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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 TWENTY-SECOND REPORT TO THE COURT SUBMITTED BY
PRICEWATERHOUSECOOPERS INC. IN ITS
CAPACITY AS MONITOR
DATED March 20, 2015

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**POSEIDON CONCEPTS CORP. ET AL
MONITOR'S TWENTY-SECOND REPORT TO COURT**

March 20, 2015

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1. INTRODUCTION

- 1.1 On April 9, 2013, on the application of Poseidon Concepts Corp., Poseidon Concepts Ltd. , Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. (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. Subsequent orders were granted by the Court extending the stay of proceedings to March 31, 2015.
- 1.4 The Monitor has issued twenty-one 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.
- 1.5 This is the Monitor's Twenty-Second Report to the Court.
- 1.6 The purpose of this report is to advise the Court of the following:
 - 1.6.1 The status of the settlement of the U.S. lien claims;
 - 1.6.2 The status of the Mediation Process; and
 - 1.6.3 The Monitor's request for an extension of the Stay of Proceedings to April 30, 2015.

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

2. STATUS OF THE U.S. LIEN CLAIMS

- 2.1 In the Monitor's Twentieth-First Report, the Monitor updated the Court on the status of the U.S. lien claims filed in the U.S. Claims Process advising that the Lending Syndicate had settled with 5 of the 7 U.S. lien claimants. The Monitor confirms that settlement proceeds were forwarded to the 5 claimants during the month of February.
- 2.2 Since that time the Lending Syndicate's counsel advised it has a settlement with 1 of the 2 remaining lien claimants, namely Mountain Man Welding and Fabrication Inc. ("**Mountain Man**"). On March 19, 2015, the Monitor filed a motion with the U.S. Court seeking approval of the settlement agreement with Mountain Man.
- 2.3 We understand that the remaining U.S. lien claimant is Rawx Inc. ("**Rawx**"). Rawx has asserted a lien claim totaling US\$494,788.65. We understand that settlement discussions continue between the Lending Syndicate and Rawx, but in the event a consensual resolution cannot be reached in the near future, the matter will be litigated.
- 2.4 The Monitor confirms that the full amount claimed by Rawx, totaling US\$494,788.65, is currently held in trust by the Monitor pending either settlement of the claim or a determination of the validity of the claim by the U.S. Court.

3. STATUS OF THE MEDIATION PROCESS

- 3.1 The Monitor notes that there has been various statements of claim filed by certain parties, including a Statement of Claim filed by the Monitor on behalf of Poseidon.
- 3.2 On October 11, 2013, this Court granted an Order approving a mediation process to address any claims, rights, obligations, or disputes resulting from, relating to, or with respect to the preparation, review, audit and restatement of Poseidon's financial statements and any other related matters (the "**Mediation**").
- 3.3 The Mediation was conducted by the Honourable George W. Adams, Q.C. and held in Calgary, Alberta on April 23, 24 and 25, 2014. Many of the details concerning the

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mediation are agreed to be confidential and without prejudice and are not commented upon here.

- 3.4 As noted in the Monitor's Eighteenth Report, at the close of the Mediation, negotiations between certain of the parties initially continued largely without the involvement of the Mediator up to November 4, 2014.
- 3.5 Since November 4, 2014, the Monitor through its counsel, has had several hundred communications with the primary stakeholders, being the Lending Syndicate, the Class Action Representatives, KPMG and counsel to the D&O Insurers. Several potential types of plans and compromises have been discussed. These communications have continued since the last extension application on February 27, 2015 and some progress has been made as the Monitor continues to pursue negotiated settlements of some or all of the claims.
- 3.6 At present, the Monitor continues to be of the view that it is able, on behalf of Poseidon, and with the consent of the Lending Syndicate, to put forward a Plan of Compromise (the "**Plan**") to creditors. A first draft has been prepared, but significant work remains to be done before it is put to the Court as part of an application for a Meeting Order. Nevertheless, the Monitor expects to be seeking such an order within the next 30 days.
- 3.7 As noted in the Monitor's Twenty-First Report, the Monitor received a substantial without prejudice commitment from one of the parties. Negotiations have continued with this party and have involved the Monitor, the Class Action Representatives and the Lending Syndicate. The Monitor expects that with this commitment, it will be able to put forth a Plan but believes it is in the best interests of all parties that a period of further negotiation continues to ensure any proposed Plan is as valuable and as comprehensive as possible. It appears that advancing a Plan pursuant to the CCAA is the most effective means to accomplish these objectives. For certainty, the Monitor expressly does not waive the without prejudice and confidential nature of its settlement communications.

4. EXTENSION OF THE STAY OF PROCEEDINGS TO APRIL 30, 2015

- 4.1 The Monitor continues to be of the view the settlement of all or a significant part of the claims resulting from the activities of Poseidon and its directors and officers is best achieved through a Plan pursuant to the CCAA.

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- 4.2 The Monitor notes that the primary secured creditor of Poseidon, being the Lending Syndicate, supports an extension to the stay of proceedings. At the time of the filing of this report, the Monitor is not aware of any opposition to the extension being sought.
- 4.3 Accordingly, the Monitor is of the view that an extension to the Stay of Proceedings is appropriate in order to finalize a settlement and potentially move towards submitting a Plan to the Company's creditors.
- 4.4 Assuming a settlement is achieved, additional time will be required to complete the following:
 - 4.4.1 The settlement of the remaining U.S. lien claim filed in the U.S. claims process;
 - 4.4.2 The filing of outstanding U.S. State sales tax returns in order to assist with the potential recovery of U.S. States sales tax refunds, if any;
 - 4.4.3 The completion of the CCAA Claims Process, with the appropriate allowances for court applications in the event there are notices of dispute filed, including significantly, an application to determine that certain claims are "equity claims" if they cannot otherwise be resolved in the Plan;
 - 4.4.4 Attend to the other claims filed in the U.S. claims process, including review of the validity of the unsecured claims and notifying U.S. creditors of the same;
 - 4.4.5 The preparation and submission of a Plan to the Company's creditors;
 - 4.4.6 An application for Court approval to hold a meeting of creditors to consider the Plan;
 - 4.4.7 A creditors' meeting to vote on the Plan;
 - 4.4.8 An application for Court approval of the Plan at a Sanction Hearing;
 - 4.4.9 Implementation of the Plan and the discharge of the Monitor.
- 4.5 In view of the foregoing, the Monitor is of the view that an extension of the stay of proceedings to April 30, 2015 is appropriate.

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5. REVISED CASH FLOW FORECAST

- 5.1 As a result of the proposed extension of the Stay of Proceedings to April 30, 2015, a revised cash flow forecast has been prepared by the Monitor which covers the period from March 31, 2015 to May 2, 2015 (the “**March 31, 2015 RCFF**”), attached as Appendix “A” to this report. The March 31, 2015 RCFF can be summarized as follows:

	<u>\$ 000's</u>
Other collections	<u>0</u>
Total Receipts	<u>0</u>
Potential priority claim payment	(1,028)
Estimated general and administrative disbursements	(25)
Estimated restructuring costs	(405)
Total Disbursements	(1,458)
Net Cash Flow for Period	(1,458)
Opening Net Cash Balance	<u>1,896</u>
Closing Net Cash Balance	<u>438</u>

- 5.2 The March 31, 2015 RCFF contains a high-level estimate of the professional fees to be incurred by the Monitor and its counsel and the Lending Syndicate's counsel in respect of the costs of the Mediation Process incurred and outstanding to date, the proposed Claims Procedure as well as preparation and implementation of a Plan.
- 5.3 Based on the foregoing, the Monitor considers that the Company's liquidity appears sufficient for the forecast period.
- 5.4 The Monitor's conclusions of the March 31, 2015, RCFF pursuant to section 23 (1)(b) of the CCAA are as follows:
- 5.4.1 The March 31, 2015 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 March 31, 2015 RCFF.

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5.4.2 Nothing has come to our attention that causes us to believe that, in all material respects:

5.4.2.1 The Hypothetical Assumptions are not consistent with the purpose of the March 31, 2015 RCFF;

5.4.2.2 As at the date of this report, the Probable Assumptions are not suitably supported or do not provide a reasonable basis for the March 31, 2015 RCFF, given the Hypothetical Assumptions; or

5.4.2.3 The March 31, 2015 RCFF does not reflect the Probable and Hypothetical Assumptions.

5.5 Since the March 31, 2015 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 March 31, 2015 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.

5.6 The March 31, 2015 RCFF has been prepared solely for the purpose described in the Notes to the March 31, 2015 RCFF, and readers are cautioned that it may not be appropriate for other purposes.

6. CONCLUSION

6.1 In view of the foregoing, the Monitor is of the opinion that an extension to the stay of proceedings is appropriate, and that it and the stakeholders involved have acted and continue to act in good faith and with due diligence.

6.2 The Monitor requests the Court approve an extension of the Stay of Proceedings to April 30, 2015.

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This report is respectfully submitted this 20th day of March, 2015.

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

A handwritten signature in black ink, appearing to read "Clinton Roberts", with a stylized, looped initial "C" and "R".

Clinton L. T. Roberts, CIRP
Senior Vice President

A handwritten signature in black ink, appearing to read "Sean Fleming", with a stylized, looped initial "S" and "F".

Sean Fleming, CIRP
Senior Vice President

APPENDIX A

March 31, 2015 Revised Cash Flow Forecast

('000's) CDN	Forecast				Total
	Week 1	Week 2-3	Week 4-5	Week 6	
	28-Mar-15	11-Apr-15	25-Apr-15	2-May-15	
WEEK ENDING					
WEEKLY NET CHANGE IN CASH					
Total AR Collections and Other	-	-	-	-	-
Asset Sale Proceeds Transferred from Monitor	-	-	-	-	-
Draw on Interim Financing Facility	-	-	-	-	-
TOTAL RECEIPTS	-	-	-	-	-
Disbursements					
Potential Priority Claim Payments (liens and admin fee charge)		-	-	1,028	1,028
Total G&A Disbursements	5	-	5	15	25
TOTAL DISBURSEMENTS	5	-	5	1,043	1,053
NET CHANGE IN CASH FROM OPERATIONS	(5)	-	(5)	(1,043)	(1,053)
Total Restructuring Costs	-	-	215	190	405
NET CHANGE IN CASH	(5)	-	(220)	(1,233)	(1,458)
CUMULATIVE NET CHANGE IN CASH					
Net change in cash	(5)	-	(220)	(1,233)	(1,458)
Opening Cash Position	1,896	1,891	1,891	1,671	1,896
TOTAL ENDING CASH	1,891	1,891	1,671	438	438

NOTES

The Monitor, on behalf of Poseidon Concepts, has prepared this Cash Flow Projection based on the probable and hypothetical assumptions noted below. Consequently actual cash flow will likely vary from this projection with such variance being material.

1. The potential priority claim payments represent a provision for the full amount of the remaining 2 U.S. lien claims filed (1 of which was settled but not yet approved by the U.S. Bankruptcy Court and the other not settled) as well as a secured claim of the IRS in respect of 2012 withholding taxes, both converted to \$CDN. The amount payable to the 1 remaining U.S. lien claimant could be lower subject to a final settlement with the Lending Syndicate or the determination of the U.S. Bankruptcy Court as to the validity of the lien claim.

2. G&A disbursements include certain costs for data capture and preservation of records.

3. Restructuring costs include the professional fees of the Monitor and the Monitor's legal counsel (Canada and U.S.), counsel for the Lending Syndicate. The ending cash balance totaling \$438K is anticipated to fund the administration of the plan of arrangement should a further extension be granted after April 30, 2015, should such a plan be approved by the Court. If an extension is not granted, the surplus cash will be used to pay certain outstanding professional fees due to the Lending Syndicate's counsel.

4. As noted in the Monitor's report, the Monitor believes there is agreement among some of the participants of the Mediation to conclude a transaction that could result in the receipt of settlement proceeds and a Plan of Compromise. However, as a settlement has not been finalized at this time, and the preliminary results of the Mediation remains confidential, the Monitor has not reflected the anticipated settlement proceeds in these cash flow projections.