signs the field ticket, and returns it to Poseidon Concepts' accounting department. By doing so, the client acknowledges that it has been provided with those services, and commits to pay. Poseidon Concepts then generates an invoice and sends it back to the client. From the issuance of the invoice, the client is required to pay Poseidon Concepts as per its terms, generally 45 days.

49. The field ticket fixes and determines the price that is owed by the client, and the document that evidences that services have been provided and that the client has committed to pay. The invoice evidences that revenue for, among other things, accounting purposes.
50. When and to the extent that revenue was fixed and evidenced by any document other than a field ticket, Poseidon Concepts was required to ensure that all requirements for revenue recognition were met, including that valid evidence existed to fix the price, and to substantiate the revenue that had purportedly been generated.
51. Poseidon Concepts was required at all times to follow these procedures, but it did not.
52. Poseidon Concepts recorded revenue from minimum commitment clients before it had received a signed field ticket and/or before there was valid and persuasive evidence of the arrangement and/or that revenue had been generated. Poseidon Concepts recorded revenue from minimum commitment clients while one or more of the requirements for revenue recognition had not been achieved.
53. Additionally, Poseidon Concepts recorded revenue from minimum commitment clients despite the fact that some or all of such clients would refuse to pay some or all of the

amounts claimed and, as such, collectability from minimum commitment clients was not reasonably assured.

54. Moreover, Poseidon Concepts also recorded revenue before it had received a signed field ticket from, issued an invoice to, and/or there was valid and persuasive evidence of revenue relating to other, non-minimum commitment clients.
55. Poseidon Concepts relied on “manual” field ticketing and invoicing systems and procedures that were ineffective and slow. As Michaluk wrote in an email to a shareholder in May 2012, those manual processes proved “cumbersome” in Poseidon Concepts’ purported “exponential growth mode.” As a result, Poseidon Concepts’ field tickets were significantly delayed at all times.
56. In the Q2 2012 MD&A, dated August 8, 2012, Poseidon Concepts indicated the need to implement new field ticketing and invoicing procedures, which it hoped to result in improvements in the second half of 2012:

the Corporation is currently implementing several new processes and software systems to improve the speed in which field tickets and invoices are processed and issued.

57. Poseidon Concepts’ field ticketing and invoicing problems crippled its revenue recognition practice and, in part, caused it to book revenue when revenue recognition requirements had not been met.
58. Poseidon Concepts’ revenue recognition practices violated both its own accounting policies and IFRS. As is discussed below, this wrongful practice caused Poseidon Concepts to book revenue for which there was no evidence, when the price payable by

the client was not fixed and determinable, and when collectability was not reasonably assured.

59. On February 14, 2013, Poseidon Concepts itself admitted that its revenue recognition practices violated both the company's accounting policies and IFRS.

THE MISREPRESENTATIONS

The Prospectus Misrepresented Poseidon Concepts' Revenue Recognition Practices, and Misrepresented that Poseidon Concepts was Preparing its Financial Statements in Accordance with IFRS

60. The Prospectus represented, either explicitly or implicitly, that Poseidon Concepts was preparing its financial statements in accordance with IFRS. Pursuant to IFRS, revenue can only be recognized when the amount of revenue can be measured reliably and it is probable that the economic benefits associated with the transaction will flow into the entity.
61. Additionally, the Prospectus incorporated by reference Open Range's Audited Financial Statements for the years ended December 31, 2010 and 2009, which falsely stated Poseidon Concepts' revenue recognition policy and practices as follow:

Fracturing fluid tank rental revenues are generally derived from the provision of rentals and related services which are based on contracts that include fixed or determinable prices based upon daily rates. Revenue is recognized when tank rentals and related services are provided and only when collectability is reasonably assured.

62. However, at the time of the Offering, Poseidon Concepts was recognizing revenue in violation of IFRS and its stated accounting policies. In particular, it was recognizing revenue when: 1) there was no persuasive evidence of an arrangement between Poseidon Concepts and the client; 2) the price was not fixed and determinable; and/or 3) collectability was not reasonably assured.

63. *First*, as explained above, the field ticket fixes and determines the price payable by the client and the invoice evidences revenue. At all material times, Poseidon Concepts booked revenue that was not fixed and determinable, nor evidenced, and recognized revenue when one or more of the requirements for revenue recognition had not been achieved and/or the arrangement between Poseidon Concepts and the client was not legally and persuasively evidenced.
64. *Second*, in order to recognize revenue, Poseidon Concepts was required to be reasonably assured that the amount is collectible. IFRS requires that revenue be recognized only when it is probable that the economic benefits of the transaction will flow into the enterprise. At all material times, Poseidon Concepts violated both these standards, and recognized revenue when collectability was not reasonably assured.
65. In addition to serving as evidence of revenue and fixing the price payable by the client, the field ticket is important for collection purposes. Without a timely field ticket, collection was in jeopardy, because the client had not committed to pay the amounts it purportedly owed to Poseidon Concepts.
66. As noted, Poseidon Concepts recorded revenue from clients under the minimum commitment arrangements before the revenue recognition requirements had been met. In fact, however, when Poseidon Concepts demanded payment, they refused to pay.
67. Moreover, Poseidon Concepts' field ticketing and invoicing processes were delayed at all times. Inasmuch as these processes were delayed, collection was further uncertain because, as Poseidon Concepts itself admits, its clients operate in the volatile oil and gas

exploration and production sector and their ability to meet their financial obligations would be negatively impacted by various industry-related and customer-specific factors.¹

68. In other words, the more the field ticketing and invoicing processes were delayed, the more it was likely that the client would become unable to pay. This risk was exacerbated by the fact that the majority of Poseidon Concepts' customers were other than investment grade parties.²
69. Moreover, Poseidon Concepts did not have an established client base and, as such, it engaged with a rapidly growing number of new customers whose creditworthiness had not been previously tested.
70. Additionally, Poseidon Concepts was aware that many, if not all, of the minimum commitment clients were refusing to pay the amounts they purportedly owed to Poseidon Concepts. Nonetheless, Poseidon Concepts continued to purportedly provide services to, and to record revenue from, them without securing the necessary assurances about collection.
71. Poseidon Concepts was required at all material times to have effective internal controls in place to ensure that its counterparties were creditworthy and able to pay, but it did not. The absence of such controls was a material fact which the Prospectus failed to disclose.

1 In the 2011 Audited Financial Statements, Poseidon Concepts states: "The vast majority of the Corporation's trade accounts receivable are from customers involved in the oil and natural gas industry and the ultimate collection of the accounts receivable depends on a mix of industry-related and customer-specific factors. Industry-related factors that may affect collection include commodity prices and access to capital. Customer-specific factors that may affect collection include realized commodity prices, the success of drilling programs, well reservoir depletion rates and access to capital."

2 Parties that are rated "investment grade" by credit agencies are less likely to default. In turn, entities that are rated non-investment grade, or those whose creditworthiness has not been rated by credit agencies, may be subject to additional risk of default. Before transacting with such parties, the companies normally conduct their own due diligence to ensure that the client is creditworthy and, ultimately, able to pay.

72. At all material times, Poseidon Concepts did not have effective credit-check policies to verify the clients' creditworthiness so as to give reasonable assurance that the amounts purportedly owed to Poseidon Concepts were collectible. Such policies were purportedly established in or about November 2012, as Poseidon Concepts disclosed in the Q3 2012

MD&A:

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.

73. Prior to November 2012, Poseidon Concepts did not have an effective policy in place to evaluate the creditworthiness of its customers, the majority of whom were other than investment grade parties and had not established a credit history with Poseidon Concepts. Before the implementation of this policy, Poseidon Concepts had no reasonable assurance that the amounts purportedly due from clients were collectible. Nor was it probable that the economic benefits of the transaction would flow into the company. The absence of such a policy was a material fact which the Prospectus failed to disclose.

The Prospectus Misrepresented that Poseidon Concepts had "Solid" Margins

74. The Circular, which was incorporated by reference into the Prospectus, represented that the margins of Poseidon Concepts' business were "solid."

75. Additionally, the Q3 2011 MD&A, which was incorporated by reference into the Prospectus, stated:

Fracturing fluid handling tank rental revenue of \$22.3 million and \$41.2 million was recognized for the three and nine months ended September 30, 2011, respectively. Operating earnings in the three and nine months ended September 30, 2011 were \$20.2 million and \$36.4 million, respectively, generating operating margins of 91 percent and 88 percent. The solid operating margins were driven by a strong operating environment for fracturing services and related equipment, resulting in a high utilization rate for the Corporation's expanding tank fleet, and by the overall acceptance of the business unit's service offering, which was driven mainly by the cost advantages and operating efficiencies of the Poseidon system over conventional steel tanks, combined with low internal costs.

76. However, gross margin is calculated by subtracting operating costs from gross revenue, and the statement that the margins for Poseidon Concepts' business were "solid" was based in large part upon Poseidon Concepts' grossly overstated revenues, and was therefore a misrepresentation.

77. As at the date of the Prospectus, Poseidon Concepts' purportedly solid margins were due to its recording grossly inflated revenue in Q1 2012. This was a material fact which the Prospectus should have, but did not, disclose.

The Prospectus set forth a False, Misleading and Unreasonable EBITDA Forecast

78. In the Circular, which was incorporated by reference into the Prospectus, Poseidon Concepts provided EBITDA guidance for fiscal year 2012 based on revenue to be generated from its long-term, minimum commitment arrangements. The Circular stated:

Poseidon is forecasting EBITDA of \$130 million and capital expenditures of \$25 million for the year ending December 31, 2012. As of the date of this Information Circular, Poseidon has secured an aggregate of \$87 million in long-term minimum commitments from customers through to September 2012.

79. Similarly, Poseidon Concepts' Material Change Report filed on SEDAR on January 17, 2012, which was also incorporated by reference into the Prospectus, stated:

Based on increased customer demand, as well as the newly approved capital program and accelerated tank system fleet expansion discussed above, Poseidon has increased its EBITDA guidance for 2012 to \$170 million, which is approximately 31% higher than its previous EBITDA guidance for 2012. Part of the increased guidance can be attributed to customer commitments for nearly 60% of the current tank system fleet, representing rental revenue of approximately \$150 million.

80. All such EBITDA forecasts were wholly unreasonable and were materially false and misleading, because they were based on improper revenue recognition practices.

81. Indeed, Poseidon Concepts cautioned on February 14, 2013 that "all previous guidance with respect to the Company's business should no longer be relied upon."

The Prospectus Misrepresented that Poseidon Concepts' Internal Controls were Adequate, Designed Properly, Effective and/or Operated Properly

82. The Circular, which was incorporated by reference into the Prospectus, stated that management had established and maintained a system of internal controls which was designed to ensure that financial information was relevant, reliable and accurate.

83. The Q3 2011 MD&A, which was incorporated by reference into the Prospectus, stated that:

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 have been designed properly at September 30, 2011.

84. Accounting tasks related to revenue recognition and AR are *not* complex and non-routine accounting transactions, but are straightforward and routine accounting transactions. As

such, the Prospectus stated or implied that there were no weaknesses in the accounting of revenue and AR, which was false and misleading.

85. In fact, Poseidon Concepts' internal controls over financial reporting were defective and completely ineffective at all material times, and were not designed properly to provide reasonable assurance that Poseidon Concepts' financial statements were reliable.
86. In the alternative, and to the extent that the internal controls were 'designed properly' but 'were not adhered to or implemented properly,' the statement that they were 'designed' properly was misleading, because Poseidon Concepts did not disclose that it failed to adhere to, or to properly implement, such internal controls.
87. Additionally, the Q3 2011 MD&A, which was incorporated by reference into the Prospectus, stated:

To mitigate the risk of such material misstatement in financial reporting [...] senior management of the Corporation perform daily oversight of the accounting records.

88. This statement was false or misleading. As at the date of the Prospectus, Poseidon Concepts did not have effective policies in place to conduct an effective "daily" (or ongoing) oversight of its accounting records.
89. The fact that Poseidon Concepts did not have effective policies to address its accounting records on an ongoing basis was a material fact which the Prospectus should have disclosed, but did not disclose.

The Prospectus Misrepresented that Poseidon Concepts' Management Team was Ethical and that its Board would establish High Standards and Proper Corporate Governance Practices

90. According to the Circular, which was incorporated by reference into the Prospectus:

A diverse and experienced management team has been assembled to lead Poseidon and will continue to assess Poseidon's longer-term strategy and organizational needs. All executive officers of Poseidon will meet the high standards to be set by the Poseidon Board which are expected to include, but not be limited to, strong business ethics, adherence to proper corporate governance principles and knowledge of public company compliance requirements.

91. These statements were a misrepresentation. In fact, the executive officers of Poseidon Concepts did not meet "high standards," Poseidon Concepts' Board did not establish such standards, and the standards established by the Board (if any) did not include strong business ethics, adherence to proper corporate governance or knowledge of public company compliance requirements. The absence of such standards was a material fact which the Prospectus failed to disclose.

**THE TRUTH IS GRADUALLY REVEALED
OVER THREE CORRECTIVE DISCLOSURES**

92. On November 14, 2012, Poseidon Concepts shocked the market by releasing the results from its Q3 2012 operations, announcing, among other things, that it was:

- (a) taking a charge of \$9.5 million for uncollectible debt, reducing its AR position and taking a charge to its net income and reported assets;
- (b) significantly increasing 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) disclosing for the first time that its internal controls over financial reporting "were not completely effective";
- (d) introducing a new 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"; and

- (e) disclosing that only 38% of its AR portfolio was due from investment grade parties.

93. This disclosure caused Poseidon Concepts' share price to plummet from \$13.22 as at the close of trading on November 14, 2012, to \$5.00 as at the close of trading on November 15, 2012, representing a 62% decline in the stock's market value. On November 15, approximately 32.6 million Poseidon Concepts' shares changed hands, representing 40% of Poseidon Concepts' 81.1 million outstanding shares.

94. In the morning of December 27, 2012, Poseidon Concepts, once again, surprised the market by issuing a press release, disclosing that, among other things:

- (a) the Special Committee had formed to investigate the concerns surrounding its AR, and to recommend "managerial changes that will strengthen the operations and finance functions of the Company";
- (b) "the Company has been diligently addressing its accounts receivable in recent weeks and is actively pursuing collections, including commencing formal collection processes in appropriate circumstances"; and
- (c) Poseidon Concepts "may need to make additional write downs of accounts receivable in future periods and such write downs may be significant."

95. As a result of this disclosure, Poseidon Concepts' share price plummeted from \$3.31 as at the close of trading on December 24, 2012 to \$1.48 as at the close of trading on December 27, 2012, representing a further 55% decline in Poseidon Concepts' share price.
96. On January 11, 2013, Poseidon Concepts provided an update on the progress of the Special Committee's investigation. To that date, Poseidon Concepts had undergone significant managerial changes, including:
 - (a) the appointment of Dawson as Poseidon Concepts' Interim President and CEO;
 - (b) the resignation of Michaluk as Poseidon Concepts' CEO and director, and his appointment as the company's Interim CFO;
 - (c) the resignation of MacKenzie as Poseidon Concepts' CFO;
 - (d) the resignation of Cliff Wiebe as Poseidon Concepts' President, Chief Operating Officer and director; and
 - (e) the resignation of Joe Kostelecky as Poseidon Concepts' Senior Vice-President, United States division.
97. On February 14, 2013, Poseidon Concepts provided a further update regarding the status of the Special Committee's investigation, disclosing among other things that:
 - (a) based on the recommendations of the Special Committee with the assistance of its independent legal and accounting advisors, Poseidon Concepts' board of directors had determined that \$95 to \$106 million of the company's purported \$148 million revenue during the first nine months of 2012 should not have been recognized;
 - (b) as a result, \$94 million to \$102 million of Poseidon Concepts' \$125.5 million AR should not have been recorded;

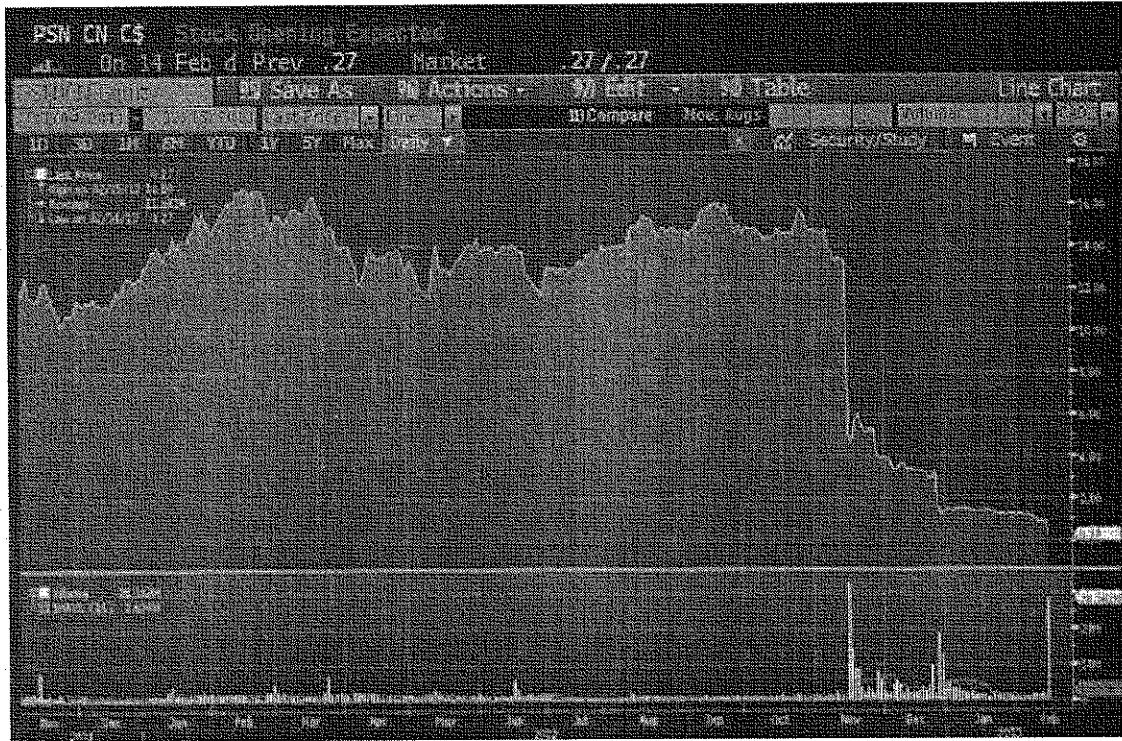
- (c) Poseidon Concepts' Q1, Q2 and Q3 2012 Interim Financial Statements and MD&As would be restated;
- (d) Poseidon Concepts' Q1, Q2 and Q3 2012 Interim Financial Statements did not comply with IFRS, nor with Poseidon Concepts' own accounting policies;
- (e) investors should no longer rely on Poseidon Concepts' previous 2012 EBITDA forecast; and
- (f) all of these events were "primarily related to [Poseidon Concepts'] long term take-or-pay arrangements."

98. As a result of this disclosure, Poseidon Concepts' shares once again plummeted from \$0.89 as at February 13, 2013, to \$0.27 on February 14, 2013, representing a further 70% decline on the stock price.

99. The disclosures particularized above corrected the misrepresentations that are alleged herein to have been contained in the Prospectus.

100. Within a few hours from Poseidon Concepts' February 14, 2013 disclosure, the Alberta Securities Commission issued an order prohibiting all trading or purchasing in Poseidon Concepts' securities until such time that the order is revoked or varied.

101. As such, within only three months, Poseidon Concepts' market capitalization was almost entirely eviscerated. As shown in the chart below, Poseidon Concepts' shares are now virtually worthless.



RIGHTS OF ACTION

Statutory Right of Action in Connection with Misrepresentations in a Prospectus

102. On behalf of himself and the Class Members, the Plaintiff pleads the right of action provided by s 130 of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation.
103. The Underwriters issued or caused to be issued the Prospectus while, as particularized above, it contained misrepresentations.
104. Each of the Underwriters signed the Prospectus and falsely certified therein that it, together with the documents incorporated by reference therein, constituted full, true and plain disclosure of all material facts relating to Poseidon Concepts' shares.

Negligence Simpliciter in Connection with the Offering Pursuant to the Prospectus

105. On behalf of himself and the Class Members, the Plaintiff pleads negligence *simpliciter*.
106. As particularized above, the Prospectus contained misrepresentations and did not constitute full, true and plain disclosure of all material facts relating to Poseidon Concepts' shares.
107. The Underwriters owed a duty to the Plaintiff and the Class Members to ensure that the Prospectus made full, true and plain disclosure of all material facts relating to Poseidon Concepts' shares, that it was materially accurate and complete, and that it contained no misrepresentation.
108. The standard of care expected in the circumstances required the Underwriters to prevent the distribution to which the Prospectus related from occurring prior to the correction of the misrepresentations alleged above to have been contained in the Prospectus, or to ensure that the shares were being offered at a price that reflected their true value. The Underwriters failed to comply with the applicable standard of care.
109. Had the Underwriters complied with their duty to the Plaintiff and the Class Members, then securities regulators likely would not have issued a receipt for the Prospectus and that distribution would not have occurred, or it would have occurred at a price that reflected the true value of Poseidon Concepts' shares.
110. As a result of the Underwriters' breach of their duty of care to the Plaintiff and the Class Members, the Offering took place at an inflated price that did not reflect the true value of Poseidon Concepts' shares, and the Class Members suffered losses when the truth was revealed.

VICARIOUS LIABILITY OF THE UNDERWRITERS

111. The Underwriters are vicariously liable for the acts and/or omissions of their respective officers, directors, partners and/or employees.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

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

- (a) Poseidon Concepts is a reporting issuer in Ontario;
- (b) Poseidon Concepts' shares trade on the TSX which is located in Toronto, Ontario;
- (c) the Prospectus was disseminated in Ontario;
- (d) the Underwriters are headquartered in Ontario or have major offices in Ontario whose staff participated in the Offering;
- (e) a substantial proportion of the Class Members reside in Ontario; and
- (f) a substantial portion of the damages sustained by the Class were sustained in Ontario.

SERVICE OUTSIDE OF ONTARIO

113. The Plaintiff may serve this 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));

- (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

114. 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

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

116. The Plaintiff intends to serve a jury notice.

Date: February 20, 2013

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and Defendants.

Court File No.:
61-13-474553 O&G

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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