

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-06-000702-148

(Class Action)
SUPERIOR COURT

Marian Lewis [REDACTED]
[REDACTED]

Petitioner

V.

National Bank Financial Inc., [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) "**ABCA**" means the Alberta *Business Corporations Act*, RSA 2000, c B-9, as amended;
 - (b) "**AIF**" means Annual Information Form;
 - (c) "**Arrangement**" means the reorganization transaction pursuant to the provisions of the *ABCA*, which was implemented on November 1, 2011, and pursuant to which Old Open Range's name was changed to Poseidon;

- (d) "**CEO**" means Chief Executive Officer;
- (e) "**CFO**" means Chief Financial Officer;
- (f) "**Circular**" means the Information Circular and Proxy Statement of Old Open Range 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;
- (g) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired Poseidon's securities on or before February 14, 2013, other than the Excluded Persons;
- (h) "**Dawson**" means A. Scott Dawson;
- (i) "**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 Old Open Range and was transferred to New Open Range pursuant to the Arrangement;
- (j) "**Excluded Persons**" means Poseidon 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 Poseidon 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; KPMG LLP and its 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;

- (k) "**Fairness Opinion**" means the written fairness opinion of NBF dated September 30, 2011 issued in connection with the Arrangement;
- (l) "**IFRS**" means International Financial Reporting Standards;
- (m) "**Impugned Documents**" (each being an "Impugned Document") means, collectively, the Circular and the Prospectus;
- (n) "**Jensen**" means Dean R. Jensen;
- (o) "**MacKenzie**" means Matt MacKenzie;
- (p) "**MD&A**" means Management's Discussion and Analysis;
- (q) "**Michaluk**" means Lyle Michaluk;
- (r) "**National Bank**" means NBC and NBF, collectively;
- (s) "**NBC**" means National Bank of Canada;
- (t) "**NBF**" means the defendant, National Bank Financial Inc.;
- (u) "**New Open Range**" means the new Open Range Energy Corp., formerly known as 1629318 Alberta Ltd, a company incorporated under Alberta laws in September 2011, which acquired Old Open Range's E&P Business pursuant to the Arrangement;
- (v) "**Offering**" means the public distribution of 6,347,000 Poseidon common shares pursuant to the Prospectus at a price of \$13.00 per share for gross proceeds of \$82,511,000;
- (w) "**Old Open Range**" means the original Open Range Energy Corp., which was renamed Poseidon pursuant to the Arrangement;
- (x) "**Peyto**" means Peyto Exploration & Development Corp.;
- (y) "**Petitioner**" means the petitioner, Marian Lewis;
- (z) "**Poseidon**" means Poseidon Concepts Corp.;

- (aa) "**Prospectus**" means the short-form prospectus of Poseidon dated January 26, 2012, including the documents incorporated therein by reference;
- (bb) "**QSA**" means the Securities Act, CQLR c V-1.1, as amended;
- (cc) "**Representation**" means the statement made by NBF in the Fairness Opinion, whether expressly or implicitly, that NBF had fulfilled its duties as an independent advisor to Old Open Range and concluded that the Arrangement was fair to the Old Open Range shareholders;
- (dd) "**Securities Legislation**" means, collectively, the *QSA*, 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;
- (ee) "**SEDAR**" means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;
- (ff) "**Special Committee**" means the special committee of Poseidon's board of directors formed in or about December 2012;
- (gg) "**Tank Rental Business**" means the business involving the development and lease of Tank Systems and related activities associated therewith, which was carried on by Old Open Range and continued to be carried on by Poseidon following the completion of the Arrangement;
- (hh) "**Tank Systems**" means the modular, insulated fluid handling systems developed and used in connection with the Tank Rental Business;
- (ii) "**TSX**" means the Toronto Stock Exchange; and
- (jj) "**Winger**" means Harley L. Winger.

2. The Petitioner wishes to institute a class action on behalf of the following group, of which she is a member:

"All persons and entities, wherever they may reside or be domiciled, who purchased or otherwise acquired Poseidon's securities on or before February 14, 2013, other than the Excluded Persons."

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

THE PARTIES

The Petitioner

3. The Petitioner is an individual resident of Québec who purchased Poseidon's shares in the secondary market prior to February 14, 2013, the whole as appears from the Notice of purchase dated January 18, 2012, a copy of which is produced herewith as **Exhibit P-1**.

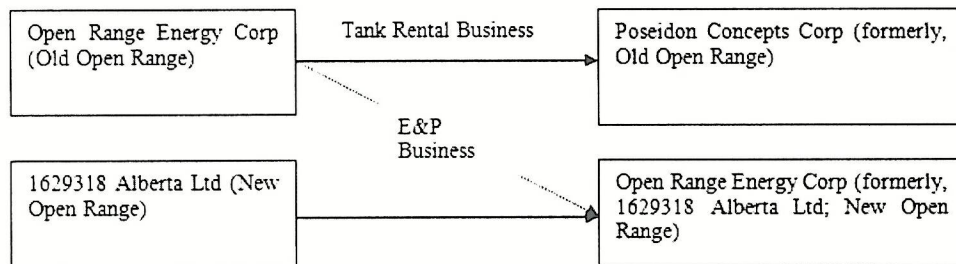
NBF

4. NBF is a provider of financial market services with offices and operations throughout Canada, including in Calgary, where Poseidon's main business offices were located.
5. NBF is a wholly-owned subsidiary of NBC which, at all material times, was a principal lender to Old Open Range and Poseidon. At all times relevant to this action, NBF and NBC had substantially overlapping management and directing minds, including:
 - (a) Louis Vachon, NBC's President, CEO and director, was previously NBF's President and CEO. Vachon is responsible for the strategies, orientations and development of NBC and its subsidiaries, including NBF;
 - (b) Lawrence Bloomberg, a member of NBC's board of directors, is also an advisor to NBF;
 - (c) Luc Paiement, an Executive Vice-President of NBC and a member of NBC's Office of the President, is also NBF's Co-President and Co-CEO; and
 - (d) Ricardo Pascoe, an Executive Vice-President of NBC and a member of NBC's Office of the President, was also NBF's Co-President and Co-CEO until April 2014.

THE POSEIDON SAGA

Corporate History of Poseidon

6. Old Open Range was a Calgary, Alberta-based company that was incorporated on November 30, 2005, and its shares traded on the TSX under ticker symbol "ONR." Prior to the Arrangement, Old Open Range had two business segments: a) the E&P Business; and b) the Tank Rental Business.
7. In September 2011, Old Open Range announced the Arrangement to split the E&P Business and the Tank Rental Business into two separate, publicly-traded companies. The Arrangement was approved by the Old Open Range shareholders and the Alberta Court of Queen's Bench on or about October 31, 2011, and was implemented effective November 1, 2011.
8. Pursuant to the Arrangement, Old Open Range's name changed to Poseidon, and it continued to carry on the Tank Rental Business as an independent, publicly-traded company. Old Open Range's E&P Business was acquired by New Open Range.
9. Poseidon's and New Open Range's shares were first issued and distributed to the then holders of Old Open Range's shares pursuant to the Arrangement on November 1, 2011. For each Old Open Range share, the shareholders received one New Open Range share and 0.8839 of a Poseidon share. Poseidon's and New Open Range's shares started trading on the TSX as of November 4, 2011, under ticker symbols "PSN" and "ONR," respectively.
10. The below chart summarizes the restructuring of Old Open Range's business pursuant to the Arrangement:



11. At all material times, Poseidon's common shares traded on the TSX and alternative trading systems in Canada, and also traded in Frankfurt and over-the-counter in the United States.

12. At all material times, Poseidon and Old Open Range were reporting issuers in all provinces of Canada. As reporting issuers in Québec, they were required to issue and file with SEDAR:
 - (a) within 45 days of the end of each quarter, quarterly financial statements prepared in accordance with IFRS that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
 - (b) within 90 days of the end of the fiscal year, audited annual financial statements prepared in accordance with IFRS, including comparative financial statements relating to the period covered by the preceding financial year;
 - (c) contemporaneously with each of the above, an MD&A of each of the above financial statements;
 - (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development; and
 - (e) contemporaneously with the solicitation by or on behalf of the management of proxies from holders of its voting shares, an information circular.
13. 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. An MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.
14. 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 future development. An AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

Certain Directors and Officers of Poseidon and Old Open Range

15. Michaluk was Old Open Range's CFO and Vice-President, Finance prior to the Arrangement, and became CEO and a director of Poseidon after the Arrangement. On or about December 27, 2012, Michaluk stepped down as Poseidon's CEO and director, and assumed the role of the company's Interim CFO. Michaluk ceased to have any position with Poseidon as of February 26, 2013.

16. MacKenzie was Poseidon's CFO from November 1, 2011 until his resignation on or about December 27, 2012. MacKenzie ceased to have any position with Poseidon as of February 26, 2013. Prior to joining Poseidon, MacKenzie was a Director, Institutional Equity Sales with NBF.
17. Dawson was President, CEO and a director of Old Open Range since its inception in November 2005. After the completion of the Arrangement, Dawson became a director of Poseidon, Chairman of the board and a member of the board's Audit Committee. On November 19, 2012, Dawson was appointed Poseidon's Executive Chairman and, on or about December 27, 2012, he assumed the role of the company's Interim President and CEO.
18. Winger was a director of Old Open Range since its inception in November 2005. After the Arrangement, Winger was appointed a director of Poseidon and held that position at all material times until his resignation on or about April 9, 2013.
19. Jensen was a director of Old Open Range since its inception in November 2005. After the Arrangement, Jensen was appointed a director of Poseidon and Chairman of the board's Audit Committee, and held those positions at all material times until his resignation on or about April 9, 2013. Jensen is a banker who was employed by NBC in the capacity of Senior Manager, Energy Lending until 2005, when he left NBC and started his own private equity firm.

The Arrangement

20. In or about August 2011, Old Open Range began exploring a reorganization of its business to separate the E&P Business and the Tank Rental Business. NBF acted as the exclusive financial advisor to Old Open Range in connection with the company's review of the restructuring options.
21. Among other contemplated transactions, Old Open Range and Peyto entered into a confidentiality agreement in August 2011, and engaged in discussions for a potential sale of the E&P Business to Peyto. This transaction, however, fell through, and Old Open Range determined to proceed with the Arrangement.
22. The Arrangement was announced on September 6, 2011. According to management and directors of Old Open Range, the Arrangement purported to create in Poseidon a standalone, sustainable, growth-oriented company with a clean balance sheet that offered "an attractive dividend" of \$1.08 per share annually. These assertions were based on certain assumptions and representations, including that: (a) as of September 2011, Poseidon had secured \$87 million in revenues through

long-term, minimum commitment contracts; (b) based on those long-term contracts, Poseidon anticipated \$130 million EBITDA in 2012; (c) Poseidon would commence independent operations with \$25 million bank debt; (d) Poseidon would have \$25 million net debt as at the end of 2012; and (e) Poseidon's debt-to-EBITDA ratio would be $<0.2x$. These assumptions and representations were incorrect, and NBF ought to have known that some or all of these assumptions were incorrect and/or unlikely to prove correct.

23. In addition to a sale of the E&P Business and assets to New Open Range, the Arrangement involved the allocation of Old Open Range's liabilities between Poseidon and New Open Range, which principally comprised of Old Open Range's bank indebtedness.
24. As of June 30, 2011, Old Open Range's bank debt totalled \$60.3 million, of which \$51.8 million was attributed to the E&P Business and \$8.5 million was attributed to the Tank Rental Business. Old Open Range's debt would increase by the time of the implementation of the Arrangement on November 1, 2011.
25. Pursuant to the Arrangement and related transactions, New Open Range assumed up to \$15 million of Old Open Range's net debt, and the significantly larger remainder was borne by Poseidon. As of December 2011, Poseidon carried substantial liabilities on its balance sheet, including debt totalling \$64.8 million, which was comprised of:
 - (a) \$18.3 million debt owed to bank lenders for a portion of Old Open Range's debt that Poseidon directly assumed pursuant to the Arrangement;
 - (b) \$36.5 million debt owed to New Open Range for a portion of Old Open Range's debt that was initially assumed by New Open Range; and
 - (c) \$10 million owed to New Open Range under promissory notes issued to Poseidon by New Open Range pursuant to transactions related to the Arrangement.
26. The majority of the debt that Poseidon assumed in the Arrangement related to the E&P Business, which was acquired by New Open Range. In spite of the assertion in the Circular that New Open Range would repay Poseidon for the portion of the debt attributed to the E&P Business, New Open Range never paid anything to Poseidon.
27. Saddled with the debt that it assumed as a result of the Arrangement, Poseidon immediately began experiencing financial difficulties that threatened its day-to-day operations, a fact that was not disclosed to shareholders in the Impugned Documents or otherwise. Poseidon's

financial distress was exacerbated due to its commitment to pay unreasonably elevated dividends. Poseidon was never a sustainable business, and NBF ought to have known of its unsustainability.

The Offering

28. The Arrangement involved the restructuring of Old Open Range's debt owed to a syndicate of lenders led by NBC. According to the Circular, it was expected that, after the Arrangement, Poseidon would secure new credit facilities with a syndicate of banks led by NBC in the amount of \$75 million. However, Poseidon was in fact able to secure only \$50 million in new credit lines, which failed to provide Poseidon with the financial flexibility that it required. As a result, Poseidon began exploring additional financing options shortly after the Arrangement.
29. On January 10, 2012, Poseidon secured an additional credit facility from NBC in the amount of \$15 million, on which it immediately drew \$5 million (the "Additional Facility"). The additional facility represented a short-term loan that would expire on March 30, 2012.
30. On January 11, 2012, Poseidon issued a press release providing operational updates and guidance for 2012. According to this press release, Poseidon purported to have secured \$150 million in revenues through long-term, minimum commitment contracts, and forecast \$170 million EBITDA in 2012. Additionally, Poseidon announced a capital budget of \$60 million for further tank construction in order to increase its tank fleet from 240 to 400 units by mid-2012.
31. On January 13, 2012, Poseidon announced by way of a press release a bought deal financing transaction underwritten by a syndicate of underwriters led by NBF involving public distribution of common shares for gross proceeds of \$82.5 million. Poseidon stated that net proceeds of this offering would be used for "further tank construction, new product development, general corporate purposes and to reduce bank indebtedness."
32. The Offering was carried out pursuant to the Prospectus, and was completed on February 2, 2012.
33. The Offering was predicated on the false and misleading representation that funds were being raised in order for Poseidon to meet its business objectives by expanding its operations, including through additional tank construction and development of new products. Indeed, the Prospectus assured the investors that:

The use of the net proceeds of the Offering by the Corporation is consistent with the Corporation's stated

business objectives of expanding the Tank System fleet to 400 units by June 30, 2012. Other than the successful completion of the Offering, there is no particular significant event or milestone that must occur for the Corporation's business objectives to be accomplished.

34. However, and unbeknownst to shareholders, the primary purpose of the Offering was to repay Poseidon's massive debt owed to New Open Range as well as bank lenders, including NBC, rather than funding the company's business growth by adding to its tank fleet and developing new products.
35. At the time of the Offering, Poseidon owed the banks \$23 million, of which \$13.5 million was owed to NBC. The Offering's proceeds were initially used to repay those debts. Additionally, at the time of the Offering, Poseidon owed significant debt to New Open Range. Shortly after the Offering, Poseidon paid the full amount of \$36.5 million owed to New Open Range pursuant to the Arrangement and its related transactions.

Poseidon's Operations and Improper Accounting Practices

36. At all relevant times, Poseidon 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 Old Open Range. In November 2011, Poseidon 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.
37. Poseidon's business was carried out through two types of arrangements with customers:
 - (a) providing services on a day-to-day basis, pursuant to which Poseidon 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 Poseidon would record revenues for the entire duration of the contract, regardless of whether or not the customer in fact utilized the tanks.
38. Starting in early 2011, Poseidon 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, Poseidon's accounts receivable position also grew and aged, largely due to the fact that Poseidon was unable to collect those purported revenues. The below chart summarizes Poseidon's reported revenues and accounts receivable during the relevant times:

Period	Total Revenue	United States Revenues	Canadian Revenues	Reported AR	Overdue AR¹
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 ²	\$36 (30% of total AR)

39. Poseidon's inability to collect on its purported revenues was due mainly to two factors:
40. First, at all material times since its inception, Poseidon suffered from dysfunctional accounting systems and ineffective internal controls that adversely affected its revenue cycle business processes. As a result, Poseidon did not maintain proper documentation evidencing the business cycle and substantiating the revenues that were being recorded. By way of example, Poseidon failed to issue or obtain customer-approved field tickets (a document that 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, Poseidon was unable to substantiate the amounts it purported to be owed by the customer in the event of a dispute or to enforce collections. Indeed, Poseidon's customers frequently disputed field tickets and invoices and, as a result, Poseidon

¹ Outstanding for more than 120 days.

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

routinely made significant adjustments to revenues previously recognized for amounts wrongly invoiced to customers.

41. Second, beginning in early-2011, a significant part of Poseidon's reported revenues, especially in the United States side of its operations, purported to be generated through the long-term, take-or-pay contracts. In late-2012, investigations by Poseidon's Special Committee revealed fundamental problems with respect to revenues recorded on the basis of those contracts including that those contracts were not properly executed and/or were not legally enforceable.
42. At all material times, Poseidon represented that its financial statements were compiled in accordance with IFRS, and also represented that its accounting policy required it to recognize 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.
43. At all material times, however, Poseidon recognized significant revenues when one or more of the above requirements had not been met, in violation of IFRS and its own stated accounting policies. Revenues recognized in violation of these requirements were false, and ought not to have been recorded.
44. Furthermore, Poseidon 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. Poseidon failed to do so, even though it had consistently experienced collection problems and customer disputes which required it to routinely record adjustments to previously recognized revenues, and in spite of its ever growing and quickly aging accounts receivable, the greater part of which was owed by non-investment-grade customers. Due in part to Poseidon's failure to evaluate its accounts receivable on an ongoing basis, its accounts receivable were further overstated.

The Truth is Gradually Revealed over Three Corrective Disclosures on November 14, 2012, December 27, 2012 and February 14, 2013

45. On November 14, 2012, Poseidon shocked the market by releasing the results from its third quarter 2012 operations, announcing, among other things:
- (a) that Poseidon 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) that, nonetheless, its 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) that its internal controls over financial reporting “were not completely effective”;
 - (d) that 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) that only 38% of its accounts receivable portfolio was due from investment grade parties.
46. As a result of this disclosure, Poseidon’s share price declined 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. On November 15, approximately 32.6 million Poseidon shares were traded, representing 40% of its 81.1 million outstanding shares.
47. Although the November 14, 2012 disclosure partially revealed the true state of Poseidon’s business and financial affairs, the entire truth was not disclosed. Poseidon’s disclosure documents issued on November 14, 2012

continued to include various misrepresentations, including misrepresentations arising out of false revenue recognition and improper accounting of accounts receivable.

48. On the morning of December 27, 2012, Poseidon once again surprised the market by issuing a press release, disclosing, among other things:
- (a) that the Special Committee had formed to investigate the concerns surrounding Poseidon's accounts receivable;
 - (b) that "the Company has been diligently addressing its accounts receivable in recent weeks and is actively pursuing collections, including commencing formal collection processes in appropriate circumstances"; and
 - (c) that Poseidon "may need to make additional write downs of accounts receivable in future periods and such write downs may be significant."
49. As a result of this disclosure, Poseidon's share price declined 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. Yet, this disclosure and Poseidon's November 14, 2012 disclosure did not constitute, either individually or collectively, the entire truth.
50. On February 14, 2013, Poseidon provided an 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, Poseidon'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 Poseidon's \$125.5 million accounts receivable should not have been recorded as accounts receivable;
 - (c) Poseidon's interim financial statements and MD&As for each of the three first quarters of 2012 would be restated and should no longer be relied upon;
 - (d) all previous guidance with respect to Poseidon's business should not be relied upon; and

(e) all of these determinations were “primarily related to [Poseidon’s] long term take-or-pay arrangements.”

51. As a result of this disclosure, Poseidon’s shares, once again, declined 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.
52. Within a few hours from Poseidon’s February 14, 2013 disclosure, the Alberta Securities Commission issued an order prohibiting all trading in Poseidon’s securities.
53. On April 9, 2013, Poseidon secured protection from its creditors under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36. In a press release issued on that day, Poseidon stated that “Based upon the investigation by the Special Committee, questions have arisen with respect to the recorded revenues in the 2011 Annual Financials.” Two of Poseidon’s directors resigned on the same day and the Special Committee was disbanded. No further updates were provided to the public on the status of the investigations after April 9.
54. On April 18, 2013, the TSX announced that it had determined to delist Poseidon. Poseidon’s shares were delisted effective May 17, 2014 as Poseidon remained in insolvency proceedings and its assets were sold to satisfy part of its debt to its secured creditors. Poseidon’s accounts receivable were sold for pennies on the dollar.
55. As such, Poseidon collapsed within less than 18 months from the commencement of its independent operations, its over \$1 billion market cap evaporated and its investors suffered hundreds of millions of dollars damages.



THE LONG-STANDING AND CLOSE RELATIONSHIP BETWEEN NATIONAL BANK, OLD OPEN RANGE AND POSEIDON

Overview

56. From the time of the inception of company, National Bank played a central role in the creation and the purported growth of both of Old Open Range and Poseidon, and consistently promoted both of Old Open Range and Poseidon in the capital markets.
57. First, at all material times, NBC was the key source of bank financing for both of Old Open Range and Poseidon. NBC advanced Old Open Range's first credit facility concurrently with its establishment in November 2005, and remained a principal lender to the company throughout its existence. Second, NBC also entered into numerous material commodity derivative agreements with Old Open Range in order to enable Old Open Range to manage various key business risks. Third, NBF maintained close relationships with Old Open Range and Poseidon, and acted as financial market advisors to their management. Fourth, NBF acted as an underwriter and the lead underwriter in a number of key securities offerings conducted by both Old Open Range and Poseidon. Fifth, NBF also acted as the exclusive financial adviser to Old Open Range in the review of strategic alternatives that led to the restructuring of Old Open Range's business and the creation of Poseidon. Sixth, from the inception of both Old Open Range and Poseidon, a former lending manager of NBC sat on the Board of Directors of each of them and, after the creation of Poseidon, a former Director of NBF became its CFO. Finally, promptly following the establishment of Poseidon, NBF's analyst, Greg Colman, aggressively promoted Poseidon in the capital markets.

58. National Bank profited handsomely from this extensive web of transactions and relationships with Old Open Range and Poseidon, and from their promotion of Old Open Range's and Poseidon's businesses and the sale of their securities to investors.

National Bank's Role in the Creation and Expansion of Old Open Range and Poseidon

59. Old Open Range was incorporated on November 30, 2005. On that same day, Old Open Range issued and filed with SEDAR a press release stating, among other things, that it "ha[d] concluded negotiations for an initial \$8 million revolving line of credit to be instituted with the National Bank." Thus, from its very inception, NBC provided key financing to Old Open Range in order to enable Open Range to conduct business.

60. Old Open Range's credit facilities with NBC expanded rapidly and, by year-end 2010, totalled \$80 million, or ten times the amount of Old Open Range's initial credit facility with NBC. The chart below shows the growth in Old Open Range's bank lines with NBC from the time of its inception to the time of the inception of Poseidon in the fourth quarter of 2011:

DATE	TOTAL CREDIT FACILITIES	TOTAL DRAW-DOWN
November 30, 2005	\$8 million	Nil
December 31, 2005	\$10.4 million	Nil
December 31, 2006	\$18.2 million	\$3.8 million
December 31, 2007	\$30.5 million	\$12.9 million
December 31, 2008	\$54.0 million	\$31.4 million
December 31, 2009	\$75.0 million	\$40.1 million
December 31, 2010	\$80.0 million	\$51.1 million (1)
September 30, 2011	\$90.0 million	\$59.9 million (1)

(1) Prior to the second quarter of 2010, Old Open Range reported that its credit facilities were held solely with NBC. Commencing in the second quarter of 2010, Old Open Range reported that its credit facilities were held with a syndicate of Canadian banks led by NBC.

61. From the time of its inception, Old Open Range's capital program, and hence its expansion, were financed in large part by its credit facilities with NBC. Those credit facilities were critical to Old Open Range's operations.

62. From the time of its inception, Old Open Range also purported to manage certain key business risks by entering into numerous commodity derivative contracts with NBC. In particular, an underwriting agreement between Old Open Range and certain underwriters dated March 19, 2008, set forth a complete list of material contracts to which Old Open Range was then a party, and that list included 9 commodity derivative agreements with NBC. That list did not identify any material commodity derivative agreements to which Old Open Range was then a party, other than those entered into with NBC.
63. In light of Old Open Range's dependence on NBC for financing and hedging arrangements, Old Open Range repeatedly identified NBC in its disclosure documents as the company's "Banker."
64. At the time of the creation of Poseidon in November 2011, the company continued to remain critically dependent upon NBC for financing.
65. Contemporaneously with the Arrangement, and in connection with the restructuring of Old Open Range's credit lines, Poseidon secured new credit facilities with a syndicate of banks, including NBC, in the amount of \$50 million (the "New Facility"). The New Facility superseded the \$90 million credit facilities that were available to Old Open Range as of September 2011. Concurrently, a lending syndicate including NBC also advanced a \$75 million credit facility to New Open Range.
66. On January 10, 2012, and in anticipation of the Offering but before the Offering was publicly disclosed, NBC extended the Additional Facility to Poseidon for use in connection with its "working capital requirements." Under the terms of the Additional Facility, Poseidon was "required to use the net proceeds from equity issuances initially to repay outstanding indebtedness under the Additional Facility." Given that the Additional Facility would mature on March 30, 2012, that requirement specifically referred to the Offering, the proceeds of which were immediately used to pay, among other debt, Poseidon's \$13.5 million debt to NBC under the New Facility and the Additional Facility.
67. Subsequently, on or about June 30, 2012, a syndicate of four banks including NBC extended a two-year extendable \$100 million credit facility to Poseidon, which remained in place until the company became insolvent.
68. The various debt and equity financing transactions that were undertaken during the company's life were interrelated and were part of the same nexus of transactions intended to provide the company with the financing that it required in connection with operations. At all material times, NBC and NBF were at the centre of all of Old Open Range's and Poseidon's financing transactions.

National Bank's Relationships with Old Open Range and Poseidon

69. National Bank's relationships with Old Open Range and Poseidon went far beyond the provision of key credit facilities.
70. NBF was an underwriter in three (out of four) equity offerings undertaken by Old Open Range and Poseidon, and was the lead underwriter in two such offerings. As the lead underwriter, NBF was directly involved in setting the terms of the offerings, including the offering prices. More particularly:
- (a) NBF was the lead underwriter in the equity offering of Old Open Range pursuant to a short-form prospectus dated March 14, 2011. The price for that offering was determined by negotiation between Old Open Range and NBF on behalf of the underwriters of that offering. The entire proceeds of that offering, after deducting the underwriters' and administration fees, were used to repay part of Old Open Range's indebtedness to NBC; and
 - (b) NBF was the lead underwriter in the Offering. The Offering price was determined by negotiation between Poseidon and NBF on behalf of the underwriters in the Offering. Part of the proceeds of the Offering were used to repay Poseidon's \$13.5 million indebtedness to NBC.

In each of the offerings in which NBF acted as the lead underwriter, the proceeds of the offering were used, entirely or partially, to repay the company's indebtedness to NBC.

71. Each of the prospectuses that related to the three Old Open Range and Poseidon offerings in which NBF acted as an underwriter stated that:

The Corporation may be considered to be a connected issuer of NBF, as NBF is an indirect wholly-owned subsidiary of a Canadian chartered bank, being the lead lender to the Corporation under its credit facility.

72. The concept of "connected issuer" derives from National Instrument 33-105, Underwriting Conflicts, which defines a "connected issuer" at section 1.1 as follows:

"connected issuer" means, for a specified firm registrant,

(a) an issuer distributing securities, if the issuer or a related issuer of the issuer has a relationship with any of the following persons

or companies that may lead a reasonable prospective purchaser of the securities to question if the specified firm registrant and the issuer are independent of each other for the distribution:

(i) the specified firm registrant,

(ii) a related issuer of the specified firm registrant,

(iii) a director, officer or partner of the specified firm registrant,

(iv) a director, officer or partner of a related issuer of the specified firm registrant, or

[...]

73. National Instrument 33-105 further defines a “specified firm registrant” at section 1.1 as follows:

***“specified firm registrant”** means a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager.*

74. In the three Old Open Range and Poseidon offerings underwritten by NBF, the underwriters, including NBF, were each a “specified firm registrant” for the purposes of National Instrument 33-105.
75. By making the statement that “The Corporation may be considered to be a connected issuer of NBF,” Old Open Range and Poseidon acknowledged that there were reasonable grounds to believe that they and NBF were not independent of each other. This statement was included with NBF’s knowledge in the prospectuses relating to the offerings in which NBF acted as an underwriter, which were signed by NBF. Accordingly, NBF also made this statement or adopted it as its own.
76. After the Arrangement, and through to Poseidon’s demise, National Bank continued to maintain close relationships with Poseidon, and provided Poseidon’s management advice in connection with a variety of matters relating to Poseidon’s financing needs and capital market trading.

77. Moreover, National Bank's and Old Open Range/Poseidon's key employees also had close personal relationships, and certain of National Bank's employees exercised unusual influence over key employees of Old Open Range and Poseidon.
78. Michaluk, Old Open Range's CFO and Vice-President, Finance since September 2006 and Poseidon's CEO and director, was a former classmate and a close friend of NBF's former banker, Sandy L. Edmonstone ("Edmonstone"). Edmonstone was involved with, among other things, Old Open Range's and Poseidon's various equity financing and other transactions, including, without limitation:
- (a) the public distribution of Old Open Range's securities pursuant to the short-form prospectus dated March 27, 2008, in which Edmonstone acted for the underwriter GMP Securities L.P.;
 - (b) the public distribution of Old Open Range's securities pursuant to the short-form prospectus dated November 4, 2009, in which Edmonstone acted for NBF; and
 - (c) the public distribution of Old Open Range's securities pursuant to the short-form prospectus dated March 14, 2011, in which Edmonstone acted for NBF.
79. MacKenzie was a Director, Institutional Equity Sales with NBF before he joined Poseidon as CFO.
80. Additionally, Old Open Range's and Poseidon's director and Chairman of the Audit Committee, Jensen, was a Senior Manager, Energy Lending at NBC before he joined Old Open Range in 2005.
81. NBC is a publicly-traded company, and is listed on the TSX under ticker symbol "NA." As such, it makes disclosures to the investing public regarding its business and operations. Among other disclosures, NBC has a Code of Conduct and Ethics (the "Code"). The Code applies to all employees and officers of NBC and its subsidiaries, among other constituencies of National Bank, including NBF and its employees.
82. The Code has specific requirements regarding conflicts of interests, which include all and any real, apparent or perceived situation that compromises the independence and impartiality necessary to exercise a function within NBC, or any situation that could eventually affect the person's judgment, integrity and loyalty to NBC.
83. In their dealings with Old Open Range and Poseidon, National Bank and its employees systematically breached the Code and acted on significant, and often undisclosed, conflicting interests.

NBF's Role in the Arrangement and the Misrepresentations in the Fairness Opinion

84. In or about August 2011, Old Open Range began considering transactions to separate the E&P Business and the Tank Rental Business, which envisaged the creation of Poseidon as a high-yield, dividend-paying company. NBF acted as the exclusive financial advisor to Old Open Range in connection with the review of strategic alternatives, and advised on the Arrangement, including the introduction and the amount of dividends to be paid by Poseidon.
85. On August 26, 2011, the Old Open Range board established a special committee, with a mandate that included: (i) reviewing and assessing potential strategic transactions; (ii) if deemed appropriate, supervising the preparation of a fairness opinion or valuation by an independent advisor; and (iii) considering and advising the board regarding the treatment of incentive securities and employee severance and performance bonus payments.
86. NBF entered into a retainer agreement with Old Open Range, dated August 11, 2011, and met with Old Open Range's board on August 26 and 30, 2011 to discuss the status of the review of strategic alternatives. In connection with the Arrangement, NBF also provided fairness opinions to Old Open Range.
87. On or about September 5, 2011, NBF provided a verbal fairness opinion to Old Open Range that the consideration to be received by the Old Open Range shareholders as a result of the completion of the Arrangement was fair from a financial point of view to the Old Open Range shareholders. After receiving this verbal opinion, and having considered other factors, Old Open Range's board, including all members of the special committee, concluded that a separation of the two businesses would be the most effective way to enhance shareholder value and unanimously approved the Arrangement.
88. On or about September 30, 2011, NBF provided the written Fairness Opinion to Old Open Range which, among other things, stated that the consideration to be received by the Old Open Range shareholders pursuant to the Arrangement was fair, from a financial point of view, to the Old Open Range shareholders. The Fairness Opinion was provided to the shareholders by way of its inclusion in the Circular on NBF's consent.
89. The Fairness Opinion was central to the Arrangement, and to the shareholders' and court's approvals of that transaction. An affidavit of Scott Dawson sworn on September 30, 2011 in connection with the court approval of the Arrangement stated:

37. Pursuant to an engagement letter between Open Range and National Bank Financial Inc. ("NBF") dated August 11, 2011, Open Range engaged NBF to act as exclusive financial advisor to Open Range in connection with a strategic transaction. At a meeting of the Open Range Board on September 5, 2011, NBF confirmed its independence for the purpose of preparing and providing a fairness opinion in connection with the Arrangement and delivered its verbal opinion. NBF has confirmed it will deliver a written fairness opinion dated September 30, 2011 (the "Fairness Opinion"), a draft of which is set out in Appendix "E" to the Information Circular, which is Exhibit "A" to this Affidavit, that, as at September 30, 2011, based upon and subject to the assumptions, qualifications and limitations set forth in such Fairness Opinion, the consideration to be received by Open Range Shareholders pursuant to the Arrangement is fair, from a financial point of view, to Open Range Shareholders.
38. The Open Range Board, including all members of the Special Committee, considered a number of factors before approving the proposed Arrangement at a meeting of the Open Range Board on September 5, 2011, including but not limited to the following:
- a) the purpose and benefits of the Arrangement;
 - b) information concerning the financial conditions, results of operations, the business plans and prospects of Poseidon and New Open Range and the resulting potential for each company as outlined under the heading "The Arrangement – Reasons for the Arrangement" at page 20 of the Information Circular, which is Exhibit "A" to this Affidavit;
 - c) the verbal fairness opinion of NBF;
 - d) that the Open Range Shareholders who oppose the Arrangement will be permitted, subject to

compliance with certain conditions, to dissent from the Arrangement and will be entitled to be paid the fair value of their Open Range Shares in accordance with Section 191 of the ABCA, as modified by the Interim Order and the Plan of Arrangement; and

e) the requirement that the Arrangement must be approved by the Court, which will consider, among other things, the fairness and reasonableness of the Arrangement to the Open Range Shareholders.

[...]

40. *Subject to receiving the Fairness Opinion, the Open Range Board has unanimously determined that the Arrangement is fair, from a financial point of view, to the Open Range Shareholders and is in the best interests of Open Range, and that it will recommend that the Open Range Shareholders vote in favour of the Arrangement Resolution.*

90. The Fairness Opinion was false and/or misleading for at least two reasons.
91. First, NBF was not independent from Old Open Range when it provided the Fairness Opinion, and the statements in the Fairness Opinion concerning NBF's "Relationship with Interested Parties" failed to fully and plainly disclose material conflicting interests of NBF. In particular,
- (a) NBF's parent company, NBC, was a principal lender to Old Open Range and, as at the time of the Arrangement, the syndicate that NBC led was owed substantial debt by the company. Furthermore, NBC purported to remain a lender to both of Poseidon and New Open Range upon the completion of the Arrangement. NBC's direct interest in Old Open Range as well as the outcome of the Arrangement as a result of the restructuring of Old Open Range was not fully and plainly disclosed. In those circumstances, NBF ought not to have issued a Fairness Opinion or, at a minimum, it ought not to have rendered a Fairness Opinion unless the full extent of NBC's interest in the transaction was disclosed;
 - (b) NBF was paid significant fees in connection with the Arrangement, which comprised of a fee in respect of the delivery of the Fairness Opinion, as well as fees that were contingent upon the closing of

the Arrangement. NBF had a direct interest in the closing of the Arrangement and an incentive to recommend it regardless of whether or not it was actually fair to the shareholders. Furthermore, NBF's compensation in connection with the Arrangement was not fully and plainly disclosed. In those circumstances, given NBF's direct interest in the closing of the Arrangement, it ought to not have issued the Fairness Opinion; and

(c) Members of NBF's investment banking and advisory team who acted in connection with the Arrangement had a significant shareholding position with the company, and thus were directly interested in the outcome of the Arrangement. Those interests were not fully and plainly disclosed in the Fairness Opinion.

92. Second, NBF's Fairness Opinion was based on assumptions that were incorrect or unlikely to prove correct, including those regarding post-Arrangement Poseidon's debt and debt-to-EBITDA ratio, and erroneous models built on such incorrect assumptions. NBF was familiar with Old Open Range's debt, which was owed to NBF's parent, NBC, and NBF ought to have known that those assumptions were incorrect or were unlikely to prove correct, and it ought not to have issued the Fairness Opinion.
93. In addition to the foregoing statements and representations, the Fairness Opinion included the statement made by NBF, whether explicitly or implicitly, that NBF had fulfilled its duties as an independent advisor to Old Open Range and concluded that the Arrangement was fair to the Old Open Range shareholders – the "Representation." The Representation was false and/or materially misleading.

NBF's Role in the Offering

94. NBF acted as the lead underwriter in connection with the Offering. In that role, NBF was directly involved in making the decision to undertake the Offering as well as in determining the offering price and the other offering terms. NBC was also advised of the Offering and its terms.
95. Additionally, in connection with the Offering, NBF consented in writing to the inclusion by reference in the Prospectus of its Fairness Opinion.
96. The Offering was closed on or about February 2, 2012, and raised gross proceeds of \$82.5 million. NBF, which underwrote 50% of the securities distributed by way of the Offering, earned \$2 million in underwriting commissions.
97. The principal purpose of the Offering was to repay Poseidon's debt to its various lenders, including the \$13.5 million debt Poseidon owed to NBC

under the New Facility and the Additional Facility, which were repaid using the proceeds of the Offering.

The Promotion of Poseidon's Stock by NBF Analyst Greg Colman

98. Within days of the establishment of Poseidon, NBF analyst Greg Colman initiated coverage on Poseidon and began to promote its stock aggressively, often above and beyond Poseidon management's own guidance and the consensus.
99. Colman's inaugural report on Poseidon stated in part:

Investment Summary

Poseidon Concepts Corp.'s (Poseidon; PSN-T) patented fluid handling system is driving down per-well costs for producers while earning an ~80% EBITDA margin and estimated four month payback period for PSN shareholders. The company's tanks provide customers with cost savings as much as 70% below traditional 400 bbl tank farms' costs. PSN's fleet has grown from four in June 2010 to a current level north of 170 and we expect 240 by June 2012. This growth is a result of the systems' low capital requirements and the high demand from customers. Approximately two-thirds of the current fleet is in the United States, with the remainder in Canada. We estimate 2012E EBITDA of \$177 million would represent only ~7% of the available market, suggesting running room for both PSN and (inevitable) competitors who will likely appear. In the meantime, first-mover advantage coupled with a production neatly sandwiched between patent protection on one side and strict regulatory requirements on the other, suggest PSN may surprise margin sustainability naysayers. PSN was spun-out of Open Range Energy Corp. (ONR-T) in November of 2011 as a pure-play energy services company. We are initiating coverage on PSN with a \$15.00 target and Outperform rating; our target price is driven by a 6.3x 2012E EV/EBITDA multiple. If the company is able to capitalize on its first-mover advantage and quickly acquire a meaningful market share while also diversifying into additional complementary lines of business, we believe the company could be worth north of \$20/share within two to three years.

[...]

Large Market to Service

We believe the North American market potential for PSN's tanks as storage vessels for frac jobs is currently over 3,000 and part of the high-growth frac stimulation segment of oilfield services. These estimates, shown in Exhibit 2, put PSN's year-end North American market share at approximately 4%. This leaves significant opportunity for the company to continue to grow, and with a track record of 0% of the market to 4% in 18 months, further expansion seems likely. Furthermore, the size of the total market will likely continue to grow. Horizontal drilling and hydraulic fracturing services have been two extremely high growth sectors over the past two years and continued expansion would mean an even greater demand for PSN's fluid systems. We suspect PSN has ample manufacturing capacity to satisfy ramping this demand: a fluid handling system's construction time is currently seven days and up to nine tanks can be constructed per week.

First-Mover Advantage

*PSN is the first to market with this modular tank design system; as a result, **E&Ps have been clamouring to lock-up PSN with service contracts.** PSN has \$90 million in revenue contracted through September 2012 and 100% repeat business from all prior clients. Additionally, no single client accounts for more than 10% of the company's business. **These factors provide both revenue clarity for the vast majority of the company's 2012 dividend and low customer risk should a client fail to pursue repeat business.***

[...]

Please note, our 2012 EBITDA estimate of \$176.8 million is well above management's guidance of \$130 million. We believe management is being overly conservative regarding the near-term demand for their product and build-out timeline. Initiating Coverage with an Outperform rating and \$15.00

target We are initiating coverage on PSN with an Outperform rating and \$15.00 target, which is driven by 6.3x EV/EBITDA on our \$176 million 2012 EBITDA estimate. We view PSN's system as one of the more attractive innovations in the service space in recent memory, targeting one of the most attractive sub-sectors; specifically, reducing producer's costs on high-volume frac jobs. Although competition is likely to emerge, PSN's first mover advantage coupled with the balance of regulations and patents, suggests to us that PSN has likely between six and 18 months of outsized returns prior to competitors eroding the market to the point where pricing is materially impacted. We watch for PSN to diversify service offerings beyond its current tank systems into complementary fluid handling business lines in order to broaden the product offering and hence, barriers to emerging competition. Due to only two days of trading history, we rely on proxy measures when determining an appropriate valuation multiple. Our 6.3x multiple is a premium to Total Energy Services Inc.'s (TOT-T) average EV to forward consensus EBITDA multiple of 5.1x since early 2009 (pre-2009 average multiple range of 6.4x-6.8x likely not relevant in the near term due to overall macroeconomic instability). We believe this premium is justified by (1) an accompanying dividend yield and (2) an extremely high growth profile. Ultimately, should PSN be able to capture market share and vertically integrate into higher value-add businesses, we suspect a value of ~\$20/share could be realized in two to three years. Overall, we believe PSN's novel tank product will flourish as producers continue to scramble for methods to reduce overall drilling costs, and meaningful competition is unlikely to materially erode margins in the near term. We rate Poseidon an Outperform.

[Emphasis added.]

100. Approximately nine months later, even after Poseidon's accounts receivable had grown rapidly, Colman continued to aggressively promote Poseidon's stock to investors. In an August 9, 2012 research report, Colman stated:

Despite market commentary surrounding new competition, we continue to see little (or no) evidence of cracks in PSN's business model, which has been reinforced with our independent third-party research. Our view of PSN possessing above-average growth owing to very low market penetration coupled with further regulatory tailwinds suggests continued EBITDA momentum in our forecast period. Outperform.

[...]

Where Could We Be Wrong? PSN's Accounts Receivable Remains Stubbornly High.

PSN's accounts receivable balance continues to increase on an absolute basis as well as in days; while this is moderately concerning, it is not unheard of for services with large U.S. growth. Furthermore, we expect days receivables should begin to fall in Q4. PSN's days in accounts receivable increased to 197.3 days from 145.3 days in Q1 and now stands at \$118.6 mln. While this is high, we are not overly concerned. Firstly, PSN has clear capacity in its \$100 mln two-year revolving credit facility (currently drawn to \$35 mln) to finance working capital requirements. Secondly, AR tends to be high for companies in high growth phases. Thirdly, U.S. clients have a tendency to gravitate towards longer receivables cycles – upwards of 120 days. Out of our U.S.-weighted services peers, we see an average days receivable of 92 (versus pure-play Canadian operations average of 47 days). Furthermore, this value has historically reached as high as 168 days for some of these firms (our Canadian operators peak at 109 days). While PSN's 197 days is the largest value, it is not an outlier. Coupled with PSN's unprecedented growth rate, we take some comfort. Management has indicated many steps have been taken to streamline ticketing and field billing, which should partially come into effect in Q3, and more fully impact Q4 receivables.

[Emphasis added.]

101. On November 15, 2012, after the first signs of Poseidon's collapse had emerged, NBF analyst Colman issued a report, which stated:

HIGHLIGHTS

EBITDA of \$26.6 mln well below consensus of \$57.3 mln and NBF at \$60.7 mln. Estimated utilization of 50% (69% modeled) and estimated day rates of \$1,900 (\$2,600 modeled) conspired to drive revenue 45% below and EBITDA 56% below our forecasts.

Additional negative disclosures accompany results... 2012 guidance has been lowered by 30% as the tank fleet growth is put on hold. Utilization is expected to drift lower in Q4 with a muted outlook for early 2013. Accounts receivables increased on an absolute basis in addition to being written-down by \$9.5 mln.

...but glimmers of hope do persist. Three new products are in the field and are expected to offset some of the utilization declines in Q4. Capital requirements remain low, leading to a great deal of flexibility for the company's cash flows. The potential market is still vast.

Estimates going lower as tank growth stops. Currently there are 440 tanks in the field, and our current forecasts model this remaining flat in 2013. We drop pricing in the near-term and leave it unchanged in H2 2013 as adoption of new products may offset lowered tank pricing.

Target to \$10.00 on 7x our new 2013 EBITDA. Our target pulls back on an effectively flat tank growth profile assumption, and a multiple based on a modest premium to fracers current trading multiple owing to PSN's substantial dividend. We do not believe the model is broken, only reset, and see value in the high single digits for investors.

EBITDA of \$26.6 mln was well below both consensus of \$57.3 mln and NBF at \$60.7 mln.

Quarterly revenue was 45% below our estimate and down 25% sequentially as decreased E&P activity in

some of PSN's core regions led to utilization decreases and pricing reductions. Estimated utilization of 50% likely came in below our 69% projection and the second quarter's 68% (recall all utilization values are NBF estimates; PSN does not disclose operating statistics). The reasons cited in reduced activity were a collapse in completions activity in the company's key regions (such as the Bakken and the Rockies) as September approached. This, in turn, led to a glut in equipment for fluid storage – both the newer large-scale storage vessels, and incumbent small tanks and/or lined pits. PSN's response was to cut pricing by 15% to 30% in areas where market share was deemed important. Canada, being the more competitive of the two countries, saw pricing decreases closer to the 30% mark. It should be noted that the results included \$4.2 mln zero-margin rentals revenue that was recognized for the period. These rentals include things such as trucking and tank-assembly labour for projects in which PSN included these functions in their overall contract bid to the E&P. Stripping this number out to make an accurate comparison, revenue was \$36.9 mln, or 33% lower than the previous quarter.

Additional negative disclosures accompany results...

Besides the miss on the quarter, there were other updates provided by the company that should further temper investors' near-term visibility in PSN's earnings profile and stability. Management lowered 2012 guidance by 30% to the range of \$140 mln to \$150 mln from \$210 mln on the back of a 42% cut of the year's capital budget to \$35 mln. Instead of growing the tank fleet, management will spend the coming months focusing on brining utilization back up above the ~50% level. The remaining \$5.8 mln in capex planned to be spent in 2012 will all be deployed towards developing the new announced products. A significant contributing factor to the negative quarter was the delay of a significant number of "contracts" by E&Ps. Approximately \$15 mln in revenue associated with work that was previously contracted to be completed in the third quarter was either cancelled or delayed by producers who exhausted

their own capital budgets for the year. On the balance sheet, accounts receivable grew by \$6.9 mln and stands at 279 days' sales. This is despite a \$9.5 mln write-down the company took on receivables it no longer believes it will be able to collect.

...but glimmers of hope do persist.

The quarter was not completely devoid of positive news as PSN did disclose the nature of its new product offerings. Three new products were announced publically in conjunction with the quarterly results: a tank heating system, a remote tank monitoring system and a piping water distribution service. The nature of the heating system is that it warms the fluid while it is sitting in the tank, as opposed to current solutions that must be pumped out of the tank and into an external heater. While the economics of the heating system can vary widely depending on temperature, fluid volumes, etcetera, management suggested that current super heaters can expend upwards of 4.5x more energy than PSN's solution. The remote tank monitoring system allows engineers to monitor tank fluid levels on a remote computer or smartphone. These two products each contributed approximately \$0.5 mln in revenue in the third quarter. Management expects all three products to contribute \$2 mln to \$3 mln in the fourth quarter with further expansion to depend on customer acceptance. Furthermore, PSN's ability to quickly cut its capital program in periods of low demand highlight the flexibility and high cash flow model that is employed. This should serve the company well as it navigates its way through a market that we still believe to be vast.

While the size of the market remains large when compared to the size of PSN's fleet, we will be monitoring the company's progress closely for any signs of further fundamental weakness. In terms of leading indicators, we believe the following are of key importance. Drilling activity in the U.S., specifically in the Bakken and Rockies appear to have a disproportionate impact on PSN's operations. The activity levels of miscellaneous rentals providers are also likely a telling indicator of PSN's more-specific

tank rentals demand – we saw weakness in both TOT-T and SDY-T’s rental operations in Q3, ahead of PSN’s results. Finally, completions activity, which is best illustrated by the demand for frac spreads, is also a good predictor of PSN’s utilization, owing to the prime use of PSN’s tanks, that being frac fluid storage.

Estimates going lower as we put a halt to our tank growth forecasts.

We have eliminated forecasted tank growth for PSN, keeping the fleet flat at the current 440 tanks; this drives the majority of our estimate revisions. We have also decreased our near-term pricing assumptions to reflect the declines that PSN has realized in the past few weeks. While we believe the new product lines can have a beneficial impact on the company’s bottom line over the medium-term, we understand that there will be a lag before they gain widespread customer acceptance; therefore, we don’t anticipate pricing recovering at all until late in 2013. Furthermore, we have trimmed our utilization assumptions because of muted commentary surrounding PSN’s key resource plays over the near-term – we think Q4 results will be flat to Q3, with the declining utilization offset by new product revenue. The result, shown in Exhibit 2, is a 51% decrease to our 2013 EBITDA estimates.

Where to step in; we think yield support kicks in.

We think that a share price in the single-digits represents an interesting opportunity; and are resetting our 12- month target to \$10.00 (from \$19.00) based on a 7x EV/EBITDA multiple on our lowered 2013 forecasts. Our 7x multiple target multiple is reached by applying a slight premium to the current trading multiple of 5.9x forward 12 months EBITDA, owing to PSN’s substantial dividend which we believe is sustainable under current circumstances. This multiple is also above our prior target multiple of 5.8x, owing to (1) dialling our estimates back to a ‘base case’ with no tank growth or contribution from additional product lines and (2) below-peak pricing and utilization expectations (peak

expectations being typically accompanied by peak, aka lower, multiples). From a trading standpoint, a 5x multiple implies \$8.00/share (and a 13% yield) and a low-growth, mature rentals multiple of 4x implies closer to \$6.50/share (and a 17% yield). While we suspect temporary share price pull back to these levels is possible, we would view as a buying opportunity. Rental businesses (of which PSN is a member) do trade at typically depressed multiples versus other energy services; this is at least partially owing to a more mature business growth profile, where the potential demand (our flat tank fleet forecast notwithstanding) for large scale fluid storage is still in a higher growth, less saturated subsector. Furthermore, PSN's low capital requirements versus the higher capex intensive frackers supports materially higher free cash flow, which PSN is returning to shareholders, further supporting a multiple premium (once the initial sell-off from this quarter is complete). Overall, while our forecasts have changed materially owing to Q3 results, we do not believe the PSN model is broke, rather – reset. Our current best estimate for shareholder value is at sub-\$10 levels, with a high single digit/low double digit dividend yield. Our Sector Perform rating (was Outperform) is predicated on a likely volatile share price in the morning. We would be an Underperform at share prices at or above \$12/share, and likely an Outperform if the value pulls back to our suspected \$8.00 level.

What Is the Biggest Risk to Our Call?

While our confidence in the story has been pulled-back in many ways, there are several situations in which even further downside becomes evident, and our target price (and "where do we step in" analysis) would be lowered. A large part of our assumption of stabilizing pricing by the latter part of 2013 is driven by the acceptance of these new product lines by customers. If these products fail to gain traction, a utilization pullback could continue, especially as PSN's product differentiation versus its growing list of competitors would be negligible. Furthermore, the combination of ageing accounts receivable with

declining present-day prices suggests that collection efforts could become more challenging; approaching a customer for cash related to prices that are 30% higher than current pricing, especially when this customer's business is highly valued during a period of depressed utilization, high fixed costs, and competitors using 400 bbl tanks as a loss-leader, could put additional accounts receivable at risk of a write off.

[Bold in original.]

MISREPRESENTATIONS IN THE IMPUGNED DOCUMENTS

102. The misrepresentations particularized hereunder are comprised of: (i) untrue statements of material facts; (ii) omissions to state material facts that were required to be stated; or (iii) omissions to state material facts that were necessary to be stated in order for the relevant Impugned Document to not be misleading. These misrepresentations were material and rendered the Impugned Documents both materially false and misleading.

Misrepresentations in the Circular

103. The Circular was issued in connection with the Arrangement, and was filed on SEDAR on October 11, 2011.

The Circular misrepresented that Old Open Range recorded revenues in compliance with accounting standards only when the revenue recognition criteria had been met

104. The Company's revenue recognition policy was stated and disclosed in the Audited Annual Financial Statements for the year ended December 31, 2010, filed on SEDAR on March 22, 2011, 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 tank rentals and related services are provided and only when collectability is reasonably assured.

A substantially identical revenue recognition policy was later disclosed in the company's Audited Annual Financial Statements for the year ended December 31, 2011.

105. Further, the Circular included the statement that the financial statements presented therein were prepared in accordance with IFRS, which required that revenues only be recorded when revenue recognition criteria had been met.
106. Accordingly, the Circular included the statement, express or implied, that revenues reported therein had been recorded in accordance with applicable accounting standards, after the revenue recognition requirements had been met. This statement was false and misleading.
107. At all material times since 2011, due to defective revenue cycle business processes as well as fundamental problems with the take-or-pay contracts, Poseidon recorded revenues when one or more of the revenue recognition criteria had not been met.

The Circular reported inflated revenues from the Tank Rental Business

108. The Circular reported revenues from the provision of tank rental services that were false and had been recorded in violation of the applicable accounting standards. As a result, the revenue numbers relating to those services were overstated, and were false and materially misleading.

The Circular reported false financial statement accounts that derived from revenue

109. The Circular reported net income and income per diluted share that derived from false and overstated revenues. Those financial statement accounts were false and misleading.

The Circular reported inflated accounts receivable relating to the Tank Rental Business

110. The Circular reported accounts receivable relating to the Tank Rental Business, which were overstated due to the recognition of false revenues, and were false and misleading.
111. Additionally, accounts receivable were further overstated, due to the company's failure to evaluate its accounts receivable on an ongoing basis, and to record provisions for doubtful or uncollectible amounts.

The Circular reported inflated assets

112. The Circular reported Old Open Range's and Poseidon's pro forma assets that were overstated due to the overstatement of accounts receivable.

The Circular falsely stated that it presented fairly the company's financial position, financial performance and cash flows

113. The financial statements presented in the Circular purported to have been prepared in accordance with IFRS, which required that the financial statements present fairly financial position, financial performance and cash flows of the company.
114. Accordingly, the Circular included the statement that it fairly presented the company's financial position, financial performance and cash flows, which was false and/or materially misleading due to the various misrepresentations of financial accounts particularized herein.

The Circular misrepresented the design and effectiveness of the company's internal controls

115. The Circular included statements regarding management's evaluation of the company's internal controls, including that:
- (a) as at December 10, 2010, weaknesses had been identified due to the limited number of finance and accounting personnel dealing with complex and non-routine accounting transactions; but, the Circular asserted that "Notwithstanding the weaknesses identified with regards to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting ha[d] been designed and are operating effectively at December 31, 2010"; and
 - (b) as at June 30, 2011, weaknesses had been identified due to the limited number of finance and accounting personnel dealing with complex and non-routine accounting transactions; but, the Circular asserted that "Notwithstanding the weaknesses identified with regard to complex and non-routine accounting matters, the Corporation concluded that all other of its internal controls over financial reporting have been designed properly at June 30, 2011."
116. The Circular also included a management report signed by Dawson and Michaluk, dated September 30, 2011, which stated:
- Management has established and maintains a system of internal controls which are designed to ensure that financial information is relevant, reliable and accurate and to provide assurance that assets are safeguarded from loss or unauthorized use and transactions are executed in accordance with management's authorization.
117. All the above representations were false and/or materially misleading.

118. At all material times since its inception, Poseidon suffered from defective accounting systems, flawed revenue cycle processes and completely ineffective internal controls. These fundamental problems resulted in material revenue recognition and accounts receivable issues. Revenue recognition and accounts receivable accounting are not non-routine and complex accounting matters.
119. Poseidon's internal controls were never designed properly and/or were never operating effectively during material times from its inception, a fact that was not disclosed to the shareholders in a timely fashion. It was only in November 2012 that Poseidon disclosed that it suffered from internal controls relating to revenue cycle processes, that its internal controls "were not completely effective," and that it was purportedly introducing further control processes to address the accounts receivable situation.

The Circular misrepresented that Poseidon had secured \$87 million in revenues through the minimum commitment arrangements

120. The Circular stated that Poseidon had secured \$87 million in revenues through the minimum commitment, take-or-pay contracts, which had not been properly executed and/or were legally unenforceable. As a result, this statement was false and/or materially misleading.

The Circular misrepresented Poseidon's 2012 EBITDA guidance

121. The Circular reported Poseidon's 2012 EBITDA guidance of \$130 million. This guidance was based on the purported minimum commitment, take-or-pay contracts that had not been properly executed and/or were legally unenforceable. Accordingly, this forecast was false and/or materially misleading, and there was no reasonable basis for making this statement.

The Circular misrepresented the financing arrangement between Poseidon and New Open Range

122. The Arrangement involved an allocation of Old Open Range's debt between Poseidon and New Open Range, and resulted in the assumption by Poseidon of the greater portion of Old Open Range's debt, which was attributed to the E&P Business that was acquired by New Open Range.
123. The Circular failed to disclose that Poseidon would assume the greater portion of the Old Open Range's debt, and that it would in fact assume debts attributed to the E&P Business assets that were being sold to New Open Range. Furthermore, given this omission, the statement in the Circular that "Poseidon will begin operations with approximately \$25 million in net debt on bank lines" was also false and/or materially misleading.

124. Additionally, the Circular falsely represented that "Bank indebtedness that has been attributed to New Open Range for carve-out purposes will be paid to Poseidon from proceeds on issuance of debt by New Open Range." In reality, Poseidon assumed the greater portion of Old Open Range's debt, and New Open Range never paid Poseidon anything.

The Circular falsely stated that the Arrangement would create in Poseidon a sustainable business

125. The Circular stated that "The Arrangement creates a stand-alone, sustainable, dividend-paying energy service and supply company." This representation was false and/or materially misleading.
126. The Arrangement was predicated on Poseidon's purported exponential growth principally on the basis of its purported take-or-pay contracts. Besides the spin-off of the E&P Business assets, the Arrangement had two main features: (a) the allocation of Old Open Range's debt, as a result of which Poseidon assumed substantial debt; and (b) Poseidon's commitment to pay, as the Circular stated, "an attractive dividend."
127. Given its phantom revenues and substantial debt, Poseidon faced material threats to its day-to-day operations from the outset, and was never able to rely on operations income to meet its financial obligations. Poseidon's downfall began promptly following the commencement of operations. In December 2012, Poseidon deferred previously declared dividends and suspended future dividends. Eventually, Poseidon filed for insolvency while owing approximately \$95 million to secured and unsecured creditors.

The Circular misrepresented that Poseidon's management met high standards of business and ethics

128. The Circular stated:

A diverse and experienced management team has been assembled to lead Poseidon and will continue to assess Poseidon's longer-term strategy and organizational needs. All executive officers of Poseidon will meet the high standards to be set by the Poseidon Board which are expected to include, but not be limited to, strong business ethics, adherence to proper corporate governance principles and knowledge of public company compliance requirements.

129. These statements were false and/or materially misleading, and had no reasonable basis when made. Poseidon's board never established such

“high standards,” and management did not meet any such high standards of “strong business ethics, adherence to proper corporate governance principles and knowledge of public company compliance requirements.”

130. Poseidon’s management proved, at a minimum, grossly negligent and incompetent in managing the affairs of Poseidon—a \$1 billion market cap public company. Similarly, the directors, who were inherently responsible for managing the affairs of the company, disregarded their fiduciary duties and were grossly negligent in failing to fulfill their supervisory and other responsibilities.

The Circular included the Fairness Opinion, which was false and misleading

131. As particularized herein, the Fairness Opinion was false and/or materially misleading. The Fairness Opinion was both included in its entirety in the Circular, and also was summarized or quoted at various places in the Circular.

The Circular did not constitute a full, true and plain disclosure to all affected parties, including the shareholders, of all facts material to a decision on voting and approval in relation to the Arrangement

132. The Circular included a representation that it constituted a full, true and plain disclosure of all material facts to the shareholders relating to their decision to vote on the Arrangement. This representation was false due to the false and/or materially misleading statements contained therein, as well as omissions to state material facts therein.

Misrepresentations in the Prospectus

133. The Prospectus was receipted by securities regulators and filed on SEDAR on January 26, 2012.

The Prospectus included all misrepresentations included in the Circular

134. The Prospectus incorporated by reference the Circular. All misrepresentations particularized herein that were included in the Circular were also included in the Prospectus.

The Prospectus included misrepresentations regarding Poseidon’s financial and business affairs as of June 30, 2011

135. The Prospectus incorporated by reference Poseidon’s interim financial statements and MD&A for the period ended June 30, 2011. Those documents included misrepresentations relating to revenue recognition, financial statement accounts, accounts receivable, assets, the design and effectiveness of Poseidon’s internal controls, the financial statements’ compliance with IFRS and the financial statements’ and MD&A’s fair

presentation of Poseidon's financial position, financial performance and cash flows.

136. Furthermore, the Circular was dated September 30, 2011, and was in fact filed on SEDAR on October 11, 2013. As such, it ought to have included full and plain disclosure of all material facts relating to Old Open Range's operations in respect of the period ended September 30, 2011. It did not. The omission of material facts relating to the period ended September 30, 2011 further rendered the Circular misleading.

The Prospectus misrepresented that Poseidon had secured \$150 million in revenues through the minimum commitment contracts

137. The Prospectus incorporated by reference Poseidon's material change report dated January 17, 2012, which claimed that Poseidon had secured approximately \$150 million in revenues through the minimum commitment contracts that had not been properly executed and/or were legally unenforceable. This representation was false and/or materially misleading, due to the fundamental problems with those contracts.

The Prospectus misrepresented Poseidon's updated EBITDA guidance

138. The Prospectus provided Poseidon's 2012 EBITDA guidance of \$170 million. This guidance was based on the purported minimum commitment, take-or-pay contracts that had not been properly executed and/or were legally unenforceable. Accordingly, this forecast was false and/or materially misleading, and there was no reasonable basis for making it.

The Prospectus misrepresented the purpose and use of proceeds of the Offering

139. The manner in which the proceeds of the Offering would be used constituted a material fact that would affect the investors' decision to purchase the securities offered by way of the Prospectus. Poseidon represented that the Offering was being undertaken primarily to fund its growth through the construction of additional tanks and development of new products, consistent with the company's updated business plans announced shortly prior to the Offering.

140. The Prospectus included these statements:

From the estimated net proceeds of the Offering: (i) approximately \$23 million will be used initially to repay outstanding indebtedness under the Credit Facilities, thereby freeing up borrowing capacity which may be redrawn as needed, (ii) approximately \$43 million will be used to fund the construction of

additional Tank Systems, and (iii) approximately \$5 million will be used for new product development, all in accordance with the Corporation's planned \$60 million capital expenditure program for 2012. If the Over-allotment Option is exercised in full, the additional net proceeds of approximately \$7 million will be used to fund the construction of additional Tank Systems. The Corporation intends to use a combination of operating cash flow and the Credit Facilities, in the aggregate amount of approximately \$12 million (or approximately \$5 million if the Over-allotment Option is exercised in full), in conjunction with the net proceeds of the Offering remaining after the repayment of outstanding indebtedness, to fund its \$60 million capital expenditure program for 2012.

[...]

The use of the net proceeds of the Offering by the Corporation is consistent with the Corporation's stated business objectives of expanding the Tank System fleet to 400 units by June 30, 2012. Other than the

successful completion of the Offering, there is no particular significant event or milestone that must occur for the Corporation's business objectives to be accomplished.

141. These statements were false and/or materially misleading.
142. The Prospectus did not disclose that the primary purpose of the Offering was to repay the debt Poseidon owed to New Open Range and bank lenders, rather than funding the expansion of its business and operations.
143. Additionally, the Prospectus failed to disclose that the proceeds of the Offering would be used to repay Poseidon's debt to New Open Range, which was a material fact that ought to have been disclosed.

The Prospectus failed to disclose Poseidon's financial difficulties and the threats they had posed to Poseidon's day-to-day operations

144. Unbeknownst to shareholders, the debt and other financial commitments that Poseidon had assumed as a result of the Arrangement, coupled with its minimal cash flow, created financial problems that threatened the company's day-to-day operations and jeopardized its financial position. The Prospectus failed to disclose these material facts.

The Prospectus misrepresented that it constituted full, true and plain disclosure of all material facts

145. The Prospectus included this statement:

This short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada, other than Québec.

146. Due to the false statements and omissions particularized herein, this statement was false and/or materially misleading.

147. Additionally, NBF issued a certificate in the Prospectus, stating that the Prospectus together with the documents incorporated therein by reference constituted full, true and plain disclosure of all material facts relating to the securities that were offered by way of the Prospectus. This statement was false and misleading.

THE STATUTORY RIGHT OF ACTION FOR SECONDARY MARKET MISREPRESENTATION AND THE DEFENDANT'S FAULT

Statutory Liability for Misrepresentations in the Secondary Market Pursuant to Title VIII, Chapter II, Division II of the QSA

148. The Petitioner pleads the claim found in Title VIII, Chapter II, Division II of the QSA, and, if required, the equivalent sections of the Securities Legislation other than the QSA, against the Defendant in its capacity as an expert and an influential person of Old Open Range and Poseidon for misrepresentations in the Impugned Documents.

149. At all relevant times, Old Open Range and Poseidon were issuers and responsible issuers within the meaning of the Securities Legislation.

150. Each of the Impugned Documents is a "document" within the meaning of the Securities Legislation.

151. Each of the Impugned Documents is a "core document," within the meaning of the Securities Legislation, in respect of NBF.

152. As particularized herein, the Impugned Documents included misrepresentations within the meaning of the Securities Legislation.

153. Among other misrepresentations, each of the Impugned Documents included NBF's false Representation. NBF made the Representation when

it ought to have known that the Representation was false and/or materially misleading.

154. Additionally, the Prospectus included NBF's statement that the Prospectus, together with the documents incorporated by reference therein constituted full, true and plain disclosure of all material facts relating to the securities that were offered by way of the Prospectus. This statement was false. NBF made this statement when it ought to have known that it was false and/or materially misleading.
155. In providing the Fairness Opinion, NBF acted as an "expert" of Old Open Range and Poseidon within the meaning of the Securities Legislation. The Fairness Opinion included misrepresentations particularized herein, and was included by NBF's written consent in each of the Impugned Documents.
156. Additionally, NBF was a "promoter" and an "influential person" of Old Open Range and Poseidon within the meaning of the Securities Legislation. NBF was extensively involved with promoting Old Open Range and Poseidon at all material times, and took the initiative, acting in conjunction with others, directly and/or indirectly, in founding, organizing and/or substantially reorganizing the business of Old Open Range and Poseidon.
157. NBF was directly involved in the Arrangement in its capacity as the exclusive financial advisor to Old Open Range. It also issued a Fairness Opinion, which was included in and constituted part of the Circular. By its actions in connection with the Arrangement, NBF knowingly influenced Old Open Range or persons acting on behalf of Old Open Range to release the Circular, and/or knowingly influenced a director or officer of Old Open Range to authorize, permit or acquiesce in the release of the Circular.
158. NBF was directly involved in the Offering as the lead underwriter, and signed a certificate included in the Prospectus stating that the Prospectus and the documents incorporated therein by reference constituted full, true and plain disclosure of all material facts. By its actions in connection with the Offering, NBF knowingly influenced Poseidon or persons acting on behalf of Poseidon to release the Prospectus, and/or knowingly influenced a director or officer of Poseidon to authorize, permit or acquiesce in the release of the Prospectus.
159. The Class Members acquired Poseidon's shares after the misrepresentations included in the Impugned Documents were made, and before those misrepresentations were publicly corrected.

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

160. On behalf of those Class Members who acquired Poseidon's shares pursuant to the Arrangement, the Petitioner pleads a fault as against NBF arising out of its provision of services in connection with the Arrangement, in violation of the general private law duty of diligence owed to them in the circumstances in accordance with article 1457 of the *Civil Code of Québec*.
161. NBF owed a duty of care to those Class Members who acquired Poseidon's shares pursuant to the Arrangement.
162. NBF acted as an expert and purported to provide professional services in connection with the Arrangement. It purported to have the relevant expertise, was retained for its purported expertise, and was uniquely positioned to assess the financial aspects of the Arrangement and to advise on the fairness of that transaction to the shareholders.
163. In providing its expert services, NBF was required to perform the due diligence required and expected from a financial advisor in similar circumstances, and to provide a fairness opinion that was based on reliable assumptions and valuation models. NBF failed to meet those standards.
164. NBF breached its duty of care by failing to conduct the due diligence required from it in the circumstance so as to not issue a materially deficient Fairness Opinion. As a result of NBF's breach of its duty of care to the Class Members, the Arrangement proceeded on the basis of the materially deficient Fairness Opinion, and the Class Members who acquired Poseidon's shares pursuant to the Arrangement suffered losses as a result.
165. It was reasonably foreseeable that the Class Members would suffer loss in the event that NBF issued a materially deficient Fairness Opinion.
166. Had NBF complied with the duty of care required of it in the circumstances, it would not have issued the impugned Fairness Opinion based on erroneous assumptions and models, and the Arrangement would not have happened and the Class Members would not have suffered losses.
167. Furthermore, on behalf of those Class Members who acquired Poseidon's shares pursuant to the Arrangement, the Petitioner pleads a fault as against NBF arising out of NBF's misrepresentations in the Fairness Opinion, in violation of the general private law duty of diligence owed to

them in the circumstances in accordance with article 1457 of the *Civil Code of Québec*.

168. NBF owed a duty of care to those Class Members who acquired Poseidon's shares pursuant to the Arrangement.
169. For the purpose of this right of action, the sole misrepresentation that is pleaded is the Representation: the statement made expressly or implicitly by NBF in the Fairness Opinion that NBF had fulfilled its duties as an independent advisor to Old Open Range and concluded that the Arrangement was fair to the Old Open Range shareholders. The Representation was false.
170. The Representation was included in the Circular and disseminated on NBF's consent to the shareholders, with the result that the Arrangement was approved. NBF knew and intended that the Representation would be disseminated to the Old Open Range shareholders by way of its inclusion in the Circular, and that the Class Members would rely on the Representation to their detriment in approving the Arrangement.
171. NBF breached its duty of care by making the Representation, and the Class Members who acquired Poseidon's shares pursuant to the Arrangement suffered losses as a result.

Liability of the Defendant

172. 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

173. 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;
 - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.
174. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:

- a) Did the Impugned Documents, or any of them, contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation?
- b) Was the Defendant an influential person of Old Open Range and/or Poseidon within the meaning of the *QSA* and, if necessary, the other Securities Legislation?
- c) Did the Defendant knowingly influence Old Open Range and/or Poseidon, or any person or company acting on behalf of Old Open Range and/or Poseidon, to release the Circular or the Prospectus, or did the Defendant knowingly influence any of Old Open Range's and/or Poseidon's directors and officers to authorize, permit or acquiesce in the release of the Circular or the Prospectus?
- d) Was the Defendant an expert of Poseidon and/or Old Open Range within the meaning of the *QSA* and, if necessary, the other Securities Legislation?
- e) Did the Fairness Opinion contain misrepresentations within the meaning of the *QSA* and, if necessary, the other Securities Legislation?
- f) Did the Impugned Documents, or any of them, include, summarize or quote from the Fairness Opinion with the Defendant's consent?
- g) Did the Defendant violate the duties owed to the Petitioner and the Class Members under the provisions of Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- h) Did the Defendant therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec* towards the Petitioner and the Class Members, thereby engaging its liability?
- i) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- j) Is the Defendant liable for the damages sustained by the Petitioner and by each of the Class Members?
- k) Is the Defendant liable for the acts and/or omissions of its officers, directors, employees and/or partners?

175. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

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

177. 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 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.

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

- The Class Members reside everywhere;
- The Defendant's head office is located in Montréal;
- The Petitioner's lawyers have an office in the District of Montréal.

179. 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:

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

180. 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 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, wherever they may reside or be domiciled, who purchased or otherwise acquired Poseidon’s securities on or before February 14, 2013, other than 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:

- Did the Impugned Documents, or any of them, contain a misrepresentation within the meaning of Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the equivalent provisions of the other Securities Legislation?
- Was the Defendant an influential person of Old Open Range and/or Poseidon within the meaning of the *QSA* and, if necessary, the other Securities Legislation?

- c) Did the Defendant knowingly influence Old Open Range and/or Poseidon, or any person or company acting on behalf of Old Open Range and/or Poseidon, to release the Circular or the Prospectus, or did the Defendant knowingly influence any of Old Open Range's and/or Poseidon's directors and officers to authorize, permit or acquiesce in the release of the Circular or the Prospectus?
- d) Was the Defendant an expert of Poseidon within the meaning of the *QSA* and, if necessary, the other Securities Legislation?
- e) Did the Fairness Opinion contain misrepresentations within the meaning of the *QSA* and, if necessary, the other Securities Legislation?
- f) Did the Impugned Documents, or any of them, include, summarize or quote from the Fairness Opinion with the Defendant's consent?
- g) Did the Defendant violate the duties owed to the Petitioner and the Class Members under the provisions of Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- h) Did the Defendant therefore commit a fault in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec* towards the Petitioner and the Class Members, thereby engaging its liability?
- i) What damages were sustained by the Petitioner and the Class Members as a result of the Defendant's faults in regards respectively to Title VIII, Chapter II, Division II of the *QSA* and article 1457 of the *Civil Code of Québec*?
- j) Is the Defendant liable for the damages sustained by the Petitioner and by each of the Class Members?
- k) Is the Defendant liable for the acts and/or omissions of its officers, directors, employees and/or partners?

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 Quebec* 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 31, 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 October 24th, 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 31, 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: 500-06-000702-148**

**(Class Action)
SUPERIOR COURT**

Marian Lewis

Petitioner

V.

National Bank Financial Inc.

Defendant

LIST OF EXHIBITS

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

Montréal, July 31, 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: 500-06-000702-148

SUPERIOR COURT (Class Action)
DISTRICT OF MONTREAL

Marian Lewis

Petitioner

V.

National Bank Financial Inc.

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)

Mre. Sammy Elnemr
O/FILE: 67-150

BS2497

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