



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**

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: **Friday, October 11, 2013**

Time: 3:00 p.m.

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

Before Whom: Madam Justice Strekaf

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 May 30, 2014.
3. Approval of a Mediation Order, substantially in the form attached as Schedule "A".
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 parties are in agreement that extension of the stay is beneficial to all stakeholders to continue 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 Mediation Order has been agreed to as between a number of parties, and provides a considered framework in which substantial issues may be resolved in a timely manner.
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 Monitor's Seventeenth Report, to be filed.
10. The inherent jurisdiction of this Honourable Court.
11. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

12. None.

Applicable Acts and regulations:

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

Any irregularity complained of or objection relied on:

14. None.

How the application is proposed to be heard or considered:

15. 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:

COURT FILE NUMBER

1301-04364

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 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

MEDIATION ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

Kenneth T. Lenz
Bennett Jones LLP
4500, 855 – 2nd Street SW
Calgary, Alberta T2P 4K7
Ph. (403) 298-3317 Fx. (403) 265-7219
File No.: 11866-66

DATE ON WHICH ORDER WAS
PRONOUNCED

October __, 2013

NAME OF JUSTICE WHO MADE THIS
ORDER

The Honourable Justice _____

UPON the application of PricewaterhouseCoopers Inc. (the "**Monitor**") as court appointed monitor of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively, "**Poseidon**");

AND UPON having read the _____ Monitor Report, dated October __, 2013, and the pleadings and proceedings filed in these CCAA proceedings;

AND UPON noting the Order dated September 27, 2013, which, among other things, enhanced the Monitor's powers to permit the Monitor to prosecute and pursue claims on behalf of Poseidon;

AND UPON noting the consent of the secured lenders of Poseidon, namely The Toronto-Dominion Bank, as agent for itself and HSBC Bank Canada, The Bank of Nova Scotia, and National Bank of Canada (the "**Lending Syndicate**"), the consent of Franz Auer, Joanna Goldsmith and Marian Lewis,

being the representative plaintiffs (the "**Class Action Plaintiffs**") in the Actions commenced against Poseidon, Scott Dawson, Lyle Michaluk, Matt MacKenzie and Harley Winger (collectively, the "**Poseidon Defendants**"), respectively, in the Court of Queen's Bench of Alberta, Action No. 1301-00935, in the Superior Court of Ontario, Action No CV-12-46873600CP, and in the Superior Court of Quebec, Action No. 500-06-000633-129 (collectively, the "**Class Actions**"), the consent of the Poseidon Defendants and the consent of the Monitor, and the consent of the Plaintiff (the "**U.S. Plaintiff**") in the action commenced and pending in the United States District Court for the Southern District of New York styled *IN RE POSEIDON CONCEPTS SECURITIES LITIGATION*, having Court File Number 12-cv-1213 (DLC) (the "**U.S. Action**");

IT IS HEREBY ORDERED THAT:

THE MEDIATION PARTIES

1. Subject to any further Order of this Court, the Class Action Plaintiffs, the Lending Syndicate, the Monitor, the Poseidon Defendants and any other Eligible Person (defined herein) (collectively, the "**Parties**," each being a "**Party**," to the Mediation) shall participate in a mediation (the "**Mediation**") to address any claims, rights, obligations, or disputes resulting from, relating to, or with respect to the restatement of Poseidon's financial statements and any other related matters (the "**Restatement**").
2. Any other person or entity that may have, or may be subject to, any claims, rights, obligations, or disputes resulting from, relating to, or with respect to the Restatement (an "**Eligible Person**") may also participate in the Mediation upon:
 - (a) the acceptance and delivery of a Mediation Notice in accordance with, paragraphs 10 to 14 of this Order;
 - (b) further Order of this Court; or
 - (c) the consent of the Class Action Plaintiffs, the Lending Syndicate, the Monitor and the Poseidon Defendants,

and thereupon shall be considered a Party to the Mediation.

3. All Parties to the Mediation shall participate in the Mediation in person and with representatives present with full authority to settle the claims (including any insurer providing coverage) or, if not practicable, through counsel or other representatives, subject to those counsel or other representatives having access to representatives with full authority, and undertaking to promptly pursue instructions with respect to any proposed agreements that arise from the Mediation.
4. Pursuant to this Court's Order dated May 30, 2013 (the "**Representation Order**"), the Class Action Plaintiffs are representatives for the class as defined in the Representation Order (the "**Representation Class**"), and shall have full authority to settle any claims, rights or disputes relating to the Representation Class resulting from, relating to, or with respect to the Restatement.
5. The US Plaintiff may participate in the Mediation through his counsel and shall be a Party to the Mediation. The U.S. Plaintiff shall have full authority to settle any claims, rights or disputes resulting from, relating to, or with respect to the Restatement relating to the Class Members contemplated in the Class Action and the U.S. Action that are not members of the Representation Class. No further notice to the Class is required.

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THE MEDIATION

6. The Mediation shall be conducted by the Honourable George W. Adams, Q.C. or, if Mr. Adams is unavailable, by such other mediator as may be agreed upon between the Class Action Plaintiffs, the Lending Syndicate, the Monitor and the Poseidon Defendants, or as may be appointed by a further Order of this Court (the "**Mediator**").
7. The Mediation shall be held in Calgary, Alberta, at a location to be agreed upon between the Class Action Plaintiffs, the Lending Syndicate, the Monitor and the Poseidon Defendants.
8. The Mediation shall be held on three (3) consecutive mutually available dates in April or May 2014, or such other dates agreed upon between the Class Action Plaintiffs, the Lending Syndicate, the Monitor and the Poseidon Defendants. Additional dates may only be added, and

adjournments of any dates may only be accepted, with the prior written consent of the Parties to the Mediation or a further Order of this Court.

9. The costs, fees and expenses of the Mediation, including facility fees and mediator's fees, shall be split equally by the Class Action Plaintiffs, the Lending Syndicate, and the Poseidon Defendants, and any other Party to the Mediation unless otherwise agreed to by the Parties to the Mediation in writing.

MEDIATION NOTICES

10. By October 31, 2013, any Party to the Mediation may send a notice (the "**Issuing Party**") in the form attached as Schedule "A" (the "**Mediation Notice**") to any proposed respondent to request their participation in the Mediation. Such Issuing Party shall provide a copy of such Mediation Notice to all other Parties to the Mediation.
11. If the proposed respondent agrees to participate in the Mediation, as described in this Order and the Mediation Notice, the proposed respondent shall unconditionally sign the Mediation Notice and return the signed Mediation Notice to the Issuing Party by no later than November 30, 2013.
12. Such proposed respondent may deliver the signed Mediation Notice to the Issuing Party by email, fax or courier.
13. Upon delivery of the signed Mediation Notice to the Issuing Party, the proposed respondent shall be considered a Party to the Mediation for all purposes and subject to all the benefits and obligations of the Mediation and this Order.
14. Upon receipt of a signed Mediation Notice, the Issuing Party shall send a copy to all Parties to the Mediation and the Mediator.

STATEMENT OF ISSUES

15. By November 15, 2013, any Party to the Mediation that has not already delivered a Statement of Claim to a Party to the Mediation against which it seeks relief, shall deliver a Statement of Issues

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to all other Parties to the Mediation and to the Mediator, which shall be in a format similar to a Statement of Claim and shall identify the party against which it believes it has a claim, set out the relief sought, and set out the factual and legal basis for the claim.

16. Any Party who wishes to do so, may deliver to all of the other Parties to the Mediation a Reply, by no later than December 15, 2013.

PRE-MEDIATION DOCUMENT DISCLOSURE

17. Subject to paragraph 18 of this Order, no later than January 31, 2014, all Parties to the Mediation shall deliver to all other Parties to the Mediation all non-privileged relevant and material records in its possession, power or control relevant to the Restatement and any other issues that arise from the Statements of Issues or Reply thereto delivered by any of the Parties to the Mediation.
18. The Poseidon Defendants shall deliver to all Parties to the Mediation all non-privileged documents in their possession, power or control responsive to the list of custodians and search terms set out in Schedule "B" to this Order.
19. Wherever possible, the Parties shall produce all records electronically, in native files types, with preserved metadata.
20. Any Party to the Mediation may submit a reasonable request to another Party for further production of relevant and material records subject to considerations of proportionality. Parties must make best efforts to respond to such requests as soon as possible.
21. Without limiting the generality of the foregoing, the Parties to the Mediation shall be entitled to disclose in the Mediation all records in their possession, power or control that may be subject to obligations of confidentiality with any other Party to the Mediation.
22. If a Party to the Mediation claims privilege over any document that would otherwise be producible under this Order, that Party will provide the other Parties to the Mediation with a list identifying the

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categories of documents over which privilege was claimed. A detailed privilege log identifying all privileged documents individually is not required.

23. Any disagreement with respect to claims of privilege on a category by category basis will be resolved in a one day arbitration before an arbitrator mutually agreeable to the Parties to the Mediation, failing such agreement, by an arbitrator appointed by the Court. The decision of the arbitrator will not be subject to judicial review or appeal. The decision of the arbitrator will be binding on the parties solely for the purposes of the Mediation.
24. If a settlement of all claims is not reached at mediation, all documents over which privilege was claimed but which were produced pursuant to a ruling of the arbitrator will be returned to the Party that produced the documents and there shall be no waiver of privilege, or allegation of waiver of privilege, in any other proceedings.
25. The decision of the arbitrator shall not be referred to, relied upon, or referenced in any respect in any other proceedings and shall not form the basis for any plea of issue estoppel or any other estoppel. Rather, any dispute regarding privilege shall be re-litigated as though it was being decided for the first time.

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CONFIDENTIALITY

26. Unless otherwise agreed in writing, or the Court orders otherwise, all information or records prepared for or in the Mediation, including Statements of Issues, Mediation Notices, and responses to Mediation Notices, and all written or other form of documentary material provided to, or prepared by the Mediator, the Parties to the Mediation, or third parties including the documents produced pursuant to paragraphs 17-25 of this Order:
 - (a) are protected by without prejudice / settlement privilege;
 - (b) must be treated by all participants in the Mediation as confidential;
 - (c) can only be used for the purposes of the Mediation;

- (d) cannot be revealed or disclosed to anyone other than a Party to the Mediation, its legal counsel and its experts;
 - (e) cannot be referred to, presented as evidence or relied upon on in any subsequent application or proceeding of a judicial or quasi-judicial nature for any purpose whatsoever including, but not limited to, impeachment; and
 - (f) are not admissible in any application, action, or proceedings of a judicial or quasi-judicial nature whatsoever.
27. Any communication made, document produced or created, or evidence given in the Mediation shall be subject to absolute privilege, as if delivered or made in a judicial proceeding. The fact that a communication is made, a document produced or created, and evidence given shall not be deemed to be an admission of relevance, nor an automatic waiver of any privilege, whether solicitor-client or otherwise, that would ordinarily attach to such communications, documents or evidence in the ordinary course of litigation.
28. The discussions, settlement negotiations, or any disclosures, including the Mediator's file, made during or for the purposes of the Mediation, are inadmissible in any other proceedings for any purpose. In particular, the Parties to the Mediation shall not rely on or introduce as evidence in any other proceedings the following:
- (a) any views or proposals expressed or suggestions made by or to the other Parties or the Mediator in respect of the possible settlement of the matter, whether orally or in writing;
 - (b) any admissions or apologies made by any of the other Parties in the course of the Mediation, whether orally or in writing;
 - (c) the fact that any of the other Parties indicated willingness to accept a proposal or recommendation for settlement made by the Mediator; and
 - (d) any information provided to the Mediator in the course of the Mediation.

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29. In order to preserve the confidentiality of the Mediation process, the Parties shall not file any documents or notices described in this Order with the Court, unless otherwise specifically directed by this Order or a further Order of this Court, however, no Party to the Mediation shall seek a Court Order to permit any such documents or notices to be filed with the Court.
30. In the event that the Parties to the Mediation (or any of them) reach a settlement, the terms of the settlement will be admissible in any Court or other proceeding required to approve or enforce it.
31. Any proved material breach of the confidentiality provisions of this Order shall be subject to the full range of sanctions available to the Court.
32. In the event that the Mediation is terminated without a settlement having been reached among all of the Parties, nothing in this order shall be construed as limiting the disclosure obligations of any party to a class proceeding or class action that has been commenced in the United States or Canada in relation to the Restatement.

MEDIATION BRIEFS

33. No later than three weeks prior to the Mediation, each of the Parties to the Mediation shall submit to each other and the Mediator a Mediation Brief, which details the significant facts, legal issues, and settlement position of the Party.

INSURANCE

34. At least one (1) month prior to the Mediation, each of the Parties to the Mediation against which a claim has been asserted by Statement of Claim or in a Statement of Issues shall disclose the following information to the Party that asserted such claim, all of which will be provided on a confidential and without prejudice basis:
- (a) The remaining limits on any responsive insurance policies; and
 - (b) A summary of any reservation of rights asserted by the insurers in respect of such insurance policies.

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TERMINATION OF THE MEDIATION

35. The Mediation shall be terminated only on the occurrence of any of the following circumstances:

- (a) A signed Declaration by the Mediator, filed with this Court, that a settlement has been reached between some or all of the Parties;
- (b) A signed Declaration by the Mediator, filed with this Court, that further efforts of Mediation are no longer considered worthwhile;
- (c) At 11:59 p.m. on the third day of the Mediation or at such later time as may be agreed to by all Parties; or
- (d) By further Order of this Court.

STANDSTILL

36. None of the Parties to the Mediation shall commence or pursue any claims or proceedings resulting from, relating to, or with respect to the Restatement or any other issues that arise from the Statements of Issues or Reply thereto delivered by any of the Parties to the Mediation against any other Party to the Mediation between the date of this Order and the termination of the Mediation under paragraph 35 of this Order.
37. The running of time for any limitation period that applies to any claim that has been or could be asserted by any Party against any other Party shall be suspended from the date of this Order until the date that is sixty (60) days after the termination of the Mediation under paragraph 35 of this Order (the "**Standstill Period**").
38. Nothing in this Order shall preclude the Petitioner in the proceeding commenced and pending in the Quebec Superior Court, District of Montreal, styled *Kegel v National Bank of Canada*, having Court File Number 500-06-000642-138, from prosecuting that proceeding.

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STAY OF PROCEEDINGS

39. Subject to any further Order of this Court, paragraph 13 of the CCAA Initial Order is hereby amended to extend the Stay Period to May 30, 2014.

AMENDMENT AND VARIATION OF ORDER

40. Any of the procedures or deadlines specified in this Order may be amended or varied by agreement in writing of all the Parties to the Mediation or further Order of this Honourable Court.

J.C.Q.B.A.

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SCHEDULE "B"

CUSTODIANS

1. Scott Dawson
2. Harley Winger
3. Dean Jensen
4. Neil Richardson
5. Lyle Michaluk
6. Cliff Wiebe
7. Matt MacKenzie
8. David Belcher
9. Sonja Sanborn
10. Doug Robinson
11. Stacey Kolenick
12. Joann Vispo
13. Kristen Schmid
14. Stacey Manista
15. Allyson Finstein
16. Jessie Heppenstall
17. Michelle Rye
18. Joe Kostelecky
19. Brad Wanchulak
20. Todd Studer
21. Brian Swendsen
22. Angus Jenkins
23. Jim McKee
24. Kenneth J. Faircloth

25. Wazir (Mike) Seth
26. Ryan McKay
27. Jenna Farquhar
28. Carrie Howell
29. Mitch Kersten
30. Cheryl Schell
31. Brian Erickson
32. Steve Swinson
33. King Schmeltzer
34. Ron Swinson

DATE RANGE

November 1, 2011 to April 1, 2013

SEARCH TERMS

	SEARCH TERM
1.	Allowance
2.	"Bad debt"
3.	Uncollectible
4.	Collectible
5.	Impaired OR impairment
6.	"Revenue recognition" OR "rev recognition" OR "rev rec"
7.	"EBITDA guidance" OR "EBITDA forecast"
8.	Profitability AND (analysis OR review OR report)
9.	"Revenue target"
10.	"Aged listing"
11.	"Aged account"
12.	"Aging report"

	SEARCH TERM
13.	"DSO" OR "Days Sales Outstanding"
14.	"Field ticket"
15.	Ticketing
16.	Billing AND (issue OR problem OR concern OR complaint)
17.	Invoicing
18.	Discrepancies AND (revenue OR contract OR price OR pricing OR term sheet)
19.	Complexities AND transaction
20.	"Credit approval"
21.	"Reverse revenue"
22.	Reversal
23.	"Credit check"
24.	"Cash deposit"
25.	"Watch list"
26.	"Revenue cycle"
27.	"Accounts Receivable" OR "AR" OR "A/R" OR "receivables" OR "receivable"
28.	Arrears
29.	"Write-off" OR "write-down"
30.	Auditor
31.	KPMG
32.	Caldwell
33.	"Interim review" OR "quarterly review"
34.	"Subsequent event"
35.	"Representation letter" OR "rep letter"
36.	"Management letter" OR "MLP" OR "ML"
37.	"Audit committee"
38.	"Financial statements"
39.	"Long-term contract" OR "long term contract"
40.	"Minimum commitment"
41.	"Take or pay"
42.	"Day to day"
43.	"Client base" OR "customer base"

	SEARCH TERM
44.	"Signed contract"
45.	TD
46.	Syndicate
47.	Lenders
48.	Bonus
49.	"Stock options"
50.	Warrants
51.	Backdate OR backdating
52.	"Internal Control"
53.	ICFR
54.	"Financial Reporting"
55.	Disclosure AND (problem, issue, concern)
56.	"Accounting personnel"
57.	Material AND (misstatement OR misrepresentation)
58.	Fraud
59.	Risk AND (revenue OR accounting OR audit)
60.	"Red flag"
61.	Weakness
62.	"National Bank" OR "NBC" OR "NBF"
63.	Sandy OR Edmonstone
64.	"Lawrence Bloomberg"
65.	"Louis Vachon"
66.	"Luc Paiement"
67.	"Ricardo Pascoe"
68.	"Greg Colman"
69.	"Connected issuer"
70.	"Due diligence"
71.	"Use of proceeds"
72.	Dividend
73.	"Accelerated program"
74.	"Capital budget" OR "capital program"

	SEARCH TERM
75.	"Special Committee" OR "SC"
76.	"The Committee"
77.	Investigation
78.	Investigate
79.	Restate OR restatement
80.	Overstate
81.	"Ernst & Young" OR "EY" OR "E&Y"
82.	"Interim report"
83.	OSC
84.	ASC
85.	SEC
86.	RCMP
87.	Whistleblower
88.	"Insider trading"
89.	"Non-public information" or "non public information"
90.	"Commitment Letter"