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May 5, 2015

VIA EMAIL

Dentons Canada LLP
15th Floor, Bankers Court
850, 2nd Street SW
Calgary, AB T2P 0R8

Attention: David Mann and David LeGeyt

Dear Sirs:

**Re: *Pacer Construction Holdings Corporation v. Pacer Promec Energy Corporation et al*
Action No. 1501-02652
Application returnable on May 7, 2015, at 2:00 p.m. (the "Application")**

As you know, we act for ThyssenKrupp Industrial Services (Canada) Inc., formerly known as Krupp Canada Inc. ("**TKIS**"). We note that you have not complied with Rule 6.3(3) and that service has not occurred five days or more before the Application is scheduled to be heard, and further note that none of the materials that you provided to us on Saturday morning at 9:56 a.m. were filed with the Court, though were filed on Monday May 4, 2015, with evidence of the filing having been provided to our office at 2:06 p.m. on Monday May 4, 2015.

As discussed with you last week, we have requested an adjournment of that portion of your Application which relates to the appointment of a Claims Officer and institutes a claims process for resolution of claims by and against the Receiver (the "**Claims Procedure**"). Although it appears that you discussed the Claims Procedure with some of the other parties to this Action in advance of service of the Application, we were not given any advance information notwithstanding that the claims made against TKIS are significant. You advised that you are not prepared to adjourn the Claims Procedure portion of the Application notwithstanding that we advised that we need time to fully respond to the merits of the Claims Procedure.

PPEC has registered a builders' lien in the amount of \$21,838,072.00 in relation to the Mildred Lake Mine Replacement ("**MLMR**") project. In addition, two of PPEC's subcontractors have also filed builders' liens on the MLMR project: Leavitt Machinery General Partnership for \$287,192.62 and Aluma Systems Inc. for \$1,016,596.15. All three of these liens were discharged from title after TKIS posted a lien bond as security for the same. TKIS also has a counterclaim against PPEC in the amount of \$12,616,989.95 against PPEC for the MLMR project.

PPEC has also registered a builders' lien in the amount of \$41,184,135.00 in relation to the Kearn Expansion Project ("**KEP**"). In addition, two of PPEC's subcontractors have also filed builders' liens on KEP: 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 as security for the same. TKIS also has a counterclaim against PPEC which is in an amount to be determined as corrections to PPEC's deficient work are on-going.

We intend to prepare and file with the Court two Affidavits in support of our position that the Claims Procedure portion of the Application be adjourned for a period of 2 weeks to May 21, 2015, or such other suitable date that the court may determine. We believe that the Claims Procedure portion of your Application is akin to a Special Chambers Application and we need the opportunity to consider the Claims Procedure and seek instructions from TKIS, prepare fulsome Affidavits and prepare a Brief of Law and Argument, similar to the opportunity that the Receiver has enjoyed.

Given the short period of time, we are not sure when we will be able to provide your office with the Affidavits that we will be relying on for an adjournment of the Claims Procedure portion of the Application, but we will do our best to provide them as soon as possible.

In addition to the adjournment of the Application, we have a number of concerns with regarding the Receiver's proposed Order. Among our concerns, we do not see any legal basis for the Receiver to avoid the provisions of the *Builders' Lien Act* as it relates to posting security; how that security will be dealt with without any Order setting out the parameters relating to the security; and whether any of the liens will survive in a bankruptcy of PPEC or PPEC Construction such that the lien claimants will be able to realise on the security. Courts routinely find that the *Bankruptcy and Insolvency Act* is paramount to the *Builders' Lien Act*, thereby putting builders' lien recovery in jeopardy once companies are bankrupt.

We again request an adjournment of the Claims Procedure portion of the Application so that we may properly respond on the merits. We wanted to make our position clear, as it may relate to costs, and to advise all of counsel of the position we will taking on May 7, 2015 at 2:00 p.m.

Yours truly,



E. Jane Sidnell
Rose LLP
EJS/jk

cc: TO ALL THE PARTIES ON THE RECEIVER'S SERVICE LIST

cc: Client