

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.

COURT FILE NUMBER **APPLICATION TO: (1) EXTEND STAY and (2)
ENHANCE MONITOR POWERS**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION
OF THE PARTY
FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street SW
Calgary, Alberta T2P 4K7
Attention: Ken Lenz

Telephone No.: 403-298-3317
Fax No.: 403-265-7219
Client File No.: 11866.66

NOTICE TO RESPONDENT:

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the master/judge.
To do so, you must be in Court when the application is heard as shown below:

Date: **September 27, 2013**

Time: 2:30 p.m.

Where: Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB

Before Whom: Mme. Justice K.M. Eidsvik

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. If necessary, an Order abridging the time for service of this Application and supporting materials and declaring service to be good and sufficient.
2. An Order further extending the stay of proceedings in this matter to October 11, 2014.
3. An Order granting enhanced powers to the Monitor, on terms substantially similar to those set out in the draft Order appended as Schedule "A" to this Application.
4. Such further and other relief, advice and directions as counsel may request and this Honourable Court may deem just and appropriate in the circumstances.

Grounds for making this application:

5. The brief extension of the stay being sought is necessary to allow the stakeholders to continue to negotiate a mediation process that would allow them to pursue a resolution of class action claims and other claims against Poseidon and its directors, and others, within the context of these proceedings, possibly as part of a Plan of Arrangement. Poseidon continues to act in good faith.
6. The directors have threatened to resign and may resign therefore it is necessary that the Monitor have enhanced powers, which enhancements have been agreed upon by Poseidon and the Lending Syndicate. In any event, the estate is largely liquidated, the Lending Syndicate faces a large deficiency on its security and these measures will result in the administration being more economical and efficient.
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

8. The pleadings and proceedings filed in the within action, including the Initial Order.
9. The Thirteenth Report of the Monitor, filed
10. The Sixteenth Report of the Monitor, filed concurrently with this Application.

11. The inherent jurisdiction of this Honourable Court.
12. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

13. None.

Applicable Acts and regulations:

14. The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

Any irregularity complained of or objection relied on:

15. None.

How the application is proposed to be heard or considered:

16. Oral submissions by counsel in an application in Justice Chambers as scheduled.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

CLERK'S STAMP

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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 **ORDER (Expansion of Monitor's Powers)**

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AND CONTACT
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PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
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Calgary, Alberta T2P 4K7

Attention: Ken Lenz
Telephone No.: (403) 298-3317
Facsimile No.: (403) 265-7219
Client File No.: 11866.66

**DATE ON WHICH ORDER WAS
PRONOUNCED:** **Friday, September 27, 2013**

**LOCATION WHERE ORDER WAS
PRONOUNCED:** **Calgary**

**NAME OF JUSTICE
WHO MADE THIS ORDER:** **The Honourable Mr. Justice Yamauchi**

UPON the application of the PricewaterhouseCoopers Inc., the Court-appointed Monitor
(the "Monitor") of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts

Limited Partnership and Poseidon Concepts Inc. (collectively, "**Poseidon**"); AND UPON the consent of The Toronto-Dominion Bank, as agent for a syndicate comprised of The Toronto-Dominion Bank, National Bank of Canada, The Bank of Nova Scotia and HSBC Bank Canada (collectively, the "**Lending Syndicate**"); AND UPON having read the Thirteenth Report of the Monitor dated September 6, 2013; AND UPON noting that the Poseidon Board of Directors have resigned, and the third party contract management services provided by Total Water Management Inc. have concluded;

AND UPON hearing from counsel for the Monitor, counsel to the Lending Syndicate, counsel to Poseidon and any other affected parties that may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Court in these proceedings dated April 9, 2013 (the "**Initial Order**").

SERVICE

2. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

EXPANSION OF MONITOR'S POWERS

3. The expansion of the Monitor's powers in respect of Poseidon as set forth below is hereby authorized and approved, on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.
4. In addition to the powers and duties of the Monitor set out in the Initial Order, without altering in any way the limitations and obligations of Poseidon as a result of these proceedings, the Monitor be and is hereby authorized and empowered to:
 - (a) preserve, protect and maintain control of the Property, or any parts thereof;
 - (b) operate and carry on the business of Poseidon including, without limitation:

- (i) completing any transaction for the sale of Property; and
 - (ii) negotiating, developing and implementing a Plan or Plans on behalf of Poseidon;
- (c) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:
 - (i) entering into any agreements;
 - (ii) incurring obligations in the ordinary course of business;
 - (iii) retaining or terminating employees; and
 - (iv) ceasing to carry on all or any part of the Business;
- (d) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) oversee and direct the preparation of cash flow statements and to assist in the dissemination of financial and other information in these proceedings;
- (f) receive, collect and take possession of all monies and accounts now owed or hereafter owing to any one of Poseidon, including proceeds payable pursuant to a sale of Property;
- (g) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf any one of Poseidon;
- (h) initiate, prosecute and continue the prosecution of any and all proceedings on behalf of Poseidon and to settle or compromise any such proceedings or claims. For greater certainty, such authority shall include the ability to represent Poseidon in any negotiations or mediation with respect to such claims of Poseidon. The

authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceedings;

- (i) instruct counsel respecting the defence of the class proceedings commenced against Poseidon, only to the extent that such instructions are necessary for defence counsel in the class proceedings and only to the extent such instructions do not require the disclosure of privileged information or documentation to the Monitor;
 - (j) exercise any rights which Poseidon may have;
 - (k) provide instruction and direction to the advisors of Poseidon;
 - (l) make any distribution or payments required under any Order in these proceedings including the Financial Advisor and to fund the KERP created herein; and
 - (m) to perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any further order of this Court.
5. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of Poseidon. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of Poseidon and that any distribution made to creditors of Poseidon will be deemed to have been made by Poseidon.
6. Poseidon and its current and former shareholders, officers, directors, agents and representatives shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court.
7. The Monitor shall continue to have the benefit of all of the protections and priorities as set out in the Initial Order and any such protections and priorities shall apply to the Monitor in fulfilling its duties under this Order or in carrying out the provisions of this Order.

FOREIGN ASSISTANCE

8. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Lending Syndicate, Poseidon, the Monitor and their respective agents in carrying out the terms of this Order.

J.C.Q.B.A.