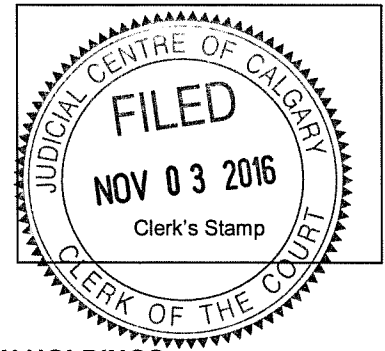


I hereby certify this to be a true copy of  
the original Order  
dated this 3 day of NOV 2016  
Monica neuber  
for Clerk of the Court



COURT FILE NUMBER	1501-02652
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	<b>PACER CONSTRUCTION HOLDINGS CORPORATION</b>
DEFENDANTS	<b>PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION</b>
APPLICANT	<b>APPLICATION BY FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION</b>
DOCUMENT	<b><u>ORDER</u></b> <b>(Approval of Settlement Agreement)</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>DENTONS CANADA LLP</b> Bankers Court 15 <sup>th</sup> Floor, 850 - 2 <sup>nd</sup> Street S.W. Calgary, Alberta T2P 0R8 <b>Attention: David W. Mann / David LeGeyt</b> Ph. (403) 268-7097/3075 Fx. (403) 268-3100 File No.: 548476-5
DATE ON WHICH ORDER WAS PRONOUNCED	November 3, 2016
LOCATION WHERE ORDER WAS PRONOUNCED	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER	Honourable Mr. Justice B. Nixon

**UPON** the application of FTI Consulting Canada Inc., in its capacity as receiver and manager (the "Receiver") of Pacer Promec Energy Corporation ("PPEC") and Pacer Promec Energy Construction Corporation in these proceedings; **AND UPON** having read the Application of the Receiver, dated October 28, 2016, the Fourth Report of the Receiver, dated October 28, 2016 (the "**Fourth Report**"), including the Confidential Appendix to the Fourth Report (the "**Confidential Appendix**"), the Affidavit of Gail Wheatley, dated November 2, 2016 (the "**Service Affidavit**"), and such other material in the pleadings and proceedings as deemed necessary; **AND UPON** hearing counsel for the Receiver and other interested parties; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **Service**

1. The time for service of notice of this application is abridged to the time actually given and service of the Application and supporting material as described in the Service Affidavit is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.

### **Definitions**

2. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Fourth Report and the following terms shall have the following meaning:
  - (a) **"Aluma"** means Aluma Systems Inc.;
  - (b) **"Aluma Action"** means Court of Queen's Bench of Alberta Action No. 1501-06666;
  - (c) **"Aluma Claim"** means all of the claims, rights, causes of action, remedies, interest, costs and relief of any kind whatsoever:
    - (i) asserted or alleged in the Aluma Action;
    - (ii) which may or could be asserted or alleged from the facts described in the Aluma Action;
    - (iii) related to or arising from the Aluma Lien; or
    - (iv) relating to any trust claim, pursuant to section 22 of the BLA or otherwise, that Aluma may have in relation to its work on the MLMR Project;
  - (d) **"Aluma Lien"** means, collectively, the builders' liens in the amount of \$1,016,596.13 registered by Aluma in the Alberta Land Titles Office as instrument no. 142 425 963 and with the Ministry of Energy as registration BL 1402873;
  - (e) **"BLA"** means the Alberta Builders' Lien Act, RSA 2000, c.B-7;
  - (f) **"Kearl Released Parties"** means tkIS, Imperial Oil Resource Ventures Limited, Imperial Oil Resources Limited, Exxon Mobil Canada Ltd., Her Majesty the Queen in right of Alberta, and Regional Municipality of Wood Buffalo;
  - (g) **"KEP"** means the "Kearl Expansion Project" in relation to which certain work was performed by tkIS and tkIS subcontracted a portion of such work to Pacer Mamisîwin Corporation and Promec as a joint venture, which subcontract was subsequently assigned to PPEC;
  - (h) **"KEP Lien Bond"** means the lien bond issued by Continental Casualty Company bearing no. 929609246 at the request of tkIS, in the amount of \$43,584,848.12 and filed with the Clerk of the Court on March 24, 2015 as security for:
    - (i) the builders' liens registered in the amount of \$41,184,135.00 by PPEC as instrument nos. 152 006 906 in the Alberta Land Titles Office and bearing no. 1500037 with the Ministry of Energy against lands and interests related to KEP;
    - (ii) the M&P Lien; and

- (iii) the RNS Lien;
- (i) **"KEP Release"** means the confidential KEP Mutual Release and Indemnity Agreement, dated October 5, 2016, between tkIS, Pacer Construction Holdings Corporation, Pacer Mamisiwin Corporation and the Receiver on behalf of PPEC contained in the Confidential Appendix;
- (j) **"KEP Settlement Agreement"** means the confidential KEP Commercial Settlement Agreement, dated October 5, 2016 between tkIS, Pacer Construction Holdings Corporation, Pacer Mamisiwin Corporation and the Receiver on behalf of PPEC, contained in the Confidential Appendix;
- (k) **"Leavitt"** means Leavitt Machinery General Partnership;
- (l) **"Leavitt Action"** means Court of Queen's Bench of Alberta Action No. 1503-01118;
- (m) **"Leavitt Claim"** means all of the claims, rights, causes of action, remedies, interest, costs and any relief of any kind whatsoever:
  - (i) asserted or alleged in the Leavitt Action;
  - (ii) which may or could be asserted or alleged from the facts described in the Leavitt Action;
  - (iii) related to or arising from the Leavitt Lien; or
  - (iv) relating to any trust claim, pursuant to section 22 of the BLA or otherwise, that Leavitt may have in relation to its work on the MLMR Project;
- (n) **"Leavitt Lien"** means, collectively, the builders' liens in the amount of \$287,192.65 by Leavitt with the Ministry of Energy as registration BL 1402566;
- (o) **"M&P"** means Manseau & Perron Inc.;
- (p) **"M&P Claim"** means all of the claims, rights, causes of action, remedies, interest, costs and relief of any kind whatsoever:
  - (i) which may have been asserted or alleged against any person as a result of the M&P Lien;
  - (ii) relating to any trust claim, pursuant to section 22 of the BLA or otherwise, that M&P may have; (**"M&P Trust Claim"**) or
  - (iii) other equitable claims made by M&P (**"M&P Equitable Claims"**)in relation to its work on KEP that were initiated prior to the date of this Order;
- (q) **"M&P Lien"** means, collectively, the builders' liens in the amount of \$595,994.85 registered by M&P in the Alberta Land Titles Office as instrument no. 142 381 532 and with the Minister of Energy as registration BL 1402550;
- (r) **"MLMR Lien Bond"** means the lien bond issued by Chubb Insurance Company of Canada, bearing no. 8233-49-68, at the request of tkIS, in the amount of \$22,038,072.00 and filed with the Clerk of the Court on December 5, 2014 as security for:

- (i) the builders' liens registered in the amount of \$21,838,072.00 by PPEC as instrument nos. 142 374 248, 142 374 616 and 142 374 617 in the Alberta Land Titles Office and bearing no. 1402486 with the Ministry of Energy against lands and interests related to the MLMR Project;
  - (ii) the Aluma Lien; and
  - (iii) the Leavitt Lien;
- (s) **"MLMR Project"** means the "Mildred Lake Mine Replacement Project" in relation to which certain work was performed by tkIS and tkIS subcontracted a portion of such work to PPEC;
- (t) **"MLMR Release"** means the confidential MLMR Mutual Release and Indemnity Agreement, dated October 5, 2016, between tkIS, Pacer Construction Holdings Corporation and the Receiver on behalf of PPEC, contained in the Confidential Appendix;
- (u) **"MLMR Released Parties"** means tkIS, Syncrude Canada Ltd., Sinopec Oil Sands Partnership, Sinopec Canada Energy Ltd., Canadian Oil Sands Partnership #1, Canadian Oil Sands Limited, Murphy Oil Company Ltd., Mocal Energy Limited, Nexen Oil Sands Partnership, Nexen Energy ULC, Suncor Energy Ventures Partnership, Suncor Energy Inc., Imperial Oil Resources Ventures Limited and Imperial Oil Resources Limited, and their respective predecessor and successor companies, and Her Majesty the Queen in right of Alberta;
- (v) **"MLMR Settlement Agreement"** means the confidential MLMR Commercial Settlement Agreement, dated October 5, 2016, between tkIS, Pacer Construction Holdings Corporation and the Receiver on behalf of PPEC, contained in the Confidential Appendix;
- (w) **"Promec"** means Construction Promec Inc., now known as 2242974 Canada Inc.;
- (x) **"PPEC Actions"** means Court of Queen's Bench of Alberta Action No. 1501-04852 and Court of Queen's Bench of Alberta Action No. 1501-07056, and includes any counterclaims in those proceedings;
- (y) **"PPEC Claims"** means all of the claims, rights, causes of action, remedies, interest, costs, and any relief of any kind whatsoever, asserted or alleged in the PPEC Actions or the PPEC Liens, or both, or which may have been asserted or alleged from the facts described in the PPEC Actions or the PPEC Liens, or both;
- (z) **"PPEC Liens"** means, collectively, the following builders' liens:
- (i) registered by PPEC in the amount of \$21,838,072.00:
    - (A) in the Alberta Land Titles Office bearing instrument no. 142 374 248, on November 5, 2014;
    - (B) in the Alberta Land Titles Office bearing instrument no. 142 374 616, on November 5, 2014;

- (C) in the Alberta Land Titles Office bearing instrument no. 142 374 617, on November 5, 2014; and
- (D) with the Minister of Energy bearing no. BL 1402486, on November 5, 2014; and
- (ii) registered by PPEC, Pacer Mamisîwin Corporation and Promec in the amount of \$41,184,135.00 on January 8, 2015:
  - (A) in the Alberta Land Titles Office bearing instrument no. 152 006 906; and
  - (B) with the Minister of Energy bearing no. BL 1500037.
- (aa) **“Released Parties”** means collectively the Kearn Released Parties and the MLMR Released Parties;
- (bb) **“RNS”** means RNS Scaffolding Inc.;
- (cc) **“RNS Action”** means Court of Queen’s Bench of Alberta Action No. 1503-03271;
- (dd) **“RNS Claim”** means all of the claims, rights, causes of action, remedies, interest, costs and relief of any kind whatsoever:
  - (i) asserted or alleged in the RNS Action;
  - (ii) which may or could be asserted or alleged from the facts described in the RNS Action;
  - (iii) related to or arising from the RNS Lien; or
  - (iv) relating to any trust claim, pursuant to section 22 of the BLA or otherwise, that RNS may have in relation to its work on KEP;
- (ee) **“RNS Lien”** means collectively, the builders’ liens in the amount of \$1,204,768.27 registered by RNS in the Alberta Land Titles Office as instrument no. 142 430 855 and with the Ministry of Energy as registration BL 1402958;
- (ff) **“Sublien Claimants”** means, collectively, Aluma, Leavitt, M&P, and RNS; and
- (gg) **“tkIS”** means thyssenkrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc.

***Approval of Settlement Agreement***

3. The KEP Settlement Agreement and KEP Release are approved.
4. The MLMR Settlement Agreement and MLMR Release are approved.
5. The Receiver is hereby authorized and directed to execute all deeds, documents and agreements, and to do all things reasonably necessary to complete and give effect to the terms of the KEP Settlement Agreement, the KEP Release, the MLMR Settlement Agreement and the MLMR Release and to carry out the terms of this Order.

6. Paragraphs 7 – 23 of this Order become effective upon the Receiver filing with this Honourable Court a Receiver's Certificate in the form attached hereto as Schedule "A".

**Effect On Sub-Lien Claimants**

7. The KEP Release, together with the compromises, arrangements, transactions, releases, discharges, injunctions and results provided for therein, shall be binding and effective upon M&P and RNS, and the rights and remedies of M&P and RNS relating to the M&P Claim and RNS Claim shall be as set forth in this Order.
8. The MLMR Release, together with the compromises, arrangements, transactions, releases, discharges, injunctions and results provided for therein, shall be binding and effective upon Aluma and Leavitt, and the rights and remedies of Aluma and Leavitt relating to the Aluma Claim and Leavitt Claim shall be as set forth in this Order.

**Aluma**

9. In respect of and as against the MLMR Released Parties:
  - (a) the Aluma Claim is dismissed and forever stayed, and Aluma is prohibited from advancing, asserting, commencing, or recommencing all, or any part, of the Aluma Claim; and
  - (b) the Aluma Action is, and shall be deemed to be, discontinued on a without costs basis and the Receiver is entitled to file a copy of this Order in the Aluma Action as evidence of such discontinuance on a without costs basis.

**Leavitt**

10. In respect of and as against the MLMR Released Parties:
  - (a) the Leavitt Claim is dismissed and forever stayed, and Leavitt is prohibited from advancing, asserting, commencing or recommencing all, or any part, of the Leavitt Claim; and
  - (b) the Leavitt Action is, and shall be deemed to be, discontinued on a without costs basis and the Receiver is entitled to file a copy of this Order in the Leavitt Action as evidence of such discontinuance on a without costs basis.

**M&P**

11. The Receiver shall deposit with the Clerk of the Court in Action No. 1501-02878 the amount of \$798,795.88 in cash, or post a bond in such amount, to be held in accordance with the terms of this Order, as security for the M&P Claim ("**M&P Security**"). The M&P Security shall stand as security for the M&P Claim and in substitution of the KEP Lien Bond.
12. In the event (a) M&P is successful in appealing and reversing the Order of Master A. Robertson filed October 7, 2015 in Court of Queen's Bench of Alberta Action No. 1501-02878, which Order declared *inter alia*, that the M&P Lien has ceased to exist, and the M&P Lien is restored; or (b) M&P proceeds with the M&P Trust Claim and/or the M&P Equitable Claim pursuant to the

terms of the Order of Justice Nixon granted May 7, 2015 in these proceedings (the “**Lien Claims Order**”) M&P may prosecute the M&P Claim, or such portions thereof, against PPEC and the M&P Security only, but may not prosecute or assert any part, or all, of the M&P Claim against any other person, including the Kearn Released Parties. Any M&P Trust Claim and/or M&P Equitable Claim which was to be pursued against a Kearn Released Party, PPEC or the Receiver will be filed with the Receiver as a supplemental Proof of Claim, which shall be subject to the Lien Claims Order, and M&P is given leave to file such supplemental Proof of Claim with the Receiver on or before December 1, 2016.

13. Subject to paragraphs 12 and 16, the posting of the M&P Security shall be entirely without prejudice to the existing rights and priorities of M&P and PPEC, acting on its own behalf and in defending the M&P Claim in respect of claims initiated against the Kearn Released Parties pursuant to the Lien Claims Order, and the M&P Claim against the M&P Security shall be subject to the same priorities, burdens, and defenses that applied to the M&P Claim prior to the posting of the M&P Security, including but not limited to the defence that the M&P Claim has been dismissed by the above-referenced Order of Master A. Robertson, and any defences available to each of the Receiver, PPEC, and the Kearn Released Parties.
14. The deposit of the M&P Security by the Receiver shall not constitute, nor be deemed to constitute, an admission by the Receiver, PPEC, the Kearn Released Parties, or any other party, as to the validity of any part, or all, of the M&P Claim.
15. The M&P Security shall be held by the Clerk of the Court, in an interest bearing account, or held by way of the bond provided for in paragraph 10 hereof, until further Order of this Honourable Court.
16. In respect of and as against the Kearn Released Parties:
  - (a) the M&P Claim is dismissed and forever stayed and M&P is prohibited from advancing, asserting, commencing, or recommencing all, or any part, of the M&P Claim, except as against PPEC and the Receiver in accordance with the Lien Claims Order;
  - (b) where the M&P Claim is pursued pursuant to the Lien Claims Order, the Receiver shall review the claim in respect of all Kearn Released Parties, and is authorized to seek the necessary information and co-operation from the Kearn Released Parties as required to review the M&P Claim;
  - (c) tkIS shall no longer be a party to Action No. 1501-02878 and the Receiver on behalf of PPEC shall:
    - (i) be substituted for and have all the rights of tkIS and the Kearn Released Parties in that Action and the style of cause in that Action shall reflect such substitution; and
    - (ii) have all of the liabilities of tkIS in that Action meaning that no costs may be made against tkIS in that Action at any time; and
  - (d) tkIS is entitled to file a copy of this Order in Action No. 1501-02878 as evidence of:

- (i) the substitution of the Receiver on behalf of PPEC for tkIS and the resulting change to the style of cause; and
  - (ii) the order that there shall be no costs awarded against tkIS in the Action.
17. For greater certainty, nothing in this Order shall revive any claim, right, or defence of any party which has lapsed due to the passage of time.

**RNS**

18. In respect of and as against the Kearn Released Parties:
- (a) the RNS Claim is dismissed and forever stayed, and RNS is prohibited from advancing, asserting, commencing, or recommencing all, or any part, of the RNS Claim; and
  - (b) the RNS Action is, and shall be deemed to be, discontinued on a without costs basis and the Receiver is entitled to file a copy of this Order in the RNS Action as evidence of such discontinuance on a without costs basis.

***Effectiveness of Settlement Agreement and Enjoinment of Released Claims***

19. Effective as of the date of this Order, the KEP Release and the MLMR Release, together with the compromises, arrangements, transactions, releases, discharges, injunctions and results provided therein shall be binding and effective upon the parties to the KEP Release and MLMR Release and the Sublien Claimants. For greater certainty, this Honourable Court confirms that, effective as of the date of this Order:
- (a) the claims of the Sublien Claimants shall be limited to the PPEC estate and, as applicable, the security posted by the Receiver with the Clerk of the Court pursuant to this Order, and any and all other claims, causes of action, proceedings or rights, the Sublien Claimants may have in relation to the Aluma Claim, the Leavitt Claim, the M&P Claim and the RNS Claim are forever extinguished;
  - (b) the Sublien Claimants and PPEC have fully released, settled, discharged and relinquished any claims which they may have had against the Released Parties;
  - (c) the Sublien Claimants and PPEC are permanently enjoined from commencing or prosecuting, whether directly, derivatively or otherwise, any claim which they may have had against the Released Parties based on the Aluma Claim, the Leavitt Claim, the M&P Claim, the RNS Claim, the PPEC Claims or the facts alleged in the Aluma Action, Leavitt Action, M&P Claim, RNS Action, or the PPEC Actions; and
  - (d) the PPEC Liens are extinguished and the Released Parties are fully released from the PPEC Liens.
20. Effective as of the date of this Order, the Released Parties shall have no obligation or liability to PPEC, the Receiver, the Sublien Claimants or Promec in respect of the PPEC Claims, the Aluma Claim, the Leavitt Claim, the M&P Claim or the RNS Claim.

***Discontinuance of action related to posting of security for MLMR builders' liens***



21. After an Order requiring the return of the MLMR Lien Bond to counsel for tkIS is granted and the MLMR Lien Bond is so returned to counsel for tkIS, Court of Queen's Bench of Alberta Action No. 1401-13098 is ordered to be discontinued on a without costs basis and this Order may be filed in such action as evidence of such discontinuance on a without costs basis.

***Discontinuance of PPEC Action***

22. The Statements of Claim in the PPEC Actions are, and shall be deemed to be, discontinued as against all defendants as of the date Discontinuances of Claim, on a without costs basis, are filed in those actions by the Receiver.
23. The Counterclaim in Action No. 1501-07056 is, and shall be deemed to be, discontinued as against all defendants by counterclaim as of the date a Discontinuance of Counterclaim, on a without costs basis, is filed in Action No. 1501-07056.

***Miscellaneous***

24. The Receiver or any party affected by this Order may apply to this Court for advice and direction or further relief on notice to any party likely to be affected by the Order sought or on such notice as this Court directs.

***General***

25. There shall be no costs of this Application to the Released Parties.
26. The Receiver shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.

*"B. Nixon"*

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A"**

**RECEIVER'S CERTIFICATE**

Clerk's stamp:

COURT FILE NUMBER	1501-02652
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF	<b>PACER CONSTRUCTION HOLDINGS CORPORATION</b>
DEFENDANTS	<b>PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION</b>
DOCUMENT	<b>RECEIVER'S CERTIFICATE</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>DENTONS CANADA LLP</b> Bankers Court 15 <sup>th</sup> Floor, 850 - 2 <sup>nd</sup> Street S.W. Calgary, Alberta T2P 0R8 <b>Attention: David W. Mann / David LeGeyt</b> Ph. (403) 268-7097/3075 Fx. (403) 268-3100 File No.: 548476-5

FTI Consulting Canada Inc. (the "**Receiver**"), the Receiver in these proceedings, hereby certifies that the Settlement Agreement dated effective October 5, 2016 (as defined in the Fourth Report of the Receiver filed in these proceedings on October 28, 2016) between, *inter alia*, the Receiver and thyssenkrupp Industrial Solutions (Canada) Inc. has closed this \_\_\_ day of \_\_\_\_\_, 2016.

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Receiver in these proceedings, and not in its personal capacity.

\_\_\_\_\_  
Per: