

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



IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES 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., ATCON LOGISICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

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18 June 2010

ORDER

THIS MOTION, made by Shell Canada Limited ("**Shell Canada**") was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING Shell Canada's Notice of Motion dated May 19, 2010 (the "**Notice of Motion**"), the Affidavit of Tracey Vincent sworn May 19, 2010 and the appendices attached thereto (the "**Vincent Affidavit**"), including the requirement to pay dated March 29, 2010 (the "**March 29 Requirement to Pay**") delivered by Canada Revenue Agency ("**CRA**") to Shell Canada in the amount of \$4,750,074.57 with respect to Atcon Construction Inc. ("**Atcon Construction**"), the Affidavit of Colleen Lambert sworn June 11, 2010 and the appendices attached thereto (the "**Lambert Affidavit**"), including the requirements to pay dated June 11, 2010 (together with the March 29 Requirement to Pay, the "**Shell Requirements to Pay**") delivered by CRA to Shell Canada Energy ("**Shell Energy**") and Albion Sands Energy Inc., each in the amount of \$4,780,601.38 with respect to Atcon Construction, the Third Report of Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver-manager of the property, assets and undertakings of Atcon Construction (the "**Receiver**") dated May 19, 2010 and the appendices attached thereto (the "**Third Report**"), including the letter dated April 7, 2010 from CRA to the Receiver demanding, *inter alia*, payment of \$3,784,276.68 in connection with CRA's deemed trust claim against the Property with respect to unremitted employee source deduction amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) under notices of assessment dated February 26, 2010 (the "**CRA Deemed Trust Claim**"), the Statement of Lien upon Interest in Crown Materials dated April 15, 2010 and filed by Emeco Canada Limited ("**Emeco**") with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**Emeco Lien**"), the Statement of Lien upon Interest in Crown Materials dated April 29, 2010 and filed by Caterpillar Financial Services Limited ("**Caterpillar**") with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**April Caterpillar Lien**"), the Statement of Lien upon Interest in Crown Materials dated May 4, 2010 and filed by the Receiver with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the "**Receiver Lien**"), and two

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Statements of Lien upon Interest in Crown Materials dated May 6, 2010 and filed by Caterpillar with the Alberta Department of Energy upon the interest of Shell Canada in respect of minerals in Alberta Crown Oil Sands Lease No. 7288080T90 and Alberta Crown Oil Sands Lease No. 728009BT30 (together, the "**May Caterpillar Liens**"), and the Supplement to the Third Report of the Receiver dated June 11, 2010 and the appendices attached thereto (the "**Supplemental Report**"), and on hearing the submissions of counsel for Shell Canada, the Receiver, CRA, The Bank of Nova Scotia ("**BNS**"), the Province of New Brunswick (the "**Province**"), Emeco, Caterpillar and such other counsel in attendance, and on hearing that Shell Canada, the Receiver, CRA, BNS, the Province, Emeco and Caterpillar have consented to and will not oppose or seek variations to the Lien Discharge Order (as defined herein) and on reading the Affidavits of Service of Carole J. Hunter respectively sworn on May 20, 2010 and on June 15, 2010, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Vincent Affidavit, the Lambert Affidavit, the Third Report, the Supplemental Report and the Record of Motion be and is hereby abridged so that Shell Canada's motion is properly returnable today and that any requirement for further service of the Notice of Motion, the Vincent Affidavit, the Lambert Affidavit, the Third Report and the Supplemental Report and the Record of Motion be and is hereby dispensed with.

LIFTING OF THE STAY

2. **THIS COURT ORDERS** that the stay of proceedings provided for in paragraph 8 of the Receivership Order granted by this Honourable Court dated March 2, 2010 as amended by the Order granted by this Honourable Court dated March 30, 2010 (the "**Stay**") be and is hereby lifted solely to permit Shell Canada, Shell Energy, Albion Sands Energy Inc. or any Canadian affiliate of those entities (hereinafter collectively, "**Shell**") to proceed with an application, which Shell is authorized and directed to bring, to the Court of Queen's Bench of Alberta (the "**Alberta Court**") on notice to the parties named in the service list in this proceeding, which Shell shall file by June 25, 2010 (the "**Lien Discharge Application**"), for the Lien Discharge Order, which, *inter alia*:

- (a) orders Shell to pay, pursuant to the provisions of the *Builders' Lien Act* (Alberta)

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(the "**BLA**"), the amount owing and payable under the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 between Shell Energy (as successor to Albion Sands Energy Inc.) and Atcon Construction, (the "**Albian Agreement**") in the amount of \$8,432,503.30 (the "**Lien Fund**") to the Receiver to be held by the Receiver in accordance with this Order;

- (b) orders that a portion of the Lien Fund shall stand in the place and stead of the Alberta Crown Oil Sands Lease No. 7277080T13, Alberta Crown Oil Sands Lease No. 7288080T90 and Alberta Crown Oil Sands Lease No. 728009BT30 (collectively, the "**Lands**"); and
- (c) discharges the Emeco Lien, the April Caterpillar Lien, the Receiver Lien and the May Caterpillar Liens (collectively, the "**Builders' Liens**") from the Lands.

3. **THIS COURT ORDERS** that the order substantially in the form attached hereto as Schedule "A" which Shell is seeking in the Lien Discharge Application (the "**Lien Discharge Order**") be and is hereby approved.

LIEN FUND

4. **THIS COURT ORDERS** that, upon receipt of the Lien Fund:

- (a) the Receiver shall hold a portion of the Lien Fund, in the amount of \$4,008,291.63 (the "**Builders' Lien Holdback**"), in a separate interest bearing trust account and shall not pay the Builders' Lien Holdback or any portion thereof except upon further Order of this Court made on notice to the parties named on the service list in this proceeding;
- (b) the Receiver shall hold a portion of the Lien Fund, in the amount of \$996,345.70 (the "**CRA Non-Deemed Trust Holdback**"), in a separate interest bearing trust account in accordance with paragraphs 14 and 15 of this Order; and
- (c) the Receiver shall hold the balance of the Lien Fund, in the amount of \$3,427,865.97, in accordance with paragraphs 11 and 12 of this Order.

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5. **THIS COURT ORDERS** that the Builders' Lien Holdback and the CRA Non-Deemed Trust Holdback (collectively, the "**Subject Amounts**") shall stand in the place and the stead of the Lands.

6. **THIS COURT ORDERS AND DECLARES** that the Emeco Lien is a valid and enforceable Claim (as defined below) against the Subject Amounts in the amount of \$228,900.22, and stands in priority to the Claim of the Receiver against any of the Subject Amounts in connection with the Receiver Lien to the extent of the amount of \$228,900.22.

7. **THIS COURT ORDERS AND DECLARES** that, to the extent that the April Caterpillar Lien is finally determined (inclusive of any appeals) to be a valid and enforceable Claim against any of the Subject Amounts, such Claim shall stand in priority to the Claim of the Receiver against any of the Subject Amounts in connection with the Receiver Lien, to the extent of the amount of the April Caterpillar Lien as finally determined.

SHARKBITE AMOUNT

8. **THIS COURT ORDERS** that:

- (a) Shell shall pay to the Receiver the amounts owing and payable to Atcon Construction under the Engineering Services Agreement dated September 25, 2009 between Shell Energy and Atcon Construction and the Engineering Procurement and Construction Agreement dated December 21, 2009 between Shell Energy and Atcon Construction (together, the "**Sharkbite Contracts**"), namely, the amount of \$34,351.42, (the "**Sharkbite Accounts Receivable**" and the "**Sharkbite Amount**" respectively) to the Receiver; and
- (b) the Sharkbite Amount in the hands of the Receiver shall stand in the place and stead of the Sharkbite Accounts Receivable in respect of any claims or encumbrances of any nature or kind whatsoever (collectively, "**Claims**") against to or upon the Sharkbite Receivable.

9. **THIS COURT ORDERS** that the Receiver is authorized and empowered to utilize the Sharkbite Amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings, as

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amended by the Order dated March 30, 2010 granted in this proceeding.

SATISFACTION OF THE OBLIGATIONS OF SHELL

10. **THIS COURT ORDERS** that payment by Shell of the Lien Fund in accordance with paragraph 2 of this Order and the Sharkbite Receivable in accordance with paragraph 8 of this Order shall satisfy and be deemed to have fully and finally satisfied the obligations of Shell to Atcon Construction under the Albion Agreement and the Sharkbite Contracts.

CRA DEEMED TRUST HOLDBACK AND GARNISHMENT FUNDS

11. **THIS COURT ORDERS** that the aggregate amount of \$3,784,276.68 (the "**CRA Deemed Trust Holdback**") shall be maintained by the Receiver in a separate interest bearing trust account until such time as the liability of Atcon Construction in connection with the CRA Deemed Trust Claim has been finally determined (inclusive of all objections and appeals) in accordance with the applicable provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada). The CRA Deemed Trust Holdback is comprised of the amount of \$3,427,865.97 of the Lien Fund referred to in subparagraph 4(c) of this Order, together with \$356,410.71 of the \$1,246,374.23 that was previously held by the Alberta Court pursuant to a Garnishee Summons issued on December 1, 2009, Q.B. Action Number 0903 12033 and subsequently paid to the Receiver (the "**Garnishment Funds**").

12. **THIS COURT ORDERS** that, upon a final determination being reached as to the liability of Atcon Construction for the CRA Deemed Trust Claim, the Receiver shall pay to CRA from the CRA Deemed Trust Holdback an amount equal to the amount determined owing by Atcon Construction on account of the CRA Deemed Trust Claim, to the maximum amount of \$3,784,276.68 (together with a *pro rata* share of the net interest actually accrued upon the CRA Deemed Trust Holdback), in priority to any Claims against the CRA Deemed Trust Holdback. Any balance of the CRA Deemed Trust Holdback shall be retained by the Receiver pending further Order of this Court.

13. **THIS COURT ORDERS** that the Receiver is authorized and empowered to utilize the balance of the Garnishment Funds, in the amount of \$889,963.52, and any interest that has accrued on the Garnishment Funds to date, for the purpose of making payments (including

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interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings, as amended by the Order dated March 30, 2010 granted in this proceeding.

CRA PENALTY AND INTEREST HOLDBACK

14. **THIS COURT ORDERS** that the CRA Non-Deemed Trust Holdback shall be held by the Receiver in a separate interest bearing trust account in connection with the Claims of all persons to the Lien Fund, including the Claim of CRA under the Shell Requirements to Pay for payment of the amount of \$996,345.70 in connection with accrued penalties and interest (accrued to but not after the date of bankruptcy of Atcon Construction) on the CRA Deemed Trust Claim and unpaid employer amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) (the “**CRA Shell Non-Deemed Trust Claim**”).

15. **THIS COURT ORDERS** that, on the consent of the Receiver, BNS, Caterpillar, Emeco and the Province, the CRA Non-Deemed Trust Holdback shall also be treated as a substitute for, and be deemed to be, a portion of the indebtedness owing and payable to Atcon Construction with respect to equipment, goods, materials and services supplied by Atcon Construction to Pennecon Heavy Civil Ltd., Pennecon Atcon Limited Partnership (the “**LP**”) and/or Pennecon Atcon JV General Partner Inc. in connection with Contract CC-0001 Earthworks-Plant Site Development for Vale Inco Long Harbour Processing Plant between the LP and Vale Inco (the “**Pennecon Receivable**”), such that, the CRA Non-Deemed Trust Holdback shall be treated as a substitute for and be deemed to be a portion of the Pennecon Receivable and CRA shall be entitled to assert its Claims under the requirement to pay dated March 29, 2010 delivered by CRA to Pennecon Heavy Civil Ltd. in the amount of \$4,750,074.57 with respect to amounts owing and payable to Atcon Construction and the requirements to pay each dated June 11, 2010 and delivered by CRA to Pennecon Atcon Limited Partnership and Pennecon Atcon JV General Partner Inc. each in the amount of \$4,780,601.38 with respect to amounts owing and payable to Atcon Construction (collectively, the “**Pennecon Requirements to Pay**”) for payment of the amount of \$996,345.70 in connection with accrued penalties and interest (accrued to but not after the date of bankruptcy of Atcon Construction) on the CRA Deemed Trust Claim and on unpaid employer amounts pursuant to the provisions of the *Income Tax Act* (Canada), the Canada Pension Plan and the *Employment Insurance Act* (Canada) (together with the CRA Shell Non-

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Deemed Trust Claim, the "**CRA Non-Deemed Trust Claim**") against the CRA Non-Deemed Trust Holdback.

16. **THIS COURT ORDERS** that, upon a final determination being reached as to the liability of Atcon Construction for the CRA Deemed Trust Claim, the Receiver shall bring a motion to this Court, on notice to the parties listed on the service list in this proceeding, regarding payment to CRA of the CRA Non-Deemed Trust Holdback to a maximum amount of \$996,345.70 (together with a *pro rata* share of the net interest actually accrued upon the CRA Non-Deemed Trust Holdback), on account of the CRA Non-Deemed Trust Claim. On any such motion, any Builders' Lien Claimant (as defined herein) and any Secured Creditor (as defined herein) shall be at liberty to challenge the priority of the CRA Non-Deemed Trust Claim to the CRA Non-Deemed Trust Holdback (or any portion thereof). Any balance of the CRA Non-Deemed Trust Holdback shall be retained by the Receiver pending further Order of this Court.

REPLACEMENT CHARGE

17. **THIS COURT ORDERS** that to the extent any amount of the CRA Non-Deemed Trust Claim or any amount of the CRA Deemed Trust Claim is paid from the Builder's Lien Holdback, the CRA Non-Deemed Trust Holdback or the CRA Deemed Trust Holdback (collectively, the "**Holdbacks**"): (a) any builders' lien claimant with a valid and perfected builders' lien Claim against the Lien Fund under the BLA ("**Builders' Lien Claimant**"), without consideration of any CRA Claims (as defined herein), that did not recover payment in full of its finally determined Claim for lien and costs from the Subject Amounts; and (b) any person holding valid and perfected security upon the Lien Fund (being all of the amounts owing and payable under the Alban Agreement), without consideration of any CRA Claims, or other property, assets and undertakings of Atcon Construction that was paid into either or all of the Holdbacks ("**Secured Creditor**") and ultimately to CRA (each, an "**Impaired Creditor**") shall have the benefit of a charge (the "**Replacement Charge**") against the property, assets and undertakings of Atcon Construction (other than the Holdbacks) that were subject to the CRA Deemed Trust Claim, the CRA Non-Deemed Trust Claim, the Shell Requirements to Pay or the Pennecon Requirements to Pay (collectively, the "**CRA Claims**"). Each Impaired Creditor's Claim under the Replacement Charge shall be equal to the amount that such Impaired Creditor's builders' lien or security was

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reduced in value from the payment of the CRA Claims. In the event that more than one Impaired Creditor is secured by the Replacement Charge, such Impaired Creditors' Claims shall rank as between such Impaired Creditors against the other property, assets and undertakings of Atcon Construction in accordance with and the extent to which each of their Claims was reduced in value by the CRA Claims and, among Impaired Creditors, shall have the same priority as their Claims had against the Lien Fund and/or the Garnishment Funds from which the Holdbacks were created. The allocation of the burden of the CRA Claims (for the benefit of the Impaired Creditors) amongst the property, assets and undertakings of Atcon Construction and the creditors shall be determined by subsequent application to this Court, if necessary.

18. **THIS COURT ORDERS** that, subject to paragraph 19 of this Order, the Replacement Charge shall have the same priority over the property, assets and undertakings of Atcon Construction as the CRA Claims had as of the date that each such Claim arose, and for greater certainty, that to the extent that a CRA Claim has priority over the Claims or security of any creditor of Atcon Construction over any property, assets and undertakings of Atcon Construction, the Replacement Charge shall have the same priority over such property and assets.

19. **THIS COURT ORDERS** that the Replacement Charge over the property, assets and undertakings of Atcon Construction shall be subordinate to the following Claims against the property, assets and undertakings of Atcon Construction:

- (a) the Administrative Charge and the Receiver's Indemnity Charge granted in this proceeding pursuant to the Receivership Order dated March 2, 2010 as amended by the Order dated March 30, 2010;
- (b) the Administration Charge granted in the *Companies' Creditors Arrangement Act* proceeding bearing Court File No. N/M/16/10; and
- (c) sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*.

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WITHOUT PREJUDICE

20. **THIS COURT ORDERS** that, except as expressly provided for in this Order, this Order and any person's consent or non-opposition thereto is without prejudice to all arguments, rights and Claims, including without limitation:

- (a) the right to argue that any Claim (including any Builders' Lien) is invalid or does not charge any of the Subject Amounts;
- (b) any argument relating to quantum of and priority of any Claim to any of the Subject Amounts, or any part thereof;
- (c) any argument based on marshalling or otherwise concerning the allocation of Claims among the Subject Amounts; and
- (d) any Claims or rights of any kind related to the Pennecon Receivable or the Pennecon project, including any lien rights.

Except as expressly provided for in this Order, for greater certainty, nothing in this Order shall be deemed to have determined the validity, quantum or priority of any Claim or the right of any party to the Subject Amounts or any part thereof.

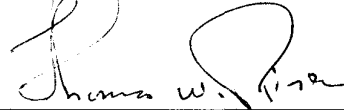
GENERAL MATTERS

21. **THIS COURT ORDERS** that the Receiver is authorized and directed to consult with CRA, BNS, the Province, Caterpillar, Emeco and such other interested persons as the Receiver deems appropriate concerning the possible resolution of the Claims of such persons with respect to the Subject Amounts, and the Receiver shall, by no later than July 30, 2010, report to this Court on the result of such consultations and, failing resolution of this matter, propose, following consultation with the previously referenced persons, a method of adjudication regarding the Claims against the Subject Amounts.

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18 June 2010*

22. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including without limitation the Court of Queen's Bench of Alberta, for the recognition of this Order and for assistance in carrying out the terms of this Order.

Dated at Miramichi, New Brunswick, this 18th day of June, 2010.

A handwritten signature in black ink, appearing to read "Thomas W. Riordon", written over a horizontal line.

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

SCHEDULE "A"

Action No. _____

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY**

**IN THE MATTER OF the *Builders' Lien Act*, R.S.A. 2000, c. B-7,
and amendments thereto and regulations thereunder**

BETWEEN:

SHELL CANADA LIMITED

Applicant

- and -

**EMECO CANADA LIMITED, CATERPILLAR FINANCIAL
SERVICES LIMITED AND ERNST & YOUNG INC., IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND RECEIVER MANAGER OF
ATCON CONSTRUCTION INC.**

Respondents

BEFORE THE HONOURABLE)
)
JUSTICE)
)
)
)

Granted at the Court House, in the City
Calgary, in the Province of Alberta on
_____ the ____ day of June, 2010

CONSENT ORDER

UPON THE APPLICATION of the Applicant by Originating Notice filed June ●, 2010;
AND UPON HAVING READ the Affidavit of Tracey Dawn Vincent sworn June ●, 2010, filed,
AND UPON noting that the Court of Queen's Bench of New Brunswick (the "**New Brunswick Court**") granted a Receivership Order dated March 2, 2010 as amended by the Order dated March 30, 2010 in respect of, *inter alia*, Atcon Construction Inc. ("**Atcon Construction**"), in which Ernst & Young Inc. was appointed as receiver and receiver-manager (the "**Receiver**") of Atcon Construction (the "**Receivership Proceeding**"); AND WHEREAS the New Brunswick Court in the Receivership Proceeding has, by Order granted June 18, 2010 (the "**New Brunswick**

Order”), lifted the stay of proceedings in the Receivership Proceeding, directed that this application be brought by the Applicant and approved this form of Order; AND UPON noting the representations made by the Applicant and each of the Respondents; IT IS HEREBY ORDERED THAT:

1. Service of the Originating Notice and the supporting materials be and is hereby abridged so that the Applicant’s motion is properly returnable today and that any requirement for further service of the Originating Notice be and is hereby dispensed with;
2. The amount of the “lien fund”, as defined in the *Builders’ Lien Act* (Alberta) (the “**BLA**”) shall be \$8,432,503.30 (the “**Lien Fund**”);
3. Pursuant to sections 27(3) and 48(1) and (2) of the BLA, the Lien Fund shall be paid by the Applicant to the Receiver and held by the Receiver subject to and in accordance with the New Brunswick Order, and portions of the Lien Fund in the amount of \$4,008,291.63 and \$996,345.70 (the “**Holdbacks**”) shall be held by the Receiver as security for the following builders’ liens which have been registered by the following parties and such other builders liens as may be registered (collectively, the “**Liens**”):
 - (a) Emeco Canada Limited with Instrument No. 1001748 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 7277080T13 (“**Lease 13**”);
 - (b) Caterpillar Financial Services Limited (“**Caterpillar**”) with Instrument No. 1001884 in respect of the minerals on the lands identified as Lease 13;
 - (c) the Receiver with Instrument Number 1001942 in respect of the minerals on the lands identified as Lease 13;
 - (d) Caterpillar with Instrument No. 1001986 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 7288080T90 (“**Lease 90**”); and
 - (e) Caterpillar with Instrument No. 1001987 in respect of the minerals on the lands identified as Alberta Crown Oil Sands Lease No. 072 728009BT30 (“**Lease 30**”),

Lease 13, Lease 30 and Lease 90, are collectively referred to herein as the "Lands".

4. Notwithstanding section 191(1) of the *Land Titles Act* (Alberta), upon being presented with a certified copy of this Order and a Certificate of the Receiver confirming receipt of the Lien Fund which the Receiver shall forthwith upon receipt of the Lien Fund provide to Shell Canada's counsel, the Alberta Department of Energy shall immediately discharge from the Lands the Liens and any certificate of Lis Pendens related to the Liens;
5. In accordance with the New Brunswick Order, the Receiver shall hold the Holdbacks separately and in an interest bearing trust accounts and shall not pay the Holdbacks or any portion thereof except upon Order of the New Brunswick Court in the Receivership Proceeding made on notice to the parties listed on the service list in the Receivership Proceeding;
6. The Holdbacks paid to the Receiver in accordance with this Order:
 - (a) stands in the place of the Lands and as security for the legal costs of the Lien claimants with respect to the Liens and are subject to the Liens to the same extent as if the Liens continued to be registered against the Lands;
 - (b) discharges the Applicant from any liability in respect of the Liens; and
 - (c) shall be subject to the protections in favour of claimants and persons contained in the New Brunswick Order.

J.C.Q.B.A.

ENTERED this ____ day of June, 2010

CLERK OF THE COURT

CONSENTED AS TO FORM AND CONTENT:

THIS ____ DAY OF JUNE, 2010

OSLER, HOSKIN & HARCOURT LLP

Per: _____
Christa Nicholson / Carole J. Hunter
Counsel for the Applicant

THIS ____ DAY OF JUNE, 2010

BORDEN LADNER GERVAIS LLP

Per: _____
Michael MacNaughton / Sam Rappos
Counsel for the Respondent, Ernst & Young
Inc., in its capacity as receiver and receiver-
manager of Atcon Construction Inc.

THIS ____ DAY OF JUNE, 2010

**BLAKE, CASSELS & GRAYDON LLP /
LAWSON CREAMER LAWYERS**

Per: _____
Susan Grundy / Bob Creamer
Counsel for the Respondent, Caterpillar Financial
Services Limited

THIS ____ DAY OF JUNE, 2010

OGILVIE LLP

Per: _____
Rod Wasylyshyn
Counsel for the Respondent, Emeco Canada
Limited

THIS ____ DAY OF JUNE, 2010

COX & PALMER

Per: _____
Josh McElman
Counsel for Bank of Nova Scotia

THIS ____ DAY OF JUNE, 2010

DEPARTMENT OF JUSTICE

Per: _____
Greg MacIntosh
Counsel for the Canada Revenue Agency

THIS ____ DAY OF JUNE, 2010

OFFICE OF THE ATTORNEY GENERAL

Per: _____
John Logan
Counsel for the Province of New Brunswick