

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)
) Chapter 15
POSEIDON CONCEPTS CORP.,) Case No. 13-15893 HRT
)
Debtor in foreign proceeding.) **(Jointly Administered)**

MONITOR'S MOTION FOR APPROVAL OF CLAIMS PROCEDURES

PricewaterhouseCoopers Inc. (the "Monitor"), as the court-appointed monitor and authorized foreign representative of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively referred to as the "PC Debtors") in the proceeding pending in the Court of Queen's Bench of Alberta, Canada (the "Canadian Proceeding" or the "Canadian Court") under the Companies' Creditors Arrangement Act (the "CCAA"), by and through its undersigned counsel, Lewis Roca Rothgerber LLP, hereby files its Motion for Approval of Claims Procedures (the "Motion"). In support of the Motion, the Monitor states as follows:

BACKGROUND

1. The PC Debtors initiated a proceeding under the CCAA on April 9, 2013. On April 9, 2013, the Canadian Court issued its CCAA Order.

2. On April 12, 2013, the Monitor filed four Chapter 15 petitions on behalf of the PC Debtors (collectively, the "US Proceedings"). On the same date, the Monitor filed its Motion for Order Directing Joint Administration of the Debtors' Cases (Docket No. 8). On April 15, 2013, the Court entered its Order Directing Joint Administration of the PC Debtors' Chapter 15 Cases (Docket No. 12).

3. In conjunction with the US Proceedings, the Monitor, as the foreign representative in each case, also filed Petitions for Recognition as Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief (Docket No. 3) (the "Petitions for Recognition"). On May 15, 2013, the Court entered its Order Granting Recognition as a Foreign Main Proceeding and Related Relief (Docket No. 60).

4. On September 26, 2013, the Monitor submitted his Sixteenth Report to the Canadian Court (the "Sixteenth Report"). The Sixteenth Report accompanied the Monitor's Application to: (1) Extend Stay, and (2) Enhance Monitor Powers. As reflected in the Sixteenth Report, the Monitor anticipated at that time that the remaining directors of the PC Debtors intended to resign. In light of this, the Monitor sought an expansion of its powers for purposes of obtaining the necessary authority to complete administration of the CCAA Proceeding.

5. On September 30, 2013, the Canadian Court entered its Order (Expansion of Monitor's Powers). The Monitor filed his Notice of Change of Status Pursuant to 11 U.S.C. § 1518 on October 15, 2013 [Docket No. 160] reflecting the expansion of his powers by the Canadian Court.

6. The Monitor filed a Motion to Set Bar Date for Filing Proofs of Claim [Docket No. 126] on June 21, 2013. The Court entered its Order Granting Debtor's Motion to Set Bar Date for Filing Proofs of Claim [Docket No. 129] on June 27, 2013. The claim bar date was set for August 22, 2013.

7. The number of claims that have been filed in each of the US Proceedings are broken down as follows:

Poseidon Concepts Corp.	Case no. 15-15893	71
Poseidon Concepts Ltd.	Case no. 15-15894	2
Poseidon Concepts Limited Partnership	Case no. 15-15895	2
Poseidon Concepts, Inc.	Case no. 15-15896	9

8. Some of the claims have been settled. Others duplicate claims that were filed in more than one proceeding or by Canadian creditors in the Canadian Proceeding. The Monitor believes that certain other claims are procedurally or substantively defective. The Monitor thus anticipates filing objections to certain of the claims filed in the US Proceeding.

9. The Monitor seeks an order providing for a claims procedure for creditors that have filed claims in the US Proceedings. The US Claims Process is proposed as follows with respect to claims filed in the US Proceedings:

Application of 11 U.S.C. § 501. Section 501 of the Bankruptcy Code shall apply with respect to filing of proofs of claim.

Application of 11 U.S.C. § 502. Section 502 of the Bankruptcy Code shall apply with respect to the allowance of claims.

Application of 11 U.S.C. § 505. Section 505 of the Bankruptcy Code shall apply with respect to the determination of tax claims.

Application of 11 U.S.C. § 506. Section 506 of the Bankruptcy Code shall apply with respect to the determination of secured claims.

Application of 11 U.S.C. § 509. Section 509 of the Bankruptcy Code shall apply with respect to the determination of claims of codebtors.

Application of 11 U.S.C. § 510. Section 510 of the Bankruptcy Code shall apply with respect to the determination of subordinated claims.

Standing. The Monitor shall have exclusive standing to object to any claim filed in the US Proceedings.

Reasonable Discretion. The Monitor may use reasonable discretion as to the adequacy of compliance with respect to the manner in which Proofs of Claim are completed and executed and may, if the Monitor is satisfied that a claim has been adequately proven, waive strict compliance with the requirements of the claims process.

Settlement Authority. The Monitor may compromise and settle any objections to claims, with Bankruptcy Court approval.

Claims for Rejection of Executory Contracts and Unexpired Leases. The Monitor is not aware of any executory contracts or unexpired leases that have not been rejected prior to the Claims Bar Date. In the event that this Court applies section 365 of the Bankruptcy Code, any proofs of claims for rejection damages with respect to such rejected executory contracts or unexpired leases shall be due to be filed and served (1) on the Claims Bar Date or (2) 30 days after entry of the order rejecting such executory contract or unexpired lease, whichever is later.

Application of Rules. To the extent not inconsistent with the above claims process, the Federal Rules of Bankruptcy Procedure shall apply.

10. Most of the trade creditors that have filed claims in these proceedings are domiciled in the United States. Their claims will be based on United States law. The Monitor does not wish to burden those creditors with the inconvenience and expense of traveling to the Canadian Court in the event of a claim objection. This Court is the preferable forum to hear claims based on United States law.

RELIEF REQUESTED

11. By and through this Motion, the Monitor seeks approval of a claims process by which objections to disputed claims filed in the US Proceedings can be filed by the Monitor and litigated pursuant to the Bankruptcy Code and the Rules of Bankruptcy Procedure.

BASIS FOR RELIEF REQUESTED

12. Section 1509(b) of the Bankruptcy Code provides that:

If the Court grants recognition under Section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter –

...

- (2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and
- (3) a court in the United States *shall* grant comity or cooperation to the foreign representative.

11 U.S.C. § 1509(b)(2)-(b)(3) (emphasis added). Here, the Monitor has been designated as the foreign representative for the PC Debtors and granted expanded powers by the Canadian Court.

13. This Court has found that the Canadian Proceedings are foreign main proceedings. Under Section 1520(a) of the Bankruptcy Code, certain relief is automatic when a foreign proceeding is recognized as main. That automatic relief under Section 1520 does not include the application of Sections 501, 502, 506, and 507 of the Bankruptcy Code, dealing with prepetition claims against the PC Debtors.

14. Certain discretionary relief is available upon recognition of a foreign proceeding under 11 U.S.C. § 1521, as discussed below. The Court may grant relief under Section 1521 only if the interests of the creditors and other interested entities, including the debtors, are sufficiently protected, as set forth under Section 1522(a). The Monitor contends that the discretionary relief requested herein is for the protection of the creditors and the PC Debtors.

15. “Any appropriate” discretionary relief is available upon recognition of a foreign proceeding, whether or not a foreign proceeding is main. 11 U.S.C. § 1521(a) (“Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief”).

16. In addition, under Section 1521(b), upon recognition of a foreign proceeding, whether main or nonmain, the court may entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

17. Furthermore, 11 U.S.C. § 105(a) provides in pertinent part: that “(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

18. The Monitor asserts that it is appropriate that Section 1521 and 105(a) be invoked to protect the interests of creditors and the PC Debtors for a fair claims process in the United States, so that United States creditors do not have to litigate claims objections and subordination proceedings in an unfamiliar and distant forum. It is also appropriate that United States law is applied by a court in the United States.

WHEREFORE, the Monitor respectfully requests that the Court enter its Order granting this Motion, approving the claims procedures for claims filed in the US Proceedings, as set forth above, and for such other and further relief as is appropriate.

Respectfully submitted this 27th day of March, 2015.

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