



Clerk's stamp:

Court File Number 1301-04364  
Court COURT OF QUEEN'S BENCH OF ALBERTA  
Judicial Centre CALGARY  
Applicants IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF POSEIDON CONCEPTS CORP.,  
POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED  
PARTNERSHIP AND POSEIDON CONCEPTS INC.  
Document FOURTH REPORT TO THE COURT SUBMITTED BY  
PRICEWATERHOUSECOOPERS INC. IN ITS  
CAPACITY AS MONITOR  
DATED May 28, 2013

Address for Service and Contact  
Information of Party Filing this  
Document: Bennett Jones LLP  
4500 Bankers Hall East  
855 - 2nd Street SW  
Calgary, AB T2P 4K7  
Phone: 403-298-3317  
Fax: 403-265-7219  
[lenzk@bennettjones.com](mailto:lenzk@bennettjones.com)  
Attention: Kenneth T. Lenz



**POSEIDON CONCEPTS CORP. ET AL  
MONITOR'S FOURTH REPORT TO COURT**

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**1. INTRODUCTION**

- 1.1 On April 9, 2013, on the application of Poseidon Concepts Corp. ("PCC"), Poseidon Concepts Ltd. ("PCL"), Poseidon Concepts Limited Partnership ("PCLP") and Poseidon Concepts Inc. ("PCI") (collectively referred to as "Poseidon" or the "Company"), the Court of Queen's Bench of Alberta (the "Court") made an order (the "Initial Order") granting Poseidon protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). Under the Initial Order, PricewaterhouseCoopers Inc. ("PwC") was appointed monitor of the Company (the "Monitor").
- 1.2 Pursuant to the Initial Order, among other things, all creditors were stayed from commencing or continuing any proceedings against Poseidon until May 9, 2013.
- 1.3 Subsequently, on May 8, 2013 the Company applied for and was granted an extension of the stay of proceedings to June 28, 2013.
- 1.4 The Monitor notes there are four main classes of creditors of Poseidon as set out below, together with the amount currently estimated to be owing to such classes:
  - 1.4.1 CCAA Interim Financing Lender - \$2.9 million;
  - 1.4.2 Secured Lending Syndicate - \$79.2 million;
  - 1.4.3 Unsecured creditors - \$15 million (some of which may have possessory lien rights); and
  - 1.4.4 Pending class action claimants (shareholders) – estimated at \$660 million by the Plaintiffs in the Class Actions, as that term is defined below (the "Class Action Plaintiffs").
- 1.5 The Monitor has filed three reports to date, copies of which are available from the Monitor's website, [www.pwc.com/car-poseidon](http://www.pwc.com/car-poseidon). All prescribed materials filed by Poseidon and the Monitor relating to this CCAA proceeding are available to creditors and other interested parties in electronic format on the Monitor's website. The Monitor will make regular updates to the website to ensure creditors and interested parties are kept current and to add prescribed materials as required.

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- 1.6 This is the Monitor's Fourth Report to the Court. The purpose of this report is to provide the Court with the Monitor's views on the hearing set for May 30 and 31, 2013 in respect of the Class Actions.
- 1.7 Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars. Capitalized terms not otherwise defined herein are as defined in the Company's application materials, including the Cassidy Affidavit and the various Monitor's reports filed to date.

**2. CLASS ACTION LAWSUITS**

- 2.1 As set out in the Application filed May 3, 2012 on behalf of the Class Action Plaintiffs (the "Application"), there are class actions pending against Poseidon and its directors in Alberta, Ontario and Quebec (the "Class Actions"). The Class Actions have not yet been certified. The Company and the Directors have retained Gowlings LLP to defend the claims set out in the Class Actions. There may also be class actions brought against Poseidon in the US.
- 2.2 The Class Action Plaintiffs, through the Application, seek certain relief more specifically described therein, but which can be summarized as follows:
  - 2.2.1 An Order directing that certain applications in respect of the Class Actions may proceed against any Defendant who does not sign an agreement suspending the passage of the limitation periods ("Tolling Agreement Order");
  - 2.2.2 An Order granting the Class Action Plaintiffs status as representatives of the members of the proposed classes in the Class Actions for the purposes of these proceedings ("Representative Appointment Order");
  - 2.2.3 An Order granting the Class Action Plaintiffs access to certain information of the Company ("Access to Information Order"); and
  - 2.2.4 An Order granting the Claims Action Plaintiffs information related to the Solicitation Process ("Access to Solicitation Process Information Order").
- 2.3 The Application was scheduled to be heard on May 8, 2013 but was adjourned to May 30 and 31, 2013.

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**3. TOLLING AGREEMENT ORDER**

3.1 The Monitor takes no position on the relief described in 2.2.1 above as it understands that that item has been resolved as between the Defendants to the Class Actions and the Class Action Plaintiffs.

**4. REPRESENTATIVE APPOINTMENT ORDER**

4.1 Regarding the Order granting the Class Action Plaintiffs status as representatives of the members of the proposed classes in the Class Actions – the Monitor takes no position.

**5. ACCESS TO INFORMATION ORDER**

5.1 Access to certain information related to the matters alleged in the Class Actions:

5.1.1.1 The Class Action Plaintiffs have attached to their draft form of order (Appendix 4) a three page list of information the Class Action Plaintiffs are seeking from the Company. This list is extensive and includes reports to the Special Committee, emails, correspondence and other communication, credit checks on the Company's customers, financial analysis reports, etc.

5.1.1.2 The Court has authorized the Company to engage Deloitte & Touche Forensic & Investigative Services Inc. to gather and preserve the Company's data. The Monitor is advised that the compilation and preservation of this data has not been completed at this time, and the Monitor understands that the Company had not had an opportunity to review the compiled data to determine issues of privilege or relevance. The Monitor is of the view that answering such requests in a short timeframe will create significant strain on the limited financial and staffing resources of Poseidon.

5.1.1.3 The Monitor notes that the Class Action Plaintiffs assert that disclosure of the information they seek as part of the Application is necessary to attain the objectives of these proceedings. The Monitor is of the opposite view, and believes that management and employees of the Company must continue to focus on the restructuring process, and specifically, maximizing results from Poseidon's assets, rather than on the disclosure of information to the Class Action Plaintiffs. It is anticipated that the Solicitation Process, and therefore the main part of these

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proceedings, will be completed in accordance with the timeline described by EYO (i.e. by the end of June).

**6. ACCESS TO INFORMATION ON SOLICITATION PROCESS ORDER**

6.1 Information relating to the Solicitation Process:

- 6.1.1 The Plaintiffs have requested information relating to the Solicitation Process; however, they have not described what information they are seeking.
- 6.1.2 The Monitor notes the following with respect to the Solicitation Process:
  - 6.1.2.1 Information pertaining to the Solicitation Process, other than information disclosed only to entities submitting bids, has been disclosed to the Court and stakeholders in the various materials filed in these proceedings by the Company and the Monitor, and the Class Action Plaintiffs therefore have access to the same information as any other stakeholder, apart from those participating in the Solicitation Process;
  - 6.1.2.2 The Monitor anticipates filing a report shortly advising of the results of the Solicitation Process, the offers received by the Bid Deadline and the Monitor's recommendation to the Court;
  - 6.1.2.3 The Monitor confirms that based on the offers received by the Bid Deadline, the Lending Syndicate will suffer a significant shortfall on account of Poseidon's indebtedness. Based on this shortfall, it is highly unlikely there will be any distribution to the Company's unsecured creditors or shareholders from recoveries through the sale of the Company's assets;
  - 6.1.2.4 To the extent that the Class Action Plaintiffs are shareholders of the Company, they have an equity claim and they will not be entitled to any distribution in these proceedings unless both the secured and unsecured creditors are paid out in full; and,
  - 6.1.2.5 Accordingly, it appears any recovery for the Class Action Plaintiffs, whether as unsecured creditors or as shareholders, is more likely to be

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obtained through other sources than through these proceedings (e.g. D&O insurance etc).

6.1.3 There are sensitivities to the release of information, and possible financial harm could result through its release too broadly. Given that the class action litigants have no real financial stake in the outcome of the Solicitation Process (unlike the secured creditors) and that there is risk in circulating the information too broadly, at this time the Monitor does not support granting the class action litigants access to the information on the Solicitation Process. Access to information sought by the Class Action Plaintiffs may be obtained at a future date, when its disclosure no longer has the potential to negatively affect the Solicitation Process and the closing of the sale contemplated thereunder.

This report is respectfully submitted this 28<sup>th</sup> day of May, 2013.

**PricewaterhouseCoopers Inc.  
Court Appointed Monitor of  
Poseidon Concepts Corp. et al**



Clinton L. T. Roberts, CIRP  
Senior Vice President



Sean E. Fleming, CIRP  
Vice President