

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	SEVENTEENTH REPORT TO THE COURT SUBMITTED BY PRICEWATERHOUSECOOPERS INC. IN ITS CAPACITY AS MONITOR DATED October 10, 2013

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

October 10, 2013

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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 "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 were 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 October 11, 2013.
- 1.5 The Monitor has issued sixteen reports to date, two of which are unfiled confidential reports (the Sixth and Eleventh Reports). 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 Seventeenth Report to the Court.
- 1.7 The purpose of this report is to advise the Court on the Monitor's views on:
 - 1.7.1 the requested extension of the Stay of Proceedings until May 30, 2014; and
 - 1.7.2 the Company's revised cash flow forecast in support of the application for an extension of the Stay of Proceedings to May 30, 2014.

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- 1.8 Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

2. EXTENSION OF THE STAY OF PROCEEDINGS TO MAY 30, 2014

- 2.1 As discussed in the Monitor's Thirteenth Report, there are still a number of outstanding administrative issues to attend to including the assessment of claims filed in the U.S. claims process and the Canadian possessory lien claim process, as well as the collection of miscellaneous outstanding receivables.
- 2.2 A number of stakeholders are of the view that the CCAA proceedings are an appropriate venue to attempt to mediate and potentially resolve certain class action and other claims against Poseidon and its former directors and officers relating to the alleged misstatements of Poseidon concerning its accounts receivable, and other related matters. Significant discussions have occurred among counsel for a number of parties who it is anticipated will be participating in a Mediation Order substantially in the form appended to the Application. In particular, the Monitor expects that in addition to itself, the following persons will consent to the Order: 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"), 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 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"), and the Poseidon Defendants.
- 2.3 The proposed Order also permits the adding of other parties to the mediation, including possibly certain underwriters and auditors, by way of a Notice to Mediate. It is anticipated that the Monitor will participate in the mediation by advancing certain of Poseidon's interests and particularly those that counsel for Poseidon's insurer cannot easily assert while representing the interests of both Poseidon and its directors on the primary claims.

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- 2.4 The Mediation Order considers a number of factors and issues including the appropriate preservation of privilege, the disclosure of documents, the selection of a mediator, standstill of claims while the mediation is ongoing and the procedure for the mediation. The Mediation Order contemplates a mediation in April or May, 2014. If a successful resolution is achieved, it is anticipated that a Plan of Arrangement may be presented to creditors and the Court shortly thereafter.
- 2.5 As a result of the timeline as set out above, and in order to minimize the costs of further appearances, the Monitor considers it appropriate to extend the stay of proceedings until May 30, 2014, the expected completion date of the mediation.
- 2.6 As of the date of this report, there are a number of outstanding matters with respect to the Mediation Process. It is hoped that these matters will be resolved by the time of the October 11, 2013 hearing, but there can be no assurance that this will occur.
- 2.7 The Monitor will provide a verbal update to the Court of the status of the Mediation Process at the October 11, 2013 hearing, as well as its views on same.

3. REVISED CASH FLOW FORECAST

- 3.1 As a result of the proposed extension of the Stay of Proceedings to May 30, 2014, a revised cash flow forecast has been prepared by the Monitor (as a result of the Order expanding the Monitor's powers) which covers the period from October 7, 2013 to May 30, 2014 (the "October 7 RCFF", attached as Appendix A to this report).

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The October 7 RCFF can be summarized as follows:

	<u>\$ 000's</u>
Asset sale proceeds transferred from Monitor	<u>18,706</u>
Total Receipts	<u>18,706</u>
Potential priority claim payment	(2,050)
Estimated general and administrative disbursement	(98)
Estimated restructuring costs	(1,177)
Estimated mediation professional fees	(600)
Estimated interim distribution to Lending Syndicate	<u>(15,496)</u>
Total Disbursements	<u>(19,420)</u>
Net Cash Flow for Period	(715)
Opening Net Cash Balance	<u>2,800</u>
Closing Net Cash Balance	<u>2,085</u>

- 3.2 The October 7 RCFF contains a high-level estimate of the professional fees to be incurred by the Monitor and its counsel in respect of the proposed mediation. The actual fees that will be incurred will depend on the scope of work requested of the Monitor.
- 3.3 Based on the foregoing, the Monitor considers that the Company's liquidity appears sufficient for the forecast period.
- 3.4 The Monitor's conclusions of the October 7 RCFF pursuant to section 23 (1)(b) of the CCAA are as follows:
 - 3.4.1 The October 7 RCFF attached as Appendix A to this report has been prepared for the purpose described in the Notes, using the Probable and Hypothetical Assumptions set out in Notes 1 to 4 to the October 7 RCFF.
 - 3.4.2 Nothing has come to our attention that causes us to believe that, in all material respects:
 - 3.4.2.1 The Hypothetical Assumptions are not consistent with the purpose of the October 7 RCFF;

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3.4.2.2 As at the date of this report, the Probable Assumptions are not suitably supported or do not provide a reasonable basis for the October 7 RCFF, given the Hypothetical Assumptions; or

3.4.2.3 The October 7 RCFF does not reflect the Probable and Hypothetical Assumptions.

- 3.5 Since the October 7 RCFF is based on Assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the October 7 RCFF will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by it in preparing this report.
- 3.6 The October 7 RCFF has been prepared solely for the purpose described in the Notes to the October 7 RCFF, and readers are cautioned that it may not be appropriate for other purposes.
- 3.7 Assuming a satisfactory resolution to the outstanding matters in respect of the Mediation Process, the Monitor supports an extension of the stay of proceedings until May 30, 2014.

This report is respectfully submitted this 10th day of October, 2013.

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



Clinton L. T. Roberts, CIRP
Senior Vice President



Sean Fleming, CIRP
Vice President

APPENDIX A

October 7 Revised Cash Flow Forecast

('000's) CDN		Note 1									
Month Ending			Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Total
MONTHLY NET CHANGE IN CASH											
Total AR Collections and Other			-	-	-	-	-	-	-	-	
Asset Sale Proceeds Transferred from Monitor	2		18,706		-	-	-	-	-	-	18,706
TOTAL RECEIPTS			18,706	-	-	-	-	-	-	-	18,706
Disbursements											
Operating Disbursements			-	-	-	-	-	-	-	-	-
Potential Priority Claim Payments			-	1,800		250	-	-		-	2,050
Interim Distribution to Lending Syndicate			15,496			-	-	-	-	-	15,496
Total G&A Disbursements			18	21	12	10	10	10	10	10	98
TOTAL DISBURSEMENTS			15,514	1,821	12	260	10	10	10	10	17,644
NET CHANGE IN CASH FROM OPERATIONS			3,192	(1,821)	(12)	(260)	(10)	(10)	(10)	(10)	1,062
Restructuring Costs	3		609	218	150	40	40	40	40	40	1,177
Mediation Professional Fees	4		50	150	150	50	50	50	50	50	600
NET CHANGE IN CASH			2,533	(2,189)	(312)	(350)	(100)	(100)	(100)	(100)	(715)
CUMULATIVE NET CHANGE IN CASH											
Net change in cash			2,533	(2,189)	(312)	(350)	(100)	(100)	(100)	(100)	(715)
Opening Cash Position			2,800	5,333	3,144	2,833	2,483	2,384	2,284	2,185	2,800
Foreign Exchange Gain{Loss}			-	-	-	-	-	-	-	-	-
TOTAL ENDING CASH			5,333	3,144	2,833	2,483	2,384	2,284	2,185	2,085	2,085

NOTES

This Cash Flow Projection has been prepared based on the probable and hypothetical assumptions noted below. Consequently, actual cash flow will likely vary from this projection with such variance possibly being material.

1. The month ending October 2013 is a partial month from October 7, 2013 to October 31, 2013 only.
2. Asset sale proceeds from Rockwater and Dacam and accrued interest of approximately \$18.7 million are held in trust by the Monitor. The cash flow forecast assumes these proceeds are transferred to the Company to satisfy the forecast disbursements of the Company, including a second interim distribution to the Syndicate of \$15.496 million.
3. Restructuring cost include the professional fees of consultants, the Company's legal counsel, the Monitor and the Monitors legal counsel, certain costs of data capture and preservation, and interim financing costs.
4. Mediation professional fees are a high-level estimate of fees to be incurred by the Monitor and its counsel in respect of the Mediation. The actual fees that will be incurred may differ materially and will depend on the scope of work requested of the Monitor.