

Court File No. 1301-04364

**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.**

APPLICANT

PLAN OF COMPROMISE AND ARRANGEMENT

**pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving**

**POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.**

June 9, 2017

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PLAN OF COMPROMISE AND ARRANGEMENT

(THE CAPITALIZED TERMS USED IN THIS DOCUMENT HAVE THE MEANING ASCRIBED THERETO IN ARTICLE 1.1 HEREOF)

RECITALS

WHEREAS Poseidon is insolvent;

AND WHEREAS there have been allegations of inadequate financial disclosure and other tortious conduct by Poseidon and its directors, officers, and employees, resulting in the Class Actions both in Canada and the United States of America, demands in respect of the Senior Secured Creditor Action, and the Monitor Action;

AND WHEREAS, on the Filing Date, the CCAA Court granted the Initial Order in respect of Poseidon pursuant to the CCAA;

AND WHEREAS, on May 15, 2013, a Recognition Order was granted by the United States Bankruptcy Court under Chapter 15 of the United States Bankruptcy Code, recognizing Canada as the foreign main proceeding for Poseidon;

AND WHEREAS by the Representation Order, the CCAA Court appointed the Class Representatives to formally represent, in the CCAA Proceeding, the interests of the persons comprising the proposed classes in the Class Actions, and authorized the Class Representatives to settle or compromise Claims by the persons whom they represent, and to take all steps and to do all acts necessary or desirable to carry out the terms of that order;

AND WHEREAS the following actions have been dismissed or discontinued, as set out below:

- (a) *Goldsmith v National Bank of Canada*, Ontario Superior Court of Justice File No. CV-13-474486-00CP, was dismissed by Order reported as 2015 ONSC 2746, aff'd 2016 ONCA 22;
- (b) *Goldsmith v National Bank Financial Inc*, Ontario Superior Court of Justice File No. CV-14-509246-00CP, was discontinued by Order dated July 12, 2016;
- (c) *Kegel v National Bank of Canada*, Quebec Superior Court File No. 500-06-000642-138, was discontinued by Order dated June 29, 2016; and
- (d) *Lewis v National Bank Financial Inc*, Quebec Superior Court File No. 500-06-000702-148, was discontinued by Order dated June 29, 2016;

AND WHEREAS through the concerted efforts of the Monitor, the Senior Secured Creditors, the Class Representatives, and the Settling Defendants and their Insurers, a substantial portion of the Claims are proposed to be resolved pursuant to the Settlement Agreement and this Plan;

AND WHEREAS Poseidon anticipates seeking a Meeting and Hearing Order pursuant to which, among other things, Poseidon will be authorized to file this Plan and to convene a meeting of Affected Creditors to consider and vote on this Plan.

NOW THEREFORE, Poseidon hereby proposes this Plan.

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

Additional Proceeds	means any and all proceeds or recoveries (whether cash or otherwise) effected through any settlement, execution on judgment, or otherwise, from KPMG and/or the Underwriters pursuant to the Class Actions and/or the Monitor Action (or otherwise), prior to the deduction of any fees, costs, or other charges.
Administration Charge	has the meaning ascribed thereto in the Initial Order.
Administration Charge Reserve	means the cash reserve to be established by Poseidon on the Plan Implementation Date in the approximate amount of \$200,000 or such other amount as agreed to by the Monitor and the Senior Secured Creditors, which cash reserve: (i) shall be maintained and administered by the Monitor, in trust, for the purpose of paying any amounts secured by the Administration Charge; and (ii) upon the termination of the Administration Charge pursuant to the Plan, shall be paid to the Senior Secured Creditors in addition to any other amounts payable pursuant to the Plan.
Affected Creditors	means the Senior Secured Creditors of Poseidon.
Affected Claims	means the Senior Secured Creditors' secured Claims.
Alberta Class Actions	<p>means, collectively, the following proceedings and any and all counterclaims, crossclaims, and third (or subsequent) party claims related thereto:</p> <p>Alberta Court of Queen's Bench Action Nos. 1301-00935, 1401-07353, and 1301-11455.</p>
Alberta Class Action Court	means the Court of Queen's Bench of Alberta, as presiding over the Alberta Class Actions.
Approval and Settlement Motion	means the motions brought contemporaneously before the CCAA Court and the Alberta Class Action Court for the Approval and Settlement Order.
Approval and Settlement Order	<p>means an Order, substantially in the form set out in Schedule C hereof, granted concurrently in the CCAA Proceeding and in the Alberta Class Actions, which shall, among other things,</p> <p style="padding-left: 40px;">(a) approve, sanction and/or confirm the Plan;</p>

- (b) provide for the release and injunction set forth herein;
- (c) convey the Monitor Action to the Litigation Trust;
- (d) grant certification of the Alberta Class Actions and leave pursuant to s. 211.08 of the *Securities Act*, RSA 2000, c S-4, if necessary and for the purposes of settlement only;
- (e) declare that the applicable parties have adhered to and complied with the Meeting and Hearing Order, and that all Persons shall be forever barred from objecting to the Settlement Agreement and the Plan;
- (f) approve the Settlement Agreement;
- (g) confirm that the Settlement Agreement shall be binding and given full effect against parties designated and part of the Class Actions, whether as a Class Representative, Class Member, named defendant/respondent, third, fourth or subsequent parties, or mis-en-cause and without any ability to "opt-out" or otherwise allow any member of the Class to not be bound by such Orders;
- (h) direct the removal of the allegations and conclusions against the Released Parties from the pleadings in the Alberta Class Actions except to the extent reasonably required to maintain the integrity of the pleadings as against the Non-Settling Defendants;
- (i) dismiss the Alberta Class Actions with prejudice as against the Released Parties, as provided for in the Plan and the Settlement Agreement;
- (j) grant the bar order, releases, and declarations provided for in the Plan and the Settlement Agreement; and,
- (k) be in form and content acceptable to all of the Settling Parties, acting reasonably, incorporating, among other things, the release and other protections provided for in the Plan and Settlement Agreement.

Approval Orders

means the Approval and Settlement Order, the U.S. Approval Order, and the Settlement Recognition Orders.

Business Day

means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Calgary, Alberta, Canada.

CCAA	means the <i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended.
CCAA Court	means the Court of Queen's Bench of Alberta, as presiding over the CCAA Proceeding.
CCAA Proceeding	means Alberta Court of Queen's Bench, Action No. 1301-04364.
Claim	<p>means any and all manner of</p> <p>actions, causes of action, counterclaims, cross claims, third (or subsequent) party claims, proceedings, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, rights, obligations, claims, and demands, or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum)</p> <p>of any Person that has been, could have been, or may be asserted or made against any other Person,</p> <p>whether personal or subrogated, existing or possible, asserted or made, known or unknown, existing or potential, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in whole or in part,</p> <p>for Damages of any kind,</p> <p>based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to, or in connection in any way whatsoever with, any conduct anywhere, from the beginning of time to the date of the last signed Approval Order,</p> <p>based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to, or in connection in any way whatsoever with, Poseidon or the affairs of Poseidon</p> <p>including as set out in the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, the Underwriter Claim or otherwise</p> <p>including by reason of the commission of a tort (whether intentional, wilful, reckless, negligent or unintentional, including for negligence, negligent misrepresentation, fraud, fraudulent misrepresentation, deceit, conspiracy, conversion, breach of trust, or any other tort), by reason of any breach of contract or other agreement (oral or written or otherwise), by reason of breach of corporate by-laws, corporate policies, corporate directives, or statutory duties or obligations (including any legal, statutory, equitable or fiduciary duty, or otherwise), by reason of</p>

any breach of statute (including breach of the *Securities Acts* of every province, the oppression remedy, s. 43 of the *Alberta Business Corporations Act* and the equivalent provisions of other provinces, the Securities Act of 1933, the Securities Exchange Act of 1934, or otherwise), or by reason of any breach of right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), by reason of any right to contribution and/or indemnity (including pursuant to statute or contract or otherwise), whether by action or inaction, statement, misstatement, or omission, transaction, conduct, misconduct, dealing, misdealing or by reason of inducing any of same,

whether or not any such Damages have been reduced to judgment, are liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, restitutionary, secured, or unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature.

For greater certainty, a Claim includes a D&O Claim.

Claimant

means any Person holding or potentially holding any Claim against Poseidon and/or any of the Released Parties.

Claims Procedure

means the procedure established for the filing of Claims in the CCAA Proceeding pursuant to the Claims Procedure Order.

Claims Procedure Order

means the Order under the CCAA of the Honourable Justice Stevens dated November 4, 2014, establishing, among other things, a claims procedure in respect of Poseidon, as such Order may be amended, restated or varied from time to time.

Class

means the Class Representatives and the Class Members.

Class Actions

means collectively the following proceedings and any and all counterclaims, crossclaims, and third (or subsequent) party claims related thereto:

the Alberta Class Actions;

Ontario Superior Court Action Nos. CV-12-468736 00CP, CV-14-512823 00CP, CV-13-474553 00CP, CV-14-517015, and CV-14-507785 00CP;

Quebec Court Action Nos. 500-06-000633-129 and 500-06-000699-146; and

the U.S. Actions.

Class Action Court	means with respect to each Class Action, the Court of competent jurisdiction that is responsible for administering the applicable Class Action.
Class Counsel	means Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Siskinds Demeules LLP, Paliare Roland Rosenberg Rothstein LLP, and The Rosen Law Firm.
Class Counsel Fees	means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel and a <i>pro rata</i> share of all interest earned on the Class Settlement Funds to the date of payment, as approved by the CCAA Court.
Class Members	has the meaning ascribed to the term "Class Members" in the Representation Order, and includes the U.S. Class Members.
Class Notice	means notice(s) to the Class of the Settlement Recognition Motion in a form to be approved by the Settling Parties, acting reasonably, and by the CCAA Court and Class Action Courts, if notice is required by those courts.
Class Notice Motion	<p>means the motion(s) brought before the Class Action Courts for order(s) setting the date for the hearing of the Settlement Recognition Motions in Ontario, Quebec and the United States, and, if required by the Class Action Courts:</p> <ul style="list-style-type: none">(a) approving the form of and authorizing the manner of publication and dissemination of the Class Notice, if notice is required by those courts; and(b) appointing Siskinds LLP to receive and report on objections to the Settlement, if any.
Class Notice Order	means the order(s) made by the Class Action Courts in Ontario, Quebec and the United States granting the relief sought on the Class Notice Motion.
Class Representatives	means Franz Auer, Mohammed Ramzy, Thomas James, and Marian Lewis, in their capacity as representatives appointed pursuant to the Representation Order, as amended from time to time, and/or such other persons as may be appointed in that capacity by the CCAA Court.
Class Settlement Funds	means the monetary payment(s) representing damages payable by the Insurers pursuant to the Settlement Agreement in settlement of the claims of Class Members, including the Class Actions, in the all-inclusive amounts of: (i) the Initial Instalment of

the Class Settlement Funds; and (ii) the Final Instalment of the Class Settlement Funds.

Contribution

means the Class Settlement Funds and the Poseidon Settlement Funds, and the amounts paid by the Insurers for the defence of the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, the Underwriter Claim and all related Claims, as well as all related regulatory or other investigations or proceedings.

Cooperation Agreement

means the commitments provided by certain of the D&Os to the Class as described in Schedule "A" to the Settlement Agreement.

Damages

means any general, punitive, aggravated, consequential, exemplary, restitutionary, by unjust enrichment, and by disgorgement, monies, losses, setoff, indemnity, injuries, indebtedness, liabilities or obligations of any kind whatsoever and however arising, and any interest, taxes, legal fees, expenses, Class Counsel Fees, administration fees, and costs payable in addition to or in respect thereof, whether incurred or suffered in the past, present or future.

D&Os

means, collectively and individually, all current and former directors and officers of Poseidon and for greater clarity specifically includes the following Persons: Matthew Mackenzie, Clifford Wiebe, Joseph Kostelecky, Lyle Michaluk, Scott Dawson, Dean Jensen, Jim McKee, Neil Richardson, David Belcher, Harley Winger, Kenneth Faircloth, and Wazir (Mike) Seth.

D&O Claim

means any Claim that has been, could have been, or may be asserted or made in whole or in part against one or more D&Os or Employees.

Employee Priority Claim

means any of the following Claims of employees and former employees of Poseidon:

- (a) Claims equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act*, R. S. C. 1985, c. B-3, as amended, if Poseidon had become bankrupt on the Filing Date; and
- (b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date.

Employees	means collectively and individually, all current and former employees of Poseidon, including but not limited to Sonja Kuehnle and Doug Robinson.
Effective Time	means 12:01 a.m. (Calgary time) on the Plan Implementation Date.
Filing Date	means April 9, 2013.
Final Instalment of the Class Settlement Funds	means 26.32% of the aggregate amount of: CAD \$7.5 million less defence costs incurred by the D&Os, Kuehnle and Robinson, subject to the limits set out in s. 5.9(c), during the Relevant Period that have been paid by, or that are payable by, the Insurers under the Insurance Policies (or any of them) for the defence of any criminal or regulatory (including enforcement) proceedings actually commenced, on or before April 10, 2019, against one or more of them (" Criminal / Regulatory Defence Costs ") (i.e. $0.2632 * (\text{CAD } \$7,500,000 - \text{Criminal / Regulatory Defence Costs})$). For the purposes of this definition, the term " Relevant Period " means April 10, 2017 until the later of (i) the date upon which all such criminal and/or regulatory proceedings are completed (i.e. any appeals that could be brought have been completed or the time for bringing such appeals has expired) and (ii) April 10, 2019.
Final Instalment of the Poseidon Settlement Funds	means 73.68% of the aggregate amount of: CAD \$7.5 million less Criminal / Regulatory Defence Costs incurred by the D&Os, Kuehnle and Robinson, subject to the limits set out in s. 5.9(c), during the Relevant Period (i.e. $0.7368 * (\text{CAD } \$7,500,000 - \text{Criminal / Regulatory Defence Costs})$). For the purposes of this definition, the term " Relevant Period " means April 10, 2017 until the later of (i) the date upon which all such criminal and/or regulatory proceedings are completed (i.e. any appeals that could be brought have been completed or the time for bringing such appeals has expired) and (ii) April 10, 2019.
Final Order	means any order that is no longer subject to: <ul style="list-style-type: none">(a) any application to amend, vary, or set aside; and(b) any appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.
Governmental Entity	means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement

panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

Government Priority Claims

means all Claims of a Governmental Entity in respect of amounts that are outstanding as of the Plan Implementation Date and that are of a kind that could be subject to a demand under:

- (a) subsections 224(1.2) of the Canadian Tax Act;
- (b) any provision of the Canada Pension Plan or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the *Income Tax Act* (Canada) and provides for the collection of a contribution, as defined in the Canada Pension Plan, or employee's premium or employer's premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act* (Canada) or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act* (Canada); or, (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection

Hearing Notice

means the notice advising Class Members as to the terms of the Plan and Settlement Agreement and of the date of the Approval and Settlement Motion, in a form to be approved by the Settling Parties, acting reasonably.

Initial Order	means the order made by the CCAA Court in respect of Poseidon on the Filing Date.
Initial Instalment of the Class Settlement Funds	means the aggregate amount of CAD \$7,632,800.
Initial Instalment of the Poseidon Settlement Funds	means the aggregate amount of CAD \$21,367,200.
Insurance Policies	means the insurance policies issued by Encon Group Inc. on behalf of the subscribing insurers of the insurance policies bearing policy numbers DO-409880, DO-394691, and DO-379046, the insurance policies issued by Chubb Insurance Company of Canada bearing policy numbers 8224-5964, 8221-3406 and 8224-6249; the insurance policies issued by Travelers Insurance Company of Canada bearing policy numbers 75237516, 75263156, 75240933 and 75287036; the insurance policy issued by Royal & Sun Alliance Insurance Company of Canada bearing policy number 9500854; the insurance policy issued by Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada, bearing policy number 01-340-62-02; and the insurance policy issued by Lloyd's Underwriters bearing policy number ODLA052012-10150.
Insureds	means any Person who is insured under the Insurance Policies.
Insurers	means Chubb Insurance Company of Canada, Travelers Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada, Lloyd's Underwriters, and the subscribing insurers on the Insurance Policies issued by Encon Group Inc. being Continental Casualty Company, Temple Insurance Company, Aviva Insurance Company of Canada and XL Reinsurance America Inc.
KPMG	means KPMG LLP.
KPMG Claim	means all of the Claims commenced by KPMG against one or more of the Released Parties including the Claim commenced in Alberta with court file no. 1401-07353.
KPMG Releasees	means KPMG LLP, and all of its present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each.

Lien Claim	means the single unresolved U.S. lien claim for which the Monitor has set aside the amount of its total claim pending resolution, being U.S. \$495,000.
Litigation Trust	means the trust arrangement whereby the Claims made in the Class Actions and the Monitor Action will be pursued solely against KPMG and the Underwriters for the benefit of the Class, subject to the obligation to remit 4.25% of all gross recoveries to the Monitor.
Litigation Trust Agreement	means the agreement substantially in the form of Schedule "D" to this Plan, establishing and governing the Litigation Trust.
Litigation Trustee	means the Honourable Stephen Goudge, or such other trustee as may be appointed by an order of the CCAA Court on motion by the Class Representatives, in his capacity as trustee of the Litigation Trust.
Meeting	means a meeting of the Affected Creditors to consider and vote on the Plan held pursuant to the Meeting and Hearing Order and includes any meeting or meetings resulting from the adjournment thereof.
Meeting and Hearing Order	means an order of the CCAA Court: <ul style="list-style-type: none">(a) directing the calling and holding of the Meeting;(b) approving the form and content of the Hearing Notice;(c) appointing Siskinds LLP to receive and report on objections to the Settlement, if any; and(d) scheduling the Approval and Settlement Motion.
Monitor	means PricewaterhouseCoopers Inc., in its capacity as Monitor of Poseidon in the CCAA Proceeding.
Monitor Action	means collectively the following proceedings and any and all counterclaims, crossclaims, and third (or subsequent) party claims related thereto: Alberta Court of Queen's Bench Action No. 1301-12927; and Ontario Superior Court of Justice Action No. CV-14-517017.
New Open Range	means Open Range Energy Corp. as it existed after the Plan of Arrangement completed on November 1, 2011.

Non-Settling Defendants	means Poseidon, KPMG and the Underwriters.
Old Open Range	means Open Range Energy Corp. as it existed prior to the Plan of Arrangement completed on November 1, 2011.
Person	means and includes an individual, a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.
Plan	means this plan of compromise and arrangement, including the schedules hereto, in the CCAA Proceeding as such plan may be amended from time to time by the Monitor, with approval of the Settling Parties, acting reasonably.
Plan Implementation Date	means the Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in Article 6.2 hereof.
Poseidon	means Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. and Old Open Range.
Poseidon Settlement Funds	means the following monetary payment(s) representing damages payable by the Insurers in settlement of the Monitor Action and the Senior Secured Creditor Action in the all-inclusive amounts of: (a) the Initial Instalment of the Poseidon Settlement Funds; and (b) the Final Instalment of the Poseidon Settlement Funds.
Priority Claims	means, in descending order of priority: <ul style="list-style-type: none">(a) claims secured by the Administration Charge;(b) the Administration Charge Reserve;(c) Government Priority Claims, if any;(d) Employee Priority Claims, if any; and(e) the Senior Secured Creditors' Claim.
Property	means the present and after acquired real and personal property of Poseidon, including the residual interest in the Administration Charge Reserve and the funds set aside in respect of the Lien Claim, but excluding the Monitor Action, the Insurance Policies, and any rights under or pursuant to the Policies, any rights as

	against the Settling Defendants, and any rights as against the Released Parties.
Released Claims	means, collectively, all of the Claims released in accordance with Article 5.1, subject to Article 5.2.
Released Parties	means the Persons identified in Schedule "A" hereto.
Representation Order	means the order granted on May 30, 2013 in the CCAA Proceeding by the CCAA Court appointing the Class Representatives, as representatives of the class members designated in the Class Actions, for the purposes of the CCAA Proceeding as amended from time to time.
Senior Secured Creditor Action	means the action commenced by the Senior Secured Creditors against Poseidon and certain officers and directors of Poseidon in the Court of Queen's Bench of Alberta with court file no. 1401-12410 and any and all counterclaims, crossclaims, and third (or subsequent) party claims related thereto.
Senior Secured Creditors	means, collectively, The Toronto-Dominion Bank, National Bank of Canada, The Bank of Nova Scotia and HSBC Bank of Canada.
Settlement	means the settlement provided for in the Settlement Agreement and the Plan.
Settlement Agreement	means the agreement among the Settling Parties attached to this Plan as Schedule "B", and the schedule thereto.
Settlement Recognition Motion	means the motions brought before the Class Action Courts in Ontario, Quebec, and in the United States for the Settlement Recognition Orders.
Settlement Recognition Orders	<p>means the orders of the Class Action Courts in Ontario and Quebec, and in the United States, the Orders of the Class Action Court or the United States Bankruptcy Court, as the case may be, in form and content acceptable to all of the Settling Parties, acting reasonably, incorporating, among other things, the releases, injunctions, and other protections provided for in the Settlement Agreement, recognizing and giving effect to the Plan and the Approval and Settlement Order in respect of each applicable Class Action and, among other things:</p> <p>(a) confirming that the Plan and Settlement Agreement shall be binding and given full effect against parties designated and part of the Class Actions, whether as a Class Representative, Class Member, named defendant/respondent or mis-en-cause and without any</p>

ability to "opt-out" or otherwise allow any Class Member to not be bound by such Orders;

- (b) removing the allegations and conclusions against the Released Parties from the pleadings in the Class Actions, except to the extent reasonably required to maintain the integrity of the pleadings as against the Non-Settling Defendants;
- (c) dismissing the Class Actions, or parts thereof, with prejudice as provided for in the Plan and Settlement Agreement;
- (d) granting the bar order, releases, injunctions and declarations provided for in the Plan and Settlement Agreement, and
- (e) to the extent necessary;
 - i. for the purposes of settlement only, granting class certification of the applicable Class Action and leave to commence a claim under s. 138.3 of the *Securities Act* (Ontario) and equivalent provisions of Securities Acts of other Provinces or, as respects the U.S. Action, Federal Rule of Civil Procedure 23;
 - ii. approving the Class Notice to Class Members; and,
 - iii. approving the settlement set out in the Settlement Agreement.

Settling Defendants

means New Open Range, Peyto Exploration and Development Corp., Matthew Mackenzie, Clifford Wiebe, Joseph Kosteletzky, Lyle Michaluk, Scott Dawson, Dean Jensen, Jim McKee, Neil Richardson, David Belcher, Sonja Kuehnle, Harley Winger, Doug Robinson, Kenneth Faircloth, and Wazir (Mike) Seth.

Settling Parties

means the Settling Defendants, the Class Representatives, the Senior Secured Creditors, and Poseidon by the Monitor.

Unaffected Claims

means the following Claims as against Poseidon:

- (a) the Claim secured by the Administration Charge;
- (b) the Government Priority Claim;

- (c) the Employee Priority Claim;
- (d) the Lien Claim;
- (e) any Claim by the Senior Secured Creditors, except to the extent that:
 - (i) they receive any payment or distribution pursuant to this Plan (and then only to that extent);
 - (ii) they are compromised and rearranged pursuant to Article 3.3 hereof; and
 - (iii) the claim is a Released Claim;
- (f) any unsecured Claim;
- (g) any Claims by KPMG; and
- (h) any Claims by the Underwriters.

Unaffected Creditor	means a person who holds or held an Unaffected Claim, to the extent of that Claim.
Underwriters	means National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd. and First Energy Capital Corp.
Underwriter Claim	means all of the Claims commenced by the Underwriters against one or more of the Released Parties including the Claim commenced in Ontario with court file no. CV-13-474553 CPA1.
Underwriter Releasees	means National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd. and First Energy Capital Corp. and all of their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each.
United States Bankruptcy Case	means the case styled In Re Poseidon Concepts Corp. commenced in the United States Bankruptcy Court, District of Colorado, Case No. 13-15893HRT.
United States Bankruptcy Code	means Title 11 of the United States Code.

United States Bankruptcy Court	means the United States Bankruptcy Court for the District of Colorado, as presiding over the United States Bankruptcy Case.
U.S. Actions	means United States District Court for the Southern District of New York Action Nos. 1:13-cv-01213-DLC and 1:13-cv-01412-DLC.
U.S. Approval Order	means an order entered in the United States Bankruptcy Case pursuant to the applicable sections of Chapter 15 of the United States Bankruptcy Code, which order recognizes and enforces the terms of the Approval and Settlement Order.
U.S. Class Members	means all persons and entities, other than Settling Defendants and their affiliates, wherever they may reside, who acquired the publicly traded common stock of Poseidon on or before February 14, 2013, in domestic U.S. transactions, transactions on a domestic U.S. exchange or on a secondary market in the United States, which includes securities acquired over-the-counter.
U.S. Class Representative	means Gerald Kolar, in his capacity as Lead Plaintiff appointed pursuant to the Order of the United States District Court for the Southern District of New York in the U.S. Action (ECF No. 24) and/or such other persons as may be appointed in that capacity by the United States District Court for the Southern District of New York.

1.2 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) any reference in the Plan to an order, agreement, contract, instrument, release, exhibit or other document means such order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;
- (b) the division of the Plan into "articles" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" intended as complete or accurate descriptions of the content thereof;
- (c) unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing any gender shall include all genders;
- (d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

- (e) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Calgary time) on such Business Day;
- (f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;
- (g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and
- (h) references to a specified "article" or "section" shall, unless something in 'the subject matter or context is inconsistent therewith, be construed as references to that specified article of the Plan or a section of the Settlement Agreement, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular article or other portion of the Plan and include any documents supplemental hereto.

ARTICLE 2

PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan and the related Approval Orders is, among other things:

- (a) to effect a compromise of certain Claims of the Senior Secured Creditors;
- (b) to effect the distribution of the consideration to the Priority Claims as set forth in Article 4 hereof;
- (c) to facilitate and approve the settlement and resolution of outstanding issues between many of the parties involved in litigation concerning the activities of Poseidon, its D&Os and other related parties, including certain insured claims against Poseidon and its D&Os and Employees, so as to maximize recoveries for all stakeholders, and in so doing balance the impact of the settlement on the Non-Settling Defendants by means of: (i) a cap on the liability of KPMG and the Underwriters; and (ii) the extinguishment of all claims against them by the Settling Defendants;
- (d) to give effect to the releases in favour of those parties who have made a substantial contribution to this Plan; and
- (e) to allow a window of time in which KPMG and the Underwriters can settle the outstanding claims against them and be released on the same terms as the Released Parties, and, failing which, to provide a mechanism whereby these claims may be litigated and adjudicated in the ordinary course.

ARTICLE 3
CLASSIFICATION, VOTING AND RELATED MATTERS

3.1 Class of creditors

There shall be one class of creditors for the purposes of considering and voting on this Plan: the Senior Secured Creditors, who shall be the only Affected Creditors. No other creditors shall vote on or receive consideration under the Plan.

3.2 Claims Procedure

The Claim of the Senior Secured Creditors, is allowed in the aggregate amount of \$43,944,957.49.

3.3 Compromise of Senior Secured Creditor Action

Effective upon the Plan Implementation Date, the Senior Secured Creditors recourse to recover their Claim shall be limited to:

- (a) their entitlement to the Poseidon Settlement Funds;
- (b) their rights to participate in Additional Proceeds as set forth in this Plan; and
- (c) the Property,

and, in this regard, the Senior Secured Creditors shall discontinue the Senior Secured Creditor Action.

3.4 Unaffected Claims

Subject to Articles 3.3, 5.1 and 5.3 hereof, and notwithstanding anything else to the contrary herein, this Plan does not compromise, release, or otherwise affect the Unaffected Claims as against the Property. Unaffected Creditors shall not, in respect of an Unaffected Claim, be entitled to vote on the Plan or attend the Meeting.

3.5 Creditors Meeting

The Meeting will be held in accordance with this Plan, the Meeting and Hearing Order, and any further Order of the Court. Only the Affected Creditors, being the Senior Secured Creditors, shall be entitled to vote and for voting purposes, their claim shall be valued as approved by the Monitor.

3.6 Approval

To be approved, the Plan must be approved by the requisite majority of the Affected Creditors.

ARTICLE 4
DISTRIBUTIONS

4.1 Contributions to the Settlement Fund

The Insurers, on behalf of the Released Parties, shall pay the Initial Instalment of the Poseidon Settlement Funds pursuant to the Plan, and the Initial Instalment of the Class Settlement Funds pursuant

to the Settlement Agreement, by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the Settlement Agreement has been signed by the last signatory thereto. The Insurers, on behalf of the Released Parties, shall pay the Final Instalment of the Poseidon Settlement Funds pursuant to the Plan (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan) and the Final Instalment of the Class Settlement Funds pursuant to the Settlement Agreement (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan), to the Monitor in accordance with such definition. The Settling Defendants shall have no personal liability for the payment of the Poseidon Settlement Funds and the Class Settlement Funds. Should this Plan be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the Insurers. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds and the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned.

4.2 Distributions of Settlement Fund

The Poseidon Settlement Funds and the Class Settlement Funds shall be held by the Monitor in trust in one or more interest bearing accounts. The Poseidon Settlement Funds shall be distributed by the Monitor to Poseidon's estate, for distribution to the Priority Claims. The Class Settlement Funds shall be distributed by the Monitor to the Litigation Trustee, for distribution in accordance with a future order of the CCAA Court.

4.3 Distribution of any Additional Proceeds

Any other Additional Proceeds recovered prior to the Effective Time on the Plan Implementation Date as a result of a settlement with KPMG and/or the Underwriters shall be paid to the Monitor and distributed by the Monitor in accordance with the Settlement Agreement, and any amount received for the benefit of Poseidon shall be distributed by the Monitor in a like manner as the Poseidon Settlement Funds.

4.4 Timing of Distributions

The distributions contemplated by this Plan shall be made as soon as reasonably possible following the Plan Implementation Date.

4.5 Delivery of Distributions to Creditors

Distributions made in accordance with the terms of this Plan by the Monitor shall be deemed to be made to the Senior Secured Creditors by delivery of such funds to counsel for the Senior Secured Creditors.

4.6 Allocation of Distributions

All distributions made pursuant to this Plan, other than in respect of the Class Settlement Funds, shall be applied firstly in payment of all fees, costs, and expenses; secondly in payment of the outstanding principal amount of the Claim and, thirdly and only after the principal portion of any such Claim is satisfied in full, to any portion of such Claim comprising accrued and unpaid interest.

4.7 Transfer of Claims; Record Date for Distributions

Claims may be sold, transferred or assigned at any time by the holder thereof, whether prior or subsequent to the Plan Implementation Date, provided that:

- (a) Neither Poseidon nor the Monitor shall be obligated to deal with or to recognize the purchaser, transferee or assignee of the Claim as the creditor in respect thereof unless and until written notice of the sale, transfer or assignment is provided to the Monitor, such notice to be in form and substance satisfactory to the Monitor, acting reasonably within five (5) Business Days prior to the Plan Implementation Date;
- (b) only holders of record of Claims as at the date of the Meeting and Hearing Order shall be entitled to attend, vote or otherwise participate at such Meeting; provided, however, that: (A) for the purposes of determining whether this Plan has been approved by a majority in number of the creditors only the vote of the transferor or the transferee, whichever holds the highest dollar value of such Claims will be counted, and, if such value shall be equal, only the vote of the transferee will be counted; and (B) if a Claim has been transferred to more than one transferee, for purposes of determining whether this Plan has been approved by a majority in number of the creditors, only the vote of the transferee with the highest value of such Claim will be counted; and
- (c) only holders of record of Claims as at five (5) Business Days prior to the Plan Implementation Date shall have the right to participate in the corresponding distribution provided for under Section 4.2 and 4.3 of this Plan.

4.8 No Further Contributions, Liability or Exposure

Notwithstanding any other provision of the Plan or the Settlement Agreement, and without in any way restricting, limiting or derogating from the releases provided herein and in the Settlement Agreement, or in any way restricting, limiting or derogating from any other protection provided in the Plan or the Settlement Agreement to the Released Parties, under no circumstances shall the Released Parties be required to or be called upon to make any further financial contribution or payment in respect of any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds, which payment is solely the responsibility of the Insurers.

Costs associated with any notices required in connection with the Plan or the Settlement Agreement shall be paid for by Poseidon. Under no circumstances shall the cost of notice be payable by the Released Parties or the Insurers.

The Poseidon Settlement Funds and the Class Settlement Funds are the full monetary contribution or payment of any kind to be made by the Released Parties, which payment is solely the responsibility of the Insurers, and is inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise.

ARTICLE 5
RELEASES AND INJUNCTIONS

5.1 Plan Release

Subject to Article 5.2 hereof, the Approval and Settlement Order and the U.S. Approval Order shall provide that all Claims against the Released Parties are fully, finally, irrevocably, absolutely, and forever compromised, remised, released, discharged, cancelled and barred as of the Effective Time on the Plan Implementation Date including the following Claims:

- (a) all Claims of the Class against the Released Parties;
- (b) all Claims of the Senior Secured Creditors against the Released Parties;
- (c) all Claims of KPMG against the Released Parties;
- (d) all Claims of the Underwriters against the Released Parties;
- (e) all Claims of Poseidon against the Released Parties;
- (f) all Claims of the Monitor against the Released Parties and the Senior Secured Creditors;
- (g) all Claims of the Released Parties against Poseidon, the Class Representatives, the Class Members, the Senior Secured Creditors, any other Released Parties, KPMG Releasees, and Underwriter Releasees;
- (h) all Claims of the Litigation Trust and/or the trustees thereof against the Released Parties; and,
- (i) all Claims of any other Person against the Released Parties.

5.2 Claims Not Released

Subject only to Articles 5.6(b), 5.6(c) and 5.8, Article 5.1 shall not waive, compromise, release, discharge, cancel, bar or otherwise affect any of the following:

- (a) any Person of its obligations under the Plan, the Approval Orders, and the Settlement Agreement, including the obligations of the Insurers to pay the Class Settlement Funds and the Poseidon Settlement Funds;
- (b) Unaffected Claims;
- (c) Claims that cannot be released by operation of s. 5.1(2) and 19(2) of the CCAA, which Claims are released under the Settlement Agreement;
- (d) Claims asserted in the Monitor Action as against KPMG (for greater certainty, all Claims in the Monitor Action against the Released Parties are released);

- (e) Claims asserted in the Class Actions by the Class as against Poseidon, KPMG and the Underwriters (for greater certainty, all Claims in the Class Actions against the Released Parties are released);
- (f) Claims asserted in the Class Actions by Poseidon against KPMG (for greater certainty, all Claims in the Class Actions against the Released Parties are released);
- (g) any party's obligations under the Cooperation Agreement;
- (h) any and all Claims referred to in sections 5.2(a) to (g), above, that are transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee (for greater certainty, all Claims transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee against the Released Parties are released);
- (i) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully released under Article 5.1 above) against the Insurers under the Insurance Policies except as affected by the declarations set out in Article 5.8 below; and
- (j) the rights of any Person, including the Senior Secured Creditors, in respect of matters that are completely unrelated to any Claims, including rights in respect of matters that are completely unrelated to any Claims as against any Releasees.

5.3 Injunctions

- (a) Subject to Articles 5.4 and 5.8, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Poseidon, the Released Parties, KPMG and the Underwriters, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from:
 - (i) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any Claim or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
 - (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, Damages, or order against the Released Parties or their property;
 - (iii) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a Claim, in any manner or forum, against one or more of the Released Parties;
 - (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property;
or

- (v) taking any actions to interfere with the implementation or consummation of this Plan.
- (b) All Persons shall be enjoined from recovering, in total, in respect of the Claims made in the Class Actions and the Monitor Action more than: (i) \$250,000,000.00 plus costs and pre-filing and post-filing interest from KPMG; and, (ii) \$16,000,000.00 plus costs and pre-filing and post-filing interest from the Underwriters.

5.4 Limitations on Injunctions

Subject only to Articles 5.6(b) and (c) and 5.8, Article 5.3 shall not bar, estop, stay and enjoin or otherwise affect any of the following:

- (a) any Person of its obligations under the Plan, the Approval Orders, and the Settlement Agreement;
- (b) Unaffected Claims;
- (c) Claims asserted in the Monitor Action as against KPMG (all Claims in the Monitor Action against the Released Parties are barred, estopped, stayed and enjoined);
- (d) Claims asserted in the Class Actions by the Class as against Poseidon, KPMG and the Underwriters (all Claims in the Class Actions against the Released Parties are barred, estopped, stayed and enjoined);
- (e) Claims asserted in the Class Actions by Poseidon as against KPMG (all Claims in the Class Actions against the Released Parties are barred, estopped, stayed and enjoined);
- (f) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully barred, estopped, stayed and enjoined under Article 5.3 above) against the Insurers under the Insurance Policies except as affected by the declarations set out in Article 5.8 below;
- (g) any and all Claims referred to in sections 5.4(a) to (f), above, that are transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee (for greater certainty, all Claims transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee against the Released Parties are permanently and forever barred, estopped, stayed and enjoined); and
- (h) the rights of any Person, including the Senior Secured Creditors, in respect of matters that are completely unrelated to the Claims, including rights in respect of matters that are completely unrelated to any Claims as against any Releasees.

5.5 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 5 shall become effective at the Effective Time on the Plan Implementation Date.

5.6 Claims against Poseidon, KPMG and the Underwriters

- (a) Subject only to the operation of Articles 5.3(b) and 5.6(b) and (c) and notwithstanding anything else in this Plan, any Claims by the Class Representatives and the Monitor against Poseidon, KPMG, and the Underwriters in the Class Actions and the Monitor Action respectively: (i) are unaffected by this Plan; (ii) are not discharged, released, cancelled or barred pursuant to this Plan; (iii) shall continue only as against Poseidon, KPMG and/or the Underwriters, as applicable; (iv) shall not be limited or restricted as against Poseidon, KPMG or the Underwriters by or as a result of this Plan in any manner, including as to quantum, joint and several liability (notwithstanding the fact that certain claims over by Poseidon, KPMG, and the Underwriters are extinguished hereunder), or otherwise; (v) do not constitute an Affected Claim under this Plan.
- (b) On payment to the Monitor of the following amounts not later than five Business Days prior to the Plan Implementation Date, KPMG Releasees shall be deemed to be Released Parties listed in Schedule "A" to this Plan with any necessary modifications to the Plan and the Settlement Agreement to provide KPMG Releasees with full protection under the Plan and the Settlement Agreement as is provided to the Released Parties: (i) \$112,027,500.00 in trust for the benefit of the Litigation Trust to be formed pursuant to this Plan; and, (ii) \$4,972,500.00 in trust for the benefit of Poseidon.
- (c) On payment to the Monitor of the following amounts not later than five Business Days prior to the Plan Implementation Date, Underwriter Releasees shall be deemed to be Released Parties listed in Schedule "A" to this Plan with any necessary modifications to the Plan and the Settlement Agreement to provide Underwriter Releasees with full protection under the Plan and the Settlement Agreement as is provided to the Released Parties: (i) CAD\$11,490,000.00 in trust for the benefit of the Litigation Trust to be formed pursuant to this Plan; and, (ii) CAD\$510,000.00 in trust for the benefit of Poseidon.
- (d) If, and to the extent that, payments are not made pursuant to clauses 5.6(b) and (c) hereof, then on the Plan Implementation Date the Monitor Action shall be conveyed to the Litigation Trust pursuant to Article 5.7 hereof, which Litigation Trust shall, along with the Class Actions, be continued pursuant to the terms of, and for the benefit of the beneficiaries of, the Litigation Trust.

5.7 Conveyance of Monitor Action

Subject to Article 5.6(d) hereof, the Monitor Action shall be conveyed to the Litigation Trust on the Plan Implementation Date in consideration of the Litigation Trust providing to Poseidon, in care of the Monitor:

- (a) 4.25% of any Additional Proceeds realized by the Litigation Trust; and
- (b) an annual report to the Monitor on the status of the actions maintained by the Litigation Trust.

5.8 Declarations re Insurance

The Approval Orders shall declare that:

- (a) the Contribution:

- (i) does not violate the rights or interests, in respect of the Insurance Policies, of the Class Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - (ii) constitutes covered Loss (as defined in the Insurance Policies);
 - (iii) reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;
 - (iv) is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds, provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
 - (v) fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution;
- (b) once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
- (c) The determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and which reduce the amount of the Final Instalment of the Class Settlement Funds and the Final Instalment of the Poseidon Settlement Funds, all such terms as defined in Article 1.1 of this Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, the Class Members or the Class Representatives.
- (d) in addition to the reduction of the Limits of Liability under the Policies pursuant to Article 5.8(a)(iii), the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

5.9 Acknowledgement

- (a) For greater certainty, the Settling Parties acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that at the Effective Time on the Plan Implementation Date, all of the protections provided for herein (including the protections in Article 5 of the Plan) for the Released Parties shall be definitive and permanent irrespective of whether any subsequently discovered facts were unknown, unsuspected, or not disclosed.
- (b) By means of the Settlement, the Settling Parties waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the protections provided for herein (including the protections in Article 5 of the Plan) and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Settling Parties agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.
- (c) It is understood and agreed by the D&Os (and Kuehnle and Robinson) that each individual D&O's (and Kuehnle and Robinson's) entitlement to Criminal / Regulatory Defence Costs shall be limited to CAD \$2.5 million (such amount being a cap on, and not a guarantee of the availability of, funds), except for Joseph Kostelecky whose entitlement to Criminal / Regulatory Defence Costs shall be limited to USD \$2.0 million (such amount being a cap on, and not a guarantee of the availability of, funds), and no D&O (nor Kuehnle and Robinson) shall be entitled to request or receive in excess of CAD \$2.5 million in respect of Criminal / Regulatory Defence Costs from the Insurers, except for Joseph Kostelecky who shall not be entitled to request or receive in excess of USD \$2.0 million in respect of Criminal / Regulatory Defence Costs from the Insurers. For the purposes of calculating the drawdown of the CAD \$7.5 million Final Instalment of Class Settlement Funds and Final Instalment of Poseidon Settlement Funds by payment of Criminal / Regulatory Defence Costs, payments of USD will be converted to CAD at the time an Insurer pays the Criminal / Regulatory Defence Costs.

5.10 Class Action Orders Required

Forthwith upon obtaining the Approval and Settlement Order and U.S. Approval Order, the Class Representatives and, where appropriate, the U.S. Class Representative, or their nominees, shall seek a

Settlement Recognition Order in each of the Class Action Courts with respect to each Class Action commenced in Ontario, Quebec, and the United States. The Class Representatives and the U.S. Class Representative, or their nominees, shall make their commercially reasonable best efforts to obtain the Settlement Recognition Orders.

ARTICLE 6
CONDITIONS PRECEDENT AND IMPLEMENTATION

6.1 Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

(a) Approval of this Plan

The Plan shall have been approved by the required majority of Affected Creditors.

(b) Granting of the Approval and Settlement Order

The Approval and Settlement Order shall have been granted, including the granting by the CCAA Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan, as well as the approval of the CCAA Court and the Alberta Class Action Court of the Settlement Agreement.

(c) Granting of the U.S. Approval Order

The U.S. Approval Order shall have been granted by the United States Bankruptcy Court, including the granting by the United States Bankruptcy Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan.

(d) Granting of the Settlement Recognition Orders

The Settlement Recognition Orders shall have been granted by the Class Action Courts in Ontario, Quebec, and in the United States.

(e) Expiry of Appeal Periods

The Approval Orders shall have become Final Orders.

(f) Contributions

The Poseidon Settlement Funds and the Class Settlement Funds shall have been paid to the Monitor in accordance with the terms of the Plan and the Settlement Agreement respectively.

(g) Insurer Release

The Monitor receiving court approval to execute a release in favour of the insurers, in the form attached to the Plan as Schedule "E"

6.2 Monitor's Certificate

Within thirty (30) days after the satisfaction of the conditions set out in Article 6.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceeding and the United States Bankruptcy Court a certificate

that states that all conditions precedent set out in Article 6.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

ARTICLE 7

GENERAL

7.1 Binding Effect

At the Effective Time on the Plan Implementation Date:

- (a) the Plan shall be final, binding and effective in accordance with its terms for all purposes on all Persons named in, referred to in, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;
- (b) each Person named or referred to in, or subject to, the Plan will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety, and shall be forever bound by the terms of the Plan; and
- (c) the Monitor shall be entitled to make all distributions and conveyances in accordance with this Plan.

7.2 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

7.3 No Admission of Liability

Neither the Plan, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Released Parties, or as a concession or admission by the Released Parties of the truthfulness or merit of any claim or allegation asserted in the Class Actions, the Monitor Action, the KPMG Claim, the Underwriter Claim, or the Senior Secured Creditor Action. Neither the Plan, nor anything contained herein, shall be used or construed as an admission by the Released Parties of any fault, omission, liability or wrongdoing whatsoever. Any and all liability or wrongdoing is expressly denied.

7.4 Agreement not Evidence

Except as required to defend against the assertion of a Released Claim and to enforce the terms of the Plan, neither the Plan, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Plan shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding.

7.5 Plan Amendment

Poseidon reserves the right, at any time prior to the Plan Implementation Date, to amend, modify and/or supplement this Plan, provided that:

- (a) any such amendment, modification or supplement must be contained in a written document that is filed with the CCAA Court, and must be discussed in advance with, and not objected to by, the Released Parties, the Senior Secured Creditors and the Class Representatives and, if made following the Meeting, communicated to such of the creditors and in such manner, if any, as may be ordered by the CCAA Court;
- (b) any amendment, modification or supplement may be made unilaterally by the Monitor, on behalf of Poseidon following the Approval Orders, provided that it concerns a matter which, in the opinion of the Monitor, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and to the Approval Orders and is not adverse in any way to the Senior Secured Creditors, the Released Parties or the Class Members; and
- (c) any supplementary plan or plans of compromise or arrangement filed with the CCAA Court by Poseidon and, if required by this Article 7.6, approved by the CCAA Court shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

7.6 Rights of Termination

The Plan shall terminate if:

- (a) the Approval and Settlement Order or the U.S. Approval Order are not granted and no further rights of appeal exist;
- (b) the Approval and Settlement Order and the U.S. Approval Order are granted, overturned on appeal, and no further rights of appeal exist;
- (c) any of the Settlement Recognition Orders are not granted and no further rights of appeal exist;
- (d) any of the Settlement Recognition Orders are granted, overturned on appeal, and no further rights of appeal exist; or
- (e) the Plan is terminated by for any reason by Final Order of the CCAA Court.

If there are any disputes about the termination of the Plan, the dispute shall be determined by the CCAA Court on notice to the Settling Parties.

7.7 Impact of Non-Consummation, Non-Approval and/or Termination

If the conditions precedent set out in Article 6.1 are not met, or if the Settlement Agreement or the Plan terminates or is terminated in accordance with its terms, then:

- (a) the Plan and the Settlement Agreement shall be null and void in all respects (subject to any survival provisions);
- (b) any settlement or compromise embodied in the Plan, or the Settlement Agreement, and any document or agreement executed pursuant to the Plan or Settlement Agreement shall be deemed null and void;

- (c) nothing contained in the Plan or the Settlement Agreement, and no act taken in preparation of the consummation of the Plan or the Settlement Agreement, shall:
 - (i) constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto, by or against any of the Released Parties or any other Person;
 - (ii) prejudice in any manner the rights of any of the creditors, the Released Parties or any other Person; or
 - (iii) constitute an admission of any sort by any of the creditors, the Released Parties or any other Person; and
- (d) the Settling Parties and any other Person affected by the Plan or the Settlement Agreement will be restored to their respective positions prior to the execution of the Agreement;
- (e) the Settling Parties will consent to orders setting aside, on a without prejudice basis, any order granting leave to commence a claim under s. 138.3 of the *Securities Act* (Ontario) and equivalent provisions of *Securities Acts* of other Provinces as against a Settling Party for the purposes of implementing this Agreement;
- (f) the Settling Parties will consent to orders setting aside, on a without prejudice basis, any orders certifying (in Ontario, Alberta and the United States) or judgments authorizing (in Quebec) the Class Actions as class proceedings as against a Settling Party for the purposes of implementing this Agreement;
- (g) subject to any survival provisions herein, the Agreement will have no further force and effect and no effect on the rights of the Settling Parties or any other Person affected by the Plan or the Settlement Agreement;
- (h) the certification and authorization of the Class Actions for the purposes of implementing this Agreement will be deemed to have been without prejudice to any position that any of the Settling Parties may later take on any issue in the Class Actions, the KPMG Claim, the Underwriter Claim and the Monitor Action;
- (i) the Poseidon Settlement Funds and the Class Settlement Funds will be returned to the payor(s) of such funds, with interest and without deduction or holdback, within 30 days after the date upon which the triggering event for repayment occurs. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds shall be payable by the recipient(s) of any such interest earned;
- (j) neither the Settlement Agreement nor the Plan will be introduced into evidence or otherwise referred to in any litigation or proceeding against the Released Parties;
- (k) the provisions of this Article, and Articles 1.1, 1.2, 7.3, 7.4, 7.8, 7.9, 7.10, 7.11, 7.13, 7.14, 7.15, 7.16 and 7.17, and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect;

- (l) Poseidon and/or the Monitor or Class Counsel, as applicable, shall, within 30 days after the date upon which the triggering event for repayment occurs, apply to the CCAA Court and the Class Action Courts, as necessary, for orders:
 - (i) declaring the Plan and the Settlement Agreement null and void and of no force or effect except for the provisions of those Articles and sections that are expressly specified as continuing in force; and
 - (ii) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

7.8 Paramountcy

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information summary in respect of this Plan, or the covenants, warranties, representations; terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between Poseidon and any creditor, Released Party or other Person as at the Plan Implementation Date, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Approval Orders, which shall take precedence and priority.

7.9 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding, and the Monitor will not be personally responsible or liable for any obligations of Poseidon hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceeding, including the Initial Order.

7.10 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail, facsimile or email addressed to the respective parties as follows:

- (a) If to Poseidon:

Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlq.com and scott.kugler@gowlingwlq.com

(b) If to the Monitor:

PricewaterhouseCoopers Inc.
Suite 3100, 111 – 5th Avenue S.W.
Calgary, Alberta T2P 5L3

Attention: Mr. Clinton Roberts
Fax: 403-781-1825
Email: clinton.l.roberts@ca.pwc.com

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

(c) If to the Class Representatives:

Paliare Roland Rosenberg Rothstein LLP
35th Floor, 155 Wellington Street W.
Toronto, Ontario M5V 3H1

Attention: Mr. Max Starnino
Fax: 416-646-4301
Email: max.starnino@paliareroland.com

(d) If to the Senior Secured Creditors:

Dentons Canada LLP
15th Floor, 850 2nd St SW
Calgary AB T2P 0R8

Attention: Mr. David Mann
Fax: 403-268-3100
Email: david.mann@dentons.com

and

Rose LLP
810-333 5 Avenue SW
Calgary AB T2P 3B6

Attention: Mr. Matthew Lindsay
Fax: 403-776-0601
Email: matt.lindsay@rosellp.com

(e) If to the U.S. Class Representative:

The Rosen Law Firm
275 Madison Avenue, 34th Floor
New York, NY 10016

Attention: Mr. Jonathan Horne
Fax: 212-202-3827
Email: jhorne@rosenlegal.com

(f) If to Matthew MacKenzie:

Burnet, Duckworth & Palmer LLP
525 – 8TH Avenue S.W., Suite 2400
Calgary, AB T2P 1G1

Attention: Mr. Daniel J. McDonald, Q.C.
Fax: 403-260-0332
Email: djm@bdplaw.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(g) If to Lyle Michaluk:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. J. Patrick Peacock, Q.C.
Fax: 403-296-2299
Email: jppeacock@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(h) If to Harley Winger:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. Perry R. Mack, Q.C.
Fax: 403-296-2299
Email: pmack@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(i) If to Scott Dawson:

Parlee McLaws LLP
3300 TD Canada Trust Tower
421-7 Avenue S.W.
Calgary, AB T2P 4K9

Attention: Mr. Gregory D.M. Stirling, Q.C.
Fax: 403-767-8874
Email: gstirling@parlee.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(j) If to Clifford Wiebe:

Scott Venturo LLP
200 Barclay Parade S.W.
Calgary, AB T2P 4R5

Attention: Mr. Domenic Venturo
Fax: 403-265-4632
Email: d.venturo@scottventuro.com

(k) If to Joseph Kostelecky:

Code Hunter LLP
440 2nd Avenue S.W., Suite 850
Calgary, AB T2P 5E9

Attention: Messrs. Eric Groody and Robert Moyse
Fax: 403-261-2054
Email: eric.groody@codehunterllp.com and robert.moyse@codehunterllp.com

(l) If to David Belcher:

Brownlee LLP
2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8

Attention: Mr. Havelock B. Madill, Q.C.
Fax: 780-424-3254
Email: hmadill@brownleelaw.com

(m) If to Lyle D. Michaluk, Matt C. MacKenzie, A. Scott Dawson, Clifford L. Wiebe, Harley L. Winger, Dean Jensen, James McKee and Neil Richardson in their capacity as Defendants in the U.S. Action:

Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, New York 10595

Attention: Mr. Paul T. Curley
Fax: 914-449-1100
Email: pcurley@kbrlaw.com

(n) If to Sonja Kuehnle and Doug Robinson:

Fasken Martineau DuMoulin LLP
350 7th Avenue S.W., Suite 3400
Calgary, AB T2P 3N9

Attention: Mr. Robert D. Maxwell
Fax: 403-261-5351
Email: rmaxwell@fasken.com

(o) If to Peyto Exploration and Development Corp. or New Open Range

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Mr. David Conklin
Fax: 416-979-1234
Email: dconklin@goodmans.ca

- (p) If to Kenneth Faircloth and Wazir (Mike) Seth:

Ormston List Frawley LLP
6 Adelaide Street East, Suite 500
Toronto, ON M5C 1H6

Attention: John P. Ormston
Fax: 416-594-9690
Email: jormston@olflaw.com

or to such other address as any party may from time to time notify the others in accordance with this Article. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Calgary time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

7.11 Further Assurances

- (a) The Settling Parties all covenant and agree to:
- (i) pursue as promptly as practicable Court approval of the Plan and the granting of the Approval Orders in an expedited and commercially reasonable fashion; and
 - (ii) execute any and all documents and perform any and all acts required by the Plan and the Settlement Agreement, including any consent, approval or waiver requested by the Settling Parties, acting reasonably.
- (b) The Settling Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the settlement and transactions contemplated by this Plan and the Settlement Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Plan and the Settlement Agreement and carry out their provisions.

7.12 Currency

Unless otherwise specified, all references in this Plan are to Canadian dollars.

7.13 Successors and Assigns

The Plan shall be binding upon and shall ensure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Plan.

7.14 Entire Agreement

The Settlement Agreement and this Plan together constitute the entire agreement between the Settling Parties with respect to the matter herein. The execution of the Plan has not been induced by, nor do any of the Settling Parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof.

7.15 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the CCAA Court.

7.16 Expenses

Each of the Settling Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Plan and its implementation.

7.17 Counterparts

The Plan may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of the Plan by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of the Plan.

7.18 Schedules

The following Schedules to the Plan are incorporated by reference into the Plan and form part of the Plan:

Schedule "A"	List of Released Parties
Schedule "B"	Settlement Agreement
Schedule "C"	Draft Approval and Settlement Order
Schedule "D"	Litigation Trust Agreement
Schedule "E"	Insurer Release

SCHEDULE "A"

RELEASED PARTIES

1. All of the defendants and third (or subsequent) parties (other than Poseidon, KPMG and the Underwriters) named in, and all other Persons who could have been or could in the future be named in, the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, or the Underwriter Claim including, jointly and severally, individually and collectively:

New Open Range
Peyto Exploration and Development Corp.
the D&Os
the Employees
2. All of the past, present and future, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, predecessors, successors, assigns, purchasers, directors, officers, employees, agents, servants, consultants, representatives, attorneys, lawyers, in-house counsel, outside counsel, and administrators of:

New Open Range
Peyto Exploration and Development Corp.

but excluding Poseidon, KPMG, and the Underwriters.
3. All of the past, present and future insurers, Employees and D&Os (to the extent not otherwise included in #1 above), agents, servants, consultants, representatives, attorneys, lawyers, in-house counsel, outside counsel, and administrators of Poseidon.
4. All of the past, present and future, direct and indirect agents, trustees, servants, consultants, representatives, attorneys, lawyers, heirs, executors, administrators, guardians, estate trustees, relatives, insurers, assigns, as the case may be, of the Persons identified or referred to directly or indirectly in paragraphs 1, 2 and 3 above, but excluding Poseidon, KPMG and the Underwriters.
5. All Persons, partnerships, joint ventures, or corporations with whom any of the Released Parties in paragraph 1-4 above have been, or are now, affiliated but excluding Poseidon, KPMG and the Underwriters.
6. The Insurers.