

FORM 10
[RULE 3.25]

COURT FILE NUMBER **1301-00935**

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

Franz Auer

DEFENDANT(S)

Poseidon Concepts Corp., A. Scott Dawson, Matt
MacKenzie, Lyle Michaluk and Harley L. Winger

DOCUMENT

Brought under the *Class Proceedings Act*
STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you
can do and when you must do it.

Statement of facts relied on:

DEFINED TERMS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “**ABCA**” means the *Alberta Business Corporations Act*, RSA 2000, c B-9, as amended;
 - (b) “**AIF**” means Annual Information Form;
 - (c) “**AR**” means accounts receivable;
 - (d) “**ASA**” means the *Alberta Securities Act*, RSA 2000, c S-4, as amended;
 - (e) “**Class**” and “**Class Members**” mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired **PSN’s Securities** on or before December 27, 2012, other than: (1) the **Excluded Persons**; and (2) those persons resident or domiciled in the Province of Québec at the time they acquired PSN Securities, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, RSQ, c C-25;
 - (f) “**CPA**” means the *Alberta Class Proceedings Act*, SA 2003, c C-16.5, as amended;
 - (g) “**Dawson**” means the defendant, A. Scott Dawson;
 - (h) “**Defendants**” means **PSN** and the **Individual Defendants**;
 - (i) “**Excluded Persons**” means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;
 - (j) “**IFRS**” means International Financial Reporting Standards;
 - (k) “**Individual Defendants**” means **Dawson, MacKenzie, Michaluk and Winger**, collectively;
 - (l) “**Impugned Documents**” (each being an **Impugned Document**) means, collectively, the Q3 2011 financial statements, filed November 8, 2011; the Q3 2011 MD&A, filed November 8, 2011; the 2011 financial statements, filed March 22, 2012; the 2011 MD&A, dated March 22, 2012; the AIF filed March 29, 2012; the Q1 2012 financial statements, filed May 9, 2012; the Q1 2012 MD&A filed May 9, 2012; the Q2 2012 financial statements filed August 8, 2012; the Q2 2012

MD&A, filed August 8, 2012; the Q3 2012 financial statements, filed November 14, 2012; the Q3 MD&A, filed November 14, 2012; and the **Prospectus**;

- (m) **"MacKenzie"** means the defendant, Matt MacKenzie;
- (n) **"MD&A"** means Management's Discussion and Analysis;
- (o) **"Michaluk"** means the defendant Lyle Michaluk;
- (p) **"New Open Range"** means, Open Range Energy Corp, the successor to **Open Range**;
- (q) **"Open Range"** means Open Range Energy Corp, the predecessor company of **PSN** and **New Open Range**;
- (r) **"Plaintiff"** means the plaintiff, Franz Auer;
- (s) **"Prospectus"** means the prospectus dated January 26, 2012;
- (t) **"PSN"** means the defendant, Poseidon Concepts Corp.;
- (u) **"Representation"** means the statement, express or implied, that **PSN's** financial statements fairly presented its financial position, financial performance and cash flows;
- (v) **"Securities"** means **PSN's** common shares, notes or other securities, as that term is defined in the **ASA**;
- (w) **"SEDAR"** means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (x) **"Securities Legislation"** means, collectively, the **ASA**, the *Securities Act*, RSO 1900, c S.5, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (y) **"TSX"** means the Toronto Stock Exchange; and
- (z) **"Winger"** means the defendant, Harley L. Winger.

THE PARTIES

The Defendants

2. PSN is an oil and natural gas service and supply company formed pursuant to the ABCA.
3. PSN is a successor of Open Range. On November 1, 2011, Open Range completed a reorganization transaction. As a result of this reorganization, PSN became an independent entity carrying on the energy service and supply business. New Open Range is the successor to the Open Range business other than that which became PSN.
4. At all material times, PSN was a reporting issuer in all provinces of Canada. At all material times, PSN's shares were listed for trading on the TSX under the ticker symbol "PSN," and also traded on alternative stock exchanges in Canada. PSN Securities also trade in Frankfurt and over-the-counter in the United States.
5. At all material times Michaluk was the Chief Executive Officer ("CEO") and a director of PSN. Previously, he had been the Chief Financial Officer ("CFO") of Open Range. Michaluk is "a Chartered Accountant with over 15 years of diversified financial experience including corporate accounting, treasury management, auditing and tax planning." Michaluk stepped down as PSN's CEO on or about December 27, 2012, and assumed the role of the company's Interim CFO.
6. At all material times during the Class Period, MacKenzie was the CFO of PSN. MacKenzie stepped down as PSN's CFO on or about December 27, 2012.
7. Dawson was previously the CEO of Open Range, and continued as the CEO of New Open Range. At all material times during the Class Period, Dawson was Chairman of the board of directors of PSN, and a member of PSN's board of directors' Audit Committee. Dawson was appointed as PSN's Executive Chairman. On or about December 27, 2012, Dawson assumed the position of PSN's Interim President and CEO.
8. At all material times Winger was a director of PSN. Winger was a director of Open Range and also a director of New Open Range.

The Plaintiff

9. Auer is an individual residing in Sturgeon County, Alberta, who purchased PSN shares before December 27, 2012.

FACTUAL ALLEGATIONS

10. On January 26, 2012, PSN issued the Prospectus. The Individual Defendants signed the Prospectus. The Prospectus, with its overallotment, issued to the public a total of 6,347,000 common shares at a price of \$13.00 per share for gross proceeds of \$82,511,000.

11. The Prospectus incorporated various documents by reference, including PSN's Q3 2011 financial statements and MD&A, both of which are Impugned Documents. False statements made in documents incorporated into the Prospectus are false statements made in the Prospectus and render the Prospectus false and misleading.
12. As a reporting issuer in Alberta, PSN was required to issue and file with SEDAR:
 - (a) Within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
 - (b) Within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
 - (c) Contemporaneously with each of the above, an MD&A of each of the above financial statements; and
 - (d) Within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.
13. MD&A's are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.
14. AIF's are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.
15. As a reporting issuer in Alberta, PSN files various reports for the benefit of the market and the Class. Prior to November 14, 2012, PSN represented that:
 - (a) Its internal controls over routine and non-complex accounting transactions were functioning adequately:

The Corporation evaluated the design of its internal controls over financial reporting as at [end of period]. During this evaluation the Corporation identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all

other of its internal controls over financial reporting had been designed properly at [end of period];

- (b) It had a policy for evaluation of its AR:

Allowance for Doubtful Trade Receivables

Poseidon evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant. This process involves a high degree of judgment and estimation and frequently involves significant dollar amounts. Accordingly, the Corporation's results of operations could be affected by adjustments to the allowance due to actual write-offs that differ from estimated amounts;

- (c) Its financial statements were prepared in accordance with IFRS; and

- (d) It had not taken an allowance for doubtful AR.

16. AR is not a "complex" or "non-routine accounting transaction".
17. Pursuant to IFRS, if PSN recorded an allowance for doubtful AR, it was required to disclose that it took that allowance and the amount of that allowance. PSN did not disclose such an allowance. PSN did not take an allowance.
18. On November 14, 2012, PSN revealed for the first time that its internal controls were ineffective and that it had materially overstated its AR. On that date, it reported financial and operating results for the three and nine months ending September 30, 2012 (Q3 2012), and PSN:
 - (a) Recorded a charge of \$9.5 million for uncollectible debt, reducing its AR asset and taking a charge to its net income;
 - (b) Reported significant increase in the size of its AR portfolio, to \$125.5 million (net of the \$9.5 million write-off) including \$36 million past due (outstanding for more than 120 days);
 - (c) Reported that "Based on the payment experience and financial condition of its customer base, Poseidon anticipates collection progress on the amounts due, but both the timing and magnitude of ultimate collections remain risks" (previously, in the Q2 2012 MD&A, PSN had falsely stated that it "does not anticipate any material collection issues on the amounts due");

- (d) Introduced a credit policy to mitigate the problems with doubtful receivables:

The Corporation has established a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions. Credit limits are established for each customer, which represents the maximum exposure. The Corporation's credit limit review includes customer cash flow analysis, external debt ratings, and credit references when appropriate. Customers that fail to meet the Corporation's benchmark creditworthiness may transact with the Corporation only after providing a cash deposit to offset a portion of the credit amount; these customers will be subject to an added level of monitoring by the Corporation until sufficient payment history is established;

- (e) Reported that it "concluded that its internal controls over financial reporting were not completely effective as at September 30, 2012"; and

- (f) Disclosed that only 38% of its AR portfolio was due from investment grade parties.

19. As a result of these disclosures, PSN's share price plummeted and the Class Members lost hundreds of millions of dollars. On November 14, PSN common shares had closed at \$13.22. On November 15, after the Defendants belatedly partially revealed the truth, PSN shares fell 62.2% to \$5.00 on extraordinarily high volume, and did so as a result of the partial disclosure of the truth.

20. On or about November 16, 2012, Michelle-Louise Rye, an employee of PSN, provided further detail on PSN's AR:

As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue, since this was brought to our attention in late Q3 just prior to releasing our results we have been diligently trying to resolve outstanding accounts of customers. Regardless, we are focused on a long term strategy, not short term results.

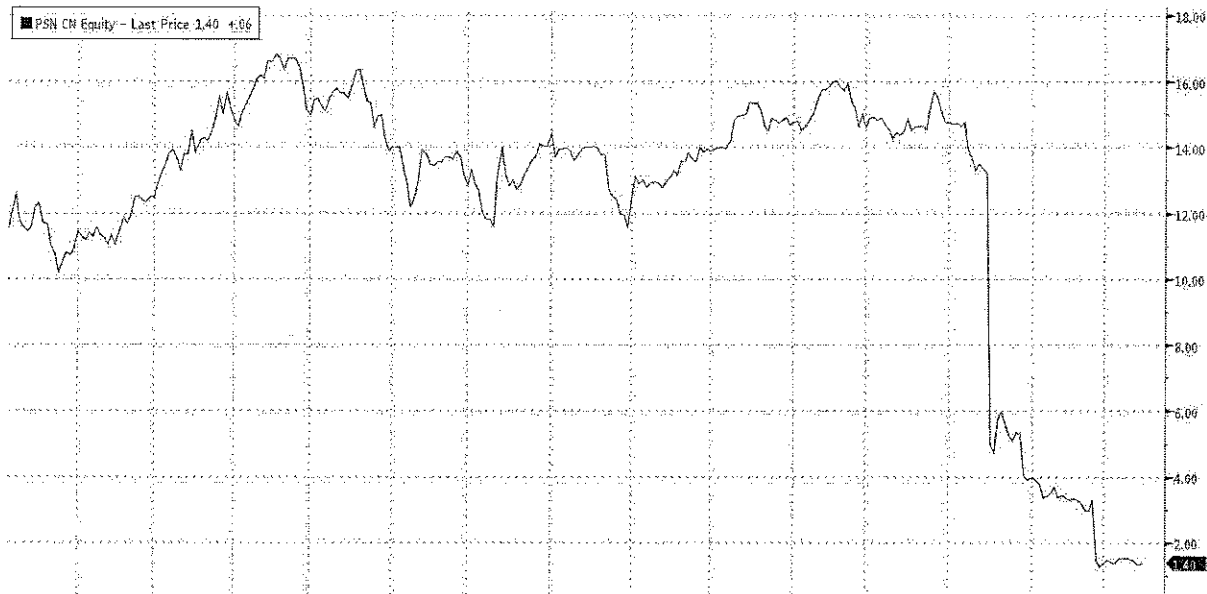
21. PSN authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye communicated to the market and investors on behalf of PSN. Statements by Michelle-Louise Rye with regard to PSN are statements of PSN.

22. In a press release disseminated on December 27, 2012 Poseidon announced the formation of a Special Committee of the Board of Directors to "review and address various issues arising from the recent write-off of certain accounts receivable and the evolving business plan of the Company." The Special Committee's mandate includes the review and assessments of Poseidon's business processes and controls, so that it can "make recommendations to the Board of Directors of Poseidon regarding further

changes including managerial changes that will strengthen the operations and finance functions of the Company.” Poseidon stated that:

The Company has been diligently addressing its accounts receivable in recent weeks and is actively pursuing collections, including commencing formal collection processes in appropriate circumstances. While a final number cannot yet be determined, the Company may need to make additional write downs of accounts receivable in future periods and such write downs may be significant. In accordance with previously stated policy, the Company will update guidance as appropriate however in the event that significant additional write downs of accounts receivable are necessary previously provided guidance will be negatively affected.

23. Poseidon further announced that the Directors would review the previously declared dividend payable January 15th, 2013, and the postponement of payment of undeclared dividends effective January 16, 2013.
24. As a result of these further disclosures, PSN’s share price again plummeted, falling from more than \$3.25 per share to less than \$1.50 per share, and the Class Members lost in excess of an additional one hundred million dollars.



PSN Was Required to Take AR Allowances

25. Pursuant to its “Allowance for Doubtful Trade Receivables” policy and IFRS, PSN was required to record an allowance against its AR where “a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation’s customers, and other factors” required it.

26. Through this allowance, PSN would ensure that it was not recording an asset for accounts that it would not collect. If it did not record this allowance, as its own policies and IFRS required, PSN's assets, and thus balance sheet, would be inflated, false and materially misleading. Additionally, if it did not record this allowance, its net income figure would be materially overstated, false and misleading.
27. PSN was required to take an AR allowance due to, among other things:
 - (a) The age of its AR;
 - (b) The size of its AR;
 - (c) The rate by which its AR increased;
 - (d) The amount of its AR that was past due;
 - (e) The rate by which its past due AR increased;
 - (f) The fact that only 38% of its total accounts receivable portfolio was due from investment grade parties;
 - (g) The ongoing "receivables problem"; and
 - (h) The fact that PSN was a successor to Open Range, that Dawson, Michaluk and Winger were involved in Open Range's allowance policy and the implementation of the same, and that *Open Range took AR allowances*.
28. The Defendants monitored the amount, timing and quality of the AR at all material times. For example, the Defendants were aware of the amount, timing and quality of PSN's AR in part because, pursuant to the terms of PSN's \$50 million credit facility, the availability of credit was "dependent in part on the amount, timing and quality of the Corporation's accounts receivable."
29. Under the terms of the facility, a "material impairment or aging of accounts receivable or a reduction of the credit worthiness of the debtor . . . could materially reduce . . . the bank credit available to the Corporation and possibly caus[e] a portion of such bank debt to be required to be repaid." Any issues with the facility could affect PSN's ability to fund ongoing operations.
30. Dawson and Michaluk were the CEO and CFO, respectively, of Open Range, predecessor to PSN. In that role, both had overseen the implementation of Open Range's allowance for doubtful trade receivables policy.
31. Winger was a director of Open Range. In that role, he approved of its financial statements.

32. Winger, Dawson and Michaluk were involved in the process by which Open Range took allowances against AR.
33. Open Range was required to, and had, recorded allowances against its AR, in the following amounts:

Period	AR (net of allowance)	Allowance Recorded	Uncollectible Amounts Written Off
Q3 2008	\$9.38 million	\$523,000	Nil
Q4 2008	\$18.46 million	\$785,000	Nil
Q1 2009	\$4.45 million	\$785,000	Nil
Q2 2009	\$1.76 million	\$1.05 million	Nil
Q3 2009	\$2.99 million	\$1.05 million	Nil
Q4 2009	\$10.50 million	\$949,000	\$94,000
Q1 2010	\$9.20 million	\$949,000	Nil

34. New Open Range, the successor to Open Range (other than the business that became PSN), had AR, some or all of which was inherited from Open Range. The largest portion of that AR was due from "Oil and natural gas marketing companies." New Open Range, and the business that would become New Open Range, "historically [had] not experienced any collection issues with its oil and natural gas marketers." Open Range and New Open Range "transact[] with creditworthy customers."

False and Misleading Statements

35. In each of the Impugned Documents that is a financial statement, PSN recorded an AR asset:

Period	Accounts Receivable at Period End
2011 Annual	\$53.6 million
Q1 2012	\$83 million
Q2 2012	\$118.6 million

Period	Accounts Receivable at Period End
Q3 2012	\$125.5 million

36. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR, and the AR was thus overstated and false, as was PSN's reported assets and shareholders' equity.
37. In each of the Impugned Documents that is a financial statement or MD&A, PSN reported net income:

Period	Net Income
Q4 2011	\$18.7 million
Q1 2012	\$ 29.64 million
Q2 2012	\$ 31.18 million
Q3 2012	\$ 7.83 million

38. Each of the above figures was false insofar as they failed to include a required allowance for doubtful AR. Accordingly, PSN's net income was overstated and false.
39. In each of the MD&A Impugned Documents, other than the Q3 2012 MD&A, PSN stated that it had "identified weaknesses due to the limited number of finance and accounting personnel at the Corporation dealing with complex and non-routine accounting transactions that may arise. Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting had been designed properly." This statement was false and misleading because, as it would later admit, "its internal controls over financial reporting were not completely effective," it had a "receivables problem" and had not yet "taken steps to completely revise [its] internal controls to address" the AR "problem."
40. In the 2011 MD&A, PSN represented that it (then and in the future):
- ...evaluates its trade receivables through a continuous process of assessing its portfolio on an individual customer and overall basis. This process consists of a thorough review of collection experience, current aging status of the customer accounts, financial condition of the Corporation's customers, and other

factors. Based on its review of these factors, it establishes or adjusts allowances for specific customers as well as general provisions if industry conditions warrant.

This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.” PSN did not “evaluate[] its trade receivables” sufficiently, as required or at all, and did not “thorough[ly] review [its] collection experience, current aging status of the customer accounts, [or] financial condition of the Corporation’s customers.”

41. Had PSN properly implemented and followed its claimed “Allowance for Doubtful Trade Receivables” policy and IFRS, it would have taken an allowance against its AR, would not have misstated its AR, and would not have misstated its net income or reported inflated assets.
42. In the AIF dated April 26, 2012, PSN falsely stated that it “assesses the credit worthiness of its customers and monitors accounts receivable on a regular, ongoing basis.” This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”
43. In the Q2 2012 MD&A PSN falsely stated that “Management conducts frequent detailed reviews of the accounts receivable amounts outstanding as part of its ongoing credit risk assessment procedures.” This statement was false and misleading because, as it would later admit, PSN lacked “a credit policy under which each customer is analyzed for creditworthiness before the Corporation begins to provide services to the customer and prior to offering standard payment terms and conditions,” did not establish “Credit limits . . . for each customer,” had a “receivables problem” and had not yet “taken steps to completely revise [its] internal controls to address” the AR “problem,” and had taken no steps, prior to “in late Q3” 2012, to “diligently . . . resolve outstanding accounts of customers.”
44. Although Poseidon partially disclosed the truth on November 14, 2012, the Q3 2012 MD&A contained misrepresentations as it: 1) reported inflated revenues, inflated earnings, and inflated net income for the three and nine months ended September 30, 2012; 2) stated that “the Corporation concluded that [as at September 30, 2012] the

internal controls over financial reporting were designed properly to provide reasonable assurance regarding the reliability of financial reporting by the Corporation and the preparation of its financial statements;" 3) did not disclose that additional "significant" AR write-offs were required; and 4) contained information for prior reporting periods that did not fairly represent Poseidon's financial status.

45. The truth of each of the statements particularized in this section are material facts and were required to be disclosed in the Prospectus, but were not. Accordingly, the Prospectus was materially false and misleading.
46. As a result of the forgoing, the Representation was false in that PSN's financial statements did not fairly present its financial position, financial performance and cash flows.

Winger, Dawson and Michaluk Sell Securities

47. Winger, Dawson and Michaluk sold securities of PSN prior to November 14, 2012:
 - (a) On November 14, 2011, Winger sold a total of 238,464 Poseidon shares indirectly held in the public market for gross proceeds of \$2.64 million;
 - (b) On November 14, 2011, Winger sold a total of 75,523 Poseidon shares directly held in the public market for gross proceeds of approximately \$860,000;
 - (c) On November 14, 2011, Dawson sold 1,000,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$11 million;
 - (d) On November 14, 2011, Michaluk sold 675,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$7.46 million;
 - (e) On February 9, 2012, Winger sold 30,000 Poseidon shares indirectly held through CIBC Wood Gundy in the public market for gross proceeds of \$480,000;
 - (f) On February 9, 2012, Winger sold 30,000 Poseidon shares directly held in the public market for gross proceeds of \$486,000; and
 - (g) On February 27, 2012, Dawson sold a total of 400,032 Poseidon shares directly held in the public market for gross proceeds of \$6.36 million.

CLAIMS

Statutory Liability for Misrepresentations in the Prospectus Pursuant to Section 203 of the ASA

48. As against PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts the cause of action found in s. 203 of the ASA and, if necessary, the equivalent provisions of the Securities Legislation other than the ASA.

Negligence Simpliciter

49. As against the Defendant PSN and the Individual Defendants, all of whom signed the Prospectus, and on behalf of those Class Members who purchased PSN shares offered by the Prospectus and during the distributions to which the Prospectus related, the Plaintiff asserts negligence *simpliciter*.
50. PSN and, by virtue of their position of authority and responsibility within PSN, each of the Individual Defendants, owed a duty to ensure that the Prospectus made full, true and plain disclosure of all material facts relating to the securities offered thereby, or was materially accurate and complete.
51. The reasonable standard of care expected in the circumstances required the Defendants to prevent the distributions to which the Prospectus related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectus or in the documents incorporated therein by reference.
52. Accordingly, the Defendants have violated their duties to those Class Members who purchased pursuant to the Prospectus.
53. PSN and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure the maintenance of adequate internal controls to ensure that PSN's disclosure documents fairly and fully presented the business and affairs of PSN on a timely basis.
54. Had the Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectus related, then securities regulators likely would not have issued a receipt for the Prospectus, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of PSN's shares.

Unjust Enrichment as against Winger, Dawson and Michaluk

55. As a result of the Representation and the other misrepresentations particularized above, PSN's shares traded, and were sold by Winger, Dawson and Michaluk, at artificially inflated prices.
56. Winger and Dawson were enriched by their wrongful acts and omissions and the Class Members who purchased PSN shares from such Defendants suffered a corresponding deprivation.
57. There was no juristic reason for the resulting enrichment of Winger, Dawson and Michaluk.
58. The Class Members who purchased PSN shares from Winger, Dawson and Michaluk are entitled to the price they paid to such Defendants for such shares.

Statutory Liability for Misrepresentations Pursuant to Part 17.01 of the ASA

59. The Plaintiff pleads the claim found in Part 17.01 of the ASA, and, if required, the equivalent sections of the Securities Legislation other than the ASA, against all Defendants.
60. Each of the Impugned Documents is a core document within the meaning of the Securities Legislation.
61. As particularized above, each of the Impugned Documents contains one or more misrepresentations.
62. PSN is a responsible issuer within the meaning of the Securities Legislation. Dawson, Michaluk and Winger are directors of PSN and were at all material times. Michaluk and MacKenzie are officers of PSN and were at all material times.
63. Michaluk and MacKenzie, *inter alia*:
 - (a) Authorized, permitted or acquiesced in the release of the Impugned Documents;
 - (b) Falsely certified the accuracy of the Impugned Documents;
 - (c) Caused the Impugned Documents to be released through instructing PSN employees to release the Impugned Documents.

Negligent Misrepresentation

64. On behalf of all Class Members who acquired PSN's Securities in the secondary market, the Plaintiff pleads negligent misrepresentation for all of the Impugned Documents.

65. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation. The Representation was untrue for the reasons particularized elsewhere herein.
66. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase PSN securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase PSN securities.
67. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of PSN's publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.
68. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed PSN's AR. The Defendants breached that duty by making the Representation as particularized above.
69. The Plaintiff and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of PSN, and suffered damages when the falsity of the Representation was revealed.
70. Alternatively, the Plaintiff and the other Class Members relied upon the Representation by the act of purchasing PSN securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of PSN. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of PSN's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiff and Class Members.

Vicarious Liability

71. In addition to their direct liability, PSN is vicariously liable for the acts and/or omissions of each of their respective officers, directors, partners and/or employees as set out above.

The Relationship between PSN's Disclosures and the Price of Its Securities

72. The issuance of the Impugned Documents directly affected the price of PSN's Securities. The Defendants were aware at all material times of the effect of PSN's disclosure documents upon the price of its securities. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

73. PSN routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. PSN provided either copies of the Impugned Documents or links thereto on its website. PSN maintains a website in part to communicate with the Class and prospective investors.
74. PSN regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time PSN communicated that new material information about its financial results to the public it directly affected the price of PSN Securities.
75. PSN was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase PSN Securities in such reports were based, in whole or in part, upon that information.
76. PSN Securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which PSN Securities traded promptly incorporated material information from PSN's disclosure documents about PSN's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by PSN, as well as by other means.

Relevant Legislation

77. The Plaintiff pleads and relies on the *Court of Queen's Bench Act, RSA 2000, c C-31*, the *CPA* and the Securities Legislation, all as amended.

Place of Trial

78. The Plaintiff proposes that this action be tried in the City of Calgary, in the Province of Alberta, as a proceeding under the *CPA*.

Remedy sought:

79. The Plaintiff claims:
 - (a) An Order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative of the class;
 - (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;

- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;
- (d) A declaration that PSN is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) On behalf of all of the Class Members who purchased PSN's common shares in the distribution to which the Prospectus related, and as against all of the Defendants, general damages in the sum of \$51,000,000;
- (f) On behalf of those Class Members who purchased their PSN Securities in the secondary market, general damages for the actual collective loss of equity arising from the two PSN share price collapses in late 2012, following disclosure of the events giving rise to the Defendants' liability in this matter, in an amount to be proven at trial but estimated to be \$200 million;
- (g) A declaration that Winger, Dawson and Michaluk were unjustly enriched, including from their collective sales of approximately \$30 million worth of PSN securities in 2011 and 2012;
- (h) A constructive trust, accounting or such other equitable remedy as may be available as against Winger, Dawson and Michaluk;
- (i) An order, pursuant to s. 30 of the *CPA* directing an aggregate monetary award;
- (j) An order, pursuant to s. 32 of the *CPA* allowing for the use of standard claim forms or other documentary evidence or such other procedure as is warranted under the circumstances;
- (k) An order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (l) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (m) Prejudgment and post judgment interest;
- (n) Costs of this action plus, pursuant to s 33(6) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (o) Such further and other relief as to this Honourable Court may seem just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.