

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	TENTH REPORT TO THE COURT SUBMITTED BY PRICEWATERHOUSECOOPERS INC. IN ITS CAPACITY AS MONITOR DATED August 9, 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 Attention: Kenneth T. Lenz



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

August 9, 2013

TABLE OF CONTENTS

1. INTRODUCTION	1
2. ROCKWATER SALE UPDATE	2
3. INTERIM DISTRIBUTION TO THE LENDING SYNDICATE	3
4. U.S. CLAIMS PROCESS	4
5. POST-FILING OPERATIONS	4
6. CASH FLOW FOR THE PERIOD APRIL 9 TO AUGUST 4, 2013.....	5
7. NEW KERP INCENTIVE POOL DISTRIBUTION	6
8. TRANSACTION FEE PAYABLE TO EYO	7
9. SALE OF EDSON REAL PROPERTY TO DACAM HOLDINGS LTD.	7
10. CONCLUSION	10

APPENDICES

- A. Forecast to Actual Variance Report for the 17 week period ended August 4, 2013**

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

August 9, 2013

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 "Canadian 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 Subsequently, a recognition order was granted by the U.S. Bankruptcy Court (the "U.S. Court") under Chapter 15 of the U.S. Bankruptcy Code recognizing Canada as the foreign main proceeding.
- 1.3 Pursuant to the Initial Order, among other things, all creditors are stayed from commencing or continuing any proceedings against Poseidon until May 9, 2013.
- 1.4 Subsequent orders were granted by the Court extending the stay of proceedings to June 28 and September 12, 2013 respectively.
- 1.5 The Monitor has filed eight reports to date and issued one unfiled confidential report (the Sixth Report). Copies of the filed reports are available from the Monitor's website, 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.
- 1.6 This is the Monitor's Tenth Report to the Court. The purpose of this report is to provide the Court with comments regarding the following:
 - 1.6.1 The status of the sale to Rockwater Energy Solutions Inc. ("Rockwater");
 - 1.6.2 The status of the interim distribution to the Lending Syndicate;
 - 1.6.3 A claims process initiated in the U.S.;

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

August 9, 2013

- 1.6.4 The status of the Company's operations;
 - 1.6.5 The Company's actual cash flow for the period April 9 to August 4, 2013;
 - 1.6.6 The status of the distribution of the New KERP Incentive Pool to the employees and Total Water Management ("TWM") and the Transaction Fee to Ernst & Young Orenda Corporate Finance Inc. ("EYO");
 - 1.6.7 The Monitor's recommendation for approval of a proposed sale of the Company's real property located in Edson, Alberta.
- 1.7 This report contains sensitive information which may adversely affect the closing of the proposed sale of the Edson property. Further, if the transaction does not close, the Monitor is of the view that efforts to re-market the assets may be significantly impaired if the purchase price is made public at this time. Therefore, the Monitor considers it appropriate that the Monitor prepare a Confidential Eleventh Report disclosing the purchase price and that this Eleventh Report be sealed pending further order of the Court.
- 1.8 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 Monitor's reports filed to date.

2. ROCKWATER SALE UPDATE

- 2.1 On June 6, 2013, a Sale Approval and Vesting Order was granted by the Canadian Court approving the sale of the assets of Poseidon to Rockwater with an estimated purchase price of \$53.2 million (the "Purchase Price"). Subsequently, on June 18, 2013, the U.S. Court approved the Rockwater Transaction.
- 2.2 As contemplated in the Asset Purchase Agreement ("APA"), some adjustments have been made to the Purchase Price to account for a reduction in accounts receivable and the removal of certain assets from the purchase. These adjustments reduced the Purchase Price to \$47,169,285 (the "Adjusted Purchase Price").

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

August 9, 2013

- 2.3 On June 24, 2013, the sale to Rockwater closed and the balance of the Adjusted Purchase Price totaling \$41,849,285 (after consideration of Rockwater's deposit of \$5.32 million submitted with their offer) was transferred to and is currently being held in trust by the Monitor's legal counsel.
- 2.4 Pursuant to Section 4.2 (b) of the APA, within 30 days of closing Rockwater is to provide Poseidon with a Draft Statement of Adjustments ("DSA") Rockwater is proposing to make to the Adjusted Purchase Price¹. On July 24, 2013, Rockwater provided Poseidon with a copy of its DSA.
- 2.5 Pursuant to Section 4.2 (b) of the APA, Poseidon has 10 business days from the receipt of the DSA to notify Rockwater of any objections to the DSA and the amount it disputes. On August 2, 2013, Poseidon notified Rockwater of its objections to the DSA.
- 2.6 The Monitor understands that Rockwater and Poseidon are attempting to resolve Poseidon's objections within the next 20 business days in accordance with the terms of the APA, failing which the dispute will be submitted to EYO for consideration. Any party objecting to the decision of EYO would have the right to apply to Court for a determination and any such decision of the Court would be binding on Rockwater and Poseidon.

3. INTERIM DISTRIBUTION TO THE LENDING SYNDICATE

- 3.1 On July 3, 2013, the Canadian Court approved an order authorizing an interim distribution of the sales proceeds to be made the Lending Syndicate totaling \$31.4 million.
- 3.2 On July 3, 2013, the Monitor filed an application in the U.S. Court seeking approval of the interim distribution to the Lending Syndicate. On July 26, 2013, the U.S. Court granted an order authorizing the interim distribution.
- 3.3 The Monitor was advised by its U.S. legal counsel that interim distributions are unusual in U.S. Bankruptcy proceedings, particularly without the debtor company having completed a claims process. Accordingly, U.S. counsel concluded that in order to satisfy the U.S. Court that the granting of an interim distribution order was appropriate, a U.S.

¹ The allowable adjustments and their method of calculation is described in Section 4.1 of the APA.

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

August 9, 2013

claims process should be commenced by the Monitor in advance of the Monitor filing its U.S. interim distribution application (discussed further below).

- 3.4 On July 30, 2013, an interim distribution of \$31.4 million was made to the agent of the Lending Syndicate (the "Agent"), comprising of \$4 million from cash on hand held by Poseidon and \$27.4 million from a portion of the sales proceeds held in trust by the Monitor's legal counsel.

4. U.S. CLAIMS PROCESS

- 4.1 On June 27, 2013, the Monitor applied to the U.S. Court for a claims process for U.S. creditors of the Company (the "U.S. Claims Process"). The U.S. Court granted an order setting a bar date for the filing of proofs of claim of August 22, 2013.
- 4.2 Pursuant to the order, the Monitor's U.S. legal counsel immediately served notice of the U.S. Bar Date Order to all known U.S. creditors and interested parties, along with a proof of claim form.
- 4.3 The Monitor will be reviewing the claims filed by U.S. creditors to determine which claims are valid and would rank in priority to the secured claim of the Lending Syndicate (i.e. possessory liens).
- 4.4 The Monitor anticipates seeking the Canadian Court's approval of a similar claims process for Canadian creditors in the near future as it pertains to creditors who may have claims ranking in priority to the secured claim of the Lending Syndicate (i.e. possessory liens).

5. POST-FILING OPERATIONS

Operations

- 5.1 As a result of the sale of the business and assets to Rockwater, the Company has ceased operations with respect to the set up and tear down of tanks.
- 5.2 The Denver and Calgary office leases were disclaimed and the premises vacated on July 1, 2013 and July 31, 2013 respectively.

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

August 9, 2013

Employees

- 5.3 All remaining employees (two in the U.S. and five in Canada) have been terminated by Poseidon effective July 31, 2013. The Monitor has retained three former employees on an hourly contract basis to assist Whitewater (discussed below) with gathering information pertaining to the DSA and the collection of U.S. state sales tax refunds, as well as assist the Monitor with respect to the U.S. Claims Process and the proposed Canadian Possessory Lien Claims Process (as defined further in this report).
- 5.4 The contract for TWM, the third party retained to manage Poseidon's operations during the CCAA, was terminated effective June 27, 2013.

Suppliers

- 5.5 The Company has remitted all valid payments due to post-filing suppliers, as well as all statutory remittances to the various levels of government, with the exception of business taxes due to the City of Calgary for the period January 1 to July 31, 2013 totaling \$16,257². We understand the Company's legal counsel is currently reviewing to determine if the outstanding balance should be paid and, if so, for what time period.

Whitewater Inc.

- 5.6 Whitewater Inc. (the financial consulting company retained by Poseidon, whose principal is Mr. Leigh Cassidy) continues to provide services to Poseidon, mainly with respect to resolving the dispute between Rockwater and Poseidon pertaining to the DSA. The Monitor is of the view that Mr. Cassidy continues to provide value to Poseidon and its stakeholders.

6. CASH FLOW FOR THE PERIOD APRIL 9 TO AUGUST 4, 2013

- 6.1 The Company's actual cash flow for the period of April 9 to August 4, 2013 compared to the combined 17 week cash flow forecast, as presented in the Initial and Comeback Application, are attached as Appendix A to this report.

² On July 18, 2013, the Monitor provided Poseidon with its legal counsel's views that the amount due to the City of Calgary likely should be paid pursuant to paragraph 7 (c) of the Initial Order and Section 348 (c) of the *Municipal Government Act*

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

August 9, 2013

- 6.2 The Monitor's comments on the Company's actual cash flows for the period of April 9 to August 4, 2013 are as follows:
- 6.2.1 Accounts receivable collections were \$12.6 million higher than forecast, principally due to customer payment slow-downs not occurring to the extent expected. The Monitor views this favourable variance as a permanent difference;
- 6.2.2 Operating disbursements were \$2.4 million lower than forecast, due to lower than expected tank related expenses, reduced general and administrative disbursements, and better than expected credit terms from suppliers. The Monitor views these favourable variances as permanent differences;
- 6.2.3 Actual disbursements for CCAA restructuring costs were \$6.2 million, which was \$1.75 million lower than forecast. The Monitor views these favourable variances as primarily due to timing differences and are anticipated to reverse in the coming weeks; and,
- 6.2.4 The Company repaid the entire outstanding balance of the Century Interim Financing Facility on June 20, 2013.
- 6.3 As a result of the foregoing, the Company had a net cash inflow of \$3.3 million for the 17 week post-filing period to August 4, 2013, \$4.3 million higher than forecast.

7. NEW KERP INCENTIVE POOL DISTRIBUTION

- 7.1 Pursuant to the Initial Order, the Court approved a new key employee retention plan (the "New KERP"). The New KERP is comprised of an incentive pool based on the collection of U.S. accounts receivable, sale of surplus assets and the results of the sale of assets through the Solicitation Process (the "Incentive Pool"). The Incentive Pool is to be split between the employees and TWM, with one-third paid to the eligible employees and two-thirds paid to TWM.
- 7.2 The Company and the Monitor have come to an agreement on the amount payable under these plans as at the closing date totaling \$2,170,689, calculated as follows:
- 7.2.1 Incentive pool for post-filing U.S. accounts receivable collections –\$533,918; and

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

August 9, 2013

7.2.2 Incentive pool for the sale of assets to Rockwater – \$1,636,771.

7.3 To date, the Company has distributed 80% of the Incentive Pool to the employees and TWM. The remaining 20% will be held pending resolution of the DSA.

8. TRANSACTION FEE PAYABLE TO EYO

8.1 On April 9, 2013, Poseidon entered into an engagement letter with EYO whereby EYO was retained as exclusive financial advisor to the Company to conduct a process to solicit offers from interested parties for a possible transaction involving the sale of the business and/or assets of the Company (the "Solicitation Process").

8.2 The EYO engagement letter contemplated the following fees payable to EYO in the event of the sale of Poseidon's assets:

8.2.1 3% of the Transaction Value, defined as cash consideration received net of any interim financing utilized and subject to a number of other adjustments; and,

8.2.2 \$25,000 monthly progress fee, to be credited against the Transaction Fee.

8.3 The Company, the Monitor and EYO have agreed that the Transaction Fee payable to EYO as at the date of closing totals \$1,405,079.

8.4 To date, the Company has distributed 80% of the Transaction Fee to EYO. The remaining 20% will be held pending resolution of the DSA.

9. SALE OF EDSON REAL PROPERTY TO DACAM HOLDINGS LTD.

9.1 As noted above, EYO was retained as exclusive financial advisor to the Company.

9.2 On April 9, 2013, the Court authorized the Solicitation Process and set a Bid Deadline for May 15, 2013 (subsequently revised to May 23, 2013).

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

August 9, 2013

- 9.3 At the Revised Bid Deadline (May 23), the Company had received 16 offers in various forms from 14 parties³.
- 9.4 The Monitor, EYO and the Company recommended the acceptance of the en bloc offer received from Rockwater totaling \$51.35 million for the assets plus an option to purchase the real estate located in Edson, Alberta for \$1.85 million⁴. On June 6 and June 19, 2013 the Canadian and U.S. courts approved the sale to Rockwater.
- 9.5 Pursuant to the APA, Rockwater had 7 days from the receipt of a Phase 1 Environmental Report to exercise its option. During the week of June 17, 2013 a Phase 1 report was provided to Rockwater.
- 9.6 On June 24, 2013, Rockwater advised it would not proceed with a purchase of the Edson property.
- 9.7 At the request of Poseidon, EYO contacted a number of the previous bidders to advise them of the opportunity to revise and resubmit their bids on the real estate only.
- 9.8 EYO advised that the only parties interested in resubmitting were those that provided a "land only" bid.

Discussions with Bidder P, Rockwater and Dacam Holdings Ltd.

- 9.9 As noted in paragraph 1.7, the Monitor will be filing a Confidential Eleventh Report describing in more detail EYO's discussions with the "land only" bidders.
- 9.10 Summarized below are the results of discussions EYO had with Rockwater and the two "land only" bidders.
 - 9.10.1 Bidder P (as described in the Bid Summary attached to the Monitor's Confidential Sixth Report):
 - 9.10.1.1 Bidder P declined to resubmit a bid.

³ The results of the Solicitation Process is described in more detail in the Monitor's Fifth Report dated May 29, 2013

⁴ In June 2011, Poseidon purchased the Edson property for \$1.85 million (comprised of \$1.55 million for the land and \$300,000 for the buildings)

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

August 9, 2013

9.10.2 Rockwater:

9.10.2.1 Rockwater declined to resubmit a bid.

9.10.3 Dacam:

9.10.3.1 Dacam (also described as Bidder Q in the Confidential Sixth Report) provided a revised offer to EYO⁵ and is intended to be on an as-is, where-is basis;

9.10.3.2 The offer was open for acceptance until July 26, 2013 with closing to occur two days after Court Approval;

9.10.3.3 Poseidon is in support of acceptance of the offer.

9.11 On July 22, 2013 the Monitor provided a copy of the Dacam offer to the Agent along with the Monitor's analysis of the offer (a copy of which was provided to Poseidon). Noting that the offer was lower than the amount paid by Poseidon in 2011, the Agent requested the Monitor obtain additional information from a commercial realtor (i.e. estimated value/comparables).

9.12 On July 25, 2013, the Monitor provided the Agent with an Opinion of Value from a national commercial real estate company. A copy of this opinion was provided to Poseidon.

9.13 In addition, the Monitor advised the Agent of the values ascribed to the property by the realtor who was involved in the 2011 sale of the land from the former owner to Poseidon and the amount Century Services Inc. (the Interim Lender) valued the land for Interim Financing lending purposes.

9.14 Based on the additional information noted above, on July 25, 2013 the Agent provided its concurrence for Poseidon to accept the Dacam offer.

⁵ The revised offer price is disclosed in the Confidential Eleventh Report

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

August 9, 2013

Recommendation

- 9.15 The Monitor supports the approval of Dacam's offer and the issuance of the necessary Court Order to effect this transaction for the following reasons:
- 9.15.1 Competitors and industry participants were fully solicited during the Solicitation Process as described in the Monitor's Fifth Report dated May 29, 2013;
 - 9.15.2 Dacam's offer is an unconditional offer with a quick closing (i.e. to occur two days after Court approval);
 - 9.15.3 The Lending Syndicate supports proceeding with the sale of the property to Dacam. As the remaining Poseidon debt owing to the Lending Syndicate far exceeds the value of the Property, there is no prejudice to any other creditors of Poseidon; and,
 - 9.15.4 There is no evidence that additional time on the market will result in a higher price.

10. CONCLUSION


- 10.1 The Monitor supports the Company's application for Court approval of the sale of the Edson property to Dacam.

This report is respectfully submitted this 9th day of August, 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

APPENDIX A

Forecast to Actual Variance Report for the 17 week period ended August 4, 2013

Poseidon Concepts Corp.
Forecast to Actual Variance Report
For the 17 week period ended August 04, 2013

	Receipts and Disbursements cumulative from April 9 to August 04, 2013			
	Forecast	Actual	Variance (\$)	Variance (%)
RECEIPTS				
Accounts Receivable Collections	3,863	16,497	12,634	327%
Asset Sale Proceeds - Including AR Sold to Purchaser (Note 1)	47,240	47,169	(70)	(0)
Draw on Interim Financing Facility (Net of Repayments)	2,040	-	(2,040)	(0)
TOTAL RECEIPTS	53,142	63,666	10,523	20%
OPERATING DISBURSEMENTS				
Disbursements - Operating Expenses				
Canadian Operating Disbursements	635	54	(581)	-91%
US Operating Disbursements	2,271	1,270	(1,001)	-44%
General & Administrative Disbursements	2,420	1,632	(788)	-33%
TOTAL OPERATING DISBURSEMENTS	5,326	2,956	(2,370)	-44%
Less: Asset Sale Proceeds Held in Trust by Monitor (Note 1)	9,448	47,169	37,721	399%
Interim Distribution to Lending Syndicate	31,400	4,000	(27,400)	-87%
NET CHANGE IN CASH BEFORE RESTRUCTURING COSTS	6,969	9,540	2,572	37%
Restructuring Costs including Employee Retention Plan (Note 2)	7,991	6,235	(1,756)	-22%
NET CHANGE IN CASH	(1,023)	3,305	4,328	

Note 1 - The entire proceeds from the asset sale to Rockwater (\$47.2 million) are currently held in trust by the Monitor. Gross receipts and disbursements related to the sales proceeds are included in the forecast to actual variance report for illustrative and information purposes.

Note 2 - On July 29, 2013, \$27.4 million of trust funds proceeds held by the Monitor were transferred to the Lending Syndicate in the form of an interim distribution. This amount, combined with Poseidon's \$4.0 million interim distribution to the Lending Syndicate, corresponds to the amount forecasted by Poseidon (\$31.4 million).