

Clerk's stamp:

COURT FILE NUMBER 1501-02652

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF PACER CONSTRUCTION HOLDINGS CORPORATION

DEFENDANTS PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION

DOCUMENT APPLICATION BY FTI CONSULTING CANADA INC., COURT-APPOINTED RECEIVER AND MANAGER FOR ACTIVITY AND FEE APPROVAL, DISCHARGE, AND DISTRIBUTION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attn: John Regush Ph. (403) 268-7086 File No.: 548476-5



NOTICE TO RESPONDENTS: Service List attached as Schedule "A"

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	January 25, 2024
Time	10:00 a.m.
Where	Calgary Courts Centre VIA WEB-EX at the coordinates attached as Schedule "B"
Before Whom	The Honourable Justice Jeffrey

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

Remedy claimed or sought:

1. FTI Consulting Canada Inc. (“**FTI**”) Court-appointed receiver and manager (“**Receiver**”) of the assets, undertakings, and properties of Pacer Promec Energy Corporation (“**PPEC**”) and Pacer Promec Energy Construction Corporation (“**PPEC Construction**”, collectively with PPEC the “**Debtors**”) seeks an Order, substantially in the form attached as Schedule “C” hereto:
 - (a) abridging, if necessary, the time for service of this application and deeming service good and sufficient;
 - (b) approving the activities of the Receiver, and payment of the accounts of the Receiver and its legal counsel, Dentons Canada LLP, without the necessity of a formal passing of accounts or assessment;
 - (c) approving distribution of the Initial Payment (as defined below);
 - (d) approving the Holdback (as defined below) and distribution of the Residual (as defined below);
 - (e) authorization for the Receiver to destroy the Debtors’ remaining corporate books and records if unclaimed by any person with a legal right to the same within 30 days of the Receiver posting a copy of this Order to its website;
 - (f) ordering the discharge of the Receiver with respect to the estates of the Debtors; and
 - (g) granting such further and other relief as this Honourable Court may deem appropriate.

Grounds for making this application:

(a) Background

2. PPEC was a private corporation incorporated in April 2013 under the laws of the Province of Alberta with offices in Calgary, Alberta. PPEC’s operations involved the provision of a wide range of civil, mechanical and electrical contracting services to customers in the oil sands developments in northern Alberta.
3. PPEC Construction was a private entity incorporated under the laws of Alberta. PPEC Construction had no operations or assets but employed some of the trade employees working on PPEC’s construction contracts.
4. PPEC had two shareholders each with a 50% ownership interest, Pacer Construction Holdings Corporation (“**Pacer**”) and Construction Promec Inc. (“**Promec**”).
5. PPEC and the National Bank of Canada (as lender, “**National Bank**”) entered into a credit agreement (the “**Credit Agreement**”), pursuant to which National Bank agreed to make certain credit facilities available to PPEC in the aggregate amount of \$30,850,000 (the “**Credit Facilities**”).
6. As a result of ongoing losses on its various construction contracts, PPEC defaulted under the Credit Agreement in about November 2014. Prior to the Receiver being appointed, due to a lack of available funds under the Credit Facilities as a result of the existing defaults, PPEC’s

operational cash needs had been primarily funded by secured advances from Pacer totaling \$21.9 million.

7. Ultimately, National Bank's position under the Credit Agreement and related security was acquired by Pacer.
8. The Receiver was appointed over the assets, properties, and undertaking of the Debtors, on application of Pacer, by Order of this Honourable Court pronounced March 10, 2015 (the "**Date of Appointment**").

(b) PPEC's Business at the Date of Appointment

9. At the time of the Receivership Proceedings PPEC's main contracts included:
 - (a) construction of certain aspects of thyssenkrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc. ("**Krupp**")'s Kears Lake Expansion project and the Mildred Lake Mine Replacement project (collectively, the "**Krupp Contracts**"); and
 - (b) four contracts relating to construction on the Horizon Oilsands site for Canadian Natural Resources Limited ("**CNRL**" and collectively, the "**CNRL Contracts**").
10. At the commencement of these Receivership Proceedings, the CNRL Contracts related to four projects at various stages of completion.

(c) Receiver's Activities

11. Immediately after being appointed the Receiver began to evaluate various options to maximize recoveries to the various stakeholder groups.
12. The Receiver's activities are set out in detail in the Reports filed in these proceedings. Several of the key areas of activity are highlighted below.

i. CNRL Contracts

13. Pacer and Promec, significant stakeholders in these proceedings, had provided certain guarantees with respect to PPEC's obligations under the CNRL Contracts. Accordingly, the decision was made for the Receiver to complete these contracts, which completion was funded by Receiver's borrowings.
14. Throughout 2016 and 2017 the Receiver met with and communicated with CNRL with respect to the completion of the CNRL Contracts and outstanding payments to the Receiver for that work.
15. The Receiver initiated significant claims against CNRL in connection with work done by PPEC on the CNRL Contracts (the "**CNRL Claim**").
16. Subsequently, on October 20, 2017, and March 18, 2018, PPEC, through the Receiver, Pacer, and CNRL entered into settlement agreements with respect to the CNRL Claim (the "**CNRL Settlement Agreements**").
17. On December 19, 2017, and March 29, 2018, the Receiver received the proceeds payable under the CNRL Settlement Agreements in full and final satisfaction of its claims against CNRL.

ii. **Krupp Claims**

18. PPEC completed work on the Krupp Contracts prior to the Date of Appointment, however had not collected all of the outstanding accounts receivable (“AR”) due to various disputed invoice amounts and unapproved and/or disputed change orders (the “Krupp Claims”). PPEC and various subcontractors had filed liens with respect to the Krupp Contracts.
19. The Receiver was successful in resolving litigation concerning the Krupp Claims, and settlement was approved by Order of this Honourable Court pronounced November 3, 2016.

iii. **CRA**

20. Since the date of the Fourth Report the Receiver has been engaged in ongoing discussions with the Canada Revenue Agency (the “CRA”) with respect to a notice of objection filed on December 14, 2017 (the “Notice of Objection”).
21. The Notice of Objection related to a dispute over approximately \$0.7 million of input tax credits (“ITC”) claimed and \$0.4 million related to amended returns (the “Amended Returns”) filed by the Receiver in January 2017 and which were disallowed by the CRA after an audit.
22. Despite repeated attempts to follow up with the CRA, the Notice of Objection was not assigned to an objections officer until October 2019. The review of the Notice of Objection was ultimately delayed by the Covid-19 Pandemic.
23. In January 2021, the Receiver was advised that CRA was allowing approximately \$0.7 million of the ITCs claimed by the Receiver, however the CRA did not address the amounts in the Amended Returns.
24. On March 2, 2022, the CRA advised that it had denied the request to adjust the amounts in the amended returns because the limitation period had been exceeded. The Receiver then contacted the CRA to alert them to the fact that the Amended Returns had been filed along with the Notice of objection in December 2017 and it was due to the CRA delays that they had not been reviewed within the limitation period.
25. After additional correspondence, and significant efforts by the Receiver between March 2022 and August 2023 to provide satisfactory evidence to the CRA with respect to the Amended Returns, the CRA denied the adjustments requested for the GST/HST return for the period ending March 31, 2015
26. The Receiver, in consultation with the Secured Creditor, determined that it had exhausted all efforts to give affect to the Amened Returns and the Receiver paid the outstanding amount on the account on January 11, 2024.

iv. **Lien Claims, Claims Process Order, and Statutory Priority Claims**

27. Throughout the course of its appointment, the Receiver has also addressed a number of secured credit claims and lien claims, including through a formal claims process and where necessary Court proceedings. These claims have now all been resolved.

28. In the case of unsecured claims, the Receiver has not evaluated these claims as it is not expected there will be any proceeds for unsecured creditors.
29. The Receiver has also made payment of statutory priority claims identified throughout the course of its mandate.

(d) Approval of Activities and Fees

30. The Receiver is seeking approval of its activities as set out in the Fifth Report. The Receiver's activities as set out in the first to fourth reports have previously been approved by this Honourable Court.
31. It is the Receiver's respectful view that the Receiver has completed all duties in accordance with the Orders of this Honourable Court in these proceedings and applicable statutory duties and respectfully seeks this Honourable Court's approval of all of the Receiver's activities.
32. The Receiver is also seeking approval of its fees and the fees of its counsel, as set out in the Fifth Report and statements of receipts and disbursements attached thereto. The Receiver notes that approval of its fees and those of its counsel as reported in the Receiver's second Report were previously approved by this Honourable Court.
33. It is the Receiver's respectful view that its fees and the fees of its counsel are appropriate and reasonable, and should be approved by this Honourable Court.

(e) Proposed Distribution

34. The Fifth Report provides comprehensive statements of receipts and disbursements for the course of these proceedings. The Receiver has made a number of distributions on account of receiver's borrowing certificates, as authorized by prior orders of this Honourable Court, as well as paying certain priority claims.
35. As at the date of the Receiver's Fifth Report the Receiver held the amount of \$178,711.
36. The relative priority of various charges granted in these proceedings is established by the Order of the Honourable Justice D.B. Nixon granted in these proceedings on May 7, 2015 ("**Nixon Order**").
37. In accordance with the priorities established by paragraph 12(b) of the Nixon Order, the Receiver proposes to:
 - (a) pay the amount of \$133,711 ("**Initial Payment**") to Pacer on account of amounts secured by the General Facility Charge; and
 - (b) holdback the amount of \$45,000 (the "**Holdback**") to pay for the outstanding fees and disbursements of the Receiver and its counsel and those necessary to finalize these proceedings and fees associated with the destruction of documents of the Debtors.
38. The Receiver proposes to make payment of the holdback on account of fees and disbursements without the necessity of any further approval, taxation, or passing of accounts. After payment of these amounts, any amounts remaining from the Holdback (the "**Residual**") shall be paid to Pacer.

(f) Books and Records

39. In connection with its discharge, the Receiver seeks an order directing that the Receiver shall continue to hold any physical books and records of the Debtors for a period of 30 days from the date a copy of the Order sought herein is posted to the Receiver's website for these proceedings, for any entitled party to claim possession and take transfer, and thereafter shall be entitled to destroy any of the Debtors' books and records remaining in the Receiver's possession or control.

(g) Discharge

40. Upon making distribution of the Initial Payment and Residual (if any), and dealing with necessary administrative matters, the Receiver is not aware of any further steps that can be taken that would be in the interests of the stakeholders of the Debtors or accretive to their estates, and as such seeks its discharge on filing of a Receiver's Certificate stating that these matters have concluded.
41. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

42. The Fifth Report of the Receiver dated January 15, 2024.
43. Affidavit speaking to service.
44. The pleadings and proceedings in the within action.
45. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

46. *Alberta Rules of Court*, Alta Reg 124/2010, including but not limited to rules 1.2-1.5, 6.3, 6.9, 6.10, 6.47, and Part 11.
47. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

48. *Bankruptcy and Insolvency Act*, RSC 1985 c B-3.
49. *Bankruptcy and Insolvency General Rules*, CRC c 368.
50. *Builders' Lien Act*, RSA 2000 c B-7.
51. *Judicature Act*, RSA 2000 c J-2.
52. *Land Titles Act*, RSA 2000 c L-4.
53. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

54. None.

How the application is proposed to be heard or considered:

55. Via Web-Ex, before the Presiding Commercial List Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A" to the Application

PACER CONSTRUCTION HOLDINGS CORPORATION
v.
PACER PROMEC ENERGY CORPORATION AND
PACER PROMEC ENERGY CONSTRUCTION CORPORATION

ACTION NO. 1501-02652

File: 548476-5

SERVICE LIST

(updated: January 15, 2024)

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<p>EECOL Electric Corp. 63 Sunpark Drive S.E. Calgary, AB T2X 3V4</p> <p>Fax: 403-252-6441</p>	
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<p>McLeod Law LLP Centennial Place, West Tower 2110, 250 – 5th Street S.W. Calgary, AB T2P 0R4</p> <p>Attention: Jeff Moroz Email: jmoroz@mcleod-law.com</p>	<p>Panels and Pipes Incorporated</p>
<p>Midwest Constructors Ltd. 10457 – 184 Street Edmonton, AB T5S 1G1</p> <p>Email: mwc@midwestconstructors.com</p>	
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<p>ECCO Equipment Corp. 2992 Ellewood Drive S.W. Edmonton, AB T6X 0A9</p> <p>Attn: Lane Barker Canada, Regional Mngr. Email: laneb@eccoequipment.com</p>	
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<p>Snyder & Associates LLP 2500, 10123 – 99 Street Edmonton, AB T5J 3H1</p> <p>Attn : Sammy Binder Email : sbinder@snyder.ca</p>	<p>FDS Prime Energy Services Ltd.</p>

COUNSEL	REPRESENTING
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<p>Lavery, De Billy LLP Suite 1400, 1 Place Ville Marie Montreal, QC H3B 4M4</p> <p>Attn: Jean Legault Email: jlegault@lavery.ca</p> <p>Construction Promec Inc. Attn: Paul Lafrenier Email: plafreniere@promec.ca</p>	<p>Construction Promec Inc.</p>
<p>Trisura Guarantee Insurance Company 333 Bay Street, Suite 1610 Toronto, ON M5H 2R2</p> <p>Attn: Stuart Detsky Email: Stuart.Detsky@trisura.com</p>	<p>Surety for Pacer Promec Energy Corporation</p>
<p>Travelers Canada 20 Queen Street West Suite 200, P.O. Box 5 Toronto, ON M5H 3R3</p> <p>Attn: Sylvain Lapointe Email: slapoin2@travelers.com</p>	<p>Surety for Pacer Promec Energy Corporation</p>
<p>Canadian Western Bank – Foothills Branch Equipment Financing Group 6127 Barlow Trail S.E. Calgary, AB T2C 4W8</p> <p>Attn: Janice M. Tiberio Fax: 403-269-9883</p>	<p>Equipment Lessor</p>

COUNSEL	REPRESENTING
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Schedule "B" to the Application

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,

Schedule "C" to the Application

Clerk's Stamp:

COURT FILE NUMBER	1501-02652
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PACER CONSTRUCTION HOLDINGS CORPORATION
DEFENDANTS	PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION
DOCUMENT	<u>ORDER FOR FINAL DISTRIBUTION, APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, APPROVAL OF RECEIVER'S ACTIVITIES AND DISCHARGE OF RECEIVER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15 th Floor, 850 - 2 nd Street S.W. Calgary, Alberta T2P 0R8 Attn: John Regush Ph. (403) 268-7086 File No.: 548476-5
DATE ON WHICH ORDER WAS PRONOUNCED	January 25, 2024
LOCATION WHERE ORDER WAS PRONOUNCED	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER	The Honourable Justice Jeffrey

UPON THE APPLICATION by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Pacer Promec Energy Corporation and Pacer Promec Energy Construction Corporation (collectively, "**PPEC**" or the "**Debtors**") for an order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities, and discharge of the Receiver; AND UPON reading the Fifth Report of the Receiver dated January [], 2024 (the "**Fifth Report**"); AND UPON reading or hearing read the Affidavit of Service of Izzy Kowalcze sworn January [], 2024; AND UPON hearing submissions of counsel to the Receiver and _____; AND UPON being satisfied that it is appropriate to do so;

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF ACTIVITIES AND ACCOUNTS

2. The Receiver's accounts for fees and disbursements, as set out in the Fifth Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel Dentons Canada LLP for their fees and disbursements, as set out in the Fifth Report are hereby approved without the necessity of a formal assessment of their accounts.
4. The Receiver's activities as set out in the Fifth Report and in all of its other reports and confidential appendices filed herein, and the Statement of Receipts and Disbursements as attached to the Fifth Report, are hereby ratified and approved.

DISTRIBUTIONS

5. The Receiver is authorized and directed to make the following distributions:
 - (a) the amount of \$133,711 to Pacer Construction Holdings Corporation (the "**Secured Creditor**").
6. The Receiver is authorized and directed to hold back the sum of \$45,000 ("**Holdback**"), to be applied to unpaid and future fees of the Receiver and its counsel, without the necessity of further approval of such fees, and fees associated with destruction of any of the Debtors' records. The Receiver shall distribute any unused portion of the Holdback to the Secured Creditor, following the completion of the administration of this receivership.

RELEASE AND STAY

7. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.

DISCHARGE OF RECEIVER

9. Upon the Receiver filing with the Clerk of the Court a Receiver's completion certificate, substantially in the form attached as Schedule "A" to this Order, confirming that:
 - (a) all matters set out in paragraphs 5 and 6 of this Order have been completed; and thereafter
 - (b) the Receiver has closed the Debtors' trust accounts;

then the Receiver shall be discharged as Receiver of the Debtors, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

10. The Receiver is not required to serve the Receiver's completion certificate referred to in paragraph 9 above on any party.

MISCELLANEOUS

11. The Receiver shall continue to hold any physical books and records of the Debtors for a period of 30 days from the date a copy of this Order is posted to the Receiver's website for these proceedings, for any entitled party to claim possession and take transfer, and thereafter shall be entitled to destroy any of the Debtors' books and records remaining in the Receiver's possession or control.
12. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
13. Service of this Order on any party not attending this application is hereby dispensed with.

Justice of the Court of King's Bench of Alberta

Schedule "A"

Clerk's Stamp:

COURT FILE NUMBER	1501-02652
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PACER CONSTRUCTION HOLDINGS CORPORATION
DEFENDANTS	PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION
DOCUMENT	<u>RECEIVER'S COMPLETION CERTIFICATE</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15 th Floor, 850 - 2 nd Street S.W. Calgary, Alberta T2P 0R8 Attn: John Regush Ph. (403) 268-7086 File No.: 548476-5

RECITALS

- A. Pursuant to an Order of the Honourable Justice Hawco of the Court of Kings's Bench of Alberta, Judicial District of Calgary (the "**Court**") pronounced March 10, 2015, FTI Consulting Canada Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property and assets of Pacer Promec Energy Corporation and Pacer Promec Energy Construction Corporation (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated January 25, 2024 (the "**Discharge Order**"), the Court ordered that the Receiver would be discharged as Receiver of the Debtors upon the filing by the Receiver of a certificate attaching all matters set out in paragraphs 5 and 6 of the Discharge Order have been completed and the Receiver has closed the Debtors' trust accounts.

THE RECEIVER CERTIFIES the following:

1. All matters set out in paragraphs 5 and 6 of the Discharge Order have been completed.
2. The Receiver has closed the Debtors' trust accounts.
3. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

**FTI Consulting Canada Inc., in its capacity as
Court-appointed receiver and manager of the
assets, properties, and undertaking of Pacer
Promec Energy Corporation and Pacer**

**Promec Energy Construction Corporation, and
not in its personal or corporate capacity**

Per:

Name: _____

Title: