

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO: 500-06-000699-146

(Class Action)  
SUPERIOR COURT

---

Marian Lewis, [REDACTED]  
[REDACTED]

Petitioner

V.

KPMG LLP, [REDACTED]  
[REDACTED]

Defendant

**MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN  
TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT  
("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND  
TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Article 1002 C.C.P. and following and 225.4 QSA and following)**

---

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUÉBEC SUPERIOR  
COURT, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE  
PETITIONER STATES AS FOLLOWS:**

**General Presentation**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
  - (a) "2010 Audited Financial Statements" means Open Range's Audited Annual Financial Statements for the years ended December 31, 2010 and 2009, which included the consolidated balance sheets as at December 31, 2010 and 2009, the consolidated statements of operations, comprehensive loss and deficit and cash flows for the years then ended, and notes, comprising a summary of significant

accounting policies and other explanatory information, filed on **SEDAR** on March 22, 2011;

- (b) **"2011 Audited Financial Statements"** means **PSN's** Audited Annual Financial Statements for the years ended December 31, 2011 and 2010, which included the consolidated statements of financial position as at December 31, 2011, December 31, 2010 and January 1, 2010, the consolidated statements of income (loss) and comprehensive income (loss), changes in shareholders' equity and cash flows for the years ended December 31, 2011 and December 31, 2010, and notes, comprising a summary of significant accounting policies and other explanatory information, files on **SEDAR** on March 22, 2012;
- (c) **"ABCA"** means the Alberta *Business Corporations Act*, RSA 2000, c B-9, as amended;
- (d) **"AIF"** means Annual Information Form;
- (e) **"AR"** means accounts receivable;
- (f) **"Arrangement"** means the reorganization transaction of **Open Range** pursuant to the provisions of the **ABCA**, which was effectuated on November 1, 2011, and pursuant to which **Open Range's** name was changed to **PSN** carrying on the **Tank Rental Business**, and **New Open Range** acquired **Open Range's E&P Business**;
- (g) **"Carve-Out Financial Statements"** means the Carve-Out Financial Statements of post-Arrangement **New Open Range** included in the **Circular**, which comprised of:
  - (i) the Interim Carve-Out Consolidated Financial Statements of post-Arrangement New Open Range for the period ended June 30, 2011, together with Management's Discussion and Analysis thereon; and
  - (ii) the Carve-Out Financial Statements of post-Arrangement New Open Range including the carve-out balance sheets as at December 31, 2010, 2009 and 2008, the carve-out statements of operations, comprehensive income (loss), owner's net investment and cash flows for the years then ended, and notes, comprising a summary of significant accounting principles and other explanatory information, which was

purportedly audited by KPMG (the "**Audited Carve-Out Financial Statements**");

- (h) "**CCAA**" means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended;
- (i) "**CEO**" means Chief Executive Officer;
- (j) "**CFO**" means Chief Financial Officer;
- (k) "**Circular**" means **Open Range's** Information Circular and Proxy Statement dated September 30, 2011, issued in connection with the **Arrangement**, together with the documents annexed thereto, all of which constituted a single document and were filed as a single document on **SEDAR** on October 11, 2011;
- (l) "**Class**" and "**Class Members**" mean all persons and entities who purchased or otherwise acquired **PSN's Securities** on or before February 14, 2013, and who are resident or domiciled in the Province of Québec or were resident or domiciled in the Province of Québec at the time they purchased or otherwise acquired such **Securities**, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, CQLR, c C-25, except for the **Excluded Persons**;
- (m) "**Defendant**" means **KPMG**;
- (n) "**E&P Business**" means the business involving the exploration for and development of crude oil and natural gas in Western Canada, including all the assets pertaining thereto, which was carried on by **Open Range** and was transferred to **New Open Range** pursuant to the **Arrangement**;
- (o) "**Excluded Persons**" means the Defendant and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; **PSN** and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; **New Open Range** and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; any individual

who is an immediate member of the family of a past or present director or officer of **PSN** or **New Open Range**; National Bank of Canada, 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., First Energy Capital Corp. (the "Financial Institutions"), and each Financial Institution's past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; and Peyto Exploration & Development Corp., and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns;

- (p) "**Financial Statements of 1629318 Alberta Ltd.**" means the statement of financial position of pre-Arrangement **New Open Range** as of September 14, 2011, and notes, comprising a summary of significant accounting policies and other explanatory information, which was purportedly audited by **KPMG** and was included in the **Circular**;
- (q) "**GAAS**" means Generally Accepted Auditing Standards;
- (r) "**IFRS**" means International Financial Reporting Standards;
- (s) "**Impugned Documents**" (each being an "**Impugned Document**") means, collectively:
  - (i) the **Circular**;
  - (ii) PSN's Interim Financial Statements for the three and nine months ended September 30, 2011, filed on SEDAR on November 8, 2011 (the "**Q3 2011 Financial Statements**");
  - (iii) PSN's MD&A for the period ended September 30, 2011, filed on SEDAR on November 8, 2011 (the "**Q3 2011 MD&A**");
  - (iv) the **Prospectus**;
  - (v) the **2011 Audited Financial Statements**;

- (vi) PSN's MD&A for the year ended December 31, 2011, filed on SEDAR on March 22, 2012 (the "**2011 MD&A**");
  - (vii) PSN's Interim Financial Statements for the three months ended March 31, 2012, filed on SEDAR on May 9, 2012 (the "**Q1 2012 Financial Statements**");
  - (viii) PSN's MD&A for the period ended March 31, 2012, filed on SEDAR on May 9, 2012 (the "**Q1 2012 MD&A**");
  - (ix) PSN's Interim Financial Statements for the three and six months ended June 30, 2012, filed on SEDAR on August 8, 2012 (the "**Q2 2012 Financial Statements**");
  - (x) PSN's MD&A for the period ended June 30, 2012, filed on SEDAR on August 8, 2012 (the "**Q2 2012 MD&A**");
  - (xi) PSN's Interim Financial Statements for the three and nine months ended September 30, 2012, filed on SEDAR on November 14, 2012 (the "**Q3 2012 Financial Statements**"); and
  - (xii) PSN's MD&A for the period ended September 30, 2012, filed on SEDAR on November 14, 2012 (the "**Q3 2012 MD&A**");
- (t) "**Interim Impugned Documents**" (each being an "**Interim Impugned Document**") means, collectively, the **Circular**, the **Q3 2011 Financial Statements**, the **Q3 2011 MD&A**, the **Prospectus**, the **Q1 2012 Financial Statements**, the **Q1 2012 MD&A**, the **Q2 2012 Financial Statements**, the **Q2 2012 MD&A**, the **Q3 2012 Financial Statements** and the **Q3 2012 MD&A**;
- (u) "**KPMG**" means the defendant, KPMG LLP;
- (v) "**MD&A**" means Management's Discussion and Analysis;
- (w) "**New Open Range**" means, the second Open Range Energy Corp., formerly known as 1629318 Alberta Ltd., a company incorporated under Alberta law in September 2011, which acquired **Open Range's E&P Business** pursuant to the **Arrangement**;

- (x) "**Offering**" means the public distribution of 6,347,000 PSN common shares at a price of \$13.00 per share for gross proceeds of \$82.5 million pursuant to the **Prospectus**;
- (y) "**Open Range**" means the original Open Range Energy Corp., the predecessor company of **PSN** and **New Open Range**;
- (z) "**Petitioner**" means the Petitioner, Marian Lewis;
- (aa) "**Prospectus**" means PSN's Short-Form Prospectus dated January 26, 2012, which was filed on SEDAR on January 26, 2012, including the documents incorporated by reference therein;
- (bb) "**PSN**" means Poseidon Concepts Corp., formerly known as the original Open Range Energy Corp., the continuation of and a successor to **Open Range**;
- (cc) "**QSA**" means the *Securities Act*, CQLR c V-1.1, as amended;
- (dd) "**Securities**" means **PSN's** common shares, notes or other securities, as that term is defined in the *QSA*;
- (ee) "**Securities Legislation**" means, collectively, the *Securities Act*, CQLR c V-1.1, as amended, the *Securities Act*, RSO 1990 c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, 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, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (ff) "**SEDAR**" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (gg) "**Special Committee**" means the Special Committee of **PSN's** Board of Directors formed in or about December 2012;

- (hh) **"Tank Rental Business"** means the business involving the development and lease of **Tank Systems** and related activities associated therewith, which was carried on by **Open Range** and continued to be carried on by **PSN** following the completion of the **Arrangement**;
  - (ii) **"Tank Systems"** means the modular, insulated fluid handling systems developed by **PSN** and used in connection with the **Tank Rental Business**; and
  - (jj) **"TSX"** means the Toronto Stock Exchange.
2. The Petitioner wishes to institute a class action on behalf of the following Class, of which she is a member:

"All persons and entities who purchased or otherwise acquired PSN's Securities on or before February 14, 2013, and who are resident or domiciled in the Province of Québec or were resident or domiciled in the Province of Québec at the time they purchased or otherwise acquired such Securities, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, CQLR, c C-25, except for the Excluded Persons"

or such other group definition as may be approved by the Court.

## **THE PETITIONER, THE DEFENDANT AND CERTAIN KEY ACTORS IN THE EVENTS OUT OF WHICH THIS ACTION HAS ARISEN**

### **The Petitioner**

3. The Petitioner is an individual residing in Québec, who purchased 200 shares of PSN at \$13.20 per share, the whole as appears from the Notice of purchase dated January 18, 2012, a copy of which is produced herewith as **Exhibit P-1**.

### **Open Range and PSN**

4. Open Range was incorporated under Alberta law in November 2005. Prior to the Arrangement, Open Range carried on two business segments: 1) the E&P Business; and 2) the Tank Rental Business. On November 1, 2011, Open Range implemented the Arrangement. Pursuant to the Arrangement, the E&P Business was

sold to New Open Range, and the Tank Rental Business remained in the company, which changed its name to PSN.

5. PSN's shares were first issued and distributed pursuant to the Arrangement to the then holders of Open Range shares. For each Open Range share, the Open Range shareholders received one New Open Range share and 0.8839 of a PSN share.
6. PSN's common shares were admitted for trading on the TSX under ticker symbol "PSN" effective November 4, 2011.
7. At all material times, PSN's Securities traded on the TSX and alternative trading systems in Canada. PSN's Securities also traded in Frankfurt and over-the-counter in the United States.
8. At all material times, Open Range and PSN were reporting issuers in all provinces of Canada. As reporting issuers in Québec, Open Range and PSN were required to issue and file with SEDAR:
  - within 45 days of the end of each quarter, quarterly financial statements prepared in accordance with IFRS that were required to include a comparative statement to the end of each of the corresponding periods in the previous financial year;
  - within 90 days of the end of the fiscal year, audited annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
  - contemporaneously with each of the above, an MD&A of each of the above financial statements;
  - 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; and
  - contemporaneously with the solicitation by or on behalf of the management of proxies from holders of its voting shares, an information circular.
9. MD&As 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. MD&As must discuss important trends and risks that have affected the financial



statements, and trends and risks that are reasonably likely to affect them in future.

10. AIFs 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 possible future development. An AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

### **The Defendant**

11. KPMG is a chartered accounting firm with operations across Canada. KPMG has, and at all material times had, an office in Montréal, and conducted business in the Province of Québec directly or, alternatively, indirectly through its affiliates.
12. At all material times since the inception of Open Range in November 2005, KPMG was Open Range's auditor. After the Arrangement, KPMG became, and remained during all relevant times, PSN's auditor. At all material times, KPMG was an expert of Open Range and PSN within the meaning of the Securities Legislation.
13. In connection with the Arrangement, KPMG provided two audit reports, which were included in the Circular:
  - a) an audit report on the Audited Carve-Out Financial Statements to Open Range's directors dated September 30, 2011; and
  - b) an audit report on the Financial Statements of 1629318 Alberta Ltd. issued to pre-Arrangement New Open Range's Director, dated September 30, 2011.

KPMG consented to the dissemination of those audit reports to Open Range's then shareholders by their inclusion in the Circular. KPMG's consent was dated September 30, 2011, and was included in the Circular.

14. In connection with the Offering, KPMG consented to the inclusion by reference in the Prospectus of three of its audit reports, which were included in the Prospectus:
  - a) its audit report to the shareholders of Open Range on the 2010 Audited Financial Statements dated March 22, 2011;

- b) its audit report to the directors of Open Range on the Audited Carve-Out Financial Statements dated September 30, 2011; and
- c) its audit report issued to pre-Arrangement New Open Range's Director on the Financial Statements dated September 30, 2011.

KPMG consented to the dissemination of those audit reports to PSN's shareholders by their inclusion in the Prospectus. KPMG's consent was included in the Prospectus, and was dated January 26, 2012. Concurrently, KPMG issued a consent letter to the Canadian provincial securities regulators, dated January 26, 2012, which was filed on SEDAR on January 26, 2012.

- 15. KPMG purportedly audited the 2011 Audited Financial Statements, and issued a report to PSN's shareholders, dated March 22, 2012, which was included in that document and was disseminated to PSN's shareholders by KPMG's consent.
- 16. At all material times, KPMG was engaged and purported to review Open Range's and PSN's interim financial statements, which were included in the Interim Impugned Documents.

## **THE FACTS**

### **The Arrangement**

- 17. On September 5, 2011, Open Range's Board of Directors purportedly determined that the separation of the E&P Business and the Tank Rental Business into two distinct public companies was in the best interests of the enterprise and fair to its shareholders. Open Range announced the proposed reorganization by way of a press release issued and filed on SEDAR on September 6, 2011. In a letter to Open Range's shareholders that was included in the Circular, Dawson wrote:

On September 5, 2011, the Board of Directors (the "Board") of Open Range, after considering various alternatives to maximize shareholder value, determined that the separation of the E&P Business and the Tank Rental Business into two distinct public companies is in the best interests of Open Range and is fair to its shareholders (the "Open Range Shareholders"). The Board believes that the separation of the businesses will enhance shareholder

value by, among other things, enabling each resultant company to achieve greater success by focusing solely on its respective business and providing investors more transparency to more accurately value the resultant companies [...] The resultant company carrying on the Tank Rental Business, namely Poseidon Concepts Corp., will continue to use its first-mover advantage to attempt to increase its market penetration across North America [...]

18. In connection with the Arrangement, Open Range issued the Circular in order to provide information about Open Range's, PSN's and New Open Range's operations, businesses and finances. Among other information, the Circular included the Carve-Out Financial Statements and the Financial Statements of 1629318 Alberta Ltd. By way of the Circular, Open Range solicited shareholders' vote on the Arrangement. The Circular was also filed with the Alberta Court of Queen's Bench in connection with court's approval of the Arrangement.
19. As the company reported on November 1, 2011, the Arrangement received approval of the shareholders and the Alberta Court of Queen's Bench.
20. The Arrangement was implemented on November 1, 2011 to separate the E&P Business from "the rapidly growing and highly profitable Poseidon Concepts" Tank Rental Business. Pursuant to the Arrangement, Open Range was renamed Poseidon Concepts Corp. and continued to carry on the Tank Rental Business. The E&P Business was spun off to New Open Range.

### **The Offering**

21. On January 26, 2012, PSN issued the Prospectus. The Prospectus, which was filed with and receipted by the securities regulators of all Canadian provinces other than Québec, authorized the issuance and public distribution of PSN shares at \$13.00 per share. Pursuant to the Offering, a total of 6,347,000 PSN shares were issued and distributed for gross proceeds of \$82,511,000.
22. The Prospectus incorporated various documents by reference, including:
  - a) the 2010 Audited Financial Statement;

- b) the Circular;
  - c) the Q3 2011 Financial Statements;
  - d) the Q3 2011 MD&A;
  - e) PSN's Material Change Report filed on SEDAR on January 17, 2012, relating to PSN's updated capital program and financial and operating forecasts for 2012, including PSN's updated 2012 EBITDA guidance; and
  - f) PSN's Material Change Report filed on SEDAR on January 18, 2012, relating to the Offering.
23. The documents that were incorporated by reference into the Prospectus constituted part of the Prospectus.

**The Poseidon Concepts saga**

24. Since the inception of the Tank Rental Business, and especially after the Arrangement, PSN adopted an "exponential growth" business strategy, purportedly to establish its footing in the North American market. By means of disclosure documents they provided to investors and other market participants, PSN and its directors and officers created the false image of a prosperous, rapidly expanding and highly profitable public company. By late 2012, however, the illusion of PSN's success became apparent.
25. PSN soon became a billion-dollar-market-cap company reporting in excess of \$50 million in quarterly revenues, the greater portion of which purportedly originated from PSN's United States operations, as summarized below:

| <b>Period<br/>(as at the end<br/>of)</b> | <b>Canadian Revenue</b>                  | <b>U.S. Revenue</b>                     | <b>Total Revenue</b> |
|--|--|---|----------------------|
| Q2 2011                                  | \$2.2 million<br>(25% of total revenue)  | \$6.7 million<br>(75% of total revenue) | \$8.9 million        |
| Q3 2011                                  | \$5.3 million<br>(24% of total revenue)  | \$17 million<br>(76% of total revenue)  | \$22.3 million       |
| Q4 2011                                  | \$10.3 million<br>(30% of total revenue) | \$24 million<br>(70% of total revenue)  | \$34.3 million       |

| <b>Period<br/>(as at the end<br/>of)</b> | <b>Canadian Revenue</b>                  | <b>U.S. Revenue</b>                       | <b>Total Revenue</b> |
|--|--|---|----------------------|
| Q1 2012                                  | \$10.3 million<br>(20% of total revenue) | \$41.8 million<br>(80% of total revenue)  | \$52.1 million       |
| Q2 2012                                  | \$3.4 million<br>(7% of total revenue)   | \$51.5 million<br>(93% of total revenue)  | \$54.9 million       |
| Q3 2012                                  | \$6.5 million<br>(16% of total revenue)  | \$34.6 million<br>(84% of total revenue)  | \$41.1 million       |
| TOTAL                                    | \$38 million<br>(18% of total revenue)   | \$175.6 million<br>(82% of total revenue) | \$213.6 million      |

26. PSN and its directors and officers disregarded numerous measures, controls and policies that are required of a reporting issuer. As a result, PSN's disclosure documents at all material times were materially defective, false and misleading in regard to the company's operational and financial results, especially PSN's financial position, financial performance and cash flows.
27. At all relevant times, PSN carried on business as a provider of large, above-ground fluid storage tanks to oil and gas exploration and production companies. This business was commenced in 2010 under Open Range. In November 2011, PSN became an independent company carrying on the Tank Rental Business and purportedly generating in excess of \$50 million in quarterly revenues. Unbeknownst to shareholders, those revenues were largely fictitious and falsely recorded in violation of applicable accounting standards and the company's stated accounting policies.
28. PSN's business was carried out through two types of arrangements with customers:
- a) providing services on a day-to-day basis, pursuant to which PSN would generate revenues for the duration of the service; and
  - b) entering into the purportedly long-term contracts (also known as minimum commitment or take-or-pay contracts), through which PSN would record revenues for the entire duration of the contract, regardless of whether or not the customer in fact utilized the tanks.
29. Starting in early 2011, PSN purported to have expanded its business principally in the United States by way of entering into long-term contracts. As a result of those long-term contracts, the

company's reported revenues grew exponentially. Concurrently, PSN's accounts receivable position also grew and aged, due to the fact that PSN was unable to collect those purported revenues. The below chart summarizes PSN's reported revenues and accounts receivable during the relevant times:

| Period  | Total Revenue | United States Revenues        | Canadian Revenues             | Reported AR        | Overdue AR <sup>1</sup> |
|---------|---------------|-------------------------------|-------------------------------|--------------------|-------------------------|
| Q2 2011 | \$8.5         | \$6.7 (79% of total revenue)  | \$1.8 (21% of total revenue)  | \$15               | Undisclosed             |
| Q3 2011 | \$21.9        | \$17 (78% of total revenue)   | \$4.9 (22% of total revenue)  | (Est. ~\$30)       | Undisclosed             |
| Q4 2011 | \$34.3        | \$24 (70% of total revenue)   | \$10.3 (30% of total revenue) | \$53.5             | \$6 (11% of total AR)   |
| Q1 2012 | \$52.1        | \$41.8 (80% of total revenue) | \$10.3 (20% of total revenue) | \$83               | Undisclosed             |
| Q2 2012 | \$54.9        | \$51.5 (94% of total revenue) | \$3.4 (6% of total revenue)   | \$118.5            | \$19 (16% of total AR)  |
| Q3 2012 | \$41.1        | \$34.6 (84% of total revenue) | \$6.5 (16% of total revenue)  | \$125 <sup>2</sup> | \$36 (30% of total AR)  |

30. PSN's inability to collect on its purported revenues was due mainly to two factors:

- a) First, at all material times since its inception, PSN suffered from dysfunctional accounting systems and ineffective internal controls that adversely affected its revenue cycle business processes. As a result, PSN did not maintain proper documentation evidencing the business cycle and substantiating the revenues that were being recorded. By way of example, PSN failed to issue or obtain customer-approved field tickets (a document that requires customer's approval and evidences that the services have been performed and the amounts charged are correct) and invoices in a timely fashion or at all. Given these process deficiencies, PSN would not be able to substantiate amounts it purported to be owed by the customer in the event of a dispute or to enforce collections. Indeed, PSN's customers frequently disputed field tickets and invoices and, as a result,

<sup>1</sup> Outstanding for more than 120 days.

<sup>2</sup> After the write-off of \$9.5 million accounts receivable in bad debt.

PSN routinely made adjustments to revenues previously recognized for amounts wrongly invoiced to customers; and

- b) Second, beginning in early-2011, a significant part of PSN's reported revenues, especially in the more significant United States side of its operations, was purportedly generated through the long-term, take-or-pay contracts. Investigations by PSN's Special Committee revealed fundamental problems with respect to revenues recorded on the basis of those contracts.
31. At all material times, PSN claimed that its financial statements had been compiled in accordance with IFRS, and that, consistently with IFRS, it recognized revenues only when all of the following requirements had been met:
- a) there was persuasive evidence of an arrangement;
  - b) tank rentals and related services were provided;
  - c) the rate was fixed and determinable; and
  - d) collectability was reasonably assured.
32. At all material times, however, PSN recognized material amounts of revenue when one or more of the above requirements had not been met.
33. Furthermore, PSN was required under IFRS and by virtue of its own accounting policies to evaluate its accounts receivable on an ongoing basis, and to take provisions for doubtful accounts and write-downs for uncollectible amounts in order to avoid reporting inflated accounts receivable. At all material times, however, PSN failed to do so, even though it had experienced constant collection problems and frequent customer disputes which required it to record repeated adjustments to previously recognized revenues, and in spite of its ever growing and quickly aging accounts receivable, the greater part of which was owed from non-investment-grade customers. Due to PSN's failure to evaluate its accounts receivable on an ongoing basis, its accounts receivable were materially overstated.

***The truth is revealed over three corrective disclosures on November 14, 2012, December 27, 2012 and February 14, 2013***

34. The truth about PSN's improper conduct and practices and the misrepresentations arising thereof became gradually known to the

public on November 14, 2012, December 27, 2012 and February 14, 2013. Notwithstanding those disclosures, the facts regarding KPMG's compliance (or lack thereof) with applicable professional standards did not emerge until later.

35. On November 14, 2012, PSN surprised the market by releasing the results from its Q3 2012 operations, disclosing, among other things, that:
  - a) PSN was taking a charge of \$9.5 million for uncollectible debt, reducing its accounts receivable position and taking a charge to its net income and reported assets;
  - b) nonetheless, its reported accounts receivable had continued to significantly grow to \$125.5 million (net of the \$9.5 million write-off), including \$36 million past due (outstanding for more than 120 days);
  - c) its internal controls over financial reporting "were not completely effective";
  - d) a new credit policy had been introduced 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"; and
  - e) only 38% of its accounts receivable portfolio was purportedly due from investment grade parties.
36. This disclosure caused PSN's share price to decline from \$13.22 as at the close of trading on November 14, 2012, to \$5.00 as at the close of trading on November 15, 2012, representing a 62% decline in the stock's market value. On November 15, approximately 32.6



million PSN shares, representing 40% of the outstanding shares, were traded.

37. PSN's November 14, 2012 release did not reveal the entire truth about PSN's business and financial affairs. On the morning of December 27, 2012, PSN, once again, surprised the market by issuing a press release, disclosing, among other things, that:
  - a) a Special Committee had been formed to investigate the concerns surrounding PSN's accounts receivable;
  - b) "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"; and
  - c) PSN "may need to make additional write downs of accounts receivable in future periods and such write downs may be significant."
38. As a result of this disclosure, PSN's share price plummeted from \$3.31 as at the close of trading on December 24, 2012 to \$1.48 as at the close of trading on December 27, 2012, representing a further 55% decline in PSN's share price, for a total drop in PSN's share price of approximately 89% from the close of trading on November 14, 2012.
39. Even this disclosure did not constitute the entire truth. On January 11, 2013, PSN provided an update on the progress of the Special Committee's investigation and disclosed significant managerial changes that were directly tied to the company's deeply flawed internal controls and accounting practices, and which managerial changes disclosed to the market the extreme seriousness of those flaws. These managerial changes included:
  - a) the appointment of A. Scott Dawson as PSN's Interim President and CEO on December 27, 2012;
  - b) the resignation of Lyle Michaluk as PSN's CEO and director, and his appointment as the company's Interim CFO on December 27, 2012;
  - c) the resignation of Matt MacKenzie as PSN's CFO on December 27, 2012;

- d) the resignation of Clifford Wiebe as PSN's President, Chief Operating Officer and director on or about December 27, 2012; and
  - e) the resignation of Joe Kostelecky as PSN's Executive Vice-President, United States Division, on January 10, 2013.
40. On February 14, 2013, PSN provided a further update regarding the status of the Special Committee's investigation, disclosing among other things that:
- a) based on the recommendations of the Special Committee with the assistance of its independent legal and accounting advisors, PSN's board of directors had determined that \$95 to \$106 million of the company's purported \$148 million revenue during the first nine months of 2012 should not have been recorded as revenue;
  - b) as a result, \$94 million to \$102 million of PSN's \$125.5 million accounts receivable should not have been recorded as accounts receivable;
  - c) PSN's interim financial statements and MD&As for each of the first three quarters of 2012 would be restated and should no longer be relied upon;
  - d) all previous guidance with respect to PSN's business should not be relied upon; and
  - e) all of these determinations were "primarily related to [PSN's] long term take-or-pay arrangements."
41. As a result of this further corrective disclosure, PSN's shares, once again, plummeted from \$0.89 as at February 13, 2013, to \$0.27 on February 14, 2013, representing a further 70% decline or 98% decline since November 14, 2012.
42. Within a few hours of the issuance of PSN's February 14, 2013 disclosure, the Alberta Securities Commission issued an order prohibiting all trading in PSN's securities.
43. Within a further three months, PSN's over \$1 billion in market capitalization evaporated. PSN's shares are now worthless.



**PSN files for CCAA protection and subsequent events**

44. On February 20, 2013, PSN disclosed by way of a press release that it was in default under the terms of its credit facilities.
45. On February 26, 2013, PSN disclosed by way of a press release that Lyle Michaluk and Matt MacKenzie had been terminated consistent with the Special Committee's recommendations.
46. On April 9, 2013, PSN issued a press release disclosing that it had applied for creditor protection under the CCAA.
47. Contemporaneously, PSN disclosed that the Special Committee's review and assessment of PSN's financial results had "given rise to questions with respect to recorded revenues in the 2011 Annual Financials." On that same date, Dean Jensen and Harley Winger tendered their resignations as PSN's directors, the Special Committee was disbanded, and A. Scott Dawson resigned as PSN's Interim President and CEO.
48. On April 17, 2013, the TSX determined to delist PSN shares for failure to meet the continued listing requirements. PSN's shares were delisted from the TSX effective May 17, 2013.

49. In connection with the CCAA proceedings, PSN sold its assets to satisfy part of its debt to its secured lenders. PSN's AR were sold for pennies on the dollar.

**Misrepresentations in the Impugned Documents relating to or arising out of PSN's improper accounting practices**

50. At all material times, PSN was engaged in the improper accounting practices pleaded herein. As a result, PSN materially misrepresented its results from operations, including those relating to the company's financial position and financial performance during all relevant times.
51. PSN's misrepresentations in the Impugned Documents included:
- a) misrepresentations relating to revenue recognition: PSN recognized revenues improperly at all material times;
  - b) misrepresentations relating to AR: PSN reported grossly inflated AR;
  - c) misrepresentations relating to income and assets: PSN overstated income and assets; and
  - d) the misrepresentation that the Impugned Documents fairly presented PSN's financial position, financial performance and cash flows.
52. Each of these misrepresentations was included in each of the Impugned Documents.
53. As PSN's long-time auditor, KPMG purported to audit Open Range's and PSN's annual financial statements and to review their interim financial statements in order to provide reasonable assurance to investors that Open Range's and PSN's financial statements were compliant with applicable accounting standards and were free of material misstatement.
54. According to the professional standards applicable to KPMG, at all material times, KPMG was associated with Open Range's and PSN's disclosure documents, including the Impugned Documents.
55. As such, KPMG adopted the misrepresentations particularized here to have been included in the Impugned Documents as its own. Those misrepresentations therefore constituted KPMG's misrepresentations.

PSN recognized revenue improperly at all times

56. The 2010 Audited Financial Statements stated the revenue recognition policy pertaining to the Tank Rental Business as follows:

Fracturing fluid tank rental revenues are generally derived from the provision of rentals and related services which are based on contracts that include fixed or determinable prices based upon daily rates. Revenue is recognized when tank rentals and related services are provided and only when collectability is reasonably assured.

57. In the 2011 Audited Financial Statements, PSN contended that its revenue recognition policy was as follows:

Fracturing fluid tank rental revenues are generally derived from the provision of rentals and related services which are based on contracts that include fixed or determinable prices based on daily rental rates. Revenue is recognized when there is persuasive evidence of an arrangement, tank rentals and related services are provided, the rate is fixed and determinable and collectability is reasonably assured.

58. These statements were false and misleading. PSN never implemented that revenue recognition policy and consistently breached that policy.
59. At all material times, PSN claimed to compile its financial statements in accordance with IFRS. Pursuant to IFRS, revenue can only be recognized when the amount of revenue can be measured reliably and it is probable that the economic benefits associated with the transaction will flow into the entity. PSN violated those requirements.
60. PSN recognized revenue when the arrangement between PSN and customers was not legally and persuasively established, the price was not fixed or determinable, the purported revenue could not be substantiated by way of evidence including signed field tickets and/or valid invoices, and/or when collectability was not reasonably assured.
61. In addition to substantiating the revenue, field tickets and invoices were important for collection purposes. Without a timely signed field ticket, collection was in jeopardy, because a client would not

commit to pay the amounts it purportedly owed to PSN before it signed off on the pertinent field ticket. In fact, PSN's customers frequently disputed the unsigned field tickets and invoices, or communicated to PSN that they were unwilling to pay.

62. Moreover, PSN's field ticketing and invoicing processes were delayed at all material times. Inasmuch as these processes were delayed, collection was further uncertain. PSN's clients operated in the volatile oil and gas exploration and production sector and their ability to meet their financial obligations would be negatively impacted by various industry-related and customer-specific factors.
63. As such, the more the field ticketing and invoicing processes were delayed, the more it was likely that the client would become unable to pay. This risk was exacerbated by the fact that the majority of PSN's customers were other than investment grade parties.
64. Moreover, PSN did not have an established client base and, as such, it engaged with a rapidly growing number of new customers whose creditworthiness had not been tested, and who had not demonstrated an interest in maintaining a long-term relationship with PSN. Nonetheless, PSN continued to purportedly provide services to, and to record revenue from, customers without securing the necessary assurances regarding collection.
65. At all material times, PSN did not have and/or did not follow effective credit-check policies to verify customers' creditworthiness so as to give reasonable assurances that the amounts purportedly owed to PSN were collectible. Such policies were purportedly established in or about November 2012, as PSN disclosed in the Q3 2012 MD&A:

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.

66. However, PSN never implemented these purported policies.

*PSN's accounting treatment of and disclosures regarding AR were improper, false and misleading*

67. Due to PSN's improper revenue recognition practices, it reported a significantly inflated AR position at all material times.

68. Furthermore, due to ineffective or non-existent assessment of the recoverability of AR, AR was overstated at all material times.

69. For the periods relevant to this action, Open Range and PSN reported AR positions as summarized below:

|             | <b>Total AR Position</b>     | <b>Not Past Due AR (age below 120 days)</b> | <b>Past Due AR (age over 120 days)</b> |
|-------------|------------------------------|---|--|
| 2010 Annual | \$9.7 million                | \$9.7 million                               | \$9,000                                |
| Q1 2011     | \$19.7 million               | Undisclosed                                 | undisclosed                            |
| Q2 2011     | \$23.3 million               | Undisclosed                                 | undisclosed                            |
| Q3 2011     | \$40.2 million               | Undisclosed                                 | undisclosed                            |
| 2011 Annual | \$53.6 million               | \$47.6 million<br>(89% of total AR)         | \$6 million<br>(11% of total AR)       |
| Q1 2012     | \$83 million                 | Undisclosed                                 | undisclosed                            |
| Q2 2012     | \$118.6 million              | \$99.5 million<br>(84% of total AR)         | \$19.1 million<br>(16% of total AR)    |
| Q3 2012     | \$125.5 million <sup>3</sup> | \$89.4 million<br>(71% of total AR)         | \$36.1 million<br>(30% of total AR)    |

70. By virtue of IFRS and its own accounting policies, PSN was required at all times to monitor its AR on an ongoing basis, to evaluate the quality of its AR position, and to record allowances for doubtful receivables in order to not report inflated AR. Indeed, PSN's 2011 MD&A stated:

Allowance for Doubtful Trade Receivables

<sup>3</sup> After the write-off of \$9.5 million due to bad or uncollectible debt.

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.

71. In addition, by virtue of IFRS and its own accounting policies, PSN was required to closely review its AR quality on an ongoing basis to determine if any debt had become uncollectible. PSN admitted this obligation, and stated for the first time in the Q3 2012 MD&A, when it wrote off \$9.5 million AR due to bad debt:

The Corporation reviews its accounts receivable amounts quarterly in determining bad debt expense and individual amounts are written down to their expected realizable value when they are determined not to be fully collectable. In determining bad debt expense, the Corporation considers a variety of circumstances for each specific customer, which include but are not limited to, when the customer has indicated an unwillingness to pay, the Corporation is unable to communicate with the customer over an extended period of time, the customer has entered creditor protection or other economic circumstances indicate the inability to pay, and other methods to obtain payment have been utilized and have not been successful.

72. Pursuant to IFRS and its own accounting policies, PSN was required to record sufficient allowances, but failed to do so. Indeed, prior to the Arrangement, PSN had a policy to record allowances for doubtful accounts, and had done so in the past, as seen in the chart below:



| <b>Period<br/>(as at the end<br/>of)</b> | <b>AR<br/>(net of<br/>allowance)</b> | <b>Allowance<br/>Recorded</b> | <b>Uncollectible<br/>Amounts<br/>Written Off</b> |
|--|--------------------------------------|-------------------------------|--|
| 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   |

73. At all material times, PSN was required to record allowances for doubtful receivables, 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) customer-specific circumstances, including billing disputes;
  - g) the fact that only 38-41% of its AR portfolio was due from investment grade parties;
  - h) the ongoing "receivables problem"; and
  - i) 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.
74. PSN's statements regarding its purported policies to evaluate its trade receivables on an ongoing basis and record allowances for doubtful accounts were false and misleading. PSN did not implement such policies effectively or at all.
75. PSN never took allowances for doubtful receivables during the relevant period. As a result, PSN's reported AR was at all material times inflated.

76. Further, at all material times, PSN did not have effective policies in place to address the AR issues. As such, the below statements, which were consistently made by PSN, were false or misleading:

[T]he CEO and CFO oversee all material transactions. In addition, the Audit Committee reviews on a quarterly basis the financial statements and key risks of the Corporation and queries management about significant transactions, the Corporation's auditors conduct a quarterly review of the financial statements of the Corporation, and senior management of the Corporation perform daily oversight of the accounting records.

These, or substantially similar, statements were contained in the Circular, the Q3 2011 MD&A, the 2011 MD&A, the Q1 2012 MD&A, the Q2 2012 MD&A and the Q3 2012 MD&A.

77. PSN's management and directors did not conduct such reviews and "daily oversight," or did not do so effectively.
78. At all relevant times, PSN did not have in place effective policies to address the AR issues, and to enable management and directors to fulfill their duties. As Michelle-Louise Rye, a senior Executive Assistant at PSN, speaking on behalf of her employer, advised investors in November 2012, it was only around that time that PSN attempted to introduce policies and procedures to address the receivables issue:

As far as the receivables problem goes we have already taken steps to completely revise our internal controls to address this issue.

\*\*\*

More importantly and in addition, we have totally revised our internal controls to address customer accounts in arrears.

79. PSN authorized Michelle-Louise Rye to speak on its behalf. Michelle-Louise Rye regularly communicated to the market and investors on behalf of PSN. Her statements with regard to PSN were statements of PSN.

PSN overstated income and assets

80. Due to improper revenue recognition and improper treatment of AR, PSN overstated income and assets at all material times.

The misrepresentation that the Impugned Documents fairly presented PSN's financial position, financial performance and cash flows

81. The financial statements included in the Impugned Documents were purportedly prepared in accordance with IFRS, or included information that was derived from financial statements that were purportedly prepared in accordance with IFRS. IFRS requires that financial statements present fairly the financial position, financial performance and cash flows of the company.
82. The Impugned Documents contained the statement that they fairly presented PSN's financial position, financial performance and cash flows. This statement was false and misleading. Due to the misrepresentations particularized above, the Impugned Documents were not compliant with IFRS, and did not present fairly PSN's financial position, financial performance and cash flows.

GAAS and other professional standards applicable to KPMG's engagements

83. In its engagements with Open Range and PSN, KPMG was required to comply with GAAS and other professional standards. Those professional standards provide for specific requirements and procedures for auditors involved with a publicly-traded company, including requirements concerning audits as well as auditors' involvement with offering documents and interim financial statements. KPMG consistently represented, either expressly or impliedly, that it had complied with those standards, which was false.
84. KPMG issued consents to the use of its audit reports in the Circular and Prospectus, and contended that, in doing so, it had complied with Canadian generally accepted standards applicable to an auditor's involvement with offering documents. Those standards required KPMG to do, among other things, the following before it issued such consents:
- a) complete the audit of the audited financial statements included in the offering document;

- b) review the unaudited financial statements in the offering document in accordance with professional standards applicable to an auditor's involvement with interim financial statements, which are further explained below at paragraph 86;
- c) read the other financial and non-financial information in the offering document and:
  - i. determine whether the financial statements and the auditor's report had been accurately reproduced in the offering document;
  - ii. consider whether any of the other information in the offering document raised questions regarding, or appeared to be inconsistent with, the audited financial statements;
  - iii. be satisfied that the auditor's report and the audited financial statements appropriately took into account relevant events or developments that had occurred subsequent to the date of the auditor's report on the financial statements; and
  - iv. take into account: (a) inconsistencies between the other information and the financial statements or between the other information and the knowledge obtained by the auditor in the course of the audit or in performing the procedures required by GAAS; (b) information that although not inconsistent with the financial statements in the offering document, appeared to be a misrepresentation; (c) an apparent failure, through omission or otherwise, of the offering document to meet the requirements of securities legislation; and (d) a subsequent event requiring a restatement of, or disclosure in, the financial statements; and
- d) perform a review of subsequent events pursuant to the professional standards procedures designed to determine whether events occurring in the subsequent period that may require restatement of the financial statements, or disclosure in the financial statements or elsewhere in the offering document, had been identified. For items identified, the auditor was required to examine audit evidence to the extent necessary to determine whether they have been treated in the financial statements or elsewhere in the offering document as appropriate in the circumstances.

85. In respect of KPMG's consents issued in connection with each of the Circular and the Prospectus, the applicable professional standards stipulated that:
- a) these procedures, including the subsequent events review procedures, be performed up to the date of KPMG's consent, or as close thereto as was reasonable and practicable in the circumstances;
  - b) KPMG's consent be dated as close to the date of the offering document as was reasonable and practicable;
  - c) KPMG refrain from consenting unless it had complied with the required procedures and was satisfied that the level of assurance required by the professional standards had been met; and
  - d) by issuing a consent, KPMG signified that, at the date of the consent, the use of its audit reports was appropriate in the context of the document in which it appeared. For this purpose, KPMG was required to be satisfied that its reports and the audited financial statements took into account all relevant events or developments that had occurred subsequent to the date of the audit reports.
86. In regard to KPMG's involvement with Open Range's and PSN's interim financial statements, which were included in the Interim Impugned Documents, KPMG was required to review those documents in accordance with the professional standards and, among other things:
- a) to plan the review adequately and execute the plan properly;
  - b) to acquire or possess sufficient understanding of Open Range and PSN and their environment, including their internal controls relating to financial reporting;
  - c) to identify types of potential material misstatements and to consider the likelihood of their occurrence in the interim financial statements;
  - d) to make inquiries and to perform analytical procedures;
  - e) to make additional inquiries and to perform additional procedures when KPMG became aware of information suggesting that material modifications were needed to be made

for the interim financial statements to be in accordance with the applicable financial reporting framework; and

- f) to consider whether KPMG could complete its review if Open Range's or Poseidon's internal controls contained deficiencies so significant that it was impracticable for KPMG to apply its knowledge of accounting and financial reporting practices.
87. At all material times, KPMG did not comply with GAAS and other applicable professional standards.

### **KPMG's misrepresentations**

88. Unbeknownst to the Class, at all material times, Open Range's and PSN's internal controls over financial reporting were completely ineffective and did not give reasonable assurance that the company's financial statements were reliable.
89. As auditors of Open Range and PSN since the inception of the company in November 2005, KPMG was at all material times aware of Open Range's and PSN's material internal controls deficiencies and weaknesses.
90. Pursuant to the applicable professional standards, KPMG was required to take into account the actual or potential impact of Open Range's and PSN's deficient and ineffective internal controls on the company's financial reporting. It failed to do so.
91. In fact, KPMG was engaged to review Open Range's and PSN's financial reports in order to provide additional assurance to investors that the company's financial statements were prepared in accordance with applicable accounting standards. Open Range and PSN consistently made the below representation in their MD&As:

As a result of the weaknesses identified in the Corporation's internal controls over financial reporting, there is a greater likelihood that a material misstatement would not be prevented or detected. **To mitigate the risk of such material misstatement in financial reporting, the CEO and CFO oversee all material transactions of the Corporation. In addition, the Audit Committee reviews on a quarterly basis the financial statements and key risks of the Corporation and queries**

**management about significant transactions, the Corporation's auditors conduct a quarterly review of the financial statements of the Corporation,** and senior management of the Corporation perform daily oversight of the accounting records.

[Emphasis added.]

This representation was made by Open Range and PSN with the knowledge and consent of KPMG. As such, KPMG adopted these statements as its own.

92. At all material times, KPMG knew and intended that its purported oversight over Open Range's and PSN's financial reporting would be communicated to the current and prospective investors, and that those investors rely upon their purported oversight.
93. Accordingly, in addition to the other misrepresentations particularized herein, the Impugned Documents contained the KPMG misrepresentations set forth below.

*KPMG's misrepresentations in the Interim Impugned Documents*

94. The financial statements that were included in the Interim Impugned Documents were purportedly prepared in accordance with IFRS.
95. The Interim Impugned Documents included financial statements and other information derived from financial statements for Open Range's and PSN's quarterly periods from the second quarter of 2011 through to the third quarter of 2012.
96. The Interim Impugned Documents included misrepresentations made by Open Range and PSN relating to revenue, accounts receivable, income, assets and fair presentation of the company's financial position and financial performance in accordance with applicable accounting standards. By way of its engagement, as well as association, with the Interim Impugned Documents, KPMG adopted those misrepresentations as its own.
97. At all material times, Open Range and PSN engaged KPMG to conduct reviews of their interim financial statements. KPMG was compensated by Open Range and PSN for these reviews. At all material times, KPMG purported to have performed reviews of Open

Range's and PSN's interim financial statements as auditors included in the Interim Impugned Documents.

98. Open Range and PSN consistently disclosed that KPMG was involved with their interim financial reporting. Open Range and PSN disclosed this fact in order to give additional assurances to their current and prospective investors that their financial statements were reliable and internal control deficiencies were mitigated.
99. KPMG knew and intended that Open Range's and PSN's current and prospective investors would be informed that KPMG purportedly reviewed the company's interim financial statements included in the Interim Impugned Documents.
100. When auditors are engaged to conduct reviews of interim financial statements, securities laws do not require that the auditors file a report on such interim financial statements unless the auditors are unable to complete their review of interim financial statements or express reservations in regard thereto.
101. When auditors are engaged to review an issuer's interim financial statement, subsection 4.3(3)(b) of National Instrument 51-102 requires that if the auditors are unable to complete their interim review, the interim financial statements must be accompanied by a notice indicating that, and explaining why, the auditors were unable to complete the interim review.
102. At all material times, KPMG purported to have successfully completed its interim reviews of Open Range's and PSN's interim financial statements in accordance with the applicable professional standards.
103. When auditors are engaged to review an issuer's interim financial statement, subsection 4.3(3)(c) of National Instrument 51-102 requires that, if the auditors have expressed a reservation in regard to the interim financial statements, the interim financial statements must include a written review report from the auditors. However, KPMG never expressed reservations on Open Range's and PSN's interim financial statements.
104. By omitting to issue such reports on the Interim Impugned Documents, KPMG expressly or impliedly represented to the investing public, including the Class Members, that it had successfully completed its purported reviews, and that it had no



reservations on the pertinent financial statements, including the Interim Impugned Documents.

105. Additionally, KPMG issued reports to Open Range and PSN in respect of each of the interim financial statements that it purported to review before those financial statements and the pertinent Interim Impugned Documents that included those financial statements were released to the public. In and by way of its reports, KPMG represented to Open Range and PSN that it had completed its reviews in accordance with the applicable professional standards and had no reason to believe that those financial statements did not comply with IFRS and other applicable accounting principles, including Open Range's and PSN's significant accounting policies, which required fair presentation of the company's financial statements.
106. Accordingly, each of the Interim Impugned Documents included the representation that KPMG had reviewed the financial statements included in those Interim Impugned Documents in accordance with the applicable professional standards and had no reason to believe that those documents did not fairly present Open Range's or PSN's financial position, financial performance and cash flows (hereinafter, the "Review Representation").
107. The Review Representation was false, in that:
  - a) at all material times, KPMG did not comply with the applicable professional standards in its review engagements. Had KPMG adequately performed interim review procedures in accordance with the applicable standards, material misstatements of revenue and AR would have become apparent; and/or
  - b) KPMG had reasons to believe that those financial statements did not constitute a fair presentation of the company's financial position, financial performance and cash flows in accordance with applicable accounting standards, but failed to communicate those concerns to the shareholders in violation of NI 51-102 section 4.3(3).
108. The Review Representation was made by KPMG directly in each of the Interim Impugned Documents to the shareholders, by virtue of its actions in connection with those reviews, including its reviews of the Interim Impugned Documents before they were released to the public.

109. Additionally, the Review Representation was made to Open Range and PSN in and by way of KPMG's reports, and was summarized, quoted or included in each of the Interim Impugned Documents, and thus communicated to the shareholders, with KPMG's consent.
110. KPMG knew and intended at all material times that such expression of its purported expert opinions in regard to the Interim Impugned Documents would be communicated to Open Range's and PSN's current and prospective shareholders in those documents.

*KPMG's misrepresentations in the Circular and the Prospectus*

111. The financial statements that were included in the Circular and the Prospectus were purportedly prepared in accordance with IFRS.
112. The Circular and the Prospectus included misrepresentations made by Open Range and PSN in respect of revenues, accounts receivable, income, assets and fair presentation of the company's financial position and financial performance in accordance with applicable accounting standards. By way of its engagement, as well as association, with the Circular and the Prospectus the related transactions, KPMG adopted those misrepresentations as its own.
113. The Circular is an Interim Impugned Document. It included KPMG's Review Representation in respect of Open Range's interim financial statements for the three and six months ended June 30, 2011. KPMG purported to have reviewed those interim financial statements in accordance with the applicable professional standards twice: first when they were released and filed on SEDAR on August 10, 2011, and then on September 30, 2011, when the Circular was issued.
114. The Prospectus is also an Interim Impugned Document. It included KPMG's Review Representation in respect of Open Range's interim financial statements for the three and six months ended June 30, 2011. It also included KPMG's Review Representation in respect of PSN's interim financial statements for the three and nine months ended September 30, 2011, which KPMG purported to have reviewed twice: first when they were released and filed on SEDAR on November 8, 2011, and then on January 26, 2012, when the Prospectus was issued.
115. The Circular included audit reports of KPMG on the Audited Carve-Out Financial Statements and the Financial Statements of 1629318 Alberta Ltd. Those audit reports were included in the Circular on

KPMG's consent dated September 30, 2011, which was included in the Circular and was communicated to the shareholders.

116. The Prospectus included audit reports of KPMG on the 2010 Audited Financial Statements, the Audited Carve-Out Financial Statements and the Financial Statements of 1629318 Alberta Ltd. Those audit reports were included in the Prospectus on KPMG's consent dated January 26, 2012, which was included in the Prospectus and was communicated to the shareholders.
117. In respect of each of the Circular and the Prospectus, KPMG's contended that in issuing its consents, it had complied with Canadian generally accepted standards for an auditor's involvement with offering documents. This statement was false; KPMG did not comply with those standards in issuing its consents.
118. In addition to the documents on which KPMG had issued audit reports, the applicable professional standards required KPMG to review the unaudited financial statements and other financial and non-financial information included in the Circular and the Prospectus. The professional standards required KPMG to ensure that its audit reports within the context of those offering documents were not misleading, and to be satisfied that the other information included in the Circular and the Prospectus did not render audit reports misleading.
119. Additionally, among other requirements, KPMG was required to follow specific procedures to review subsequent events up to the date of its consents included in the Circular and the Prospectus, and to consider events that required further disclosures in order to not make it audit reports and the offering documents misleading. Absent satisfaction that the use of its audit reports within the contexts of the Circular and/or the Prospectus and in light of subsequent events was appropriate, KPMG ought to have withheld consent.
120. Had KPMG adequately performed subsequent event procedures, the material misstatements of revenue and accounts receivable would have been apparent. KPMG ought not to have issued consents in connection with the Circular or the Prospectus. In the alternative, had KPMG complied with the professional standards then additional disclosures would have been made and the misrepresentations included in those documents would have been corrected before KPMG issued consent.

121. Indeed, each of the audit reports of KPMG included in the Circular and the Prospectus included KPMG's statement that the pertinent financial statements constituted fair presentation of the company's financial position and the results of its operations as of a certain date. Those statements of KPMG were misleading within the contexts of the Circular and the Prospectus given the misrepresentations and other financial and non-financial information that was included in the Circular and the Prospectus, as well as subsequent events that ought to have been disclosed, but were not.

*KPMG's misrepresentations in the 2011 Audited Financial Statements*

122. The 2011 Audited Financial Statements were purportedly prepared in accordance with IFRS and audited in accordance with GAAS.
123. The 2011 Audited Financial Statements included PSN's misrepresentations regarding revenue, accounts receivable, income, assets and fair presentation of PSN's financial position and financial performance in accordance with applicable accounting standards. By way of its purported audit, KPMG adopted those misrepresentations as its own.
124. In the 2011 Audited Financial Statements, KPMG issued a clean and unqualified audit report dated March 22, 2012. In that audit report, KPMG falsely stated that:
- a) KPMG had conducted its audits in accordance with GAAS;
  - b) KPMG had assessed the risks of material misstatements of the consolidated financial statements, whether due to fraud or error;
  - c) KPMG had considered PSN's internal controls relevant to PSN's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that were appropriate in the circumstances;
  - d) KPMG had designed audit procedures that were appropriate in the circumstances;
  - e) KPMG had evaluated the appropriateness of accounting policies used and the reasonableness of accounting estimates made by PSN management;

- f) KPMG had evaluated the overall presentation of the consolidated financial statements;
  - g) KPMG's audit evidence obtained in its audits was sufficient and appropriate to provide a basis for its audit opinion; and that
  - h) the 2011 Audited Financial Statements presented fairly, in all material respects, the consolidated financial position of PSN as at December 31, 2011, December 31, 2010 and January 1, 2010, its consolidated financial performance and its consolidated cash flows for the years ended December 31, 2011 and December 31, 2010 in accordance with IFRS.
125. Additionally, the 2011 Audited Financial Statements included KPMG's representation that it fairly presented PSN's financial position, financial performance and cash flows – hereinafter, the "Audit Representation." The Audit Representation was false due to the misrepresentations that were included in the 2011 Audited Financial Statements.

**KPMG owed a duty of care to Class Members and breached that duty**

126. As Open Range's and PSN's auditors, KPMG purported to perform an important gatekeeper role to protect investors. KPMG owed a duty of care not just to the company but to all Class Members.
127. At all material times, Open Range and PSN were reporting issuers in the Province of Québec. They issued their financial statements and other disclosure documents, including the Impugned Documents, to the Class Members, who are residents of the Province of Québec, delivered those documents to the Class Members and made those documents available to them on their websites, as well as through SEDAR. Those documents were also filed directly or indirectly with regulators in the Province of Québec, including the Autorité des marchés financiers. KPMG was aware of the fact that Open Range and PSN were reporting issuers, and had shareholders, in the Province of Québec. KPMG consented to the dissemination of its reports, opinions, statements and consents included in the Impugned Documents to the Class Members.
128. KPMG owed a duty of care to those Class Members who acquired PSN's Securities pursuant to the Arrangement. In connection with the Arrangement, and pursuant to KPMG's consent dated September 30, 2011, KPMG's audit reports were included in the Circular, and were disseminated to the then holders of Open

Range's shares. Those audit reports were misleading within the context of the Circular, and KPMG's consent was also false and misleading. KPMG knew and intended that its audit reports and consent would be communicated to the Open Range shareholders, whose votes were solicited on the Arrangement. The class of Open Range's shareholders who voted on the Arrangement and acquired PSN Securities as a result of the Arrangement was known to KPMG.

129. KPMG owed a duty of care to those Class Members who acquired PSN's Securities in the secondary market. KPMG's reports including its reports on the 2010 Audited Financial Statements, the Audited Carve-Out Financial Statements, the Financial Statements of 1629318 Alberta Ltd., and the 2011 Audited Financial Statements were consistently communicated to the current and prospective PSN investors. KPMG's consents in connection with the Arrangement and the Offering were also communicated to the current and prospective PSN investors.
130. Additionally, at all material times, KPMG purported to conduct quarterly reviews of Open Range's and PSN's interim financial statements, and knew and intended that this fact would be communicated to the Class Members. The purpose of those regular quarterly reviews was to provide additional assurance to the Class Members that PSN's interim financial statements were reliable. The class of persons who acquired PSN's Securities in the secondary market was known to KPMG.
131. At all material times, KPMG knew and intended that the Impugned Documents containing their reports, statements or opinions were prepared, among other reasons, for the purpose of attracting investment and to induce members of the investing public to invest in PSN's Securities. Furthermore, KPMG knew and intended at all material times that the market value of PSN's Securities reflected publicly available information about PSN, including its reports, statements or opinions regarding the financial position, financial performance and affairs of PSN.
132. At all times since November 2005, KPMG acted as Open Range's and PSN's auditors. During their longstanding engagement, and in the course of their purported regular oversight over the company's books and records, KPMG ought to have become familiar with the company's business and the environment in which it operated.
133. At all material times, KPMG was privy to non-public information about Open Range's and PSN's business and financial affairs,

including material and undisclosed, deficiencies in the company's internal controls. It was through financial statements that were purportedly reviewed or audited by KPMG that the Class Members were informed of the company's financial performance and financial position.

134. KPMG's duty of care was informed by the Securities Legislation and subsidiary instruments, including NI 51-102, NI 52-107, NI 52-108 and NI 52-110, applicable accounting standards, and professional standards applicable to auditors, including GAAS.
135. KPMG breached that duty of care. As a result of KPMG's breach of the duty of care, the Class Members suffered damages.
136. PSN formed the Special Committee in December 2012. Within two months, the Special Committee and its advisors found that approximately 65-72% of PSN's \$148 million revenue and 75-81% of PSN's AR recorded during the first nine months of 2012 had been falsely recognized.
137. KPMG would have readily realized that PSN systematically recorded false revenue and AR had it conducted reviews and audits in accordance with the applicable professional standards, and had it complied with its duties, including those KPMG owed to the Class Members.

## **THE DEFENDANT'S FAULT**

### **Statutory right of action for misrepresentations in secondary market disclosures**

138. On behalf of herself and all Class Members who acquired PSN's Securities in the secondary market, and as against KPMG, the Petitioner asserts the right of action found in in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation in respect of all Impugned Documents.
139. At all material times, Open Range and PSN were reporting issuers within the meaning of the *QSA* and the other Securities Legislation. They released the Impugned Documents while those documents contained misrepresentations, including misrepresentations particularized herein to have been made by KPMG.

140. At all material times, KPMG was an expert of Open Range and PSN within the meaning of the *QSA* and the other Securities Legislation.
141. The misrepresentations pleaded herein to have been included in the Impugned Documents were also contained in a report, statement or opinion made by KPMG. The Impugned Documents derived from, quoted or summarized KPMG's reports, statements or opinions, including its reports or statements to Open Range's and PSN's shareholders and/or directors.
142. KPMG consented in writing to the inclusion in each of the Impugned Documents of the misrepresentations pleaded to have been contained therein including, without limitation, by entering into engagement letters with Open Range and PSN and issuing consents, as particularized herein.
143. KPMG made the misrepresentations particularized herein to have been made in the Impugned Documents while it knew that they were misrepresentations, recklessly or with wilful blindness.
144. The Petitioner will seek leave of court to pursue the right of action found in in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation.

***The Defendant violated the Duties they owed to the Members of the Class***

***A fault in connection with the Circular and the Arrangement***

145. On behalf of all Class Members who acquired PSN's Securities pursuant to the Arrangement, and as against KPMG, the Petitioner pleads a fault in violation of the general private law duty of diligence KPMG owed to them in the circumstances in accordance with article 1457 of the *Civil Code of Québec*.
146. In connection with the Arrangement, KPMG purported to perform professional services in accordance with the applicable professional standards and issued consent to Open Range's Board of Directors, dated September 30, 2011, which was included in the Circular.
147. KPMG was negligent in performing its professional services, and in issuing an impugned consent, which it ought not to have issued in the circumstances. But for KPMG's consent, which was issued negligently and as a result of KPMG's breach of the professional



standards applicable to it, the Arrangement would not have happened.

148. As particularized herein, KPMG owed a duty of care to those Class Members. KPMG breached that duty of care by issuing its consent in connection with the Arrangement negligently and in violation of the applicable professional standards. It was foreseeable that there was a risk of harm to Class Members in the event that KPMG breached the duty of care owed to Class Members.
149. Had KPMG complied with the standard of care applicable to its engagement in the context of the Arrangement, it would have withheld consent. In the alternative, had KPMG complied with that standard of care, then additional disclosures would have been made in the Circular and the misrepresentations included in that document would have been corrected.
150. But for KPMG's consent, Open Range's shareholders and the Alberta Court of Queen's Bench would not have approved the Arrangement, and the Arrangement would not have been implemented.
151. As a result of KPMG's fault, however, the Open Range shareholders and the Alberta Court of Queen's Bench approved the Arrangement, and the Arrangement was implemented. As a result, those Class Members who exchanged their Open Range shares for PSN's shares in the Arrangement suffered damages.

*A fault in connection with secondary market trading in PSN Securities*

152. On behalf of herself and the other Class Members who acquired PSN's Securities in the secondary market, and as against KPMG, the Petitioner pleads a fault in violation of the general private law duty of diligence KPMG owed to them in the circumstances in accordance with article 1457 of the *Civil Code of Québec*.
153. As particularized herein, KPMG owed a duty of care to the Class Members who purchased PSN's Securities in the secondary market. KPMG breached that duty of care by:
  - a) breaching the professional standards applicable to it during its engagement as PSN's auditor;
  - b) performing its professional services negligently, recklessly and/or with willful blindness; and/or

c) making the misrepresentations particularized herein to have been made by KPMG in the Impugned Documents.

It was foreseeable that there was a risk of harm to Class Members in the event that KPMG breached the duty of care owed to Class Members.

154. PSN's Securities were admitted for trading on the TSX effective November 4, 2011, after the Arrangement was approved by Open Range's shareholders and the Alberta Court of Queen's Bench, and was implemented. KPMG had knowledge that as a result of the Arrangement, a certain number of PSN shares would be issued and would be listed for trading on the TSX and other exchanges.
155. But for KPMG's fault in breaching the professional standards applicable to its engagement with the Arrangement and the Circular and issuing the impugned consent dated September 30, 2011, the Arrangement would not have been approved and implemented, and PSN Securities would not have been listed for trading on the TSX.
156. On February 14, 2013, within a few hours after the true state of PSN's financial affairs was revealed to the public, the Alberta Securities Commission issued a cease trade order prohibiting all trading in PSN's Securities. Shortly after that date, PSN's Securities were delisted from the TSX. The Alberta Securities Commission's cease trade order remained in effect until PSN's Securities were delisted. PSN's Securities are now worthless.
157. But for KPMG's fault in issuing the impugned consent dated September 30, 2011, PSN's Securities would never have been issued and listed for trading on the secondary market, and no one would have purchased PSN Securities in the secondary market. In the alternative, the truth about PSN would have come to light, and PSN's Securities would have traded at substantially lower prices.
158. Additionally, after the Arrangement, KPMG continued to perform services negligently in the course of its engagement as PSN's auditor. But for KPMG's fault, the truth about PSN would have been revealed, and the trading in PSN's Securities would have been ceased, earlier than February 14, 2013. In the alternative, the market price of PSN's Securities would have been adjusted to their true value.
159. As a result of KPMG's fault, PSN Securities were admitted on the TSX and the other secondary market platforms, and continued to

trade in the secondary market until trading was halted and the Securities were delisted. As a result, the Class Members who acquired PSN's Securities in the secondary market suffered damages.

160. Furthermore, in the course of its engagement as Open Range's and PSN's auditor, KPMG consistently made the misrepresentations included in the Impugned Documents to PSN's shareholders, the class of which was known to KPMG. By making the false statements, KPMG's actions fell below the acceptable standard of care expected of an auditor in the same or similar circumstances.
161. In purchasing PSN Securities in the secondary market, those Class Members who purchased such Securities in the secondary market relied, whether directly or indirectly, upon KPMG's Audit Representation and Review Representation in the Impugned Documents.
162. The Audit Representation and the Review Representation were constantly communicated to shareholders, investors, analysts and other market participants, and were incorporated into the market price of PSN's Securities. At all material times, PSN Securities traded on the TSX, which is an efficient market, and the price of PSN Securities reflected publicly available information regarding such Securities, including the Audit Representation and Review Representation. Furthermore, and at all material times, KPMG was in a special relationship with the Class Members, involving KPMG communicating the Audit Representation and the Review Representation to Class Members and the Class Members relying on that information.
163. The damages incurred by the Class Members are a result of the Defendant's fault.
164. The reasonable standard of care expected in the circumstances required the Defendant to act fairly, reasonably, honestly, candidly and in the best interests of the Petitioner and the Class. The Defendant's conduct failed to meet the requirements imposed by the duty not to harm others by reason of wrongful conduct under the *Civil Code of Québec*.

### **Liability of the Defendant**

165. In addition to its direct liability, the Defendant is liable for the acts and omissions of its officers, directors, partners and/or employees.

## CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

166. The composition of the Class makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:
- a) The number of persons included in the Class is estimated to be several thousand;
  - b) The names and addresses of persons included in the Class are not known to the Petitioner; and
  - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.
167. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Did any or all of the Impugned Documents contain, whether explicitly or implicitly, one or more of the misrepresentations particularized herein to have been made by KPMG, and did such misrepresentations constitute misrepresentations at law and/or within the meaning of the *QSA*?
  - b) Did the Defendant owe a duty of care to the Class Members or any group of them, did the Defendant breach that duty of care and did the Petitioner and the Class Members suffer damages as a result of the Defendant's breach of its duty of care?
  - c) Did the Defendant commit a fault towards the Petitioner and the Class Members, thereby engaging its liability under Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
  - d) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults?
  - e) Is the Defendant liable for the damages sustained by the Petitioner and by each of the Class Members?
  - f) Is the Defendant liable for the acts and/or omissions of its officers, directors partners and/or employees?
168. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

## NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

169. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

170. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** the Petitioner's action against the Defendant, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation and under article 1457 of the *Civil Code of Québec*;

**CONDEMN** Defendant to pay to the Petitioner and the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioner on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

171. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:

- a) The Petitioner resides the Province of Québec;
- b) The Class Members reside everywhere in the Province of Québec; and
- c) The Petitioner's lawyers have an office in the District of Montréal.

172. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members for the following reasons:

- a) She understands the nature of the action;

- b) She is available to dedicate the time necessary for an action to collaborate with Class Members; and
- c) Her interests are not antagonistic to those of other Class Members.

173. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** leave under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation and under article 1457 of the *Civil Code of Québec* and the bringing of a class action in the form of a Motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Class herein described as:

“All persons and entities who purchased or otherwise acquired PSN’s Securities on or before February 14, 2013, and who are resident or domiciled in the Province of Québec or were resident or domiciled in the Province of Québec at the time they purchased or otherwise acquired such Securities, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec Code of Civil Procedure, CQLR, c C-25, except for the Excluded Persons”

or such other group definition as may be approved by the Court.

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did any or all of the Impugned Documents contain, whether explicitly or implicitly, one or more of the misrepresentations particularized herein to have been made by KPMG, and did such misrepresentations constitute misrepresentations at law and/or within the meaning of the *QSA*?
- b) Did the Defendant owe a duty of care to the Class Members or any group of them, did the Defendant breach that duty of care

and did the Petitioner and the Class Members suffer damages as a result of the Defendant's breach of its duty of care?

- c) Did the Defendant commit a fault towards the Petitioner and the Class Members, thereby engaging its liability under Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- d) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults?
- e) Is the Defendant liable for the damages sustained by the Petitioner and by each of the Class Members?
- f) Is the Defendant liable for the acts and/or omissions of its officers, directors partners and/or employees?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the Petitioner's action against the Defendant, under the cause of action contained in Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation and under article 1457 of the *Civil Code of Québec*;

**CONDEMN** the Defendant to pay to the Class Members compensatory damages for all monetary losses;

**GRANT** the class action of the Petitioner on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 1031 to 1036 C.C.P.;

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**DECLARE** that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of a notice to the Class Members in accordance with article 1006 C.C.P.;

**REFER** the record to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

**THE WHOLE** with costs, including the costs of all publications of notices.

Montréal, July 7, 2014

(s) SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.

---

**SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.**  
Lawyers for the Petitioner



## **SCHEDULE 1**

### **NOTICE TO DEFENDANT**

Take notice that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montréal.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal located at 1, Notre-Dame East, Montréal, Québec, H2Y 1B6 within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on September 26<sup>th</sup>, 2014 at 9h00 AM. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Montréal, July 7, 2014

(s) SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.

---

**SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.**

Lawyers for the Petitioner

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO: 500-06-000699-146**

**(Class Action)  
SUPERIOR COURT**

---

**Marian Lewis**

Petitioner

V.

**KPMG LLP**

Defendant

---

LIST OF EXHIBITS

---

**Exhibit P-1:** Notice of purchase dated January 18, 2012.

Montréal, July 7, 2014

(s) SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.

---

**SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.**

Lawyers for the Petitioner

No: 500-06-000699-146

---

SUPERIOR COURT (Class Action)  
DISTRICT OF MONTREAL

---

Marian Lewis

Petitioner

v.

KPMG LLP

Defendant

---

MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION CONTAINED IN TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC SECURITIES ACT ("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Article 1002 C.C.P. and following and 225.4 QSA and following)

---

Mtre. Sammy Elnemr  
O/FILE: 67-148

BS2497

**SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.**

480 Saint Laurent, Suite 501

Montréal (Québec)

H2Y 3Y7

Tél. : (514) 849-1970

Fax : (514) 849-7934

---