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COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT PACER CONSTRUCTION HOLDINGS CORPORATION
RESPONDENTS PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION
DOCUMENT FOURTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION

October 28, 2016

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Fourth Report of the Receiver

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INTRODUCTION

1. On March 10, 2015 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Pacer Promec Energy Corporation (“**PPEC**” or the “**Company**”) and its wholly-owned subsidiary, Pacer Promec Energy Construction Corporation (“**PPEC Construction**”) pursuant to an Order of this Honourable Court (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to take possession of and exercise control over the Property, carry on the business of the Company and to make such arrangements or agreements as deemed necessary by the Receiver.
3. On May 7, 2015, the Honourable Justice B. Nixon granted an order which, among other things, provided for:
 - (a) an increase to the Receiver’s borrowing powers, allowing additional borrowings of \$68 million, to bring the total approved borrowings for the receivership to \$78 million;
 - (b) the creation of the Krupp Facility Charge and General Facility Charge, and ranking those charges against the Debtors’ various assets;
 - (c) approval of the proposed Lien Management process;
 - (d) approval the proposed Claims Procedure; and
 - (e) appointment of the Claims Officer.

4. On September 4, 2015, the Honourable Justice K.M. Horner granted various orders which, among other things:
 - (a) approved the sale of the PPEC Equipment by way of public auction pursuant to the terms set out in the liquidation agreement between the Receiver and Century Services Inc. dated July 24, 2015;
 - (b) directed the Receiver to hold the net proceeds from the sale of the PPEC Equipment until further order of this Court; and
 - (c) approved the repayment of the amounts owing under the Receiver's Certificates described in the Second Report of the Receiver, and repayment of any other obligations incurred by the Receiver on account of its borrowings in these proceedings.
5. On November 17, 2015, the Honourable Justice MacLeod granted an Order which, among other things, granted approval of the GE Distribution and the CWB Distribution.
6. The Receiver's reports and other publicly available information in respect of these proceedings (the "**Receivership Proceedings**") are posted on the Receiver's website at <http://cfcanada.fticonsulting.com/ppec>.
7. The purpose of this fourth report (this "**Fourth Report**") is to provide the Court with:
 - (a) a general update with respect to the activities of the Receiver since the Receiver's Third Report dated November 10, 2015, including its receipts and disbursements;
 - (b) an update with respect to the Krupp Contracts and Krupp Claims;

- (c) recommendations with respect to the proposed commercial settlement agreements, related release and indemnity agreements, and related Orders sought by the Receiver in respect of the Krupp Claims (the “**Settlement Agreement**”); and
 - (d) the proposed distribution by the Receiver of the proceeds of the Settlement Agreement.
8. The Receiver is requesting the following relief from this Honourable Court;
- (a) an Order approving and authorizing the Receiver to take such steps as are necessary to complete the Settlement Agreement, and related relief;
 - (b) separate Orders in Court of Queen’s Bench of Alberta Action No. 1401-13098 and Action No. 1501-02878 directing the Clerk of the Court to release the lien bonds filed in those proceedings to legal counsel to Krupp;
 - (c) an Order sealing the Confidential Appendix (as defined herein) on the Court file; and
 - (d) an Order approving the activities of the Receiver since the date of the Receiver’s Second Report, including its receipts and disbursements.

TERMS OF REFERENCE

9. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Companies’ books and records and discussions with various parties (collectively, the “**Information**”).

10. Except as described in this Fourth Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
11. Future oriented financial information reported or relied on in preparing this Second Report is based on assumptions regarding future events; actual results may vary from forecasts and such variations may be material.
12. The Receiver has prepared this Fourth Report in connection with the Application scheduled to be heard on November 3, 2016. This Fourth Report should not be relied on for other purposes.
13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order and in the Receiver's previous reports.

ACTIVITIES OF THE RECEIVER

COMPLETION OF CNRL CONTRACTS AND ENSUING LITIGATION

14. PPEC completed construction on the remaining CNRL Contracts and demobilized from the CNRL job site on or about September 4, 2015 and all employees were laid off at that time. All retention bonuses relating to the CNRL Contracts per PPEC's records were paid out to eligible employees on October 15, 2015.
15. After September 4, 2015, the Receiver retained six former employees on a contractual basis to assist in the completion of the remaining administrative tasks:
 - (a) updating of the books and records and general accounting;
 - (b) documentation regarding various change-orders and negotiating such change orders and other commercial matters;
 - (c) completing remaining invoicing; and
 - (d) preparation of employee related documentation (T4's and ROE's).
16. Throughout much of 2016 the Receiver has met with and communicated with CNRL about the completion of the CNRL Contracts and payment to the Receiver for that work. The Receiver and CNRL continue to communicate in that regard.
17. The Receiver has registered a builders' lien against the CNRL Horizon Project and issued a Statement of Claim seeking judgment against CNRL in the amount of approximately \$64 million.

DISPUTED CLAIMS

18. Throughout much of 2016 the Receiver has implemented the Claims Procedure contained in the Order of this Honourable Court granted on May 7, 2015. In doing so the Receiver has litigated the disputed builders' lien claims which could not be resolved consensually with the claimants. Two such builders' lien claims required the Receiver and the claimant to litigate before the Claims Officer appointed in these proceedings. In both instances the Claims Officer found the builders' liens to be invalid.

19. One of the builders' lien claimants appealed the decision of the Claims Officer to the Court of Queen's Bench of Alberta. The hearing of that appeal took place in August of 2016. The Court has not yet rendered its decision in respect of that appeal. The quantum of this claim is approximately \$2.9 million.

SUMMARY OF RECEIPTS AND DISBURSEMENTS

20. Receipts and Disbursements from the Date of Appointment to October 26, 2016 are summarized as follows:

Schedule of Receipts and Disbursements	N5000	R100	Other	Total	Notes
Receipts					
Receipts	\$ 20,756,927	\$ 13,070,809	\$ 3,266,969	\$ 37,094,705	a
Receivers Certificates	-	-	49,693,217	49,693,217	b
Sale of Assets	-	-	3,802,850	3,802,850	c
HST Collected / Refund	-	-	1,960,119	1,960,119	d
Opening cash	-	-	444,068	444,068	e
Total - Receipts	\$ 20,756,927	\$ 13,070,809	\$ 59,167,223	\$ 92,994,959	
Disbursements					
Labour and Benefits	\$ 30,224,279	\$ 6,711,771	\$ 1,290,648	\$ 38,226,698	f
Repayment of Receiver's Certificates	-	-	17,000,000	17,000,000	g
Lien Settlements	-	-	15,208,290	15,208,290	h
Equipment	3,457,359	797,142	-	4,254,501	i
Professional Fees	-	-	4,045,552	4,045,552	j
Camp costs	2,584,812	1,038,037	-	3,622,849	k
Materials	1,966,723	550,979	-	2,517,702	l
Distribution to Lessors	-	-	2,474,884	2,474,884	m
Travel	1,254,953	545,063	-	1,800,016	n
HST Paid	-	-	1,508,476	1,508,476	o
Project Consumables	659,258	356,038	-	1,015,296	p
General Overhead	-	-	928,145	928,145	q
Total - Disbursements	\$ 40,147,385	\$ 9,999,030	\$ 42,455,994	\$ 92,602,409	
Net Cash on Hand	\$ (19,390,458)	\$ 3,071,779	\$ 16,711,229	\$ 392,550	

- (a) Receipts – revenue collected by the Receiver for progress billing from the CNRL Contracts;
- (b) Receiver Certificates – amounts drawn on the Receiver’s Certificates in accordance with the terms of the Receivership Order;
- (c) Sale of Assets – including the proceeds from the sale of the condominium and the PPEC Equipment;
- (d) HST Collected / Refunded – including HST refunds and HST collected;
- (e) Opening Cash – funds transferred to the Receiver’s bank account in accordance with the terms of the Receivership Order;

- (f) Labour and Benefits – amounts disbursed by the Receiver relating to payroll and employee related deductions;
- (g) Repayment of Receiver’s Certificates – amounts repaid in accordance with the order granted by this Honourable Court on May 7, 2015;
- (h) Lien Settlements – Amounts paid to valid Lien holders in order to settle the liens as permitted by the Claims Procedure, a portion of this amount is being held by the Court awaiting resolution;
- (i) Equipment – cost incurred for rental and purchased equipment relating to the completion of the CNRL Contracts;
- (j) Professional Fees – Receiver and Receiver’s Counsel fees and disbursements;
- (k) Camp Costs – costs incurred relating to employee lodging at the CNRL Horizon Site;
- (l) Materials – costs incurred for material required to complete the CNRL Contracts;
- (m) Distribution to Lessors – amounts repaid to lessors in accordance with the order granted by this Honourable Court on November 17, 2015 ;
- (n) Travel – costs incurred relating to employee travel to CNRL Horizon Site;
- (o) HST Paid – includes the amount of HST paid;
- (p) Project Consumables – fuel, small tools, welding supplies and various other supplies; and
- (q) General Overhead – general and administrative costs.

21. As at October 26, 2016, the Receiver holds \$392,550 in cash on hand.

KRUPP CONTRACTS

22. As described in the Receiver's First Report, prior to the Date of Appointment PPEC had completed the Krupp Contracts in respect of the Kearl Lake Project and the MLMR Project.

23. As set out below in greater detail, the Receiver has initiated significant claims against Krupp in connection with the work done by PPEC on the MLMR Project and the Kearl Lake Project. Krupp has communicated significant counterclaims against both PPEC and additional parties in connection with the work done at both projects. Krupp and the Receiver have now, subject to Court approval, settled all of these claims and counterclaims as set out below. However, the implementation of this settlement is complicated by the following factors:

- (a) in Action No. 1501-07056 Krupp has counterclaimed against PPEC, Pacer, Promec, and Pacer Mamisiwim Corporation, however one of the Defendants by Counterclaim, being Promec, is not party to the proposed Settlement Agreement. Promec was invited to become a party to the proposed Settlement Agreement, but refused;
- (b) on the MLMR Project builders' liens were registered by two subcontractors of PPEC, and on the Kearl Lake Project builders' liens were registered by two different subcontractors of PPEC, all of which are affected by the Proposed Settlement;
- (c) three of these four subcontractors have issued Statements of Claim in respect of their builders' liens and related claims, which need to be discontinued as part of the proposed settlement;

- (d) Master Robertson Q.C. has granted an Order declaring that the builders' lien of the fourth of these subcontractors has ceased to exist, and the subcontractor has appealed that Order;
- (e) Krupp has commenced two separate Court of Queen's Bench of Alberta Actions against PPEC and the relevant subcontractors (one in respect of the MLMR Project, and one in respect of the Kearn Lake Project), and has posted in each of those Actions a lien bond as security for the builders' liens of PPEC and its four subcontractors. These actions need to be discontinued and the lien bonds returned to legal counsel to Krupp; and
- (f) the owners of the real property subject to these builders' liens are named as Defendants in the Statements of Claim issued in respect of the builders' liens. As a result there are a number of entities to be released under the proposed Settlement Agreement and Order being sought by the Receiver who are not party to the proposed Settlement Agreement, but who benefit from the releases contained within the proposed Settlement Agreement and the Order. (Defined in the Order as the "**MLMR Released Parties**" and the "**Kearn Released Parties**"). The Receiver notes that it is a condition of the proposed Settlement Agreement that the Kearn Released Parties and the MLMR Released Parties receive the releases contemplated by the proposed Settlement Agreement and Order.

MLMR

24. A summary of the MLMR Project is as follows:

- (a) on June 27, 2013 PPEC entered into an agreement with Krupp (the "**MLMR Agreement**") pursuant to which PPEC agreed to supply, deliver and install electrical instrumentation and controls for two crusher facilities, two crusher discharge conveyors, and two surge bin feed conveyors (the "**MLMR Work**");

- (b) pursuant to the MLMR Agreement Krupp agreed to pay PPEC \$16,967,615.44 for the MLMR Work;
 - (c) in connection with the MLMR Work PPEC issued 207 requests for change orders;
 - (d) PPEC completed the MLMR Work in accordance with the MLMR Agreement and PPEC has invoiced Krupp in the total amount of \$20,401,510. Of this amount, \$3,511,928 has not been paid to PPEC; and
 - (e) PPEC also completed work pursuant to the change order requests (the “**MLMR Change Order Work**”). According to the records of PPEC the value of the MLMR Change Order Work is \$29,669,954. The value of the MLMR Change Order Work was never agreed to by Krupp and this amount has been in dispute since the completion of the MLMR Project.
25. On November 4, 2014 PPEC caused to be registered a builder’s lien at the Registrar of Land Titles and claimed an amount owing of \$21,838,072. Subsequent to the date of registration, PPEC completed additional analysis to assess the value of the potential claim against Krupp which was in excess of the value of the builder’s lien filed.
26. On May 1, 2015, the Receiver, through its counsel, filed a Statement of Claim commencing Court of Queen’s Bench Action No. 1501-09852 in respect of the MLMR Project seeking judgement in the amount of \$3,511,928 and \$29,669,954.

27. A summary of the amounts described above are outlined in the table below.

MLMR Agreement	
(\$ in CAD Millions)	
PPEC invoiced amount to Krupp	20,402
Revenue due per MLMR Agreement	16,968
Outstanding invoiced amount	3,512
MLMR Change Order Work	29,670

28. The Receiver is aware that Krupp has prepared a Statement of Defence and Counterclaim in Action No. 1501-09852, however these documents have not been filed with this Honourable Court.

29. Additionally, two of PPEC's subcontractors at the MLMR Project, being Leavitt Machinery General Partnership ("Leavitt") and Aluma Systems Inc. ("Aluma") caused builder's liens to be registered against the MLMR Project totaling approximately \$1.3 million. Similarly, each of Aluma and Leavitt have issued Statements of Claim in respect of these builders' liens and related claims against PPEC and other parties, including the MLMR Released Parties.

30. The Receiver has now settled with Leavitt and Aluma, and in doing so has acquired the builders' liens registered by them, their claims, and the Queen's Bench Actions commenced by them against PPEC and the owners relating to their work at the MLMR Project. Pursuant to the proposed Settlement Agreement, the Receiver will be settling and releasing all of the claims and the builders' liens of Leavitt and Aluma which it has acquired, and discontinuing the Actions which they have commenced.

31. In 2014 Krupp commenced Court of Queen's Bench of Alberta Action No. 1401-13098. In those proceedings Krupp has posted a lien bond (the "**MLMR Lien Bond**") in the amount of \$22,038,072.00 as security for the builders' liens registered against the MLMR Project by PPEC, Aluma and Leavitt. As part of the proposed Settlement Agreement, the Receiver is seeking a separate Order in Action No. 1401-13098 directing the Clerk of the Court to return the MLMR Lien Bond to legal counsel to Krupp. Action No. 1401-13098 will also be discontinued as part of the proposed Settlement Agreement.

KEARL LAKE

32. A summary of the Kearl Lake Project is follows:
- (a) on or about July 21, 2013, PPEC was assigned from Pacer and Promec, with Krupp's consent, the work associated with erecting a surge facility and slurry preparation plant building (the "**Surge Facility Work**"). On or about August 9, 2013, PPEC entered into an agreement with Krupp pursuant to which PPEC agreed to erect a surge bin feed conveyor and crusher discharge conveyor building (the "**Conveyor Work**", and together with the Surge Facility work, the "**Kearl Lake Agreements**");
 - (b) in connection with the Kearl Lake Agreements PPEC issued 350 requests for change orders to Krupp;
 - (c) PPEC completed the work in connection with the Kearl Lake Agreements by the end of December, 2014;
 - (d) as of December 31, 2014, the total expended by PPEC to complete the work under the Kearl Lake Agreements was \$74,639,026; and

- (e) the expected revenue for the Kearn Lake Project, adding 15% to the direct costs described above, is \$85,834,880. The amount received to date from Krupp, not including GST, is \$42,038,770. The difference between these two amounts, which PPEC claimed entitlement to is \$43,796,110 plus GST.
33. On January 8, 2015, PPEC caused to be registered a builder's lien at the Registrar of Land Titles and claimed an amount owing of \$41,184,135.
34. On June 23, 2015, the Receiver, through its counsel, filed a Statement of Claim commencing Court of Queen's Bench of Alberta Action No. 1501-07056 in respect of the MLMR Project seeking judgement in the amount of \$43,796,110 plus GST or, in the alternative, \$41,109,083 plus GST.
35. A summary of the alternative amount described above is outlined in the table below.

Kearn Lake Agreements	
(\$ in CAD Millions)	
Revenue due per Kearn Lake Agreements and Approved Changes	\$ 48,889
Less allowance for work that had been de-scoped	(1,260)
Revenue due per Kearn Lake Agreements and Approved Changes	47,629
Less amount received to date	(42,039)
Balance of approved amount currently outstanding	5,590
Additional outstanding items	
Disputed requests for change orders	10,873
Bid to drawing changes	5,991
Productivity loss claim	9,900
Indirect cost for project growth	8,754
Total - Outstanding Items	35,519
Total - Outstanding and Additional	\$ 41,109

36. On November 17, 2015, Krupp filed a Statement of Defence disputing the PPEC Statement of Claim based upon the following:
- (a) the fixed price nature of the Kearn Lake Agreements and that amounts in excess of the fixed price are to be agreed upon in writing and only adjusted by a change order;
 - (b) performance of the PPEC work and defective work and lost materials;
 - (c) failure to meet certain milestone dates as provided for in the recovery plan agreed to by both PPEC and Krupp;
 - (d) breaches of the Kearn Lake Agreements; and
 - (e) PPEC did not pay all of its subcontractors and suppliers two of which registered builder's liens in the amount of approximately \$1.8 million.
37. On December 7, 2015, Krupp filed a Counterclaim in Court of Queen's Bench Action No. 1501-07056 seeking judgement against PPEC and other Defendants by Counterclaim, including Pacer and Promec, in the amount of \$47,428,005.04. A summary of the Counterclaim filed by Krupp is presented in the table below.

Krupp Counterclaim	
<i>(\$ in CAD Millions)</i>	
Remedial work and lost materials	\$ 3,783
Misrepresentation of de-scoped work	1,490
Increased PPEC logistics costs	6,000
Liquidated damages	3,427
Other sub-contractor impact costs	21,185
Increased Krupp management costs	6,743
Increased Krupp logistics costs	400
Lien costs	2,392
GST (excluding Liquidated damages and Liens)	2,008
Total - Counterclaim	\$ 47,428

38. Additionally, two of PPEC's subcontractors at the Kearl Lake Project, being RNS Scaffolding Inc. ("RNS") and Manseau & Perron Inc. ("M&P"), registered builders' liens against the Kearl Lake Project totaling approximately \$1.8 million. The status of each of these subcontractors, and the effect of the proposed Settlement Agreement upon them is discussed below.
39. In 2015 Krupp commenced Court of Queen's Bench of Alberta Action No. 1501-02878. In those proceedings Krupp has posted a lien bond in the amount of \$43,584,484.12 as security for the builders' liens registered against the Kearl Lake Project by PPEC, RNS and M & P (the "**Kearl Lien Bond**"). As part of the proposed Settlement Agreement, the Receiver is seeking a separate Order in Action No. 1501-02878 directing the Clerk of the Court to return the Kearl Lien Bond to legal counsel to Krupp. Action No. 1501-02878 will also be discontinued as part of the proposed Settlement Agreement.

RNS

40. RNS has issued a Statement of Claim in respect of its builders' lien and its related claims against PPEC and the owners.
41. The Receiver has now settled with RNS, and in doing so has acquired the builders' lien registered by RNS, the related claims of RNS, and the RNS Action against PPEC and other parties. Pursuant to the proposed Settlement Agreement, the Receiver will also be settling and releasing all of the RNS claims and the RNS builders' lien which it has acquired, and discontinuing the Action RNS has commenced.

M & P

42. M & P filed a Proof of Claim in the PPEC receivership pursuant to the Claims Procedure, alleging a secured builders' lien claim in the amount of \$798,795.88, a copy of which, without attachments, is attached as Schedule "A". The Receiver has not yet responded to this Proof of Claim as a result of the litigation described below.
43. On August 21, 2015 Krupp filed an Application with this Honourable Court in Court of Queen's Bench of Alberta Action No. 1501-02878 seeking a declaration that the builders' lien filed by M & P against the Kearn Lake Project had ceased to exist as a result of M & P not filing a Statement of Claim to preserve its builders' lien as required by the *Builders' Lien Act* (Alberta), and as required by a previous Order of the Court Action No. 1501-02878.
44. On October 6, 2015 Master Robertson, Q.C. granted the Application made by Krupp and in doing so found that the M & P builders' lien had ceased to exist.
45. M & P appealed the Order of Master Robertson, Q.C., which appeal was heard by the Honourable Mr. Justice Brooker on October 12, 2016. Justice Brooker has not yet rendered his decision in respect of the M & P appeal.

46. As part of the Settlement Agreement, the Receiver has agreed that the Kearl Lien Bond posted by Krupp in Court of Queen's Bench of Alberta Action No. 1501-02878 should be returned to counsel for Krupp. In order to facilitate this, and given that (i) the Kearl Lien Bond was originally posted by Krupp as security for, *inter alia*, the M & P builders' lien; and (ii) M & P may succeed in its appeal of the Order of Master Robertson, Q.C., or otherwise prove entitlement to a priority claim, the Receiver will post the amount of the M & P builders' claim (being \$798,795.88) with this Honourable Court in these proceedings as security for the M & P claims in substitution for the Kearl Lien Bond. M & P will not be prejudiced by the proposed Settlement Agreement or the return of the Kearl Lien Bond as M & P will have access to this new security should M & P successfully appeal the Order of Master Robertson, Q.C., and otherwise prove any aspect of its builders' lien claim, and priority to the security to be posted by the Receiver. The Receiver notes that this is consistent with Lien Management Protocol prescribed by this Honourable Court in its Order granted on May 7, 2015.
47. M & P has issued a Statement of Claim in respect of its claims arising from its work at the Kearl Lake Project, a copy of which is attached as Schedule "B".

PROPOSED SETTLEMENT AGREEMENT

48. Since the Date of Appointment the Receiver and Krupp have had ongoing discussions in an attempt to amicably resolve the outstanding disputes relating to the Krupp Contracts.

49. PPEC, through its Receiver, Pacer, and Krupp have agreed upon the terms of the proposed Settlement Agreement, conditional upon approval of this Honourable Court. It is a term of all the agreements which comprise the Settlement Agreement that their terms and conditions remain confidential. Given this and given the sensitive nature of the commercial terms of the agreements comprising the proposed Settlement Agreement, the Receiver has prepared a confidential appendix to this Fourth Report (the “**Confidential Appendix**”). The Confidential Appendix contains the agreements comprising the Settlement Agreement and the commercial details of the proposed Settlement Agreement.

RECEIVER’S COMMENTS ON THE PROPOSED SETTLEMENT AGREEMENT

50. The Receiver engaged Revay and Associates Limited (“**RAL**”) to provide an opinion on the adequacy of the proposed Settlement Agreement with respect to the Krupp Claims (the “**RAL Opinion**”). The RAL Opinion concludes that “.....should settlement not be accepted there is a distinct possibility of a worse outcome”. A copy of the RAL Opinion is attached to the Confidential Appendix
51. The Receiver notes that PPEC’s secured creditor (Pacer), who is likely the only affected creditor in these proceedings, is in agreement with the proposed Settlement Agreement, and is party to it. The Receiver has disclosed the terms of the proposed Settlement Agreement to Promec, and Promec was invited to be a party to the Settlement Agreement, but refused. The Receiver notes that Promec will nonetheless benefit from the discontinuance of the Counterclaim against Promec.
52. Given the foregoing the Receiver is of the opinion that the proposed Settlement Agreement is fair and reasonable in the circumstances as it provides the maximum recovery for the creditors of the PPEC without the uncertainty and costs associated with a litigation process.

PROPOSED DISTRIBUTION

53. The Order granted by this Honourable Court on May 7, 2015 prescribes how any funds recovered from Krupp are to be distributed. The priority waterfall set out in the May 7, 2015 Order with respect to these funds is:

- (a) First – the Receiver’s Charge;
- (b) Second – the Receiver’s Borrowing Charge;
- (c) Third – the Krupp Facility Charge;
- (d) Fourth – the National Bank Charge; and
- (e) Fifth – the General Facility Charge;

(all as defined in the Order granted May 7, 2015).

54. The Receiver notes that no amounts are owing under the Receiver’s Borrowing Charge.

55. As noted above, on September 4, 2015 this Honourable Court granted an Order allowing the Receiver to repay the Receiver's Certificates described in the Receiver's Second Report, and any other obligations incurred by the Receiver on account of its borrowings in these proceedings. Pursuant to that Order, the Receiver intends to use the proceeds of the Settlement Agreement to completely repay and retire the Krupp Facility Charge, and will apply the balance in partial reduction of the National Bank Charge which remaining outstanding amounts are set out below.

Summary of Receiver's Certificates	Borrowings	Repayments	Outstanding
Receiver's Borrowing Charge			
Certificate #1	\$ 2,000,000	\$ 2,000,000	\$ -
Certificate #2	3,000,000	3,000,000	-
Certificate #3	3,000,000	3,000,000	-
Certificate #4	2,000,000	2,000,000	-
	\$ 10,000,000	\$ 10,000,000	\$ -
General Facility Charge			
Certificate #1	\$ 5,000,000	\$ 5,000,000	\$ -
Certificate #2	5,649,093	2,000,000	3,649,093
Certificate #3	4,000,000	-	4,000,000
Certificate #4	5,544,124	-	5,544,124
Certificate #5	3,000,000	-	3,000,000
Certificate #6a	1,500,000	-	1,500,000
Certificate #6b	1,500,000	-	1,500,000
Certificate #7	3,000,000	-	3,000,000
Certificate #8	3,000,000	-	3,000,000
Certificate #9	Never issued	-	-
Certificate #10	4,000,000	-	4,000,000
Certificate #11	1,500,000	-	1,500,000
	\$ 37,693,217	\$ 7,000,000	\$ 30,693,217
Krupp Facility Charge			
Certificate #1	\$ 2,000,000	\$ -	\$ 2,000,000
Total	\$ 49,693,217	\$ 17,000,000	\$ 32,693,217
National Bank Charge	\$ 26,227,046	\$ -	\$ 26,227,046


RECEIVER'S RECOMMENDATIONS

56. The Receiver respectfully requests that this Honourable Court grant the following Orders:

- (a) approving the proposed Settlement Agreement, authorizing the Receiver to take such steps as are necessary to complete the Settlement Agreement, and related relief;
- (b) separate Orders in Court of Queen's Bench of Alberta Action No. 1401-13098 and Action No. 1501-02878 directing the Clerk of the Court to return the MLMR Lien Bond and the Kearn Lien Bond to counsel to Krupp;
- (c) an Order sealing the Confidential Appendix on the Court file; and
- (d) an Order approving the Receiver's actions and activities since its Second Report, including the Receiver's receipts and disbursements.

All of which is respectfully submitted this 28th day of October, 2016.

FTI Consulting Canada Inc. in its capacity as receiver
and manager of the assets undertakings and
properties Pacer Promec Energy Corporation and
Pacer Promec Construction Corporation



Deryck Helkaa
Senior Managing Director



Jamie Engen
Managing Director

SCHEDULE "A"

Manseau & Perron Inc. – Proof of Claim (without attachments)

Sara Pearl Oslje
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires February 25, 2018

THIS IS EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF

JANICE STEWART

SWORN BEFORE ME THIS 15th DAY
OF SEPTEMBER A.D., 2015

Sara Pearl Oslje
A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

SCHEDULE "D"

FORM 31

Proof of Claim

(Sections 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8),
102(2), 124(2), 128(1), and Paragraphs 61(1)(e) and 66.14(b) of the *Bankruptcy and Insolvency Act*)

All notices or correspondence regarding this claim must be forwarded to the following address:

Scott Ventura LLP 203, 200 Barclay Parade SW, Calgary, Alberta T2P 4R5 (Attn: Scott Chimuk) –
Fax No. 403-265-4632

This claim is against (check one):

- Pacer Promec Energy Corporation
- Pacer Promec Energy Construction Corporation
- FTI Consulting Canada Inc. in its capacity as Receiver and Manager of Pacer Promec Energy Corporation and pacer Promec Energy Construction Corporation

In the matter of the receivership of Pacer Promec Energy Corporation and Pacer Promec Energy Construction Corporation and the claim of Manseau & Perron Inc., creditor.

I, Julie Larivière, of the City of Rouyn-Noranda, in the Province of Quebec, do hereby certify:

1. That I am Presidente Directrice-générale of Manseau & Perron Inc.
2. That I have knowledge of all of the circumstances connected with the claim referred to below.
3. That the debtor was, at the date the receivership, namely the 10th day of March 2015, and still is, indebted to the creditor in the sum of \$798,795.88 (plus interest of \$17,991.71 as of June 17, 2015 and costs) as specified in the affidavit attached and marked Schedule "A," after deducting any counterclaims to which the debtor is entitled. (*The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.*)

4. *Check and complete appropriate category*

- A. UNSECURED CLAIM OF \$ _____

(*Other than as a customer contemplated by Section 262 of the Act*)

That in respect of this debt, I do not hold any assets of the debtor as security and
(*Check appropriate description*)

- Regarding the amount of \$ _____, I claim a right to priority under section 136 of the Act.
- Regarding the amount of \$ _____, I do not claim a right to a priority.

(Set out on an attached sheet details to support priority claim)

- CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

FORM 31 - *Continued*

(Give full particulars of the claim, including the calculations upon which the claim is based)

- B. SECURED CLAIM OF \$798,795.88

That in respect of this debt, I hold assets of the debtor valued at \$N/A as security, particulars of which are as follows:

Claim of Liens pursuant to the Builders' Lien Act (see below).

Please refer to the Affidavit of Julia Lariviere, attached here to and marked as Schedule "A", and additional supporting documents, attached hereto and marked as Schedule "B", as the basis for valuation.

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents)

- C. CLAIM OF LIEN PURSUANT TO BUILDERS' LIEN ACT (ALBERTA) IN THE AMOUNT OF \$798,795.88

A. On the leasehold estate or other interest of Imperial Oil Resources Limited and ExxonMobil Canada Ltd.

In the following lands (legal description(s)):

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 10
QUARTER NORTH WEST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97

SECTION 9
QUARTER SOUTH EAST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 10
QUARTER SOUTH WEST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 9
QUARTER NORTH EAST
EXCEPTING ALL MINES AND MINERALS

In respect of the following work or materials:

Supply all labour, supervision, materials, tools and equipment for the installation of heating, ventilating and air conditioning

The work or materials were last provided on the following date: December 12, 2014

B. On the estate upon the interest in minerals of the following persons: Imperial Oil Resources Limited

The Lien is claimed in respect of minerals in the following land: All lands and zones in respect of Agreement No. 074 7400120006

In respect of the following work or materials:

Supply all labour, supervision, materials, tools and equipment for the installation of heating, ventilating and air conditioning

The work or materials were last provided on the following date: December 12, 2014

NOTE: Refer to Schedule "A" (Affidavit of Julie Larivière) – Attached as Exhibit "1" to the Affidavit of Julie Larivière is a copy of the Court Order filed on March 17, 2015 in Court File No. 1501 02878 (the "TKIS Order"). Pursuant to this Order, the Applicant, ThyssenKrupp Industrial Solutions (Canada) Inc. ("TKIS"), was permitted to deposit, with the Clerk of the Court, the sum of \$42,984,848.12 as security for the liens described above (together with liens registered on behalf of Pacer Promec Energy Corporation and RNS Scaffolding Inc.) plus \$600,000.00 as security for costs, in the form of a lien bond. Accordingly, Manseau & Perron Inc. may be entitled to assert an interest upon the Lien Bond. Notwithstanding the foregoing, and notwithstanding the filing of the TKIS Order and the posting of the Lien Bond, Manseau & Perron Inc. ought to be entitled to participate in the Lien management procedure as set out in the Order filed on May 11, 2015 in the Receivership Proceedings (Court File No. 1501 02652).

D. CLAIM BY WAGE EARNER OF \$ _____

- That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____
- That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____
- E. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____
- That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____
- That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____
- F. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors)

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based)

FORM 31 – Concluded

- 5. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non-arm's-length manner. N/A
- 6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of subsection 2(1) of the Act. (provide details of payments, credits and transfers at undervalue). N/A

Dated at Rouyn-Noranda, this 19 day of June, 2015

Nathalie Bernier
Witness:



Julie Larivière
JULIE LARIVIERE
Creditor

Telephone No.: 819.762.2818
Fax No.: 819.762.3801
Email address: julie.lariviere@mansseauperron.com

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

Instructions for Completing Proof of Claim Forms

In completing the attached form, your attention is directed to the notes on the form and to the following requirements:

Proof of Claim:

1. The form must be completed by an individual and not by a corporation. If you are acting for a corporation or other person, you must state the capacity in which you are acting, such as, "Credit Manager", "Treasurer", "Authorized Agent", etc., and the full legal name of the party you represent.
2. The person signing the form must have knowledge of the circumstances connected with the claim.
3. Tick the box of the appropriate Debtor your claim is against, or the Receiver if your claim is against the Receiver. A Statement of Account containing details of secured and unsecured claims, and if applicable, of the amount due in respect of property claims, must be attached and marked Schedule "A". It is necessary that all creditors indicate the date and location of the delivery of all goods and/or services. Any amounts claimed as interest should be clearly noted as being for interest.
4. The nature of the claim must be indicated by ticking the type of claim which applies. e.g. -

Ticking (A) indicates the claim is unsecured;

Ticking (B) indicates the claim is secured, such as a builders' lien, mortgage, lease, or other security interest, and the value at which the creditor assesses the security must be inserted, together with the basis of valuation. Details of each item of security held should be attached as Schedule "B" and submitted with a copy of the statement of lien, chattel mortgage, conditional sales contract, security agreement, etc.

5. The person signing the form must insert the place and date in the space provided, and the signature must be witnessed.

Additional information regarding the Debtors and receivership process, as well as copies of claims documents may be obtained at <http://cfcanada.fticonsulting.com/ppcc>. If there are any questions in completing the notice of claim, please write or telephone the office of the Receiver at:

FTI Consulting Canada Inc. in its capacity as the Court appointed Receiver and Manager of
Pacer Promec Energy Corporation and Pacer Promec Energy Construction Corporation

By Mail/Courier:

FTI Consulting Canada Inc.
Suite 200, 1040 - 7th Avenue S.W.
Calgary, AB T2P 3G8
Attention: Ms. Julie Haghiri
Phone: 1-855-344-1825
Fax: 403-232-6116

Note: Any claim not delivered to the Receiver at the above noted address by June 19, 2015, will, unless otherwise ordered by the Alberta Court of Queen's Bench, be barred and may not thereafter be advanced against the Debtors or the Receiver.

SCHEDULE "B"

Manseau & Perron Inc. – Statement of Claim

Form 10

CLERK OF THE COURT

FILED

SEP 28 2016

JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER

1601-12906

COURT

QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

MANSEAU & PERRON INC.

DEFENDANTS

PACER PROMEC ENERGY CORPORATION,
IMPERIAL OIL RESOURCES LIMITED,
EXXONMOBIL CANADA LTD., HER MAJESTY THE
QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA;
REGIONAL MUNICIPALITY OF WOOD BUFFALO
and THYSSENKRUPP INDUSTRIAL SOLUTIONS
(CANADA) INC., formerly known as KRUPP CANADA
INC.

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Scott Venturo LLP
Barristers and Solicitors
203, 200 Barclay Parade S.W.
Calgary, AB T2P 4R5
Attention: Scott Chimuk
Phone: (403) 261-9043
Fax: (403) 265-4632
Solicitors for the Plaintiff
File No: 66781.001

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

Statement of facts relied on:

1. The Plaintiff, Manseau & Perron Inc. ("M&P"), is a body corporate incorporated pursuant to the laws of the Province of Quebec and, *inter alia*, carries on business in the Province of Alberta.

2. The Defendant, Pacer Promec Energy Corporation (“PPEC”), is a corporation incorporated pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
3. The Defendant, Her Majesty the Queen in Right of Alberta, is the owner of the mineral interest and further administers the leasehold interest in the lands legally described as:

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 10
QUARTER NORTH WEST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 9
QUARTER SOUTH EAST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 10
QUARTER SOUTH WEST
EXCEPTING ALL MINES AND MINERALS

MERIDIAN 4 RANGE 7 TOWNSHIP 97
SECTION 9
QUARTER NORTH EAST
EXCEPTING ALL MINES AND MINERALS

(collectively the “**Lands**”), which are the subject of the within action, and is joined as a Defendant pursuant to the provisions of the *Builders’ Lien Act*, R.S.A. 2000, c. B-7, and the amendments thereto (the “*Builders’ Lien Act*”).

4. The Defendant, the Regional Municipality of Wood Buffalo, is joined as a Defendant pursuant to the provisions of the *Builders’ Lien Act*.
5. The Defendants, Imperial Oil Resources Limited and ExxonMobil Canada Ltd. (collectively, the “**Imperial/ExxonMobil Defendants**”) are federal corporations incorporated pursuant to the laws of Canada and carry on business in the Province of Alberta and elsewhere. At all material times, the Imperial/ExxonMobil Defendants, or any one of them, were, and are at the date of the issuance of this Statement of Claim, the owners of leasehold estates or other interests in the Lands and the owners and holders of Oil Sands Lease No. 074 7400120006 (the “**Oil Sands Lease**”).
6. The Defendant, ThyssenKrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc. (“**Krupp**”), is a federal corporation incorporated pursuant to the laws of the Canada and carries on business in the Province of Alberta and elsewhere and is joined as a Defendant pursuant to the provisions of the *Builders’ Lien Act*.

7. On or about February 20, 2014, M&P entered into a written agreement (the "**Contract**") with PPEC whereby M&P agreed to supply all labour, supervision, materials, tools and equipment necessary to install, construct, complete and provide all required turnover documentation for HVAC work (the "**Work**") at the OPP 2 Kearn Slurry Preparation Plant and Surge Bin Facility being constructed on the Lands.
8. The Contract provided that, in consideration of the Work, PPEC was to pay:
 - (a) M&P the sum of \$871,500.00 inclusive of GST in consideration of the Work; and
 - (b) all amounts invoiced within 30 days of receipt and interest on each outstanding invoice from the date the invoice was issued at the rate prescribed by the Contract.
9. Subsequent to the execution of the Contract, PPEC altered the scope of the Contract and increased the price to be paid in respect of the Work by \$501,365.41 inclusive of GST pursuant to four (4) change orders (the "**Change Orders**").
10. PPEC further altered the scope of the Contract through extra work requests in the amount of \$154,396.99 inclusive of GST. All extra work on the project is documented by change order requests and email correspondence and is contained and referenced in the various signed and unsigned work orders. Regardless, all extras referenced in the work orders were approved either verbally or in writing by PPEC.
11. As a result of the Change Orders and extra work requests, PPEC agreed to pay M&P the sum of \$1,527,262.40 under the Contract.
12. All Work was performed:
 - (a) in accordance with the terms of the Contract, Change Orders and extra work requests;
 - (b) in a good and workmanlike fashion;
 - (c) in compliance with all applicable bylaws and regulations; and
 - (d) in accordance with generally accepted construction standards.
13. As a result of the Work performed pursuant to the Contract, the Change Orders and the extra work requests, M&P invoiced PPEC a total sum of \$1,304,577.93 in respect of the Work.
14. In breach of the Contract, and despite numerous demands made by M&P for payment, PPEC refused or neglected to pay M&P the sum of \$798,795.88 in respect of the Work which was supplied and invoiced pursuant to the Contract, the Change Orders and the approved extra work requests and this amount remains outstanding and is a debt justly owed to M&P by PPEC.

15. On November 12, 2014, M&P caused to be registered a builders' lien in the amount of \$595,944.85, plus interest and costs, with the Land Titles Office for the Alberta Land Registration District as Registration No. 142 381 532 with respect to the Imperial Oil/ExxonMobil Defendants' leasehold interest in the Lands.
16. On November 12, 2014, M&P caused to be registered a builders' lien in the amount of \$595,944.85, plus interest and costs, with Alberta Department of Energy as Registration No. 1402550 with respect to an interest in Crown Minerals against all lands within the Oil Sands Lease.
17. By reason of the supply of the Work, M&P became and is entitled to a valid builders' lien upon the Imperial Oil/ExxonMobil Defendants' leasehold interest in the Lands and upon the minerals within the Oil Sands Lease, in the amount of \$595,944.85, together with interest and costs of this action pursuant to the provisions of the *Builders' Lien Act*.
18. Further or in the alternative, M&P claims that PPEC and the Imperial Oil/ExxonMobil Defendants, or any one or more of them, have received an unjust enrichment in the amount of \$798,795.88, plus interest and costs, as a result of the supply of the Work for which PPEC and the Imperial Oil/ExxonMobil Defendants, or any one of them, have refused to make payment. M&P has suffered a corresponding deprivation and M&P says that there is no juristic reason for such unjust enrichment and deprivation, as set out above.
19. Further or in the further alternative, M&P claims reimbursement from PPEC and the Imperial Oil/ExxonMobil Defendants, or any one of them, in the amount of \$798,795.88, plus interest and costs, on a *quantum meruit* basis, that amount being fair and reasonable compensation for the value of the Work supplied to the Lands, which Lands have increased in value by at least \$798,795.88 as a result of the supply of the Work.
20. Further or in the further alternative, to the extent that, following the issuance of a certificate of substantial performance, PPEC receives any funds with respect to the OPP 2 Kearn Slurry Preparation Plant and Surge Bin Facility which is situated on the Lands and was the subject of the Work, then pursuant to s. 22 of the *Builders' Lien Act*, PPEC holds those funds in a statutory trust on behalf of M&P.
21. Further or in the further alternative, pursuant to s. 22 of the *Builders' Lien Act*, a statutory trust has been created with respect to any funds (the "Trust Funds") that Krupp received with respect to the project from the date of issue of the certificate of substantial performance. Krupp is a trustee of the Trust Funds and M&P is a beneficiary.
22. As a trustee of the Trust Funds, Krupp owed M&P a fiduciary duty to ensure the Trust Funds were kept separate, not comingled and held for the benefit of the M&P.
23. In breach of its fiduciary duty, Krupp dispersed or took the Trust Funds for its own benefit for no juristic reason.
24. M&P pleads and relies upon the provisions of the *Builders' Lien Act* and the *Judgment Interest Act*, R.S.A. 2000, c. J-1, both as amended.

Remedy sought:

25. Judgment against Pacer Promec Energy Corporation, Imperial Oil Resources Limited and ExxonMobil Canada Ltd., jointly and severally, in the amount of \$798,795.88.
26. Interest on each outstanding invoice issued by M&P from the date the invoice was issued at the rate prescribed by the Contract or, alternatively, pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1.
27. A declaration that M&P has a valid and subsisting builders' lien registered against Imperial Oil Resources Limited and ExxonMobil Canada Ltd.'s leasehold interest in the Lands in the amount of \$595,944.85, together with interest and costs.
28. A declaration that M&P has a valid and subsisting builders' lien registered against the Oil Sands Lease and any materials in respect of that lease in the amount of \$595,944.85, together with interest and costs.
29. An Order that, in default of payment of any Judgment granted in this action, the leasehold interest of Imperial Oil Resources Limited and ExxonMobil Canada Ltd., the Oil Sands Lease and any materials in respect of the Oil Sands Lease be sold and the proceeds applied in accordance with the provisions of the *Builders' Lien Act* and in payment of the claim of M&P.
30. Further or in the alternative, a declaration that M&P is entitled to a claim against Pacer Promec Energy Corporation, Imperial Oil Resources Limited and ExxonMobil Canada Ltd., or any of or more of them, on a *quantum meruit* basis and, accordingly, Judgment against Pacer Promec Energy Corporation, Imperial Oil Resources Limited and ExxonMobil Canada Ltd., jointly and severally, in the amount of \$798,795.88, together with interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and costs.
31. Further or in the alternative, an Order for attachment or appointment of a Receiver of the rents and profits or proceeds of the interests in the Lands pursuant to the provisions of the *Builders' Lien Act*.
32. Further or in the alternative, a declaration that Imperial Oil Resources Limited and ExxonMobil Canada Ltd. hold the Lands and the Oil Sands Lease on a constructive trust for M&P to the extent of M&P's claim pursuant to its liens in the amount of \$595,944.85, together with interest and costs.
33. Further or in the alternative, a declaration that to the extent that, following the issuance of a certificate of substantial performance, Pacer Promec Energy Corporation receives any funds with respect to the OPP 2 Kearn Slurry Preparation Plant and Surge Bin Facility which is situated on the Lands and was the subject of the Work, then pursuant to s. 22 of the *Builders' Lien Act*, Pacer Promec Energy Corporation holds those funds in a statutory trust on behalf of M&P.
34. Further or in the alternative, a declaration that to the extent that, following the issuance of a certificate of substantial performance, ThyssenKrupp Industrial Solutions (Canada)

Inc., formerly known as Krupp Canada Inc. receives any funds with respect to the OPP 2 Kearn Slurry Preparation Plant and Surge Bin Facility which is situated on the Lands and was the subject of the Work, then pursuant to s. 22 of the *Builders' Lien Act*, ThyssenKrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc. holds those funds in a statutory trust on behalf of M&P.

35. Costs of this action on a solicitor and own client basis.
36. Such further and other relief as this Honourable Court deems just and appropriate in the circumstances of this case.

WARNING

NOTICE TO THE DEFENDANTS

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

WARNING

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