

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:)
) Chapter 15
POSEIDON CONCEPTS CORP.,) Case No. 13-15893 HRT
)
Debtor in foreign proceeding.) **(Jointly Administered)**

**MOTION FOR ORDER APPROVING SALE OF ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS**

PricewaterhouseCoopers Inc. (“PWC”), as the court-appointed monitor (the “Monitor”) and authorized foreign representative of Poseidon Concepts Corp. (“PC Canada”), 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, hereby files this motion seeking an order approving the sale of substantially all of the assets of the PC Debtors free and clear of liens, claims and interests to Rockwater Energy Solutions Inc. (“Rockwater”) (the “Motion”). In support of the Motion, PWC states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 157(a) and (b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M) and (P) of the Bankruptcy Code. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1) and (3).

BACKGROUND

I. The Insolvency Proceedings

2. The PC Debtors initiated a proceeding under the CCAA on April 9, 2013. On April 9, 2013, the court in the Canadian Proceeding issued its CCAA Order.

3. On April 12, 2013, the Monitor filed four Chapter 15 petitions on behalf of the entities collectively referred to as the PC Debtors (the “Petitions”).

4. In conjunction with the Petitions, the Monitor, as the foreign representative in each case, also filed Petitions for Recognition as Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief (the “Petitions for Recognition”). [Docket No. 03]

5. On April 15, 2013, the Court entered its Order Directing Joint Administration of the PC Debtors’ Chapter 15 Cases. [Docket No. 12]

6. On May 15, 2013, the Court entered its Order Granting Recognition as a Foreign Main Proceeding and Related Relief. [Docket No. 60]

II. Business Operations of the PC Debtors

7. 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. 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.

8. 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.

9. In addition to the Tanks, PC Canada also owns 27 VolcanoTM E-Z Heat heaters (the “Heaters”). The Heaters circulate heating fluid through piping and radiators placed inside the Tanks, which enable 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.

10. In addition to the Tanks and Heaters, the assets of the PC Debtors include intellectual property, accounts receivable, customer contracts and books and records (collectively, the “Assets”).

III. The Canadian Proceeding

11. The CCAA is a Canadian federal Act¹ 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

¹ The Court in *In re Fracmaster, Ltd.*, 237 B.R. 627, n. 3 (Bankr. E.D. Tex. 1999) 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.”

order, giving the debtor thirty (30) days of protection from its creditors to allow for the preparation of the Plan of Arrangement.

12. The initial order will also appoint a monitor for the debtor. The monitor is an independent third party appointed by the court to monitor the company's ongoing operations and to assist with the filing and 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.

13. On April 9, 2013, the PC Debtors instituted the Canadian Proceedings by filing applications for the commencement of reorganization proceedings pursuant to the CCAA in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary (the "Canadian Court"). On April 9, 2013, the Canadian Court granted an initial order (the "CCAA Order") for relief in the Canadian Proceedings. On May 8, 2013, the Canadian Court extended the stay and amended the CCAA Order.

IV. The Sale Procedures

14. On April 22, 2013, the Monitor filed its Omnibus Motion for Order (A) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Interests; (B) Authorizing the Debtor to Employ Ernst & Young Orenda Corporate Finance Inc. as Financial Advisor; and (C) Approving Procedures for Sale of Assets (the "Sale Procedures Motion"). [Docket No. 22] The relief requested included approval of the Solicitation Procedures and Information Package previously approved by the Canadian Court.

15. On May 10, 2013, the Court entered its Order Granting the Monitor's Omnibus Motion for Order (A) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Interests; (B) Authorizing the Debtor to Employ Ernst & Young Orenda Corporate Finance Inc.

as Financial Advisor; and (C) Approving Procedures for the Sale of Assets (the “Sale Procedures Order”). [Docket No. 55]

16. Pursuant to the terms of the Solicitation Procedures and Information Package, bids were solicited by E&Y. A total of 213 parties were contacted. Confidentiality agreements were signed by 78 potential bidders. A total of 16 bids were submitted for all or some of the assets by the bidding deadline of May 23, 2013.

17. The party designated as having submitted the highest and best bid was Rockwater Energy Solutions, Inc. (“Rockwater”). Rockwater is a fluids and environmental solutions provider offering customized products and services to the water, stimulation, fracturing, fluids, and production needs of its customers throughout North America. Rockwater has executed an Asset Purchase Agreement dated May 24, 2013 (the “APA”), a copy of which is attached and incorporated herein as **Exhibit A**. The aggregate Purchase Price, as defined in the APA, is \$51,350,000.00, subject to certain specified adjustments and inclusive of certain accounts receivable valued at approximately \$5,550,000.00. In the event the Real Property Option described in the APA is exercised, the purchase price will be \$53,200,000.00.

18. On May 29, 2013, the Monitor filed its Fifth Report and Confidential Sixth Report in conjunction with an application filed by the PC Debtors seeking approval of the sale of the assets to Rockwater. A hearing has been set before the Canadian Court for June 6, 2013. It is anticipated that the Rockwater transaction will be approved at that time. Upon entry of an order approving the sale to Rockwater, the Monitor intends to supplement this Motion.

19. Approval of the proposed sale to Rockwater is in the best interests of the bankruptcy estates. The proposed sale to Rockwater represents the culmination of a rigorous marketing and sale effort conducted by E&Y. The proposed sale is not conditioned on further

due diligence or financing contingencies. Rockwater has demonstrated that it has the ability to close the transaction upon obtaining the necessary approval from the Canadian Court and this Court.

REQUESTED RELIEF

20. By this Motion and pursuant to 11 U.S.C. § 363(b), (f) and (m) and FED. R. BANKR. P. 6004 and 6005, the Monitor requests that the Court enter an Order approving the sale of the assets described in the APA to Rockwater, free and clear of all liens, claims, and interests. The Monitor also requests that the Court recognize and enforce the Sale Approval and Vesting Order of the Canadian Court approving the sale of the Assets to Rockwater.

21. Because time is of the essence with regard to the proposed closing, currently set for June 21, 2013, contemporaneously with the filing of this Motion, the Monitor is filing a separate motion requesting the Court set a hearing as soon as practicable on the Motion subsequent to the expiration of the notice period within which to address objections to the Motion, if any.

DISCUSSION AND RELEVANT LEGAL AUTHORITY

22. It is anticipated that, either explicitly or by reference to 11 U.S.C. § 1520, 11 U.S.C. § 363 will apply to these jointly administered Chapter 15 cases.

23. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. § 363(b)(1); *see also* *Cajun Elec. Power Coop., Inc. v. Official Comm. of Unsecured Creditors (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 354 (5th Cir. 1997). The proper standard for the Court’s use in considering a proposed motion to sell is the

“business judgment” test and, under that standard, the debtor-in-possession has the burden to establish sound business reasons for the terms of the proposed sale. *See In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004) (*citing In re Lionel*, 722 F.2d 1063 (2nd Cir. 1983)). The factors for the Court to consider in whether to approve the sale include: (i) any improper or bad motive; (ii) that the price is fair and the negotiations or bidding occurred at arm’s length; and (iii) adequate procedures, including proper exposure to the market and accurate and reasonable notice to all parties in interest. *Id.*

24. 11 U.S.C. § 363(f) provides that a debtor may sell property under 11 U.S.C. § 363(b) free and clear of any interest in such property of an entity other than the estate only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

25. The Monitor submits that subsections (1), (3), and/or (5) of the above statute apply to the Assets. In addition, the Monitor also anticipates that all creditors claiming liens or security interests will consent to the sale, thereby satisfying subsection (2) of the statute. Accordingly, the Assets can be sold free and clear of liens, interests, and claims pursuant to 11 U.S.C. § 363(f).

26. Approval of the sale to Rockwater has been requested by the Canadian Court and will promote the objectives and principles provided in Chapter 15 of the Bankruptcy Code,

including Section 1501. The relief requested in this Motion is specifically of a type contemplated by Section 1521 and Chapter 15.

DISPOSITION OF SALE PROCEEDS

27. All liens and security interests in the Assets will attach to the respective proceeds of sale.

NOTICE OF THIS MOTION

28. Notice of this Motion is being served on all interested parties and the United States Trustee pursuant to FED. R. BANKR. P. 2002(a)(6) and Local Bankruptcy Rule 9013-1. In conjunction and contemporaneously filed with the Sale Procedure Motion, the Monitor is seeking a shortened notice period for the filing of any objections to the requested relief.

WHEREFORE, the Monitor respectfully requests that the Court enter an Order approving the sale of substantially all of the PC Debtors' assets free and clear of liens, claims, and interests; specifying that, to the extent applicable, liens, claims, or interests attach to the proceeds of any sale; recognizing and enforcing the order approving the sale entered by the Canadian Court; and such other and further relief as the Court deems appropriate.

Dated: May 31, 2013.

Respectfully submitted,

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

/s/ Brent R. Cohen

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*Attorneys for PricewaterhouseCoopers Inc., as
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 31, 2013, a true and correct copy of the MOTION FOR ORDER APPROVING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS was mailed by depositing same in the United States mail, first-class postage prepaid, addressed to the CM/ECF registered attorneys and parties in interest at the addresses of record on the Court's electronic database ("Mailing Matrix") as of the date of service of the above (see attached Service List), and also mailed to the following:

5J Oilfield Services, LLC
4090 N US Hwy 79
Palestine, TX 75801

5J Trucking
199 Free Soil Road
Perry, PA 15349

5J Trucking
212-250 Bald Hill Road
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5J Trucking
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Reclamation, LLC
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Drisco, LLC
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SFI of Tennessee, LLC
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/s/ Kimberly Means

OF: ROTHGERBER JOHNSON & LYONS LLP

Label Matrix for local noticing

1082-1

Case 13-15893-HRT

District of Colorado

Denver

Fri May 31 13:50:34 MDT 2013

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1418600 Alberta Ltd.

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Show-Me Hotshot Services LLC
201 2nd Avenue W
Williston, ND 58801-5920

Siebenga Interior Design Consultants Inc
166 Springborough Green SW
Calgary, Alberta T3H 5M4
CANADA

Source Office Products
13350 West 43rd Drive
Golden, CO 80403-7238

Southwest Business Machines Inc
564 - 23rd Avenue East
Dickinson, ND 58601-7100

Southwest Disposal Service Inc
PO Box 840730
Dallas, TX 75284-0730

Spira Data Corp
500 630 - 8th Avenue SW
Calgary, Alberta T2P 1G6
CANADA

Sterling Crane LLC
9351 Grant Street Suite 250
Denver, CO 80229-4364

Sterling Crane LLC
9351 Grant Street, Suite 250
Thornton, CO 80229-4364

Steve Iverson
Steel & Erection Inc
351 West 5960 South
Salt Lake City, UT 84107-6915

Sullivan's Trucking Company Inc.
PO Box 2164
Ponca City, OK 74602-2164

Summit Energy Services LLC
PO Box 4440
Williston, ND 58802-4440

Supreme Office Products Limited
PO Box 4318
Regina, SK S4P 3W6
CANADA

T Rex Conoco
1107 3rd Avenue West
Dickinson, ND 58601-3804

TSX Inc
PO Box 421
Toronto, Ontario M5X 1J2
CANADA

TWS Inc.
PO Box 488
Lovington, NM 88260-0488

Tab Canada
130 Sparks Avenue
Willowdale, Ontario M2H 2S4
CANADA

Tanks-A-Lot Inc
4227 E Larkspur Lane
Gardendale, TX 79758-3802

The Banff Centre
Box 1020
Banff, Alberta T1L 1H7
CANADA

The City of Calgary
PO Box 2405 STN M
Calgary, Alberta T2P 3L9
CANADA

Alan S. Thompson
950 S. Cherry St.
Ste. 900
Denver, CO 80246-2666

Thompson Reuters
PO Box 7855 Station A
Toronto, Ontario M5W 2R2
CANADA

Three Amigos LLC
PO Box 2534
Hobbs, NM 88241-2534

Tinky Trucking
Box 6448
Edson, Alberta T7E 1T8
CANADA

Titan Specialized Hauling Ltd
 PO Box 7949
 Edson, Alberta T7E 1W2
 CANADA

Toronto Dominion Bank
 77 King St W
 18th Fl
 Toronto, Ontario MSK 1A2
 CANADA

Trident Oilfield Services Ltd
 PO Box 1095
 Grand Prairie, Alberta T8V 4B5
 CANADA

Triumph Oilfield Hauling Inc
 Box 1488
 Grand Prairie, Alberta T8V 3R5
 CANADA

Troutman Sanders LLP
 PO Box 933652
 Atlanta, GA 31193-3652

UFA Co-operative Ltd
 PO Box 2790 Station M
 Calgary, Alberta T2P 2M7
 CANADA

United Rentals North America Inc
 PO Box 840514
 Dallas, TX 75284-0514

United States Trustee
 999 18th Street, Suite 1551
 Denver, CO 80202-2415

Valley Crest Crane & Rigging
 42331 West Tabby Swale Road
 Tabiona, UT 84072

Wagner Equipment Co.
 c/o Arnold & Arnold, LLP
 Attn.: Terry Ehrlich, Esq.
 7691 Shaffer Parkway, Suite A
 Littleton, CO 80127-3010

Wagner Rents
 PO Box 911291
 Denver, CO 80291-1291

Western Rentals Inc
 5 W Industrial Circle
 Odessa, TX 79761-7128

Risa Lynn Wolf-Smith
 555 17th St.
 Ste. 3200
 Denver, CO 80202-3921

Workers' Compensation Board - Alberta
 McCall Court 150
 4311 - 12th Street NE
 Calgary, Alberta T2E 4P9
 CANADA

Xylem Dewatering Solutions Inc
 PO Box 935152
 Atlanta, GA 31193-5100

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Class Action Litigants

(d) Poseidon Concepts Inc.
 1200, 645 - 7th Avenue SW
 Calgary, AB T2P 4G8
 Canada

(d) Poseidon Concepts Ltd.
 1200, 645 - 7th Avenue SW
 Calgary, AB T2P 4G8
 Canada

(u) PricewaterhouseCoopers Inc.

(u) Sterling Crane

(d) Sterling Crane LLC
 9351 Grant Street, Suite 250
 Thornton, CO 80229-4364

(u) Summit Energy Services, Inc.

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