

N/M/17/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI

COPY

IN THE MATTER OF THE RECEIVERSHIP OF:

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER
PRODUCTS INC, and ATCON LOGISTICS INC.**

**PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B.
1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and
Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank with a
registered office in the City of Saint John, Province of New
Brunswick**

APPLICANT

- and -

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER
PRODUCTS INC, and ATCON LOGISTICS INC., all of
which are carrying on business in the Province of New Brunswick**

RESPONDENTS

ORDER

THIS MOTION, made by the Applicant in these proceedings (the "**Receivership Proceedings**") and in the proceedings having Court File No. N/M/16/10 (the "**CCAA Proceedings**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**"), in relation to:

a. Atcon Construction Inc. ("**Construction**"),

*Jan
30 March 2010*

- b. Atcon Management Services Inc. ("**Management**"),
- c. Atcon Civil Inc. ("**Civil**"),
- d. Dycon Construction Inc. ("**Dycon**"),
- e. Atcon Structures Inc. ("**Structures**"), and
- f. Envirem Technologies Inc. ("**Envirem**")

(collectively, the "**Companies**"), for an Order pursuant to Section 33 of the *Judicature Act*, R.S. N.B. 1973, Ch. J-2, (the "**Judicature Act**"), Rule 41 of the Rules of Court of New Brunswick (the "**Rules**") and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young Inc. ("**EYI**") as receiver and receiver manager (in such capacities, the "**Receiver**") without security, of each of the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, including, without limitation, the shares in any subsidiaries of any of the Companies (the "**Property**") in relation to the business carried on by the Companies was heard this 30th day of March, 2010 at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Affidavit of Rocco Fabiano sworn to on March 26, 2010 and on hearing the submissions of counsel for the Respondents, the Companies, the Applicant, the Monitor in the CCAA Proceedings, the Province of New Brunswick, Caterpillar Financial Services Limited, GE Canada Equipment Financing C.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company, GE VFS Canada Limited Partnership, the Royal Bank of Canada and Key Equipment Finance:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 33 of the *Judicature Act*, Rule 41 of the Rules and section 243(1) of the BIA, the Receiver is appointed receiver and receiver manager, without security, of the Property on the terms set out herein.

Just
30 March 2010

INCORPORATION OF ORIGINAL RECEIVERSHIP ORDER3. **THIS COURT ORDERS** that:

- (a) the order of this Court dated March 2, 2010 in the Receivership Proceedings (the "**Receivership Order**") is hereby amended so that the term Respondents, as defined in the Receivership Order, hereby includes each of the Companies;
- (b) the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge created and granted by the Receivership Order hereby form a charge on the Property of each of the Companies in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person in accordance with the terms and priority set out in the Receivership Order but each such charge in relation to the Property of the Companies shall be and are hereby subordinate to the charges created and granted by the initial Order of this Court dated March 2, 2010 in the CCAA Proceedings (the "**Initial Order**"), as such charges were modified by the Order of this Court dated March 22, 2010;
- (c) the Receiver is hereby granted all powers, duties and obligations in relation to each of the Companies and their respective Property as provided in Receivership Order as amended by this Order;
- (d) the style and cause in the Receivership Proceedings is hereby amended so as to include each of the Companies as Respondents, and shall be in the form attached hereto as Schedule "A"; and
- (e) The Receivership Order applies to each of the Companies and their Property in accordance with its terms as modified and provided for herein.

John
30 March 2010

ENVIREM

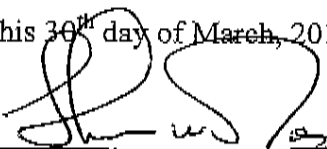
4. **THIS COURT ORDERS** that notwithstanding any other provision of this Order the appointment of the Receiver in relation to Envirem shall be of no force or effect until the issuance by the Monitor of the Monitor's Certificate in accordance with the Order of the Court dated March 22, 2010 in order to complete the Transaction, as such term is defined therein, or until further order of this Court.

EMPLOYEE PAYMENTS

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to cause the payroll for employees of the Companies and Atcon Industrial Services Inc. ("Industrial") to be paid or funded in accordance with usual or ordinary payment practices in respect of work performed for the Companies and Industrial since March 1, 2010.

6. **THIS COURT ORDERS** that all property of Industrial shall be subject to a charge ("Employee Payment Charge") in favour of the Receiver in an amount equal to the amount paid pursuant to paragraph 5 of this Order to or for the benefit of persons employed in the Industrial business and the Employee Payment Charge shall rank in priority to all other charges and interests in Industrial's assets.

Dated at Miramichi, New Brunswick, this 30th day of March, 2010.



Justice Thomas W. Riordon
Judge of the Court of Queen's Bench of New
Brunswick