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

AMENDED AND RESTATED RECORD ON MOTION

dated November 30, 2010

ON BEHALF OF THE MOVING PARTY,
ERNST & YOUNG INC., for the motion returnable
December 3, 2010 at 9:30 a.m. AST

INDEX

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IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI

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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

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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

INDEX

TAB 1

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

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK	COUR DU BANC DE LA REINE DU NOUVEAU-BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY	DIVISION DE PREMIERE INSTANCE
JUDICIAL DISTRICT OF MIRAMICHI	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: | E N T R E:

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)

- 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.

AMENDED AND RESTATED 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 Amended and Restated 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 via teleconference call on Friday, December 3, 2010 at 9:30 am AST for the following relief:	Le demandera à la Cour à le , à :

(a) an Order, substantially in the form of draft Order attached as **Schedule "B"** to this Amended and Restated Notice of Motion, *inter alia*:

i) abridging and validating the timing and method of service of the Amended and Restated Notice of Motion, the Receiver's Amended and Restated Fourteenth Report to the Court dated November 30, 2010 (the "**Fourteenth Report**"), and the Record on Motion, if necessary, so that this Motion is properly returnable and further service is dispensed with;

ii) authorizing and approving the execution of the Suncor Settlement Agreement (as defined below) by the Receiver,

iii) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement; and

iv) authorizing and empowering the Receiver to utilize the Suncor settlement amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order; 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 granted in these proceedings, the jurisdiction of the Court under the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of the Court.

2. Atcon Construction Inc. ("**Atcon Construction**") was engaged by Suncor Energy Oil Sands Limited Partnership ("**Suncor LP**") to provide certain engineering, procurement and construction materials and services in respect of the construction of roadway infrastructure improvements at Highway # 63, which is adjacent to the Suncor oil sands operations located north of Fort McMurray, Alberta (the "**Suncor Project**") pursuant to the terms of the Highway 63 Interchange Engineering, Procurement and Construction, Multiple Use Contract No. 4600004026 with an effective date of August 11, 2006 between Atcon Construction and Suncor LP (the "**Suncor Contract**").

3. The Receiver understands, based on its discussions with certain former employees of Atcon Construction, that there were a number of disputed billing issues between Atcon Construction and Suncor LP in connection with the services provided by Atcon Construction under the Suncor Contract.

4. As a result, on May 14, 2009, Atcon Construction, as plaintiff, commenced an action by way of statement of claim against Suncor LP, Suncor Energy Inc. and Suncor Energy Services Inc. (collectively, "**Suncor**"), as defendants, with the Court of Queen's Bench of Alberta, Judicial Centre of Calgary, bearing Action Number 0901-07234 (the "**Action**").

5. Following the commencement of the Action, the Receiver understands that a number of without prejudice meetings, discussions and correspondence occurred between Atcon Construction and Suncor from June 2009 to September 2009 in an attempt to resolve the outstanding issues with respect to the Suncor Contract to each party's mutual satisfaction. At the time of the commencement of these proceedings, the Action had not been resolved by the parties.

6. The Receiver reports that, in accordance with its powers under the Receivership Order, and as a result of without prejudice discussions that have occurred following the commencement of these proceedings between the Receiver and Suncor, a settlement of the Action has been reached between the Receiver and Suncor pursuant to a settlement agreement and release effective November 10, 2010 between the Receiver and Suncor (the "**Suncor Settlement Agreement**"). The Suncor Settlement Agreement is conditional upon the Receiver obtaining this Honourable Court's approval of the settlement.

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

    a. Suncor will pay to the Receiver an agreed upon settlement amount and will release the Receiver and Atcon Construction with respect to all potential claims held by Suncor in connection with the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action; and

    b. in consideration of receipt of the settlement amount, the Action will be dismissed by the Receiver and the Receiver, and Atcon Construction by the Receiver, will release Suncor in connection with all potential claims held by the Receiver and Atcon Construction with respect to the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action.

8. The Receiver intends to file a supplement to the Fourteenth Report prior to the hearing of the motion scheduled for December 3, 2010 (the "**Supplemental Report**") that will provide further details on the history of the Action and contain an unredacted copy of the Suncor Settlement Agreement appended thereto.

9. The Receiver seeks a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents' stakeholders and to the

successful completion of the Action in the event that the Suncor Settlement Agreement is not approved by this Honourable Court.

10. The Receiver of the view that the Suncor Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Action and the Suncor Contract, on the basis that:

    a. The Bank of Nova Scotia and the Province of New Brunswick, which the Receiver understands are the parties with the likely priority proprietary interests in any amounts recovered by the Receiver in connection with the Action and the Suncor Contract, each concur with the terms of the Suncor Settlement Agreement and the quantum of the settlement amount to be paid by Suncor;

    b. Counsel to the Receiver in connection with the Action has recommended that the Receiver accept the settlement contained in the Suncor Settlement Agreement; and

    c. in the event that the Suncor 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 and Alberta, and there is no guarantee that the Receiver would be successful in realizing as much or more for the Atcon Construction receivership estate as it will pursuant to the Suncor Settlement Agreement.

11. The Receiver recommends that this Honourable Court approve the Suncor Settlement Agreement.

12. 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

13. 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 Fourteenth Report;

(2) The Supplemental Report; and

(3) 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:

(a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

(b) the applicant intends to proceed in the English language; and

(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.

Sachez que:

(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) le demandeur à l'intention d'utiliser la langue anglais; et

(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 30th day of November, 2010

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Solicitors for the Receiver

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::ODMA\PCDOCS\TOR01\4512748\2

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 carrying on business in the Province of New Brunswick

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Court-appointed Receiver of Atcon Industrial Services Inc. and Atcon Plywood Inc.

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*, (i) authorizing and approving the execution of the Suncor Settlement Agreement (as defined below) by the Receiver; (ii) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement; and (iii) authorizing and empowering the Receiver to utilize the Settlement Amount (as defined below) for the purpose of making payments (including interim payments) required or permitted by the Receivership Order, was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Amended and Restated Notice of Motion dated November 30, 2010 (the "**Notice of Motion**"), the Amended and Restated Fourteenth Report of the Receiver dated November 30, 2010 and all the appendices attached thereto (the "**Fourteenth Report**"), the Amended and Restated Supplement to the Fourteenth Report dated November 30, 2010 and all the appendices attached thereto (the "**Supplemental 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 Fourteenth Report, the Supplemental Report and the Amended and Restated 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 Suncor Settlement Agreement (as defined in the Fourteenth Report and attached as Appendix "B" thereto), and the execution of the Suncor Settlement Agreement by the Receiver, is hereby approved, and the Receiver is 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 Suncor Settlement Agreement.

3. **THIS COURT ORDERS** that the Receiver is authorized, empowered and directed, upon receipt of the settlement amount under the Suncor Settlement Agreement (the "**Settlement Amount**"), to utilize the Settlement 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 amended by the Order dated March 30, 2010 granted in these proceedings.

4. **THIS COURT ORDERS** that the Supplemental Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened upon further Order of the Court.

Dated at Miramichi, New Brunswick, this 3rd day of December, 2010.

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

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TAB 2

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

AMENDED AND RESTATED FOURTEENTH REPORT OF THE RECEIVER
(Approval of Suncor Settlement Agreement)
November 30, 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. ("**EYI**") was respectively appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings 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 Construction Inc. ("**Atcon Construction**"), Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated March 30, 2010 granted in these proceedings (the "**March 30 Order**", and the March 30 Order together with the March 2 Order, the "**Receivership Order**).

2. The Receivership Order authorized the Receiver to, among other things:

   (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

   (b) receive, preserve and protect the Property, or any parts thereof;

   (c) receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies;

   (d) settle, extend or compromise any indebtedness owing to the Respondents;

(e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name of and on behalf of any of the Respondents, for any purpose pursuant to this Order;

(f) initiate, prosecute and continue the prosecution of any and all proceedings and defend all proceedings now pending or hereafter instituted with respect to any of the Property and to settle or compromise any such proceedings; and

(g) engage consultants, appraisers, agents and experts, among other persons, to assist with the exercise of the Receiver's powers and duties.

3. The purpose of this Amended and Restated Fourteenth Report (the "**Fourteenth Report**") is to report to this Honourable Court on the status of matters relating to Suncor (as defined below) and recommend that this Honourable Court grant an Order authorizing and approving the execution of the Suncor Settlement Agreement (as defined below) by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement, and authorizing and empowering the Receiver to utilize the Suncor settlement amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

4. In preparing this Fourteenth 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 the 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 Fourteenth Report or relied upon by the Receiver in preparing this

Fourteenth 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 Fourteenth Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Fourteenth 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).

SUNCOR

Background

8. Pursuant to the terms of the Highway 63 Interchange Engineering, Procurement and Construction, Multiple Use Contract No. 4600004026 with an effective date of August 11, 2006 between Atcon Construction and Suncor Energy Oil Sands Limited Partnership ("**Suncor LP**") (the "**Suncor Contract**"), Atcon Construction was engaged by Suncor LP to provide certain engineering, procurement and construction materials and services in respect of the construction of roadway infrastructure improvements at Highway # 63, which is adjacent to the Suncor oil sands operations located north of Fort McMurray, Alberta (the "**Suncor Project**").

9. The services to be performed by Atcon Construction under the Suncor Contract pertained to the construction of an interchange between Highway # 63 and the Voyageur Oil Sands access road, a bridge structure carrying the access road over Highway # 63 and related loop roads, ramps and service roads on and adjacent to the interchange.

Commencement of the Action re Suncor Contract

10. The Receiver understands, based on its discussions with certain former employees of Atcon Construction, that there were a number of disputed billing issues between Atcon

Construction and Suncor LP in connection with the services provided by Atcon Construction under the Suncor Contract.

11. As a result, on May 14, 2009, Atcon Construction, as plaintiff, commenced an action by way of statement of claim against Suncor LP, Suncor Energy Inc. and Suncor Energy Services Inc. (collectively, "**Suncor**"), as defendants, with the Court of Queen's Bench of Alberta, Judicial Centre of Calgary, bearing Action Number 0901-07234 (the "**Action**"). Attached hereto and marked as **Appendix "A"** is a copy of the Atcon Construction statement of claim dated May 14, 2009 that was issued in the Action.

12. Following the commencement of the Action, the Receiver understands that a number of without prejudice meetings, discussions and correspondence occurred between Atcon Construction and Suncor from June 2009 to September 2009 in an attempt to resolve the outstanding issues with respect to the Suncor Contract to each party's mutual satisfaction.

13. The Receiver understands that, by early October 2009, the outstanding issues had not been resolved by Suncor and Atcon Construction and the without prejudice discussions had reached an impasse. As a result, at the time of the commencement of these proceedings with respect to Atcon Construction in March 2010, the outstanding issues with respect to the Suncor Contract and the Action had not been resolved.

<u>**Commencement of Receivership Proceeding**</u>

14. Following the commencement of these proceedings, and in accordance with the Receiver's authority to collect all monies and accounts owed to Atcon Construction under paragraph 3(g) of the Receivership Order, the Receiver sent a letter to Suncor dated April 9, 2010 demanding payment of the amount owed by Suncor to Atcon Construction, based on the books and records of Atcon Construction.

15. In a written response dated April 29, 2010, counsel to Suncor notified the Receiver that Suncor's position was that no amounts were owed by Suncor to Atcon Construction. Suncor's counsel confirmed that Suncor disputed the allegations made by Atcon Construction in the Action and would, if required, aggressively defend the lawsuit. Suncor's counsel also confirmed that it expected to file a counterclaim seeking set off of

any amounts alleged to be owing to Atcon Construction and seeking additional damages against Atcon Construction relating to breach of contract issues with respect to the Suncor Contract.

16. The Receiver retained Gowling Lafleur Henderson LLP ("**Gowlings**"), legal counsel to Atcon Construction with respect to the Suncor Contract and the Action, as its legal counsel with respect to the Action. The Receiver also engaged certain former employees of Atcon Construction to assist the Receiver in matters relating to the Suncor Contract and the Action.

17. Following its discussions with former Atcon Construction employees and Gowlings, the Receiver instructed Gowlings to commence without prejudice discussions with counsel to Suncor regarding matters relating to the Action and the Suncor Contract.

Settlement of the Action

18. The Receiver reports that, as a result of the without prejudice discussions, a settlement of the Action has been reached between the Receiver and Suncor, subject to the Receiver obtaining this Honourable Court's approval of the settlement. Attached hereto and marked as **Appendix "B"** is a redacted copy of the settlement agreement and release effective November 10, 2010 between the Receiver and Suncor (the "**Suncor Settlement Agreement**").

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

   (a) Suncor will pay to the Receiver an agreed upon settlement amount and will release the Receiver and Atcon Construction with respect to all potential claims held by Suncor in connection with the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action; and

   (b) in consideration of receipt of the settlement amount, the Action will be dismissed by the Receiver and the Receiver, and Atcon Construction by the Receiver, will release Suncor in connection with all potential claims held by the Receiver and

Atcon Construction with respect to the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action.

20. The Receiver reports that an unredacted copy of the Suncor Settlement Agreement will be provided to the Court as an appendix to a supplemental report prior to the hearing of the motion scheduled for December 3, 2010 (the "**Supplemental Report**").

21. The Receiver will be seeking a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents' stakeholders and to the successful completion of the Action in the event that the Suncor Settlement Agreement is not approved by this Honourable Court.

22. The Receiver is in a position to publicly report that it is of the view that the Suncor Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Action and the Suncor Contract, on the basis that:

(a) the Bank and the Province of New Brunswick, which the Receiver understands to be the parties that likely have the priority proprietary interests in any amounts recovered by the Receiver in connection with the Action and the Suncor Contract, each concur with the terms of the Suncor Settlement Agreement and the quantum of the settlement amount to be paid by Suncor;

(b) Gowlings, the Receiver's legal counsel with respect to the Action, and formerly Atcon Construction's counsel with respect to the Action, has recommended that the Receiver accept the settlement set out in the Suncor Settlement Agreement; and

(c) in the event that the Suncor 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 and Alberta, and there is no guarantee that the Receiver would be successful in realizing as much or more for the Atcon Construction receivership estate as it will pursuant to the Suncor Settlement Agreement as a result of such litigation.

23. As a result of the foregoing, and the information provided to the Court in the Supplemental Report, the Receiver recommends that this Honourable Court approve the Suncor Settlement Agreement.

RELIEF SOUGHT BY THE RECEIVER

24. The Receiver respectfully requests that this Court grant an order authorizing and approving the execution of the Suncor Settlement Agreement by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement, and authorizing and empowering the Receiver to utilize the Suncor settlement amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of November 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

APPENDIX “A”

Action No: 0901-07234

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

BETWEEN:

ATCON CONSTRUCTION INC.

Plaintiff

- and -

SUNCOR ENERGY INC., SUNCOR ENERGY SERVICES INC. AND SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP

Defendants

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, Atcon Construction Inc. ("Atcon"), is a corporation duly registered in Alberta.

2. Suncor Energy Inc. and Suncor Energy Services Inc. are corporations duly registered in Alberta.

3. Suncor Energy Oil Sands Limited Partnership is a limited partnership duly registered in Alberta with Suncor Energy Inc. registered as the general partner.

4. Suncor Energy Inc. is the registered owner of the fee simple estate in the land legally described as:

PLAN SETT 106
GROUP 566
LOT 2 TOGETHER WITH ALL THE STATUTORY ROAD ALOWANCES INCLUDING THE ADJACENT INTERSECTIONS WITHIN LOT 2;
CONTAINING 798 HECTARES (1972 ACRES) MORE OR LESS
EXCEPTING THEREOUT

	HECTARES	(ACRES) MORE OR LESS
A) ALL THAT PORTION OF THE SAID LOT 2 COVERED BY THE WATERS OF A SURVEYED LAKE CONTAINING	28.98	71.60

B) ALL THAT STATUTORY ROAD ALLOWANCES LYING WITHIN THE PRODUCTION ACROSS THE SAID STATUTORY ROAD ALLOWANCES OF THE NORTHERLY AND SOUTHERLY LIMITS OF THE ROAD AS SHOWN ON ROAD PLAN 4212PX,

CONTAINING		0.42	1.04
C)	PLAN 8322253 – ROAD	10.62	26.24
D)	PLAN 9926730 – R/W AREA 'A'	49.84	123.15
E)	PLAN 0021932 – SUBDIVISION	22.61	55.87
F)	PLAN 0120485 – ROAD	12.882	31.83

EXCEPTING THEREOUT ALL MINES AND MINERALS

5. The Defendants have an unregistered interest in the following non patent lands:

FIRST
THE SOUTH WEST QUARTER OF SECTION ELEVEN (11)
TOWNSHIP NINETY TWO (92)
RANGE TEN (10)
WEST OF THE FOURTH MERIDIAN
EXCEPTING THEREOUT: ALL THAT PORTION WHICH LIES WITHIN LOT 2 IN GROUP NO. 566, ACCORDING TO THE PLAN OF FIELD NOTES SIGNED BY A.J. TREMBLAY AND SIGNED BY EDOUARD DEVILLE IN OTTAWA ON THE 10TH DAY OF DECEMBER, 1913
EXCEPTING THEREOUT ALL MINES AND MINERALS

and

SECOND
THE SOUTH EAST QUARTER OF SECTION ELEVEN (11)
TOWNSHIP NINETY TWO (92)
RANGE TEN (10)
WEST OF THE FOURTH MERIDIAN
EXCEPTING THEREOUT: ALL THAT PORTION WHICH LIES WITHIN LOT 2 IN GROUP NO. 566, ACCORDING TO THE PLAN OF FIELD NOTES SIGNED BY A.J. TREMBLAY AND SIGNED BY EDOUARD DEVILLE IN OTTAWA ON THE 10TH DAY OF DECEMBER, 1913
EXCEPTING THEREOUT ALL MINES AND MINERALS

6. Suncor Energy Inc. is the registered mineral interest holder and its co-Defendants are holders of unregistered mineral interests in:

Oil Sands Lease 072 7280060T23

4-10-092:11SP; All Zones

7. The lands described in paragraphs 4, 5 and 6 will hereinafter be collectively referred to as the "Lands."

8. At all relevant times the Defendants other than Suncor Energy Inc. were the holders of registered and unregistered estates or interests in the Lands.

The Contract

9. On or about February 22, 2007, Atcon and Suncor Energy Services Inc., acting as agent for and on behalf of the Suncor Energy Oil Sands Limited Partnership ("Suncor"), entered into a contract entitled "Highway 63 Interchange Engineering, Procurement and Construction Multiple Use Contract No. 4600004026" with an effective date of August 11, 2006 (the "Contract").

10. Pursuant to the Contract, the contracting parties agreed that Atcon would provide certain engineering, procurement and construction materials and services in respect of the construction of roadway infrastructure improvements at Highway 63 adjacent to the existing Suncor Oil Sands operations located north of Fort McMurray, Alberta (the "Services"). The infrastructure improvements included construction of an interchange between Highway 63 and the Voyageur Oil Sands access road, a bridge structure carrying Voyageur Road over Highway 63 and related loop roads, ramps and service roads on and adjacent to the Lands (the "Project").

11. The Contract provided terms of payment for the Services based upon cost reimbursable, unit price, fixed price and lump sum pricing structures.

12. Pursuant to the Contract, Suncor issued authorizations to Atcon describing the scope of work Suncor authorized Atcon to perform ("Work Authorizations"). The Services were authorized by Work Authorizations in five stages, each of which included a description of the work to be performed, the estimated date for completion of the work, the terms of compensation for the work and any special conditions for the Work Authorization.

<u>Work Authorization #1 - Design</u>

13. On or about August 28, 2006, Suncor issued to Atcon purchase order 4500122025 in the amount of $1,500,000.00 relating to the design, engineering, survey and geotechnical services to be performed on the Project. By a change order dated April 16, 2007, the value of purchase order 4500122025 was increased to $2,824,000.00. Subsequent to the change order, Work Authorization No. VU-4600004026-1-REV 1 ("Work

Authorization #1") was issued on May 4, 2007, indicating an estimated date of completion of the work under Work Authorization #1 of May 15, 2007.

14. The pricing structure under Work Authorization #1 was cost reimbursable with a guaranteed maximum amount to be managed by Atcon.

15. By a further change order dated on or about April 21, 2008 ("Change Order 001"), the value of Work Authorization #1 was increased to $3,278,500.00 to reflect increased costs resulting from design changes to the Project. Change Order 001 was conditionally accepted by Atcon subject to Atcon's position that further amounts for engineering services previously identified and claimed still needed to be addressed by Suncor.

Work Authorization #2 - Steel

16. On or about February 14, 2007, Suncor issued to Atcon purchase order 5200041308 in the amount of $825,000.00 relating to the purchase, fabrication, transportation and erection of the steel and girders for the Project. By a change order dated April 16, 2007, the value of purchase order 5200041308 was increased to $2,261,000.00. Subsequent to the change order, on May 4, 2007, Work Authorization No. VU-4600004026-2-REV 1 ("Work Authorization #2") was issued indicating an estimated date of completion of the work under Work Authorization #2 of September 30, 2007.

17. The pricing structure under Work Authorization #2 was a combination of fixed prices and unit prices with estimated quantities that were to be confirmed by May 16, 2007. After quantities were firmed up, an amendment to Work Authorization #2 was to be issued confirming a fixed price. Furthermore, it was a special condition of Work Authorization #2 that the costs for the erection of girders, while a construction phase activity to be completed under a future Work Authorization, were included as a firm price within Work Authorization #2.

Work Authorization #3 – Rough Grading

18. On or about May 28, 2007, Suncor issued to Atcon purchase order 5200055523 in the amount of $11,914,770.25 relating to the rough grading and early works for the Project. On May 28, 2007, Work Authorization No. VU-4600004026-3-REV 1 ("Work Authorization #3") was issued indicating an estimated date of completion of the work under Work Authorization #3 of June 30, 2007.

19. The pricing structure under Work Authorization #3 was a combination of lump sums, allowances, reimbursed on actual costs, and unit prices with estimated quantities that were to be confirmed by field inspections and measurements. Furthermore, it was a special condition of Work Authorization #3 that, despite the provisions of the Contract, Appendix B - Terms of Payment, Suncor agreed to supply diesel fuel to Atcon's site for its use.

20. By further revisions in writing, Work Authorization #3 was amended to revise the estimated date of completion of the work under Work Authorization #3 to February 15, 2008.

<u>Work Authorization #4 – Balance of Construction</u>

21. On or about March 19, 2008, Suncor issued to Atcon purchase order 5200089474 in the amount of $32,553,474.00 relating to the balance of construction for the Project. On March 19, 2008, Work Authorization No. VU-4600004026-4-REV 1 ("Work Authorization #4") was issued indicating a completion date for the work under Work Authorization #4 of October 17, 2008. The pricing structure of Work Authorization #4 was a combination of lump sum, unit rates and allowances, paid at actual cost.

22. By Change Order 001 dated May 8, 2008, the value of purchase order 5200089474 was increased to $32,606,726.10 to account for trends relating to the relocation of a haul road at the South end of Voyageur Road and the installation of an electrical duct bank across Base Plant Road.

23. Despite the issuance date of March 19, 2008, Atcon was not permitted to commence necessary site work until mid-April 2008 as a result of on-going negotiations between Suncor and Alberta Infrastructure and Transportation ("AIT"). Atcon was further delayed from commencing work pursuant to Work Authorization #4 as a result of on-going negotiations relating to increased costs associated with the high mast lighting design required by AIT.

24. By Change Order 002 dated June 10, 2008, the increased costs associated with the approved high mast lighting design were agreed and the value of purchase order 5200089474 was increased by $1,597,682.00 to $34,204,408.10.

25. As of June 10, 2008, Suncor permitted Atcon to commence work on the high mast lighting under Work Authorization #4, 83 days after the date of issue of Work Authorization #4 (the "High Mast Lighting Delay").

26. Further change orders to purchase order 5200089474 were issued by Suncor, as follows:

    (a) Change Order 003 dated July 16, 2008 relating to the paving of Gate B, increasing the value of purchase order 5200089474 to $34,270,408.10;

    (b) Change Order 004 dated July 22, 2008 relating to 2007 extra work items, increasing the value of purchase order 5200089474 to $34,966,038.65; and

    (c) Change Order 005 dated October 21, 2008 relating to the double handling of borrow, costs associated with overlapping work zones and offsite camp costs, increasing the value of purchase order 5200089474 to $36,091,421.31.

Work Authorization #5 – Camp Site Preparation

27. On or about July 6, 2007, Suncor issued Work Authorization No. VU-4600004026-5-REV 1 ("Work Authorization #5") relating to the preparation of the Voyageur Camp Site, having a value of $1,623,572.00 and indicating an estimated completion date for the work under Work Authorization #5 of August 6, 2007. The pricing structure of Work Authorization #5 was unit rates.

Trends

28. Pursuant to the Contract, the parties agreed that Atcon would advise Suncor of events that resulted in a potential change or deviation in the Services contemplated by the Contract through a written project change initiation or alert (a "Trend"). Trends were to include descriptions of such changes and Atcon's initial assessment of cost and schedule impact.

29. During Atcon's provision of its Services, Atcon identified a number of Trends and notified Suncor of such Trends on a timely basis or as required by the Contract. In addition, Atcon maintained and submitted to Suncor a Trend Log to identify and track the status of such Trends as they arose and evolved during the performance of the Services.

30. Atcon incurred significant increased costs of performing the Services, the particulars of which include, but are not necessarily limited to, the following:

<u>Trend 20 – Utility Poles</u> $44,595.50

31. In or around November 2007, Atcon advised Suncor that certain Atco utility poles were located within the alignment of Ramp 200 of the Interchange. Atcon advised that unless the poles were moved, a redesign and construction of a temporary detour would have to be completed, including revised traffic accommodation strategies (the "TAS"). Suncor arranged with Atco to have some of the utility poles removed in mid-July 2008, but because of the delay in removal and because certain poles remained in the alignment area beyond July 2008, Atcon's work had to proceed in sections or around the obstructions.

32. Atcon incurred costs related to redesign, revision to the TAS, layout surveying, field adjustments, rescheduling, additional mobilization for borrow work, construction and asphalt on the detour and costs to remove same totalling $44,595.50. While Suncor had previously agreed to pay the costs resulting from the utility pole obstruction, no amount has been received by Atcon.

<u>Trend 28 – Engineering Payments</u> $78,604.21

33. In or around February 2008, Atcon submitted a Trend to Suncor relating to engineering costs, including subcontractor engineering and soils investigation costs, associated with revisions to the Project requested by AIT, Suncor and Suncor's agents. Atcon submitted an updated Trend to Suncor on or about April 14, 2008 for design and materials testing, including testing conducted by AMEC on materials incorporated into the Project. By Change Order 001 (referred to in paragraph 15 herein), Suncor increased the value of Work Authorization #1 to account for some, but not all of the redesign and engineering costs. Atcon advised Suncor on April 21, 2008 that the Trend with respect to the third party services relating to materials testing remained unresolved.

34. Pursuant to the terms of the Contract and Work Authorization #1, Suncor is liable to reimburse Atcon for engineering costs required to complete the design and confirm compliance of the materials used in the Project, but Suncor has refused, neglected or failed to pay for such engineering costs incurred by Atcon in the amount of $78,604.21.

<u>Trend 34 – Drop Culvert</u> $20,585.96

35. In or around February 2008, after quantities for Work Authorization #4 had been established, it was discovered that the drainage design for the median between the northbound lane and the new Loop Ramp 210 would need to be altered, including the removal of a steel pipe across the Loop Ramp and the installation of a drop culvert in the median. Atcon incurred costs totalling $20,585.96 in installing the drop culvert, and although Suncor agreed to issue a change order for the drop culvert costs, Suncor has refused, neglected or failed to pay for such costs.

<u>Trend 38 – Topsoil Shortage</u> $32,812.50

36. In May 2008, Atcon advised Suncor that there was a shortage of topsoil that met specifications in the vicinity of the new roads to be constructed as part of the Project. On May 31, 2008, Atcon issued Trend 10038 ("Trend 38") advising Suncor of the basis for and impact of Trend 38. On or about June 2, 2008, an alternate source of acceptable topsoil was identified by Suncor, which added an average haul distance from the borrow area to the road site of 1.7 kilometres, resulting in additional costs to Atcon of $32,812.50.

37. Despite Atcon having submitted an updated Project Trend Notice to Suncor dated January 30, 2009, reflecting the justification and calculation of the Trend 38 amount, Suncor has refused, neglected or failed to pay any amounts for the topsoil in question.

<u>Trend 39 – Double Handling of Girders</u> $234,115.48

38. Pursuant to Atcon's scheduling, communicated periodically to Suncor, Atcon planned to deliver the steel girders required for the Project in the period of April to July 2008. In April and May 2008, the girders were delivered to the railhead south of Fort McMurray. It was Atcon's intention to store the girders in the CN rail yard until they were needed for erection on site so that they would only need to be handled once.

39. In or around May 2008, Suncor instructed Atcon to deliver the girders from the CN rail yard to a lay down area at the work site, despite the fact that the erection of the girders was not yet scheduled to proceed. When Atcon notified Suncor that delivering the girders to a lay down site would result in additional handling charges, first to the lay down area, from the lay down area to the transport trailer and then from the transport

trailer to the Project site, Suncor assured Atcon that they would be paid for the costs resulting from the additional handling and that a Change Directive would be issued.

40. Atcon relied on Suncor's assurances and proceeded as directed. Trend 10039 ("Trend 39") was issued on or about July 4, 2008, identifying the anticipated cost impact of the additional handling of girders including loading, storage and bracing, transport and off-loading costs. In the months of August and September 2008, Atcon incurred labour and equipment costs associated with the additional handling totalling $234,115.48. Despite Suncor's representations and assurances of and Atcon's demands for payment, Suncor has refused, neglected or failed to pay the additional handling costs (Trend 39).

<u>Trend 50 – Bussing Costs</u> $492,989.50

41. Pursuant to the terms of the Contract, Suncor is responsible for the costs of bussing for Atcon's craft labour from the camp facilities to the site at cost plus a mark up of 5%. Over the duration of the Project, camp space for Atcon's craft labour was limited, unavailable or, at times, unsuitable. As a result, Atcon's craft labour was housed at a variety of locations and Atcon used its own vehicles and resources to provide the necessary ground transport to site, rather than a third party transport provider.

42. Suncor was aware at all material times of this transport arrangement and was aware that Atcon expected to be compensated for the cost associated with such transport. Atcon incurred transport costs for its craft labour of at least $492,989.50, the details of which have been provided to Suncor and which costs Suncor has refused, neglected or failed to pay.

<u>Trend 51 – Borrow South Service Road</u> $325,821.88

43. In the spring of 2008, Atcon and Suncor began discussing access to the South Service Road and the availability of a borrow source for its construction. Due to delays in gaining access to the site and the progress of construction on Ramp 200, Voyageur Road and Aostra Road, none of which were within the control of Atcon, fully loaded off-road haul vehicles could no longer access the designated borrow source.

44. Suncor attempted to obtain access to a borrow source closer to the South Service Road and in or around early June 2008 informed Atcon that they had found a source of borrow at the East Tank Farm ("ETF"), situated to the southeast of the South Service Road.

Recognizing the increased convenience of this location as opposed to the main borrow pit, Suncor requested a revised unit rate.

45. Atcon and Suncor had several meetings at the ETF site and by phone to discuss the borrow source and to review access requirements. Based on the assurance from Suncor that the ETF borrow source was available, Atcon planned a temporary route through the ETF site so that off-road trucks could travel to the borrow source.

46. In August 2008, Suncor informed Atcon that it could not have access to the ETF borrow source due to the time required to obtain permits from the Crown. As a result of the decision by Suncor not to pursue the ETF borrow source, Atcon had no choice but to use the designated borrow source with the result that Atcon had to travel across portions of the Project that were in advanced stages of construction.

47. After hauling started, Suncor directed Atcon to haul through the Suncor Voyageur site (under construction by others) to avoid damaging the Voyageur Road. This increased the haul length. Suncor later advised Atcon that they could no longer haul through the construction site. As a result, Atcon had to haul using conventional haul vehicles.

48. Atcon submitted Trend 51 on August 5, 2008 and submitted a revision dated November 26, 2008 including an update based on unavailability of the ETF borrow source. On or about January 9, 2009, Atcon submitted a further update to Trend 51 including the cost of hired trucks, bringing the total costs associated with Trend 51 to $325,821.88. Despite having incurred increased costs as a result of the Defendants' actions and for the benefit of the Project and the Defendants, Suncor has refused, neglected or failed to pay any amounts.

<u>Trend 52 – Atco Poles</u> $20,000.00

49. Four or more utility poles were located on the east side of the existing Suncor plant access road within the shoulder of the new tie-in with Base Plant Road. By a Project Trend Notice dated August 5, 2008, Atcon advised Suncor that if the poles were not relocated, the tie-in of the new Base Plant Road would have to be redesigned around the obstruction. In addition, Suncor requested Atcon to make a field revision to the superelevated portion of the tie-in to account for a Suncor revision to the posted speed limit from 80 km/hr to 50 km/hr. Atcon incurred additional survey, design and

construction costs in preparing a revised horizontal and vertical curve for the base plant road tie-in at the request of Suncor.

50. Suncor failed to remove the obstructing poles in a timely manner or at all, with the result that Atcon incurred redesign, resurveying, regrading and related costs of $20,000.00 in redesigning the road around the poles. Despite Suncor having been notified of the matters in Trend 52, Suncor has refused, neglected or failed to pay any amounts in relation thereto.

<u>Trend 55 – Union Rates Escalation</u> $1,079,031.03

51. Pursuant to the Contract, Appendix B – Terms of Payment, Atcon is entitled to rate escalations required by law (as defined in the Contract), union agreement or other collective agreements.

52. During the performance of the Contract, Atcon paid labour rate increases to unionized craft trades or trades with collective bargaining agreements in accordance with the labour rate and benefit increases granted to the Building Trades Unions, including the Christian Labour Association of Canada. Atcon notified Suncor of the escalation in labour rates and submitted a request for labour rate increases by way of a Project Trend Notice dated August 22, 2008.

53. During construction activities in 2007 and 2008, Atcon incurred increased labour rates over the labour rate estimates in the Contract for the ironworkers, steel setters, operators, carpenters and general labourers in the amount of $1,079,031.03. Despite having incurred the increased labour costs for the benefit of the Project and the Defendants, and the notification and submission of the Trend, Suncor has refused, neglected or failed to pay any labour rate escalation amounts.

<u>Trend 57 – High Performance Concrete Costs</u> $11,715.00

54. On or about February 26, 2009, Suncor agreed to pay $11,715.00 for costs associated with high performance concrete. To date, Suncor has refused, neglected or failed to pay any amounts for such concrete, as previously agreed by Suncor.

Trend 59 – Hydro-seeding $100,328.17

55. Under Work Authorization #4, the unit rate for seeding was $1,200.00 per hectare. The Project required approximately 13 hectares to be hydro-seeded. The lowest possible rate able to be procured by Atcon for the hydro-seeding was $5,100.00 per hectare. While Atcon was able to reduce costs further by negotiating the return of excess materials over estimated quantities to the vendor, the unit rate was significantly below any market rate, including AIT's North Central Region Weighted Unit Price Average for 2008 construction prices of $6,080.16 per hectare.

56. On or about September 28, 2008, Atcon submitted a Project Trend Notice to Suncor requesting an adjustment to the unit rate to reflect the AIT rate of $6,080.16 per hectare, or a total adjustment of $100,328.17. Suncor has refused, neglected or failed to pay any additional amount in respect of this Trend.

Trend 60 – High Mast Lighting Base Size Increases $344,776.80

57. During the foundation design and pricing for the lighting on the Project, Atcon estimated the unit rates for high mast lighting foundations based on the typical AIT Lighting Guide specifications. A subsequent report by AMEC indicated that the size of the foundations for the lights needed to be increased due to the existing soil conditions and other design factors. Following receipt of the final design for the foundations, Atcon's sub-contractor Can-Traffic Services Ltd. ("Can-Traffic"), advised of a unit rate increase due to the increased size of the foundations.

58. Atcon issued a Project Trend Notice to Suncor dated October 7, 2008 to notify Suncor of the basis for and impact of the increased size to the high mast lighting foundations, and incurred an additional cost of $344,776.80 in completing the work. Suncor has refused, neglected or failed to pay Atcon for the additional costs incurred in constructing the foundations for the high mast lighting.

Trend 61 – Ramp Detour $10,000.00

59. On or about February 26, 2009, Suncor agreed to pay $10,000.00 for costs associated with twinning the southbound Highway 63 bypass detour over Ramps 300 and 400. To date, Suncor has refused, neglected or failed to pay any amounts for such ramp detour, as agreed.

Trend 62 – Asphalt Concrete Pavement $855,209.33

60. In or around mid September 2008, after placement of asphalt concrete pavement ("ACP") on portions of the first and second lift of the Project, testing reports showed air void percentage results from the mix placed in the field below the limit specified in AIT's specifications. These air void percentages were attributed to the aggregate material present at the Susan Lake Gravel Pit that was being mined and incorporated in the ACP mix. Notwithstanding the testing results, between September 19 and 23, 2008, Suncor repeatedly instructed Atcon to continue paving on portions of Voyageur Road West, Base Plant Road and Ramps 310 and 410 (the "Fulowski Locations") with the existing mix design, which instructions Atcon followed.

61. Atcon moved its crushing plant to a new location in the Susan Lake Gravel Pit and on or about September 29, 2008, changed the mix design and the new material came to meet AIT's air void specification when incorporated into the ACP. Prior to September 29, the bottom lifts on Ramp 300 and 110 were also paved using the original mix design, but were deemed acceptable by AIT, subject to a one year extension of the warranty by Atcon (the "AIT Locations").

62. Atcon agreed to overlay a lift area at the bridge approach in Lot 24 paved with the new mix design that did not meet specification (the "Lot 24 Location"). In January 2009, Suncor deducted from the December 2008 progress payment all of the tonnage attributed to paving the Fulowski Locations, the AIT Locations and the Lot 24 Location. Atcon notified Suncor, and submitted a Trend, indicating that only the tonnage with respect to the Lot 24 Location was properly deducted from the progress payments due and owing to Atcon.

63. Despite proper notification and demands for payment, Suncor has refused, neglected or failed to pay Atcon $855,209.33 for materials placed at the Fulowski and AIT Locations.

Trend 64 – 2007 Diesel Fuel $1,990,633.57

64. Pursuant to Work Authorization #3, Suncor agreed to supply diesel fuel to Contractor's site, at no charge to Atcon, for Atcon's use. Despite the express terms of Work Authorization #3, Suncor failed to supply diesel fuel to Atcon for the rough grading and

early site works as agreed or at all and Atcon was forced to source, supply and distribute all necessary diesel fuel for the purposes of performing the Services required.

65. Atcon took delivery of 2,177,366.10 litres of diesel fuel in the period June 5 to December 11, 2007 for the purposes of performing the scope of work under Work Authorization #3 at a cost to Atcon of $1,895,841.50 (the "2007 Fuel"). Atcon made numerous requests during 2007 (and subsequent) for compensation or reimbursement for the 2007 Fuel Atcon took delivery of and paid for in 2007. Atcon provided Suncor with the delivery slips associated with the 2007 Fuel confirming the delivery location, date of delivery, volume delivered and the cost to Atcon, but Suncor has refused, neglected or failed to pay Atcon any amount for 2007 Fuel.

66. Atcon is entitled to the cost to supply the 2007 Fuel, plus a 5% mark up of $94,792.07 for the third party supply of materials pursuant to Appendix B of the Contract, for a total of $1,990,633.57

<u>Trend 65 – 2008 Diesel Fuel</u> $4,288,240.35

67. In the period April 21 to December 31, 2008, Atcon incurred further costs for diesel fuel pursuant to the completion of the scope of work under Work Authorization #3 and for completion of the balance of construction under Work Authorization #4. Unit prices for work started in 2007 under Work Authorization #3 and continued and completed in 2008 under Work Authorization #4 remained unchanged.

68. During 2008, Atcon also purchased, delivered and consumed diesel fuel for crushing granular base course aggregates for use in the Project and for the operation of the burner and generator of the asphalt plant at Susan Lake ("Susan Lake Fuel"). The cost incurred by Atcon for the Susan Lake Fuel, including fuel truck expenses, totalled $1,120,379.52. Atcon is entitled to the cost incurred for Susan Lake Fuel, plus a 5% mark-up for the third party supply of materials pursuant to Appendix B of the Contract, for a total of $1,176,398.50.

69. Further, Atcon took delivery of 1,224,683 litres of diesel fuel in the period April 21 to December 31, 2008 for the purposes of completing the scope of work under Work Authorization #3 and performing the work under Work Authorization #4 on site at a cost to Atcon of $1,497,394.30 (the "Site Fuel"). Atcon is entitled to the cost incurred for Site

Fuel, plus a 5% mark-up for the third party supply of materials pursuant to Appendix B of the Contract, for a total of $1,572,264.00.

70. Further, Atcon incurred diesel fuel expenses in 2008 through its transport subcontractor, Neutrino Trucking, in an amount equal to at least $1,466,264.55 ("Neutrino Fuel"). Atcon is entitled to the cost incurred for Neutrino Fuel, plus a 5% mark-up for the third party supply of materials pursuant to Appendix B of the Contract, for a total of $1,539,577.85.

71. Atcon made numerous requests during 2008 (and subsequent) for compensation or reimbursement for the Susan Lake Fuel, the Site Fuel and the Neutrino Fuel (together the "2008 Fuel") that Atcon took delivery of and paid for in 2008. Atcon provided Suncor with the delivery slips associated with the 2008 Fuel confirming the delivery location, date of delivery, volume delivered and the cost to Atcon, but Suncor has refused, neglected or failed to pay Atcon the total of $4,288,240.35, or any amount for 2008 Fuel.

Trend 68 – Asphalt Concrete Pavement Escalation $1,253,424.90

72. Pursuant to Appendix B of Work Authorization #4, executed in March 2008, the unit price for ACP was indicated as $116.00 per tonne. Due to unforeseen and unprecedented increases in the price of fuel and asphalt cement in mid-2008, by the time ACP was ready to be placed on the Project the cost of ACP had increased significantly.

73. In the summer of 2008, and subsequent, Atcon raised with Suncor the issue of a unit price increase to help off-set the dramatic price increases being experienced. Suncor was aware that the $116.00 per tonne unit price was then less than the cost to produce the ACP, and Suncor made representations to Atcon that the matter of a unit price increase should be dealt with at the end of the Project. Relying on the representations that a unit price increase for ACP would be considered at the end of the Project, Atcon completed all ACP work under Work Authorization #4 in a timely and satisfactory manner.

74. In or around October 2008, Atcon submitted a Trend to Suncor proposing an increase in the ACP unit price based upon taking the average of two methods: (i) a material price increase method, calculated using actual material price invoices for diesel fuel and asphalt cement; and (ii) a market price method using published AIT average unit rates for Type H1 asphalt in the North Central Region with a fuel escalation allowance. Based

on this pricing approach, Atcon submitted a unit price increase of $20.58 per tonne for a total of $1,253,424.90, based on 60,905 tonnes of ACP placed.

75. Despite provisions for unit price increases in the Contract and the representations that a unit price increase would be considered, Suncor has refused, neglected or failed to pay, or even consider, any increased amounts with respect to the unit price for ACP.

<u>Trend 69 – Southbound Lane Repair</u> $61,233.25

76. In 2007, pursuant to a contract between AIT and Carmacks Enterprises Ltd. ("Carmacks"), a portion of the south bound lane ("SBL") of the highway was constructed from Stage II towards Ramp 400 to near the top of subgrade. Suncor had an agreement with AIT that allowed Suncor to use this unfinished roadway for access to the new Voyageur site, in turn for Suncor's agreement that repairs to the roadway would be paid by Suncor. The SBL was not part of the scope of work contemplated by the Contract.

77. In or around April 2008, Atcon informed Suncor that the delay in construction of the SBL would result in delays to Atcon's construction of Ramps 300 and 400. Atcon and Suncor agreed that Atcon would sub-contract from Carmacks the construction of the SBL from the Stage II interchange to the south end tie-in on the existing south bound lane and that Suncor would pay Atcon $150,000.00. Atcon constructed the SBL as agreed and made repairs to the pre-existing roadway under the direction of AIT's site engineers and Suncor's field engineers. Suncor agreed that they would pay Atcon for the repairs to the existing roadway.

78. On November 26, 2008, Atcon submitted to Suncor a Project Trend Notice describing the basis for and costs related to the required repairs in the amount of $61,233.25. Despite Suncor's previous agreement to pay for such repairs and Atcon's demand therefor, Suncor has refused, neglected or failed to pay Atcon any amounts for such repairs.

<u>Trend 71 – Unit Rate for Granular Base Course</u> $153,422.71

79. At the request of Suncor, 75 mm granular base course material was placed in soft areas on the South Service Road, the Northbound lane and on parts of Ramp 200 instead of

the usual borrow material. Atcon crushed, transported, placed and compacted 7,994.93 tonnes of 75 mm material in October and November 2008.

80. In a Project Trend Notice dated October 28, 2008, most recently revised February 17, 2009, Atcon proposed a unit rate of $19.19 per tonne for a total amount payable of $153,422.71. Despite Atcon's demand therefor, Suncor has refused, neglected or failed to pay Atcon any amounts for the base course materials placed.

<u>Trend 72 – Pavement Heater to Place Reflective Striping</u> $21,544.99

81. Suncor agreed to pay 50% of the costs associated with the rental of a ground heater to pre-heat pavement for the placing of reflective stripping on the Project. In or around November 2008, in reliance on Suncor's promise, Atcon rented and employed a pre-heater on the Project to complete the installation of reflective stripping.

82. By Trend 72 first submitted on November 21, 2008, Atcon advised Suncor that $21,544.99 was owed to Atcon representing 50% of the costs of rental. Despite Suncor's agreement to pay for 50% of the rental costs and Atcon's demand therefor, Suncor has refused, neglected or failed to pay Atcon any amounts for such rental costs.

<u>Trend 73 – Borrow Source Costs</u> $4,627,460.66

83. Under the Contract, Suncor agreed to provide Atcon an acceptable borrow source for the Project. Suncor provided Atcon with a designated borrow site in the vicinity of an existing mine site within the Voyageur Project being worked by another Suncor contractor (Cow Harbour Construction Ltd. ("Cow Harbour")). In preparing and submitting unit prices for borrow excavation, loading, and delivery to the work site, Suncor prohibited Atcon from performing any tests or inspections of the borrow area designated for Atcon's use.

84. The information made available to Atcon by Suncor was limited to borehole logs provided in April 2007, representations from Suncor about the quality of the borrow material and a visual inspection of the borrow pit operated by Cow Harbour. Atcon relied on the information and representations provided by Suncor in establishing unit prices for the work and a schedule for the work. Atcon also relied on Suncor's assurances that it would be permitted to utilize a haul road developed by Cow Harbour for access to and from the borrow pit and the Atcon work site.

85. Atcon commenced work at the designated borrow site in June 2007. Contrary to the assurances provided by Suncor, Atcon was not permitted by Suncor to use the Cow Harbour haul road. As a consequence, Atcon was required to build a new haul road. Suncor directed the location of the new haul road and the location from which Atcon was permitted to access the designated borrow site. Atcon began developing the borrow site where the haul road intersected with the site. The designated site required excessive stripping and waste and only provided minimal amounts of material.

86. Atcon had no option other than to obtain borrow for the job from the designated borrow site. The materials that were initially sourced from the designated borrow site were either unacceptable or required significantly more work to access than represented by Suncor and in comparison to the materials sourced by Cow Harbour.

87. In August 2007, Suncor provided Atcon additional borehole logs. These logs contained February and March 2006 dates and provided different information from and at variance with the borehole log information originally provided in April 2007. Atcon eventually located an area within the designated borrow site containing acceptable material in early September 2007. The location was adjacent to the Cow Harbour site at the opposite end of the designated site from where the haul road was located.

88. Under the Contract, Suncor was obligated to deliver 80,000 cubic meters of borrow material to Atcon at the Project site (the abutment stockpile) for Atcon to redistribute at road embankments on the Project. Suncor failed to provide the required materials. It was agreed that these materials would be provided to Atcon by another Suncor contractor. Atcon incurred added cost as a result of Suncor's failure to provide the required material.

89. As a result of Suncor's misrepresentations, misinformation and breaches of contract, Atcon was required to perform extra work and incurred additional costs in the period June to August 2007. Based on the force account rates in the Contract, Atcon claims $5,130,938.15 less an adjustment for fuel of $503,477.49 for a total of $4,627,460.66. This amount is net of all amounts paid to Atcon by Suncor on a unit rate basis during the same time period.

Trend 74 – Concrete Barriers at Suncor Intersection $274,130.86

90. At the request of Suncor and AIT, Atcon was asked to install precast concrete barriers at the intersections of Aostra Road and Highway 63, the old Suncor northbound east side access and Highway 63 and at the median across from the old east side access. After barriers had been installed in the locations specified by Suncor, Atcon was asked in or around December 2008 to reposition some of the barriers. At that time, Atcon was told by Suncor that the repositioning work would be paid as an extra and that a change order would be issued.

91. On January 20, 2009, Atcon issued a Project Trend Notice setting out the basis for and impact of the Trend. Suncor responded that Atcon would be paid for the concrete barriers under the unit rates of the Contract and that the approved costs of repositioning the barriers would be paid. Atcon provided the information requested by Suncor, but Suncor has refused, neglected or failed to pay Atcon $274,130.86, or any other amount, representing the cost of the concrete barriers and the extra work associated with the repositioning of the barriers.

Trend 78 – Light Duty Vehicle Reimbursement $583,300.00

92. Pursuant to the terms of the Contract, Suncor was liable to pay for Atcon's rental of light trucks and cars, for local transportation to and from the airport for the purposes of work on the Project, and an allowance for private cars for those of Atcon's personnel who lived locally. In the 2007 construction season, Atcon required light duty trucks for use by 13 Atcon Managers or Field Supervisors, for a total cost of $203,550.00. In the 2008 season, Atcon required light duty trucks for use by 17 Atcon Managers or Field Supervisors, for a total cost of $381,750.00.

93. On or about January 9, 2009, Atcon submitted a Trend to Suncor with a light duty vehicle log seeking reimbursement pursuant to the Contract in the amount of $583,300.00. Despite demand, Suncor has refused, neglected or failed to pay Atcon any amount for these light duty vehicles.

Trend 80 – Aggregate Royalty Rebate $150,610.92

94. Pursuant to AIT's General Specifications, all granular base course and asphalt concrete aggregates placed on Public Works projects in the Province of Alberta are eligible for a

$0.48 per tonne rebate (the "Royalty Rebate"). The Project qualifies as a Public Works project for the purposes of the Royalty Rebate. Atcon has requested confirmation from Suncor on numerous occasions that quantities of granular base course and asphalt concrete aggregates were placed on the public right-of-way. Suncor is aware that such materials have been placed by Atcon on the public right-of-way and that Atcon cannot claim the Royalty Rebate to which it is entitled without Suncor's confirmation. Despite this knowledge, Suncor has wrongfully refused to provide the confirmation that would allow Atcon to collect its Royalty Rebate in the amount of $150,610.92.

<u>Trend 81 – Lifting Lug Removal on Steel Girders</u> $21,950.00

95. Atcon, in compliance with normal practice and industry standards, intended to weld lifting lugs on the steel girders to facilitate the erection procedure. The AIT Specifications for Bridge Construction do not specify the type of lifting equipment or methods for erection that can be used for steel girders on bridge structures. Atcon submitted a lifting lug detail, which was reviewed and approved by the engineer of record in advance of the scheduled start of erection, and in order to maintain schedule, Atcon began welding lifting lugs on the steel girders and had completed 7 girders when AIT directed that they be removed and another method of lifting be developed.

96. As a result of AIT's direction, Atcon had to remove the lugs, do testing on the weldments, design an alternate method of lifting acceptable to both Atcon and AIT and purchase and implement beam clamps to facilitate the new lifting method. The use of beam clamps as the lifting method also necessitated the removal and re-welding of Nelson studs to accommodate the beam clamps. Despite the suitability of the lifting lug method, Atcon incurred costs of $21,950.00 in removing the lugs and implementing the beam clamp erection method, which costs are for the benefit of and properly the responsibility of Suncor.

<u>Trend 82 – Camp Site Quantities</u> $159,664.17

97. In July 2007, pursuant to Work Authorization #5, Atcon performed the stripping, grubbing and borrow operations for the preparation of the Voyageur camp site. The pricing structure was by unit price based on the quantity of units associated with the performance of the work. The quantities paid by Suncor for clearing, stripping, fill with borrow and grubbing did not compensate Atcon for the quantities actually surveyed and

performed. As a result, Atcon has not been paid for work under Work Authorization #5 amounting to $159,664.17.

98. Despite the proper identification and submission of such Trends, Suncor has refused, neglected or failed to pay the costs associated with such Trends, including several Trends which Suncor approved, and others that Suncor has not approved despite having received the benefit of the additional work and Atcon having the express or implicit approval of the Defendants for particular Trends.

Unpaid Invoices and Holdback

99. Suncor approved Atcon's invoices and has retained a holdback in the amount of $6,581,014.15. Notwithstanding the prior approval, Suncor has refused neglected or failed to pay any amounts pursuant to the invoices. The particulars of the invoices and holdback are as follows:

Invoice	Date	Amount
WA 4 No. 10	November 24, 2008	$385,283.25
WA 4 No. 11	December 4, 2008	$2,211,818.85
WA 4 No. 12	December 21, 2008	$851,274.09
WA 4 holdback		$3,046,907.58
WA 1 No. 18	March 18, 2008	$78,604.21
Highway Maintenance No. 2	November 24, 2008	$3,906.45
Highway Maintenance No. 3	December 6, 2008	$1,369.91
Highway Maintenance No. 4 (holdback)	December 7, 2008	$1,849.81
TOTAL		$6,581,014.15

Builders' Liens

100. Atcon provided the Services in respect of the Lands on various dates up to and including February 15, 2009.

101. The Services provided by Atcon to the Defendants are valued at, and have improved the Lands at least in the sum of $25,008,076.68. Atcon is entitled to valid builders' liens against the Lands in the amount of $25,008,076.68.

102. In order to secure the outstanding debt, Atcon has registered builders' liens upon the interests of the Defendants. The particulars of the liens are as follows:

Date of Lien	Amount of Lien	Legal Description of Land
March 26, 2009 Reg. No. 092 092 246	$25,358,524.00, plus interest and legal costs on a solicitor and client basis	FIRST THE SOUTH WEST QUARTER OF SECTION ELEVEN (11) TOWNSHIP NINETY TWO (92) RANGE TEN (10) WEST OF THE FOURTH MERIDIAN EXCEPTING THEREOUT: ALL THAT PORTION WHICH LIES WITHIN LOT 2 IN GROUP NO. 566, ACCORDING TO THE PLAN OF FIELD NOTES SIGNED BY A.J. TREMBLAY AND SIGNED BY EDOUARD DEVILLE IN OTTAWA ON THE 10TH DAY OF DECEMBER, 1913 EXCEPTING THEREOUT ALL MINES AND MINERALS SECOND THE SOUTH EAST QUARTER OF SECTION ELEVEN (11) TOWNSHIP NINETY TWO (92) RANGE TEN (10) WEST OF THE FOURTH MERIDIAN EXCEPTING THEREOUT: ALL THAT PORTION WHICH LIES WITHIN LOT 2 IN GROUP NO. 566, ACCORDING TO THE PLAN OF FIELD NOTES SIGNED BY A.J. TREMBLAY

Date of Lien	Amount of Lien	Legal Description of Land
		AND SIGNED BY EDOUARD DEVILLE IN OTTAWA ON THE 10TH DAY OF DECEMBER, 1913 EXCEPTING THEREOUT ALL MINES AND MINERALS and PLAN SETT 106 GROUP 566 LOT 2 TOGETHER WITH ALL THE STATUTORY ROAD ALOWANCES INCLUDING THE ADJACENT INTERSECTIONS WITHIN LOT 2; CONTAINING 798 HECTARES (1972 ACRES) MORE OR LESS EXCEPTING THEREOUT HECTARES (ACRES) MORE OR LESS A) ALL THAT PORTION OF THE SAID LOT 2 COVERED BY THE WATERS OF A SURVEYED LAKE CONTAINING 28.98 71.60 B) ALL THAT STATUTORY ROAD ALLOWANCES LYING WITHIN THE PRODUCTION ACROSS THE SAID STATUTORY ROAD ALLOWANCES OF THE NORTHERLY AND SOUTHERLY LIMITS OF THE ROAD AS SHOWN ON ROAD PLAN 4212PX, CONTAINING 0.42 1.04 C) PLAN 8322253 – ROAD 10.62 26.24 D) PLAN 9926730 – R/W AREA 'A' 49.84 123.15 E) PLAN 0021932 – SUBDIVISION 22.61 55.87 F) PLAN 0120485 – ROAD 12.882

Date of Lien	Amount of Lien	Legal Description of Land
		31.83 EXCEPTING THEREOUT ALL MINES AND MINERALS
March 31, 2009 Reg. No. 0901335	$25,358,524.00, plus interest and legal costs on a solicitor and client basis	Oil Sands Lease 072 7280060T23 4-10-092:11SP; All Zones

103. Further, or in the alternative, the Defendants have breached the terms of the Contract by neglecting, failing, or refusing to pay Atcon the amount of $25,008,076.68 being the balance owed under the Contract for the Services provided by Atcon as the request of the Defendants.

104. In the alternative, in the event that Suncor was not, at any time, acting as agent for the Defendants, the interests of the Defendants in the Lands are nonetheless subject to the builders' lien of Atcon pursuant to the provisions of the *Builders' Lien Act*, R.S.A., c. B-7.

Delay and Loss of Productivity Claims

105. Further, Suncor caused delays to Atcon in the performance of its Services in 2008, the particulars of which include, but are not limited to:

(a) Suncor's failure to reasonably provide crossing permits;

(b) Suncor's failure to move utility components, primarily poles, on a reasonable and timely basis;

(c) Suncor's failure to provide reasonable and timely approvals in connection with the Services as a result of poor coordination between consultants engaged by Suncor and consultants engaged by AIT;

(d) Suncor's failure to provide timely access to AIT right-of-ways; and

(e) Such further and other particulars as may be proven at the trial of this action.

106. The aforementioned delays caused Atcon to complete its Services beyond the contemplated Contract completion date.

107. Further, Suncor either expressly or impliedly unreasonably required Atcon to accelerate the performance of its Services and to perform its Services during winter weather when anticipated productivity was impaired in order to meet Suncor's schedule.

108. It was an original term of the Contract that it would be completed by October 17, 2008.

109. In breach of Contract, as a result of the negligence or wilful acts of Suncor, or both, Atcon required an additional period of at least 121 calendar days to complete the Services after the original Contract completion date and incurred significant increased costs of performing the Services, the particulars of which have not yet been fully calculated but are estimated to exceed $12,000,000.00.

Performance of the Contract

110. Atcon completed all, or substantially all, of the work and provided all, or substantially all, of the materials comprising the Services in a timely manner and in accordance with the requirements of the Contract. In the alternative, to the extent that Atcon did not complete all of the Services under the Contract, Atcon's inability to complete such Services resulted from Suncor's acts or omissions, including but not limited to Suncor's refusal to pay for approved invoices and Suncor's wrongful termination of the Contract.

111. At all material times, Suncor was acting as agent for the co-Defendants. The Services were provided at the request, express or implied, of the co-Defendants on whose credit and behalf, with whose privity and consent and for whose direct benefit the Services were provided.

112. Atcon pleads and relies upon the express and implied provisions of the Contract, and in addition to and notwithstanding the provisions of the Contract, relies upon the course of conduct of the Defendants during the provision of the Services.

113. Atcon provided the Services and invoiced or otherwise brought its claims for such Services to Suncor's attention during the course of the Contract. Particulars of such invoicing and claims notification have been provided to and are well known by Suncor.

114. In addition, Atcon has provided Suncor with proper notice of most claims and Trends, and Suncor has neglected or refused to pay the invoiced amounts as well as amounts for which Atcon provided sufficient notice.

General

115. The Defendants are indebted to Atcon for the Services provided by Atcon to the Defendants in the principal amount of $37,608,076.68, inclusive of Goods and Services Tax, plus interest.

116. In addition, or in the further alternative, by virtue of Atcon having furnished the Services to the Lands and the Defendants having failed, neglected or refused to pay for such Services, the Defendants have been unjustly enriched in the amount of $37,608,076.68 to the corresponding deprivation of Atcon, in the absence of a juristic reason for such enrichment.

117. Atcon claims the interest accruing on the indebtedness at a rate of RBC prime plus 2% per month from 30 days after the date of each invoice up to the date Judgment is granted. In the alternative, Atcon claims interest on the principal amount from 30 days after each invoice date to the date that judgment is granted pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto.

118. Full particulars of the indebtedness owed by the Defendants to Atcon have been provided to the Defendants, and the Defendants are well aware of such particulars. Atcon has made demands upon the Defendants for payment of the indebtedness but the Defendants have failed, refused or neglected to pay the said amount or any portion thereof, and the same remains a just debt improperly withheld.

119. Atcon pleads and relies upon the provisions of the *Builders' Lien Act*, R.S.A. 2000, c. B-7, the *Tort-feasor's Act*, R.S.A. 2000, c. T-5 and the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto.

120. Atcon proposes that the Trial of this action be held at the Calgary Courts Centre in the City of Calgary, in the Province of Alberta.

121. Atcon estimates that such trial will not take more than 25 days.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS, JOINTLY AND SEVERALLY:

(a) A declaration that Atcon is entitled to valid builders' liens against the Lands in the amount of $25,008,076.68, plus interest and costs, or such other amount as may be proven at trial;

(b) An Order that, in default of payment of the amount of Atcon's builders' lien claim, the interests of the Defendants in the Lands be sold and the proceeds of the sale applied in accordance with the provisions of the *Builders' Lien Act*, R.S.A. 2000, c. B-7 and the claims of Atcon;

(c) An accounting for all petroleum and petroleum products that have been produced from February 15, 2009;

(d) Judgment or, in the alternative, damages for breach of contract in the amount of $25,008,076.68 for Trends and unpaid invoices and $12,600,000.00 for delays and loss of productivity, or such other amount as may be proven at trial;

(e) Interest on the principal sum of $37,608,076.68 at RBC prime plus 2% per annum from 30 days after the date of each invoice or Trend notice, as appropriate, to the date that judgment is granted;

(f) In the alternative, interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto;

(g) Costs; and

(h) Such further and other relief as this Honourable Court deems just.

DATED at the City of Calgary, in the Province of Alberta, this 14th day of May, 2009, AND DELIVERED by Gowling Lafleur Henderson LLP, Solicitors for the Plaintiff, at 1400, 700

2^{nd} Street S.W., Calgary, Alberta, T2P 4V5 whose address for service is in care of the said solicitors.

AND ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial Centre of Calgary, this 14th day of May, 2009.

V.A. BRANDT COURT SEAL

CLERK OF THE COURT

NOTICE
To the Defendants:

SUNCOR ENERGY INC.
SUNCOR ENERGY SERVICES INC.
SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff(s) named in this Statement of Claim.

WARNING: If you do not do both things within 15 days you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by Gowling Lafleur Henderson LLP, solicitors for the Plaintiff who carry on business at:

Calgary, Alberta, across Canada, and throughout the world

and whose address for service is in care of the said solicitors at 1400, 700 2nd Street S.W., Calgary, Alberta T2P 4V5.

The Defendants carry on business and reside, so far as is known to the Plaintiff, in the City of Calgary and elsewhere in the Province of Alberta.

CLERK OF THE COURT
MAY 14 2009
CALGARY, ALBERTA

Action Number: 0901-07234

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

BETWEEN:

ATCON CONSTRUCTION INC.

Plaintiff

- and -

SUNCOR ENERGY INC., SUNCOR ENERGY SERVICES INC. AND SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP

Defendants

STATEMENT OF CLAIM

GOWLINGS

Gowling Lafleur Henderson LLP
Barristers & Solicitors
Patent & Trade Mark Agents
#1400 Scotia Centre
700 – 2 Street S.W.
Calgary, AB T2P 4V5

Solicitors: James S. Peacock Q.C.
Geoffrey D. Holub
Telephone: (403) 298-1000
Facsimile: (403) 263-9193

File: A115708

APPENDIX “B”

SETTLEMENT AGREEMENT AND RELEASE

THIS AGREEMENT effective as of the 10th day of November, 2010;

BETWEEN:

ERNST & YOUNG, INC. (**"E&Y"**), in its capacity as Court Appointed Receiver and Receiver Manager of Atcon Construction Inc. (**"Atcon"**)

\- and –

SUNCOR ENERGY INC., SUNCOR ENERGY SERVICES INC. and SUNCOR ENERGY OIL SANDS LIMITED PARTNERSHIP (collectively **"Suncor"**)

WHEREAS Atcon brought an action, being Court of Queen's Bench Action No. 0901-07234 (the "**Action**"), against Suncor for injuries, losses, damages, costs and interest relating to the construction of the Highway #63 Interchange Project located north of Fort McMurray, Alberta (the "**Project**") and for alleged breaches by Suncor of a contract entitled "Highway 63 Interchange Engineering, Procurement and Construction, Multiple Use Contract No. 4600004026" with an effective date of August 11, 2006 (the "**Contract**");

AND WHEREAS pursuant to an Order of the Court of Queen's Bench of New Brunswick (Trial Division) in the Judicial District of Miramichi (the "**New Brunswick Court**") made March 30, 2010, Atcon was placed into Receivership pursuant to Section 33 of the *Judicature Act* (New Brunswick) and Section 243(1) of the *Bankruptcy and Insolvency Act* (Canada);

AND WHEREAS the New Brunswick Court appointed E&Y as Receiver and Receiver Manager (the "**Receiver**") of Atcon's current and future assets, undertakings and properties, including Atcon's claims in and to the Action;

AND WHEREAS E&Y has advised Suncor, and Suncor is relying on such advice from E&Y, that E&Y has the authority to settle the Action and release all claims made by Atcon in the Action subject to the terms of this Agreement;

AND WHEREAS the Receiver and Suncor wish to finally resolve all matters between Atcon and Suncor related to the Project, the Contract and all matters or claims relating to, connected with, or arising from, in any way, the matters alleged by Atcon in the Action;

NOW THEREFORE this Agreement witnesses that for and in consideration of the matters hereinbefore referred, the release given herein, the payments, agreements, covenants and undertakings hereafter referred to, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Suncor shall pay $[redacted] Cdn plus GST to E&Y by cheque made payable to Atcon's solicitors Gowling Lafleur Henderson LLP;

2. Atcon, by the Receiver, hereby releases Suncor and their insurers, administrators, successors, assigns, employees, officers, directors, partners, and affiliates of and from any and all manner of action or actions, causes or causes of action, suits, debts, sums of money, dues, expenses, general damages, special damages, interest, costs, claims and demands of any and every kind whatsoever, at law or in equity or under any statute which Atcon ever had, now has, or any of Atcon's heirs, insurers, executors, administrators, successors, officers, directors, employees, or assigns, can, shall or may have against Suncor for or by reason of any matter, cause or thing whatsoever related, directly or indirectly, to the Project, the Contract and the matters alleged by Atcon in the Action (collectively, the **Released Matters**).

3. Suncor hereby releases Atcon and the Receiver and their insurers, administrators, successors, assigns, employees, officers, directors, partners, and affiliates of and from any and all manner of action or actions, causes or causes of action, suits, debts, sums of money, dues, expenses, general damages, special damages, interest, costs, claims and demands of any and every kind whatsoever, at law or in equity or under any statute which Suncor ever had, now has, or any of Suncor's heirs, insurers, executors, administrators, successors, officers, directors, employees, or assigns, can, shall or may have against Atcon or the Receiver for or by reason of any matter, cause or thing whatsoever related, directly or indirectly, to the Released Matters.

4. This Settlement Agreement and Release shall be construed broadly and is and shall remain a full and complete general release with respect to the Released Matters notwithstanding the discovery or existence of any facts in addition to or different from those they now know or believe to be true.

5. This Settlement Agreement and Release is a compromise of a disputed claim and the payment referred to herein shall in no way be construed as an admission of liability by Suncor. It is understood that Suncor specifically denies any liability to Atcon as alleged or at all.

6. The Receiver shall, at its sole cost and expense, execute all such further and other deeds and documents, including a Consent Dismissal Order dismissing the Action, promptly when required, and shall do or perform, or cause to be done or performed, all such acts as shall be reasonably necessary to ensure the completion of the settlement contemplated herein. Without limiting the generality of the foregoing, the Receiver shall take all such steps as may be necessary to withdraw any remaining or prior complaints, claims or demands made by Atcon relating to the Contract or to the Project, including any claims made by Atcon under or in relation to the *Public Works Act* of Alberta.

7. The Receiver covenants that it shall not make any claim or take any proceedings against any other person, firm, company or other legal entity who might claim contribution or indemnity from Suncor for any of the Released Matters.

8. The recitals hereto form part of this Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

10. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

11. This Agreement is conditional upon the approval of this Agreement by the New Brunswick Court. This condition is for the benefit of the Receiver and not Suncor.

12. This Agreement is entered into by E&Y in its capacity as Receiver and not in its personal or corporate capacity.

13. This Agreement may be executed in separate counterparts and by facsimile and all executed counterparts shall constitute one agreement.

IN WITNESS WHEREOF the parties have executed this Settlement Agreement and Release as attested to by the hands of their duly authorized officers effective November 10, 2010.

ERNST & YOUNG, INC., in its capacity as Court Appointed Receiver and Receiver Manager of Atcon Construction Inc.

Per: ______________________

• George Kinsman
Senior Vice President

SUNCOR ENERGY INC. by its authorized agent SUNCOR ENERGY SERVICES INC.

Per: ______________________

• Adrian Hessels
Director SCM

SUNCOR ENERGY OILSANDS LIMITED PARTNERSHIP, by its authorized agent SUNCOR ENERGY SERVICES INC.

Per: • Adrian Hessels
Director SCM

SUNCOR ENERGY SERVICES INC.

Per: ______________________

• Adrian Hessels
Director SCM

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