

COURT FILE NUMBER 1501-02652
COURT Queen's Bench of Alberta
JUDICIAL CENTRE Calgary
PLAINTIFF PACER CONSTRUCTION HOLDINGS CORPORATION
DEFENDANTS PACER PROMEC ENERGY CORPORATION and
PACER PROMEC ENERGY CONSTRUCTION CORPORATION
DOCUMENT **AFFIDAVIT OF PATRICE DAUBA**
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Attention: E. Jane Sidnell
File No.: 10052-019

AFFIDAVIT OF PATRICE DAUBA

Sworn on May 6th 2015

I, Patrice Dauba of Calgary, Alberta, SWEAR AND SAY THAT:


1. I am a Project Manager with ThyssenKrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc. ("TKIS"), for the Erection of Surge Facility and SPP Building Package at the Kearl Expansion Project Ore Preparation Plant (the "Project"), and as such have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I believe such to be true.
2. TKIS entered into a subcontract with Pacer Mamisiwin Corporation ("PMC") and Construction Promec Inc. ("CPI") on March 18, 2013, known as KESB 9.2 5871 (the "Contract") for the Project. On July 21, 2014, PMC and CPI assigned the Contract to Pacer Promec Energy Corporation ("PPEC").
3. The Project is at Imperial's Kearl Expansion Project, located 70 kilometers north of Fort McMurray.
4. PPEC mobilised to the Project site in April and May 2013 to perform the work described in the Contract (the "Work") and demobilised from the Project site in November 2014.
5. The Contract is a lump sum contract whereby PPEC agreed to perform the Work for a fixed price. An overview of the Contract accounting (rounded to the nearest hundred thousand dollars) is as follows:

Original lump sum price of the Contract	\$36,700,000
Agreed changes	\$4,900,000
Revised Contract price	<u>\$41,600,000</u>

6. PPEC asserts multi-million dollar claims for extras, labour availability issues, acceleration costs and productivity losses (the "PPEC Claim"), in addition to the revised Contract price. While PPEC provided some information regarding the PPEC Claim to TKIS, PPEC has never provided information for claims totaling \$41,184,135.00, the amount of PPEC's builders' lien.
7. TKIS denies that is liable for the PPEC Claim under the lump sum Contract and it is TKIS' position that the extras, labour availability issues, acceleration costs and productivity losses claimed are the result of mismanagement of the Project by PPEC. As Richard Pelletier states in his Affidavit in support of the Receivership Application, sworn March 6, 2015, at paragraph 32: "The cost estimates used to formulate bids on projects in response to requests for proposals have regularly been exceeded, and PPEC has struggled to find the proper team to manage the projects it has taken on."
8. PPEC demobilised from site after agreeing to remove the remaining scope from the Work. Since demobilisation, a significant number of deficiencies in the Work have been discovered. TKIS has a claim against PPEC for cost to rectify the deficiencies, which is in an amount to be determined as corrections to PPEC's deficient work are on-going.
9. PPEC registered a builders' lien in the amount of \$41,184,135.00 on the Kearn Expansion Project. In addition, two of PPEC's subcontractors have also registered builders' liens: Manseau & Perron Inc. for \$494,944.85 and RNS Scaffolding Inc. for \$1,204,768.27. All three of these liens were discharged from title after TKIS posted a lien bond in the amount of \$43,584,848.12 as security for the same.
10. TKIS' cost of maintaining the lien bond is \$566,592.00 per year.
11. Resolving the PPEC Claim and counterclaim involves many detailed aspects of the Work and TKIS alone has hundreds of thousands of relevant documents relating to the issues of: purported extras, labour availability issues, acceleration costs, productivity losses and TKIS's counterclaim.
12. TKIS requires further time to review the proposed Claims Officer's qualifications to take on the role proposed by the Receiver as the Receiver has provide no information as to the proposed Claims Officer's experience or expertise.
13. TKIS requires further time to review the claims procedure proposed by the Receiver and to provide the Court with its comments on the most effective and efficient method of resolving the PPEC Claim.

14. I make this Affidavit in support of an adjournment of that portion of the Receiver's Application dealing with the appointment of a Claims Officer and institution of a claims procedure and which is scheduled to be heard on May 7, 2015.

SWORN BEFORE ME at the Calgary, Alberta, this)
6th day of May, 2015)


_____))
Commissioner for Oaths in and for the)
Province of Alberta)

Name: _____
Position: _____
My commission expires: _____,
20__


_____))
Patrice Dauba)

DANIELA DOERFLER
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission Expires February 02, 2016