

**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 LOGISTICS 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 LOGISTICS 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

RECORD ON MOTION

**ON BEHALF OF THE MOVING PARTY,
ERNST & YOUNG INC., for the motions returnable
Thursday October 28, 2010 at 9:30 a.m. AST**

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RESPONDENTS

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2.	Tenth Report of the Receiver dated October 21, 2010
Appendix "A"	List of Purchased Assets
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TAB 1

COURT FILE NO.: N/M/17/10

IN THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE
INSTANCE

CIRCONSCRIPTION
JUDICIAIRE DE MIRAMICH

**IN THE MATTER OF THE
RECEIVERSHIP OF:**

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

B E T W E E N:

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

(Applicant)

E N T R E:

-and-

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS 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)

- and -

IN THE MATTER OF THE APPLICATION OF ERNST & YOUNG INC. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondents.

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO:

DESTINAIRE:

The Persons on the Service List attached hereto as **Schedule "A"** to this Notice of Motion

Ernst & Young Inc. in its capacity as receiver and receiver and manager of the property, assets and undertakings of the Respondents (the "**Receiver**") will apply to the Court of Queen's Bench, at 673 King George Highway, Miramichi, New Brunswick on Thursday, October 28, 2010 for the following relief:

Le demandera à la Cour à

le , à :

- (a) an Order, substantially in the form attached hereto as **Schedule "B"**, *inter alia*:
- i) abridging and validating the timing and method of service of the Notice of Motion, the Receiver's Ninth Report to the Court dated October 22, 2010 (the "**Ninth Report**"), and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;
 - ii) approving the Caterpillar Settlement Agreement (as defined in the Ninth Report);
 - iii) authorizing, empowering and directing the Receiver to distribute the following amounts from the Builders' Lien Holdback (as defined in the Ninth Report):
 - a. \$1,200,000 to Caterpillar Financial Services Limited ("**Caterpillar**") in connection with the Caterpillar Settlement Agreement;
 - b. \$228,900.22 to Emeco Canada Limited ("**Emeco**") on account of the principal amount of the Emeco Builders' Lien (as defined in the Ninth Report);
 - c. \$7,000 to Emeco on account of Emeco's costs in respect to the Emeco Builders' Lien;
 - d. \$2,576,592.84 to The Bank of Nova Scotia (the "**Bank**") on account of its valid and enforceable claim against the Builders' Lien Holdback, plus any additional interest accrued thereon prior to distribution, subject to the Receiver providing confirmation to the Honourable Court at the motion scheduled to be heard on Thursday October 28, 2010 that it is in receipt of a legal written opinion as to the validity and enforceability of the Bank's security over the Property of Atcon Construction;
 - iv) authorizing, empowering and directing the Receiver to distribute \$930,734.09 to the Bank on account of its valid and enforceable claim against the Pennecon Holdback (as defined in the Ninth Report), plus any additional interest accrued thereon prior to distribution, subject to the Receiver providing confirmation to the Honourable Court during the motion scheduled to be heard on Thursday October 28, 2010 that it is in receipt of a legal written opinion as to the validity and enforceability of the Bank's security over the Property of Atcon Construction; and
- (b) such further and other relief as may be just.

The grounds upon which the Receiver relies are as follows:

1. The relief sought by the Receiver is appropriate in the circumstances and is in accordance with the provisions of the Receivership Order, the jurisdiction of the Court under the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of the Court;
2. The Receiver is of the view that Caterpillar Settlement Agreement is fair and reasonable since
 - a. it has been agreed to by the Bank, which is the party with the priority proprietary interest in the Builders' Lien Holdback and the Pennecon Holdback;
 - b. the proposed payment to Caterpillar represents less than twenty-five per cent (25%) of the known alleged values of claims that Caterpillar has against the Respondents, the Receiver, and the Property of Atcon Construction (including the Builders' Lien Holdback and the Pennecon Holdback); and
 - c. in the event that the Caterpillar Settlement Agreement is not approved by this Honourable Court, time consuming and costly litigation would be necessary to resolve the issues between the parties, perhaps in the Provinces of New Brunswick, Alberta and Newfoundland & Labrador;
3. The Receiver does not oppose the granting of an Order authorizing the Receiver to make payment to Emeco in the amount of \$228,900.22 from the funds in the Builders' Lien Holdback. Emeco has agreed to reduce the quantum of its costs request to \$7,000, and the Bank has agreed to support such request for payment from the Builders' Lien Holdback. As a result, the Receiver does not oppose payment to Emeco of \$7,000 on accounts of its costs from the Builders' Lien Holdback;
4. With respect to the remaining funds in the Builders' Lien Holdback and the Pennecon Holdback following the above-noted recommended distributions, the Receiver anticipates being in receipt of a written legal opinion from its New Brunswick counsel prior to the hearing of this motion as to whether or not the Bank has valid and enforceable security against the present and after-acquired personal property of Atcon Construction, and that the Bank has the first-in-time registration against all of the present and after-acquired personal property of Atcon Construction;
5. Upon confirmation to this Court that the Receiver is in receipt of a legal opinion confirming that the Bank has valid and enforceable security against the present and after-acquired personal property of Atcon Construction, and that the Bank has the first-in-time registration against all of the present and after-acquired personal

property of Atcon Construction, the Receiver recommends that this Court authorize the Receiver to make payment to the Bank of \$2,576,592.84 from the Builders' Lien Holdback plus any additional interest accrued thereon prior to distribution, and \$930,734.09 from the Pennecon Holdback, plus any additional interest accrued thereon prior to distribution;

6. The Receiver relies on:

- a) the *Rules of Court*, as amended, including but not limited to Rules 1.03, 2.01, 2.02 and 3.02;
- b) the *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, and

7. Such further and other grounds as counsel for the Receiver may advise and this Honourable Court may permit.

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

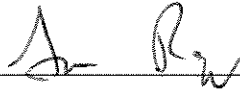
- (1) The Ninth Report; and
- (2) Such further and other affidavits or documentary evidence as counsel for the Receiver may advise and this Honourable Court may permit.

You are advised that:

Sachez que:

- | | |
|--|--|
| (a) you are entitled to issue documents and present evidence at the hearing in English or French or both; | (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues; |
| (b) the applicant intends to proceed in the English language; and | (b) le demandeur à l'intention d'utiliser la langue anglais; et |
| (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 5 days before the hearing. | (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez un aviser le greffier au moins 5 jours avant l'audience. |

DATED at Toronto, Ontario, this 22nd day of October, 2010



SAM P. RAPPOS
BORDEN LADNER GERVAIS LLP
Solicitors for the Receiver

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3Y4

MICHAEL J. MACNAUGHTON
Tel: (416) 367-6646
Fax: (416) 682-2837
LSUC # 25889U

CRAIG J. HILL
Tel: (416) 367-6156
Fax: (416) 361-7301
LSUC # 31888K

SAM P. RAPPOS
Tel: (416) 367-6033
Fax: (416) 361-7306
LSUC# 51399S

**Counsel to Ernst & Young Inc.,
the Court-appointed Receiver
of the Respondents**

SCHEDULE "A"

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MIRAMICHI

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

- and -

**IN THE MATTER OF ATCON CONSTRUCTION INC.,
ATCON INDUSTRIAL SERVICES INC., ATCON
MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES
INC., ENVIREM TECHNOLOGIES INC. all of which are
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c. B-3**

SERVICE LIST

(motions returnable October 28, 2010)

E-MAIL SERVICE LIST

COX & PALMER

Purdy's Wharf, Tower I
1100-1959 Upper Water Street
Halifax, NS B3J 3N2

Robert G. MacKeigan, Q.C.

Tel: (902) 491-4121
Fax: (902) 421-3130
E-mail: robbie@coxandpalmer.com

J. Craig McCrea, Q.C.

Tel: (902) 491-4120
Fax: (902) 421-3130
E-mail: cmccrea@coxandpalmer.com

Counsel to The Bank of Nova Scotia

BORDEN LADNER GERVAIS LLP

Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

Michael J. MacNaughton

Tel: (416) 367-6646
Fax: (416) 682-2837
E-mail: mmacnaughton@blg.com

Craig J. Hill

Tel: (416) 367-6156
Fax: (416) 361-7301
E-mail: chill@blg.com

Sam P. Rappos

Tel: (416) 367-6033
Fax: (416) 361-7306
E-mail: srappos@blg.com

Counsel to Ernst & Young Inc., the Court-Appointed Monitor and Receiver

COX & PALMER

Brunswick Square, Suite 1500
1 Germain Street, PO Box 1324
Saint John, NB E2L 4H8

Josh J.B. McElman

Tel: (506) 633-2708
Fax: (506) 632-8809
E-mail: jmcelman@coxandpalmer.com

ERNST & YOUNG INC.

The Fortis Building
139 Water Street, 7th Floor
St. John's, NL A1C 1B2

Paul D. Hickey

Tel: (709) 570-5404
Fax: (709) 722-1758
E-mail: paul.d.hickey@ca.ey.com

George C. Kinsman

Tel: (902) 421-6282
Fax: (902) 420-0503
E-mail: george.c.kinsman@ca.ey.com

Brian M. Denega

Tel: (416) 943-3058
Fax: (416) 943-3300
E-mail: brian.m.denega@ca.ey.com

Mathew M. Harris

Tel: (902) 421-6255
E-mail: mathew.m.harris@ca.ey.com

Court-appointed Monitor and Receiver

OFFICE OF THE ATTORNEY GENERAL

Legal Services Branch
Province of New Brunswick
Room 447, Centennial Building
670 King Street
Fredericton, NB E3B 1G1

Natalie H. LeBlanc

Tel: (506) 453-2222
Fax: (506) 453-3275
E-mail: natalie.leblanc@gnb.ca

John B.D. Logan

Tel: (506) 453-2222
Fax: (506) 453-3275
E-mail: john.logan@gnb.ca

Richard Williams

Tel: (506) 453-2222
Fax: (506) 453-3275
E-mail: richard.williams@gnb.ca

Counsel to the Province of New Brunswick

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9

Susan M. Grundy

Tel: (416) 863-2572
Fax: (416) 863-2653
E-mail: susan.grundy@blakes.com

Marc Flynn

Tel: (416) 863-2685
Fax: (416) 863-2653
E-mail: marc.flynn@blakes.com

Counsel to Caterpillar Financial Services Limited

BARRY SPALDING

Mercantile Centre
55 Union Street, Suite 710
Saint John, NB E2L 5B7

Howard A. Spalding, Q.C.

Tel: (506) 633-4215
Fax: (506) 633-4206
E-mail: has@barryspalding.com

William C. Kean

Tel: (506) 646-7505
Fax: (506) 633-4206
E-mail: wck@barryspalding.com

Counsel to GE Canada Equipment Financing G.P., General Electric Canada Equipment Financing G.P., GE Canada Leasing Services Company and GE VFS Canada Limited Partnership

LAWSON CREAMER LAWYERS

133 Prince William Street, Suite 801
P.O. Box 6787, Station A
Saint John, NB E2L 4S2

Bob Creamer/Jeffrey Burgess/

Kelly Vanbuskirk

Tel: (506) 633-3737
Fax: (506) 633-0465
E-mail: rcream@lawsoncream.com/
jburgess@lawsoncream.com/
kvanbuskirk@lawsoncream.com

Counsel to Caterpillar Financial Services Limited

AIRD & BERLIS LLP

Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9

Sanjeev Mitra

Tel: (416) 865-3085
Fax: (416) 863-1515
E-mail: smitra@airdberlis.com

Counsel to Royal Bank of Canada

MILLER THOMSON LLP

Suite 5800, Scotia Plaza
40 King Street West
Toronto, ON M5H 3S1

Arthi Sambasivan

Tel: (416) 595-8636
Fax: (416) 595-8695
E-mail: asambasivan@millერთhompson.com

Counsel to Capital Underwriters

**BINGHAM ROBINSON MACLENNAN
EHRHARDT TEED**

Heritage Court
300-95 Foundry St.
Moncton, NB E1C 5H7

Brian M. Hunt

Tel: (506) 857-8856
Fax: (506) 875-2017
E-mail: bhunt@bingham.ca

**Counsel to Key Equipment Finance Canada
Ltd.**

MCMILLAN LLP

Brookfield Place, Suite 4400
181 Bay Street
Toronto, ON M5J 2T3

Tushara N. Weerasooriya

Tel: (416) 865-7262
Fax: (416) 865-7048
E-mail: tushara.weerasooriya@mcmillan.ca

Counsel to Macquarie Premium Funding Inc.

DEPARTMENT OF JUSTICE CANADA

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, NS B3J 1P3

Gregory A. MacIntosh

Tel: (902) 426-8007
Fax: (902) 426-8802
E-mail: gregory.macintosh@justice.gc.ca

Counsel to Canada Revenue Agency

PARLEE McLAWS LLP

3400 Suncor Energy Centre
150 -6 Avenue SW
Calgary, AB T2P 3Y7

G. Scott Watson

Tel: (403) 294-7038
Fax: (403) 294-7030
E-mail: swatson@parlee.com

Brent W. Mescall

Tel: (403) 294-7544
Fax: (403) 767-8889
E-mail: bmescall@parlee.com

**Counsel to Canadian Natural Resources
Limited**

FOSTER & COMPANY
100-564 Prospect St.
Fredericton, NB E3B 9M3

Steven Barnett
Tel: (506) 462-4008
Fax: (506) 462-4001
E-mail: srbarnett@fandclaw.com

Counsel for CML Northern Blower Inc.

**BINGHAM ROBINSON MACLENNAN
EHRHARDT TEED**
95 Foundry Street
Moncton, NB E1C 5H7

Jeff Delaney
Tel: (506) 857-8856
Fax: (506) 857-2017
E-mail: jdelaney@bingham.ca

Counsel to Aviva Surety

**LAW OFFICE OF HARRY H.
WILLIAMSON, Q.C.**
Keystone Place
270 Douglas Avenue, Suite 203
Bathurst, NB E2A 1M9

Harry H. Williamson, Q.C.
Tel: (506) 546-6050
Fax: (506) 545-1010
E-mail: hwilliamson@nb.aibn.com

**Counsel to Ernst & Young Inc., the Court-
Appointed Monitor and Receiver**

MILLER THOMPSON LLP
2700 Commerce Place
10155 - 102 Street
Edmonton, AB T5J 4G8

Thomas V. Duke
Tel: (780) 429-9742
Fax: (780) 424.5866
E-mail: tduke@millerthomson.com

Counsel for Alberta Fuel Distributors

GILBERT MCGLOAN GILLIS
22 King Street
P.O. Box 7174
Saint John, NB E2L 1G3

**Rodney J. Gillis, Q.C./James L.
Mockler/Cathy Fawcett**
Tel: (506) 634-3600
Fax: (506) 634-3612
E-Mail: rjgillis@gmglaw.com/
jmockler@gmglaw.com/cfawcett@gmglaw.com

Counsel to the Respondents/Mr. Robert Tozer

DAVIS LLP
1201 Scotia 2 Tower
10060 Jasper Avenue
Edmonton, AB T5J 4E5

David Stratton, Q.C.
Tel: (780) 429-6804
Fax: (780) 702-4353
E-mail: dstratton@davis.ca

**Counsel to Alberta Ironworks Pension Fund
and Ironworkers Health and Welfare Trust
Fund of Western Canada**

MILLER THOMSON LLP

Suite 5800, Scotia Plaza
40 King Street West
Toronto, ON M5H 3S1

Craig Mills

Tel: (416) 595-8596
Fax: (416) 595-8695
E-mail: cmills@millerthomson.com

Counsel to Michelin North America Inc.

**AHLSTROM WRIGHT OLIVER &
COOPER LLP**

Sherwood Park Office
Suite 200, 80 Chippewa Road
Sherwood Park, AB T8A 4W6

Patricia C. Tiffen

Tel: (780) 410-2820
Fax: (780) 467-6428
E-mail: p.tiffen@awoc.ca

Counsel to Frontier Fence & Guard Rail Ltd.

BOYNE CLARKE

33 Alderney Drive, Suite 700
PO Box 876, Dartmouth Main
Halifax, NS B2Y 3Z5

David G. Coles, QC

Tel: (902) 460-3422
Fax: (902) 463-7500
E-mail: Dcoles@boyneclarke.ca

**Counsel to Canadian National Railway
Company**

FRASER MILNER CASGRAIN LLP

2900 Manulife Place
10180-101 Street
Edmonton, AB T5J 3V5

Lyle B. Brookes

Tel: (780) 423-7164
Fax: (780) 423-7276
E-mail: lyle.brookes@fmc-law.com

**Counsel to PTI Premium Camp Services Ltd.
and Noralta Lodge Ltd.**

GORMAN NASON

121 Germain Street
PO Box 7286 Station "A"
Saint John, NB E2L 4S6

Timothy M. Hopkins/Frederick A. Welsford

Tel: (506) 634-8600
Fax: (506) 634-8685
E-mail: tmh@gormannason.com/
faw@gormannason.com

**Counsel to Komatsu International (Canada)
Inc.**

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Joseph Bellissimo

Tel: (416) 860-6572
Fax: (416) 642-7150
E-mail: jbello@casellsbrock.com

**Counsel to De Lage Landen Financial Services
Canada Inc.**

OGILVIE LLP

Suite 1400
10303 Jasper Avenue
Edmonton AB T5J 3N6

Rod Wasylyshyn

Tel: (780) 429-6223
Fax: (780) 701-5923
E-mail: RWasylyshyn@ogilvielaw.com

Counsel to Emeco Canada Limited

LANDE LANGFORD

6020 Jean Talon East
Suite 700
Montreal, QC H1S 3B1

Richard Lande

Tel: (514) 257-9999
Fax: (514) 257 7339
E-Mail: rlande@iprimus.ca

Counsel to CN Worldwide

BURNET, DUCKWORTH & PALMER LLP

1400, 350 - 7th Ave. S.W.
Calgary, AB T2P 3N9

Jeff E. Sharpe

Tel: (403) 260-0176
Fax: (403) 260-0332
E-mail: jes@bdplaw.com

**Counsel to Suncor Energy Inc., Suncor
Energy Services Inc. and Suncor Energy
Oilsands Limited Partnership**

OTTENHEIMER BAKER

Baine Johnston Centre
10 Fort William Place, P.O. Box 5457
St. John's, NL A1C 5W4

Gregory W. Dickie

Tel: (709) 570 7307
Fax: (709) 722 9210
E-mail: gdickie@ottenheimerbaker.com

**Counsel to Ernst & Young Inc., the Court-
Appointed Monitor and Receiver**

CML NORTHERN BLOWER INC.

388 Kingston Crescent
Winnipeg, MB R2M 0T8

Robert Goodwin

E-mail: beverley_goodwin@hotmail.com

AIMARK TRAVERS LTD.

300 Steelcase Rd. W. #23
Markham, ON L3R 2W2

Ron B. Sidon

E-mail: ron@aimarktravers.com

CANADA REVENUE AGENCY

Insolvency Unit, Atlantic Region
Moncton Tax Services Office
50 King Street, PO Box 1070
Moncton, NB E1C 8P2

PENNECON GROUP

1309 Topsail Road
P.O. Box 8274, Stn. A
St. John's, NL A1B 3N4

Kevin Jensen

E-mail: Kevin.Jensen@cra-arc.gc.ca

Janis Byrne

Tel: (709) 782-5774
E-mail: jbyrne@pennecon.com

**OFFICE OF THE SUPERINTENDENT OF
BANKRUPTCY**

5, Place Ville-Marie, bureau 800
Montréal, QC H3B 2G2

Michel Huot

Tel: (514) 496-8641
Fax: (514) 283-9795
E-mail : Michel.Huot@ic.gc.ca

SODEXO

930 Wellington Street
Suite 100
Montreal, QC H3C 1T8

John Mignacca

Tel: (514) 866-7070 x256
Fax: (514) 866-8732
E-mail: John.Mignacca@Sodexo.com

ATCON CONSTRUCTION PPSA REGISTRANTS¹

ADD CAPITAL CORP.

500 Cochrane Drive, Unit 2
Markham, ON L3R 8E2

**AIG COMMERCIAL EQUIPMENT
FINANCE INC.**

145 Wellington Street West
Toronto, ON M5J 1H8

Attention: Russell Murray

**AIG COMMERCIAL EQUIPMENT
FINANCE COMPANY, CANADA/
COMPAGNIE DE FINANCEMENT**

Commercial AIG, Canada
145 Wellington Street West
Toronto, ON M5J 1H8

**COMPAGNIE DE FINANCEMENT
COMMERCIAL AIG, CANADA/AIG
COMMERCIAL EQUIPMENT FINANCE
COMPANY, CANADA**

145 King Street West
Toronto, ON M5J 1H8

BODKIN LEASING CORPORATION

2150 Dunwin Dr, Unit 1
Mississauga, ON L5L 5M8

**CAPMOR FINANCIAL SERVICES
CORPORATION – IN TRUST**

5575 North Service Road, Suite 401
Burlington, ON L7L 6M1

**FIDUCIE ALTER MONETA/ALTER
MONETA TRUST**

5925 Airport Rd., Ste. 200
Mississauga, ON L4V 1W1

LOUNSBURY LEASING LTD.

2155 West Main Street
Moncton, NB E1C 8G3

Attention: Robert Alan Roundell, Accountant

MCAP LEASING INC.

5575 North Service Rd, Ste 300
Burlington, ON L7L 6M1

NATIONAL LEASING GROUP INC.

1558 Willson Pl
Winnipeg, MB R3T 0Y4

¹ Parties listed in this section of the service list represent parties with a PPSA registration against "Atcon Construction Inc." in the Provinces of New Brunswick, Alberta and Newfoundland & Labrador, and/or the Northwest Territories, and which are not listed in the E-Mail Service List.

NORTHSTAR LEASING CORPORATION
231 Bayview Drive, Suite L101
Barrie, ON L4N 4Y5

PACCAR FINANCIAL SERVICES LTD.
6711 Mississauga Rd. N., Ste 500
Mississauga, ON L5N 4J8

385367 ALBERTA LTD.
C/O 10019b Franklin Avenue
Fort McMurray, AB T9H 2K7

BIRCH MOUNTIAN ENTERPRISES LTD.
Po Box 5445
Fort McMurray, AB T9H 3G4

COMBINED CONCRETE PUMPING (2007) LTD.
212 26229 TWP 531A Zone 2
Acheson, AB T7X 5A4

COREDATA INCORPORATED
Unite 403, 501 - 18 Ave SW
Calgary, AB T2S 0C7

FINNING INTERNATIONAL INC.
10910 170 Street
Edmonton, AB T5S 1H6

**FORD CREDIT CANADA LEASING, A
DIV/ OF CANADIAN ROAD LEASING CO**
Po Box 2400
Edmonton, AB T5J 5C7

FORD CREDIT CANADA LIMITED
Po Box 2400
Edmonton, AB T5J 5C7

MCMURRAY BUSINESS MACHINES
C/O 10019b Franklin Avenue
Fort McMurray, AB T9H 2K7

PACCAR FINANCIAL LTD.
6711 Mississauga Rd. N., Ste 500
Mississauga, ON L5N 4J8

PLACE-CRETE SYSTEM INC.
15 Chisholm Avenue
St. Albert, AB T8N 5A7

Attention: Darrell F. Bokenfohr

**ALTER MONETA LIMITED/ALTER
MONETA LIMITEE**
5935 Airport Road, Suite 115
Mississauga, ON L4V 1W5

CITICORP VENDOR FINANCE, LTD.
123 Front Street West, 16th Floor
Toronto, ON M5J 2M2

**DAIMLER CHRYSLER FINANCIAL
SERVICES**
2680 Matheson Blvd E., Suite 500
Mississauga, ON L4W 0A5

THE DRIVING FORCE INC.
11025 184 Street
Edmonton, AB T5S 0A6

DCFS CANADA CORP.
2680 Matheson Blvd. E, Ste 500
Mississauga, ON L4W 0A5

**FIDUCIE ALTER MONETA/ALTER
MONETA TRUST**
5925 Airport Rd., Ste. 200
Mississauga, ON L4V 1W1

GMAC LEASECO CORPORATION
2400 - 10155 102 Street
Edmonton, AB T5J 4G8

NORALTA LODGE LTD.
C/O 2900 10180 101 St
Edmonton, AB T5J 3V5

**PETERSEN PONTIAC BUICK GMC
(ALTA) INC**
10 Automall Rd
Sherwood Park, AB T8H 2N1

SORGE'S WELDING LTD.
Po Box 5768
Fort McMurray, AB T9H 4V9

SPRUCELAND LUMBER
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

SPRUNG INSTANT STRUCTURES LTD.
Po Box 62 Maple Leaf Road
Aldersyde, AB T01 0A0

PLACE-CRETE SYSTEMS INC.
#600, 12220 Stony Plain Road
Edmonton, AB T5N 3Y4

PTI PREMIUM CAMP SERVICES LTD.
C/O 29th Fl. 10180 101 St
Edmonton, AB T5J 3V5

UFA CO-OPERATIVE LIMITED
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

VIRGIN TECHNOLOGIES INC.
C/O Box 32006 Millwoods Postal Outlet
Edmonton, AB T6K 4C2

SCHEDULE “B”

Court File No. N/M/17/10

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 LOGISTICS 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 LOGISTICS 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

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an Order, *inter alia*, approving the Caterpillar Settlement Agreement (as defined below) and authorizing, empowering and directing the Receiver to make certain distributions from the Builders' Lien Holdback and the Pennecon Holdback (each as defined below) was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Notice of Motion dated October 22, 2010, the Ninth Report of the Receiver dated October 22, 2010 and all the appendices attached thereto (the "**Ninth Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Ninth Report and the Record on Motion 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.

2. **THIS COURT ORDERS AND DECLARES** that the Caterpillar Settlement Agreement (as defined in the Ninth Report and attached as Appendix "E" thereto) is hereby approved, and Caterpillar Financial Services Limited ("**Caterpillar**") and the Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Caterpillar Settlement Agreement.

3. **THIS COURT ORDERS** that the Receiver is authorized, empowered and directed to distribute:

- (a) \$1,200,000 to Caterpillar from the funds in the Builders' Lien Holdback (as defined in the Ninth Report) in connection with the Caterpillar Settlement Agreement;
- (b) \$228,900.22 to Emeco Canada Limited ("**Emeco**") from the funds in the Builders' Lien Holdback on account of the principal amount of the Emeco Builders' Lien (as defined in the Ninth Report);

- (c) \$7,000 to Emeco from the funds in the Builders' Lien Holdback on account of Emeco's costs with respect to the Emeco Builders' Lien;
- (d) \$2,576,592.84 to The Bank of Nova Scotia (the "**Bank**") from the Builders' Lien Holdback, plus any additional interest accrued thereon prior to distribution; and
- (e) \$930,734.09 to the Bank from the Pennecon Holdback (as defined in the Ninth Report), plus any additional interest accrued thereon prior to distribution.

Dated at Miramichi, New Brunswick, this 28th day of October, 2010.

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

TAB 2

**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 LOGISTICS 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 LOGISTICS 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

**NINTH REPORT OF THE RECEIVER
October 22, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings (collectively, the “**Property**”) of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”); and
 - (b) Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc., Atcon Construction Inc. (“**Atcon Construction**”) and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated March 30, 2010 (the “**March 30 Order**”, and together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order, among other things, authorizes and empowers the Receiver to:
 - (a) take possession and control of the Property;
 - (b) receive, preserve and protect the Property, or any parts thereof;
 - (c) receive and collect all accounts now owed or thereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies;
 - (d) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
 - (e) apply to this Honourable Court for advice and directions in the discharge of its powers and duties under the Receivership Order.
3. The purpose of this Ninth Report is to:

- (a) report to this Honourable Court on the consultations between the Bank, the Receiver and Caterpillar (as defined below) with respect to the Builders' Lien Holdback (as defined below) and recommend that this Honourable Court approve the Caterpillar Settlement Agreement (as defined below);
- (b) report to this Honourable Court with respect to the claims against the Builders' Lien Holdback and recommend that this Honourable Court grant an Order authorizing the Receiver to:
 - (i) distribute \$1,200,000 from the Builders' Lien Holdback to Caterpillar in connection with the Caterpillar Settlement Agreement;
 - (ii) distribute \$228,900.22 from the Builders' Lien Holdback to Emeco (as defined below) on account of the principal amount of the Emeco Builders' Lien (as defined below) against the Builders' Lien Holdback;
 - (iii) distribute \$7,000 from the Builders' Lien Holdback to Emeco on account of Emeco's costs with respect to the Emeco Builders' Lien;
 - (iv) distribute \$2,576,592.84 from the Builders' Lien Holdback to the Bank on account of its valid and enforceable claim against the Builders' Lien Holdback, plus any additional interest accrued thereon prior to distribution, subject to the Receiver providing confirmation to this Honourable Court at the motion scheduled to be heard on Thursday October 28, 2010 that it is in receipt of a legal written opinion as to the validity and enforceability of the Bank's security over the Property of Atcon Construction; and
- (c) report to this Honourable Court with respect to the claims against the Pennecon Holdback (as defined below) and recommend that this Honourable Court grant an Order authorizing the Receiver to distribute \$930,734.09 to the Bank on account of its valid and enforceable claim against the Pennecon Holdback, plus any additional interest accrued thereon prior to distribution, subject to the Receiver providing confirmation to this Honourable Court during the motion scheduled to

be heard on Thursday October 28, 2010 that it is in receipt of a legal written opinion as to the validity and enforceability of the Bank's security over the Property of Atcon Construction.

TERMS OF REFERENCE

4. In preparing this Ninth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with certain management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Ninth Report or relied upon by the Receiver in preparing this Ninth Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.
5. All references to monetary amounts in this Ninth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Ninth Report are as defined in the Receivership Order.
7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

BUILDERS' LIEN HOLDBACK AND PENNECON HOLDBACK

Shell Receivable and Establishment of Builders' Lien Holdback

8. As has been previously reported to this Honourable Court, Atcon Construction provided various construction and engineering services to affiliates of Shell Canada Limited (collectively, "**Shell Canada**"), including services provided by Atcon Construction under

the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 between Albian Sands Energy Inc., an affiliate of Shell Canada Limited, and Atcon Construction (the “**Albian Agreement**”).

9. In connection with Atcon Construction and the Albian Agreement, Caterpillar Financial Services Limited (“**Caterpillar**”), Emeco Canada Limited (“**Emeco**”) and the Receiver filed the following builders’ liens against lands leased by Shell Canada under the *Builders’ Lien Act* (Alberta) (collectively, the “**Builders’ Liens**”):

(a) Caterpillar:

- (i) Statement of Lien upon Interest in Crown Materials dated April 29, 2010 filed by Caterpillar in the amount of \$3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 7277080T13;
- (ii) Statement of Lien upon Interest in Crown Materials dated May 6, 2010 filed by Caterpillar in the amount of \$3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 7288080T90;
- (i) Statement of Lien upon Interest in Crown Materials dated May 6, 2010 filed by Caterpillar in the amount of \$3,739,011 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 728009BT30 (collectively, the “**Caterpillar Alberta Builders’ Liens**”)

(b) Statement of Lien upon Interest in Crown Materials dated April 14, 2010 filed by Emeco in the amount of \$272,895.22 in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 7277080T13 (the “**Emeco Builders’ Lien**”); and

(c) Statement of Lien upon Interest in Crown Materials dated May 3, 2010 filed by the Receiver in the amount of \$10,236,322.97 plus costs in respect of Shell Canada Limited in minerals in Alberta Crown Oil Sands Lease No. 072 7277080T13 (the “**Receiver Builders’ Lien**”).

10. Pursuant to paragraph 2(a) of the Order of Justice Riordon dated June 18, 2010 (the “**June 18 Order**”), Shell Canada was directed by this Honourable Court to pay the amount of \$8,423,503.30 (the “**Shell Receivable**”) to the Receiver, which amount represented the amount owing and payable to Atcon Construction under the Albian Agreement. A copy of the June 18 Order is attached hereto as **Appendix “A”**.

11. Pursuant to paragraph 4(a) of the June 18 Order, the Receiver was directed to hold a portion of the Shell Receivable, in the amount of \$4,008,291.63 (the “**Builders’ Lien Holdback**”), in a separate interest bearing trust account and not pay the Builders’ Lien Holdback or any portion thereof except upon further Order of this Honourable Court made on notice to the parties named on the service list in this proceeding.
12. The Receiver reports that, as of September 30, 2010, the amount in the Builders’ Lien Holdback, including accrued interest, was \$4,012,493.06.
13. The establishment of the Builders’ Lien Holdback was necessary as a result of the filing of the Builders’ Liens and the Order of The Honourable Justice B.E.C. Romaine of the Alberta Court of Queen’s Bench dated June 25, 2010 (the “**June 25 Order**”) that held, among other things, that the Builders’ Lien Holdback was to be held by the Receiver as security for the Builders’ Liens and that the Builders’ Lien Holdback stood in the place of the lands upon which the Builders’ Liens were filed. A copy of the June 25 Order is attached hereto as **Appendix “B”**.

Pennecon Receivable and Establishment of Pennecon Holdback

14. As is set out in greater detail in the Fourth Report of the Receiver dated June 25, 2010 (the “**Fourth Report**”), Pennecon Atcon Limited Partnership, a limited partnership governed by the laws of Newfoundland & Labrador (the “**Pennecon-Atcon LP**”), a joint venture between Penney Construction Ltd. and Atcon Construction, was formed for the purpose of completing all work for Contract CC-0001-Earthworks-Plant Site Development for plant site development of the Long Harbour Nickel Processing Plant Site in Long Harbour, Newfoundland and Labrador (the “**Vale Inco Contract**”), among other things. A copy of the Fourth Report (without exhibits) is attached hereto as **Appendix “C”**.
15. The Pennecon-Atcon LP subcontracted the work to be performed under the Vale Inco Contract to Pennecon Heavy Civil Ltd. (“**PHCL**”). To complete the services under the Vale Inco Contract, the Receiver understands that PHCL arranged for Atcon Construction to provide certain management services and rent equipment to PHCL (the “**Management**”).

Services and Equipment Rental Contract”). The Receiver further understands that certain of the equipment rented by Atcon Construction to PHCL was equipment leased by Caterpillar to Atcon Construction.

16. As noted in the Fourth Report, as of May 1, 2010, the aggregate amount of \$3,558,810.55 was owed to Atcon Construction by PHCL with respect to the Management Services and Equipment Rental Contract for equipment rentals and management services provided to April 30, 2010 (the “**Pennecon Receivable**”).
17. In May 2010, the Receiver entered into discussions with PHCL and the Pennecon-Atcon LP with respect to payment of the outstanding Pennecon Receivable. As discussed in the Fourth Report, the negotiations among the Receiver, PHCL and the Pennecon-Atcon LP included matters relating to various amounts allegedly owing by Atcon Construction with respect to the Pennecon-Atcon LP and Atcon Construction’s interest in the Pennecon-Atcon LP.
18. The negotiations culminated in the execution of a settlement agreement dated May 27, 2010 (the “**Pennecon Settlement Agreement**”), which provided for, among other things, payment to the Receiver by the Pennecon-Atcon LP of the amount of \$3,222,385 (the “**Pennecon Settlement Amount**”) and the transfer of Atcon Construction’s interest in the Pennecon-Atcon LP..
19. Prior to the hearing of the Receiver’s motion seeking Court approval of the Pennecon Settlement Agreement, the Receiver was informed by Caterpillar that it intended to file a mechanic’s lien under the *Mechanics’ Lien Act* (Newfoundland) with respect to Caterpillar equipment leased to Atcon Construction and allegedly used by PHCL in relation to the Vale Inco Contract.
20. On June 30, 2010, an Order was granted by Justice Riordon approving the Pennecon Settlement Agreement (the “**June 30 Order**”). A copy of the June 30 Order is attached hereto as **Appendix “D”**.
21. As a result of the information provided by Caterpillar to the Court regarding its intention to file a mechanics’ lien, the Receiver agreed to request a draft Order that provided that a

portion of the Pennecon Settlement Amount, in the amount of \$929,786, was to be held by the Receiver in an interest bearing trust account pending further Order of this Court (the “**Pennecon Holdback**”). Paragraph 4 of the June 30 Order provides that the Order was granted without prejudice to all parties’ rights relating to the Pennecon Holdback, including any liens under the *Mechanics’ Lien Act* (Newfoundland).

22. The Receiver reports that, as of September 30, 2010, the amount in the Pennecon Holdback account, inclusive of interest, was \$930,734.09.
23. The Receiver further reports that, following the granting of the June 30 Order, Caterpillar filed a mechanics’ lien under the *Mechanics’ Lien Act* (Newfoundland) on June 30, 2010 against the Long Harbour Nickel Processing Plant Site in the amount of \$929,786 with respect to equipment allegedly used in connection with the Vale Inco Contract, bearing Registration Number 16020 (the “**Caterpillar Newfoundland Lien**”), and commenced an action in the Supreme Court of Newfoundland and Labrador – General Division with respect to such lien, bearing Court File No. 2010 01G 4289 (the “**Caterpillar Newfoundland Action**”). The Receiver understands that, as of July 31, 2010, the claim asserted by Caterpillar with respect to the Caterpillar Newfoundland Lien, the Caterpillar Newfoundland Action and the Pennecon Holdback was in the amount of \$1,171,732.12, which amount was inclusive of HST but exclusive of costs.

Caterpillar Settlement Agreement

24. As has previously been reported to this Honourable Court, the Receiver, in accordance with paragraph 21 of the June 18 Order, has primarily consulted with the Bank, Caterpillar and Emeco and counsel to those parties concerning the possible resolution of the claims of such persons to the Builders’ Lien Holdback, among other things.
25. On October 13, 2010, representatives of the Receiver, the Bank and Caterpillar, along with counsel to such parties, engaged in discussions regarding the claims of Caterpillar against the Builders’ Lien Holdback and the Pennecon Holdback. The discussions among the Receiver, the Bank and Caterpillar culminated in the execution of a settlement letter agreement dated October 13, 2010 by the Bank, Caterpillar and the Receiver (the

“**Caterpillar Settlement Agreement**”) with respect to the claims of Caterpillar against Atcon Construction and the Receiver. Attached as **Appendix “E”** is a copy of the Caterpillar Settlement Agreement.

26. The Caterpillar Settlement Agreement provides that, subject to the approval of this Honourable Court, Caterpillar:

- (a) will receive payment of the amount of \$1,200,000 from the Builders’ Lien Holdback in full and final satisfaction of all Caterpillar Released Claims (as defined below) other than Caterpillar Excluded Claims (as defined below);
- (b) in consideration of the payment of \$1,200,000:
 - (i) releases any and all claims whatsoever that Caterpillar has or may have against any of the Respondents, the Receiver, the Property of Atcon Construction (including the Builders’ Lien Holdback and the Pennecon Holdback), including the Caterpillar Newfoundland Action (the “**Caterpillar Released Claims**”);
 - (ii) acknowledges and agrees that, as a result of the release, Caterpillar has no further claims against any of the Respondents or the Property of Atcon Construction, other than the Excluded Claims; and
 - (iii) agrees to discontinue the Newfoundland Action without costs against all defendants.

27. The Caterpillar Released Claims to be released as part of the Caterpillar Settlement Agreement do not include:

- (a) A mortgage registered by Caterpillar as instrument number 20442480 against real property located in Miramichi, New Brunswick identified as PID 40450389 and previously owned by Envirem Technologies Inc. (the “**Envirem Mortgage**”);
- (b) A mortgage registered by Caterpillar as instrument number 20442613 against real property located in Northumberland, New Brunswick identified as PID 40095887 and previously owned by Atcon Property Holdings Inc. (the “**Atcon Property Mortgage**”); and

- (c) any other mortgage or real property charge registered by Caterpillar against any real property in the name of a Respondent (collectively, the “**Caterpillar Excluded Claims**”).
28. The Receiver reports that it is not aware of the existence of any mortgage or real property charges registered by Caterpillar against any real property in the name of a Respondent other than the Envirem Mortgage and the Atcon Property Mortgage.
29. As has been previously reported to this Honourable Court, the claim asserted by Caterpillar with respect to the Builders’ Lien Holdback and the Caterpillar Alberta Liens was in the amount of \$3,864,645.52 as of August 31, 2010, which amount was inclusive of interest but exclusive of costs. Additionally, as noted above, the Caterpillar Newfoundland Action and the claim asserted by Caterpillar with respect to Pennecon Holdback was in the amount of \$1,171,732.12 as of July 31, 2010, which amount was inclusive of HST but exclusive of costs. As a result, the face value of the Caterpillar Released Claims, when only taking into consideration the claims of Caterpillar with respect to Caterpillar Alberta Liens and the Caterpillar Newfoundland Lien, was in the amount of approximately \$5,036,000.
30. The Receiver is of the view that the Caterpillar Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Caterpillar Released Claims, on the basis that:
- (a) the Caterpillar Settlement Agreement has been agreed to by the Bank which, as is discussed in greater detail below, likely has valid, perfected and enforceable security against the Property of Atcon Construction, including the Builders’ Lien Holdback and the Pennecon Holdback and is the party with the priority proprietary interest in the Builders’ Lien Holdback and the Pennecon Holdback;
 - (b) the proposed payment of \$1,200,000 to Caterpillar represents less than twenty-five per cent (25%) of the known alleged values of the Caterpillar Released Claims; and

- (c) in the event that the Caterpillar Settlement Agreement is not approved by this Honourable Court, time consuming and costly litigation would be necessary to resolve the issues between the parties, perhaps in the Provinces of New Brunswick, Alberta and Newfoundland & Labrador.

31. As a result of the foregoing, the Receiver recommends that this Honourable Court approve the Caterpillar Settlement Agreement.

Distributions

32. The Receiver reports to this Honourable Court that, in anticipation of the motion scheduled to be heard on October 28, 2010 with respect to the issues detailed in this Ninth Report, including proposed distributions to certain creditors of Atcon Construction, the Receiver has been advised by its counsel that a copy of the Receiver's Record on Motion, which includes this Ninth Report, will be sent to each party on the service list maintained by the Receiver in this proceeding and to each party not on the service list that has a personal property security registration against Atcon Construction in the Provinces of New Brunswick, Newfoundland & Labrador and Alberta, and the Northwest Territories, being the provinces and territory in which Atcon Construction conducted business in prior to the commencement of these proceedings.

Caterpillar

33. In the event that this Honourable Court approves the Caterpillar Settlement Agreement, the Receiver recommends that an Order be granted authorizing the Receiver to make payment to Caterpillar in the amount of \$1,200,000 from the funds in the Builders' Lien Holdback in accordance with the terms of the Caterpillar Settlement Agreement.

Emeco

34. As has been previously reported to this Honourable Court, the Receiver does not oppose the granting of an Order authorizing the Receiver to make payment to Emeco in the amount of \$228,900.22 from the funds in the Builders' Lien Holdback, on the basis that pursuant to paragraph 6 of the June 18 Order, this Honourable Court held that the Emeco Builders' Lien in the amount of \$228,900.22 is a valid and enforceable claim against the

Builders' Lien Holdback in the amount of \$228,900.22 and stands in priority to the claim of the Receiver against the Builders' Lien Holdback in connection with the Receiver's Builders' Lien to the extent of the amount \$228,900.22.

35. As noted in the Record on Motion of Emeco that was originally returnable before this Honourable Court on October 13, 2010 and was adjourned to be heard on October 28, 2010, Emeco is seeking payment of costs in the amount of \$22,890 from the Builders' Lien Holdback with respect to the Emeco Builders' Lien.
36. The Receiver understands that Emeco has agreed to reduce the quantum of its costs request to \$7,000, and the Bank has agreed to support Emeco's request for payment of \$7,000 from the Builders' Lien Holdback.
37. The Receiver reports that it does not oppose the distribution of the amount of \$7,000 from the Builders' Lien Holdback to Emeco on account of its costs in relation to the Emeco Builders' Lien.

The Bank

38. As previously reported to this Honourable Court, the Bank extended credit to Atcon Holdings Inc. ("**Atcon Holdings**") pursuant to a credit agreement dated as of June 30, 2009, as amended. In connection with the credit facilities provided by the Bank to Atcon Holdings, the Bank obtained security and guarantees from a number of members of the Atcon group of companies, including Atcon Construction. Atcon Construction is a company that is governed by the laws of the Province of New Brunswick. A copy of the Service New Brunswick Corporate Affairs Registry Database listing for Atcon Construction as of September 29, 2010 is attached hereto as **Appendix "F"**.
39. The Receiver has been advised by its counsel that, pursuant to the provisions of the *Personal Property Security Act* (New Brunswick) (the "**PPSA**"), matters relating to the validity, perfection, the effect of perfection or non-perfection, of a security interest in an intangible, which includes accounts receivable, is governed by the law of the jurisdiction where Atcon Construction is located at the time the security interest attaches.

40. As a result of the foregoing, the Receiver understands that, as the Builders' Lien Holdback and the Pennecon Holdback represent accounts receivable payable to Atcon Construction, and Atcon Construction is a New Brunswick corporation that has its chief executive office in New Brunswick, the PPSA is the statute that is to determine the validity, perfection, and the effect of perfection or non-perfection of a security interest in the Builders' Lien Holdback and the Pennecon Holdback.
41. The Receiver has requested that its New Brunswick counsel provide an opinion letter that provides, subject to what the Receiver understands to be customary assumptions and qualifications for security opinion letters granted in an insolvency proceeding context, its New Brunswick counsel's opinion whether or not the Bank has valid and enforceable security against the present and after-acquired personal property of Atcon Construction, and whether or not the Bank has the first-in-time PPSA registration against all of the present and after-acquired personal property of Atcon Construction. The Receiver anticipates being in receipt of such a written legal opinion prior to the hearing of the motion scheduled for Thursday October 28, 2010 and will provide verbal confirmation of such receipt during the hearing of the motion.
42. As a result of the foregoing, the Receiver recommends that, upon the Receiver providing verbal confirmation as to its receipt of a legal written opinion that the Bank has valid and enforceable security with respect to Atcon Construction and the first-in-time PPSA registration against all of the present and after-acquired personal property of Atcon Construction, this Honourable Court grant an Order authorizing the Receiver to make the following payments to the Bank on account of its valid and perfected security interest in all of the present and after-acquired personal property Atcon Construction:
 - (a) the amount of \$2,576,592.84 from the remaining funds in the Builders' Lien Holdback, plus any additional accrued interest thereon prior to distribution; and
 - (b) the amount of \$930,734.09 of funds in the Pennecon Holdback, which represents all of the funds in the Pennecon Holdback as of September 30, 2010, plus any additional accrued interest thereon prior to distribution.

RELIEF SOUGHT BY THE RECEIVER

43. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver, that provides for the following:

- (a) approval of the Caterpillar Settlement Agreement;
- (b) authorization to distribute:
 - (i) \$1,200,000 to Caterpillar from the funds in the Builders' Lien Holdback;
 - (ii) \$228,900.22 to Emeco from the funds in the Builders' Lien Holdback;
 - (iii) \$7,000 to Emeco from the funds in the Builders' Lien Holdback to Emeco on account of Emeco's costs;
 - (iv) the amounts of \$2,576,592.84 and \$930,734.09 to the Bank respectively from the funds in the Builders' Lien Holdback and the Pennecon Amount, plus any additional interest accrued thereon prior to distribution, subject to the Receiver providing confirmation to this Honourable Court during the motion scheduled to be heard on Thursday October 28, 2010 that it is in receipt of a legal written opinion confirming the validity and enforceability of the Bank's security over the Property of Atcon Construction and its and its first-in-time PPSA registration against all of the present and after-acquired personal property of Atcon Construction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October 2010

ERNST & YOUNG INC.
in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity



By:

Paul D. Hickey, CA•CIRP
Senior Vice President

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APPENDIX “A”

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

JSR
18 June 2010

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

JMR
18 June 2010

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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18 June 2010

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*.

Jul.
19 June 2010

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.

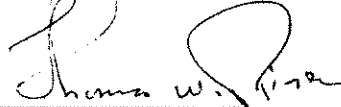
GENERAL MATTERS

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.

*J.R.
15 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	)	Granted at the Court House, in the City
	)	Calgary, in the Province of Alberta on
JUSTICE	)	_____ 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

APPENDIX “B”

Action No. 1001-09112

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 AND
SHELL CANADA ENERGY

I hereby certify this to be a true copy of
the original [Signature]

Applicants

Dated this 25 day of June 2010

- and -

for Clerk of the Court

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	)	Granted at the Court House, in the City
	)	Calgary, in the Province of Alberta on
JUSTICE B. E. C. ROMAINE	)	Friday the 25 th day of June, 2010
	)	

CONSENT ORDER

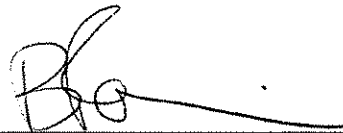
UPON THE APPLICATION of the Applicants by Originating Notice filed June 22, 2010; AND UPON HAVING READ the Affidavit of Tracey Dawn Vincent sworn June 22, 2010, filed, AND UPON noting that the Court of Queen's Bench of New Brunswick (the "**New Brunswick Court**") granted a Receivership Order dated March 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 UPON noting that 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 Applicants and approved this form of Order; AND UPON noting the representations made by the Applicants and each of the Respondents; AND UPON noting that the Applicants, each of the Respondents, the Canada Revenue Agency, the Bank of Nova Scotia and the Province of New Brunswick have consented to this Order; IT IS HEREBY ORDERED THAT:

1. Service of the Originating Notice and the supporting materials be and is hereby abridged so that the Applicants' 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 Applicants 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 the Applicants' 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 account 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) stand 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 Applicants 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 28 day of June, 2010



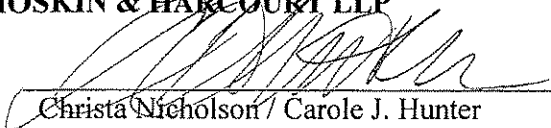
CLERK OF THE COURT



CONSENTED TO:

THIS 22nd DAY OF JUNE, 2010

OSLER, HOSKIN & HARCOURT LLP

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

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.

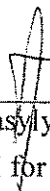
THIS ____ DAY OF JUNE, 2010

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

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

THIS 22nd DAY OF JUNE, 2010

OGILVIE LLP

Per: 
Rod Wasylshyn
Counsel for the Respondent, Emeco Canada
Limited

CONSENTED TO:

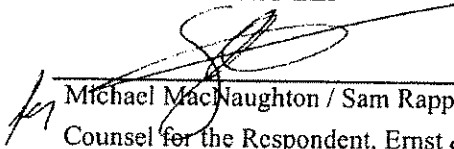
THIS ____ DAY OF JUNE, 2010

OSLER, HOSKIN & HARCOURT LLP

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

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

CONSENTED TO:

THIS ____ DAY OF JUNE, 2010

OSLER, HOSKIN & HARCOURT LLP

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

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 22 DAY OF JUNE, 2010

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

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

THIS ____ DAY OF JUNE, 2010

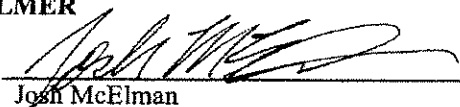
OGILVIE LLP

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

THIS 27th DAY OF JUNE, 2010

COX & PALMER

Per:

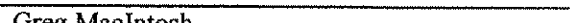

Josh McElman

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

THIS ____ DAY OF JUNE, 2010

COX & PALMER

Per: _____
Josh McElman
Counsel for Bank of Nova Scotia

THIS 22nd 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

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 24th DAY OF JUNE, 2010

OFFICE OF THE ATTORNEY GENERAL

Per: John Logan
Counsel for the Province of New Brunswick

Action No. 1001-09112

**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 AND
SHELL CANADA ENERGY**

Applicants

- 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



CONSENT ORDER

OSLER, HOSKIN & HARCOURT LLP

Barristers and Solicitors
Suite 2500, 450 – 1st Street S.W.
Calgary, Alberta T2P 5H1
Attention: Carole J. Hunter
Phone No. (403) 260-7055