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

THIRD REPORT OF THE RECEIVER
May 19, 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 (the "**New Brunswick Court**") 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 Inc., Dycon Construction Inc., Atcon Structures Inc. and Envirem Technologies Inc.[1] pursuant to an Order dated March 30, 2010 (the "**March 30 Order**", and together with the March 2 Order, the "**Receivership Order**").

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

   (a) take possession and control of the Property and any 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 thereafter owing to the Respondents;

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[1] Pursuant to paragraph 4 of the March 30 Order, the appointment of the Receiver in relation to Envirem was of no force or effect until the issuance by the Monitor of the Monitor's Certificate in accordance with the Order of the Court dated March 22, 2010 in order to complete the Transaction, as such term is defined therein, or until further order of this Court. The Monitor issued the Monitor's Certificate on April 28, 2010. Additionally, Envirem Technologies Inc. changed its name to 0585456 N.B. Inc. effective April 28, 2010.

(d) initiate proceedings with respect to any of the Property and to settle or compromise any such proceedings; and

(e) apply to the New Brunswick Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

3. The purpose of this Third Report is to report to this Honourable Court on the status of the Shell Receivable (as defined herein) and the Receiver's motion originally returnable on April 23, 2010 concerning payment of the Shell Receivable.

EXECUTIVE SUMMARY AND RECOMMENDATION

4. The Receiver, in an attempt to reach a consensual resolution that protects the interests of all stakeholders of Atcon Construction, through its counsel, Borden Ladner Gervais LLP, has had numerous discussions with all parties with an interest in the Shell Receivable during the past five (5) weeks. Despite the efforts of all parties, as of the date of this Third Report, the Receiver is not in a position to submit a draft Order to this Honourable Court that deals with the disposition of the Shell Receivable and has been agreed to by all interested parties.

5. However, the Receiver has proposed a form of draft Order to the interested parties that the Receiver believes will protect the interests and rights of all claimants to the Shell Receivable, including the interests of the beneficiaries of Court-ordered charges granted in these proceedings, and will permit Shell to be extricated from the Atcon Construction receivership proceedings and have the Builders' Liens (as defined herein) discharged. The Receiver proposes that this Honourable Court grant an Order:

(a) authorizing and directing Shell to pay to the Receiver the Albian Account Receivable and the Sharkbite Account Receivable (each as defined herein), to be held by the Receiver in interest-bearing trust accounts pending further Order of this Honourable Court on notice to all parties on the service list in this proceeding;

(b) that the funds held by the Receiver shall stand in the place and stead of the Shell Receivable, subject to any claims to or upon the Shell Receivable;

(c) that payment of the Shell Receivable is without prejudice to the rights and arguments of interested parties as to the validity, quantum and priority of any claim to or upon the Shell Receivable; and

(d) that the Builders' Liens be discharged and vacated from the property of Shell by the lien claimants and the lien claimants be granted the same protections as if Shell gave security or paid into Court amounts pursuant to the *Builders' Lien Act* (Alberta) (the "**Builders' Lien Act**").

6. The Receiver is of the view that the proposed payment mechanism protects and preserves the rights of all claimants, avoids multiple proceedings, and provides the interested parties with additional time to discuss a consensual resolution. In the event that the disposition of the Shell Receivable funds held by the Receiver cannot be agreed to by June 4, 2010, the Receiver will bring a motion seeking the advice and direction of this Honourable Court as to disposition of the Shell Receivable, on no less than seven (7) days written notice to all parties on the service list in this proceeding.

7. Accordingly, the Receiver recommends that this Honourable Court grant an Order in the form submitted by the Receiver with respect to payment of the Shell Receivable.

TERMS OF REFERENCE

8. In preparing this Third 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 Third Report or relied upon by the Receiver in preparing this Third

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.

9. All references to monetary amounts in this Third Report are in Canadian dollars unless otherwise noted.

10. Capitalized terms not defined in this Third Report are as defined in the Receivership Order.

11. 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).

ATCON CONSTRUCTION AND SHELL

Albian Project and Sharkbite Project

12. As has previously been reported to this Honourable Court, Atcon Construction provided various construction and engineering services to affiliates of Shell Canada Limited ("**Shell**") in 2009 and 2010 in connection with construction projects commonly referred to as the Albian project and the Sharkbite project.

13. The Albian project was with respect to the removal of muskeg by Atcon Construction in the Albian Oil Sands near Fort McMurray, Alberta pursuant to the terms and conditions of the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 entered into between Atcon Construction and Albian Sands Energy Inc., an affiliate of Shell (the "**Albian Contract**"). As has been previously reported to this Honourable Court, work under the second phase of the Albian Contract was completed by Atcon Construction on or about March 21, 2010.

14. The Sharkbite project was with respect to the design, engineering, procurement and construction of bridges and roads near the Albian Oil Sands pursuant to the terms and conditions of the Engineering Services Agreement dated September 26, 2009 between Atcon Construction and Shell Canada Energy, an affiliate of Shell (the "**Sharkbite ESA**"), and the Engineering, Procurement and Construction Contract dated December 21,

2009 between Atcon Construction and Shell Canada Energy (the "**Sharkbite EPC**"). As has been previously reported to this Honourable Court, Shell delivered notices of termination dated February 25, 2010 to Atcon Construction with respect the Sharkbite ESA and the Sharkbite EPC, terminating the contracts effective as of February 26, 2010.

Accounts Receivable under the Albian Contract, Sharkbite ESA and Sharkbite EPC

Albian Contract

15. In a letter dated April 13, 2010 from the Receiver to Shell Canada Energy (the "**Albian Demand Letter**"), the Receiver confirmed that, based on the books and records of Atcon Construction, Shell Canada Energy was indebted to Atcon Construction in the amount of $10,236,322.97. The Receiver understands that such indebtedness is with respect to services provided by Atcon Construction under the Albian Contract. Attached as **Appendix "A"** is a copy of the Albian Demand Letter.

16. The Receiver has confirmed that the amount of indebtedness listed in the Albian Demand Letter included the amount of $1,245,905.15 (the "**Garnishment Funds**") that Shell paid to the Court of Queen's Bench of Alberta (the "**Alberta Court**") on February 26, 2010 pursuant to a Garnishee Summons issued on December 1, 2009 by Spruceland Lumber, Q.B. Action Number #0903 12033.

17. The Receiver received a cheque in the amount $1,246,374.23 from the Clerk of the Court Trust Account, on behalf of the Minister of Finance of the Government of the Province of Alberta. The Receiver understands that the funds recovered from the Alberta Court represent the principal amount of the Garnishment Funds and accrued interest in the amount of $469.08. Upon receipt of the funds, the Receiver deposited the funds in an interest-bearing trust account and has taken no further steps with respect to such funds to date.

18. As a result of the receipt of the Garnishment Funds, the Receiver has confirmed and communicated to Shell its view that the outstanding amount of indebtedness owed to Atcon Construction under the Albian Contract is $8,990,417.82. The Receiver has received written confirmation from Shell that the amount of unpaid invoices owed to

Atcon Construction under the Albian Contract is $8,990,417.82 (the "**Albian Indebtedness**").

19. On April 29, 2010 and May 5, 2010, Shell confirmed in writing that it was prepared to pay a portion of the Albian Account Receivable, in the amount of $8,432,503.30, into the Alberta Court (the "**Albian Account Receivable**"). Attached as **Appendix "B"** is a copy of a letter dated April 29, 2010 from Shell Canada Energy to the Receiver (the "**April 29 Letter**"). Attached as **Appendix "C"** are copies of documents provided to the Receiver by Shell Canada Energy on May 5, 2010 (the "**May 5 Documents**").

20. With respect to the balance of the Albian Indebtedness, being the amount of $577,914.52, Shell confirmed its position in the April 29 Letter that it intends to exercise rights of set-off against this amount with respect to the amount of $310,433.30 that Shell alleges was paid to Atcon Construction in error, and the amount of $247,381.22 that Shell alleges Atcon Construction overcharged Shell under the Albian Contract.

21. The Receiver, following a review of the books and records of Atcon Construction and the documentation provided by Shell and discussions with former employees of Atcon Construction, is satisfied that Shell is entitled to exercise rights of set-off against the Albian Indebtedness and has agreed that payment of the Albian Account Receivable by Shell will constitute full and final satisfaction of the obligations of Shell and its affiliates to Atcon Construction under the Albian Contract.

Sharkbite ESA and Sharkbite EPC

22. In a letter dated April 9, 2010 from the Receiver to Shell Canada Energy (the "**Sharkbite Demand Letter**"), the Receiver confirmed that, based on the books and records of Atcon Construction, Shell Canada Energy was indebted to Atcon Construction in the amount of $508,011.30. The Receiver understands that such indebtedness is with respect to services provided by Atcon Construction under the Sharkbite ESA and Sharkbite EPC. Attached as **Appendix "D"** is a copy of the Sharkbite Demand Letter.

23. Following discussions between the Receiver and representatives of Shell, the Receiver has confirmed that the amount of indebtedness owed by Shell Canada Energy to Atcon

Construction with respect to the Sharkbite ESA and the Sharkbite EPC are respectively $388,032.05 and $124,869.16, totaling an aggregate amount of $512,901.21. The Receiver has received written confirmation from Shell that the amount of unpaid invoices owed to Atcon Construction under the Sharkbite ESA and the Sharkbite EPC respectively are $388,032.05 and $124,869.16 (collectively, the "**Sharkbite Indebtedness**").

24. In the April 29 Letter and the May 5 Documents, Shell confirmed that it was prepared to pay a portion of the Sharkbite Account Receivable, in the amount of $34,351.42, into the Alberta Court (the "**Sharkbite Account Receivable**", and together with the Albian Account Receivable, the "**Shell Receivable**").

25. With respect to the balance of the Sharkbite Indebtedness, being the amount of $478,549.79, Shell confirmed its position in the April 29 Letter and the May 5 Documents that it will not pay in full the remaining amount of the Sharkbite Indebtedness at this time. Shell has indicated that the $478,549.79 is with respect to:

(a) unsubstantiated invoices in the amount of $330,923.36 under the Sharkbite ESA that Shell has rejected;

(b) $57,108.68 held by Shell pursuant to the Sharkbite ESA provisions requiring Shell to hold certain amounts until it receives confirmation from Atcon Construction that all subcontractor invoices have been satisfied by Atcon Construction. As Shell did not receive such confirmation from Atcon Construction, it continues to hold the funds, and may pay the funds directly to the subcontractors; and

(c) unsubstantiated invoices in the amount of $90,517.74 under the Sharkbite ESA that Shell has rejected.

26. The Receiver, following a review of the books and records of Atcon Construction and the documentation provided by Shell with respect to the Sharkbite Amount and discussions with former employees of Atcon Construction, has agreed that payment of the Sharkbite Account Receivable by Shell will constitute full and final satisfaction of the obligations of Shell and its affiliates under the Sharkbite ESA and the Sharkbite EPC, subject to the

release to the Receiver of the amount of $57,108.68 held by Shell in the event it is determined that the subcontractor invoices have been satisfied by Atcon Construction and the Receiver is entitled to such amount.

ATCON CONSTRUCTION AND CRA

27. The Canada Revenue Agency ("**CRA**") issued notices of assessment dated February 26, 2010 to Atcon Construction in connection with alleged unremitted employee income tax, CPP and EI source deductions, along with certain penalties (collectively, the "**Notices of Assessment**"). The Receiver understands that the amounts contained in the Notices of Assessment were originally assessed against Ledwell Construction Labour Limited ("**Ledwell**"), a third-party that provided services to Atcon Construction. Attached as **Appendix "E"** are copies of the Notices of Assessment.

28. On March 29, 2010, the CRA issued a Requirement to Pay to Shell (the "**Shell Requirement to Pay**") pursuant to section 227(4) of the *Income Tax Act* (Canada) (the "**ITA**"). The Shell Requirement to Pay directed Shell to deliver to the CRA any monies owed to Atcon Construction in connection with the alleged liability of Atcon Construction under subsection 227(10.1) of the ITA, in the maximum amount of $4,750,074.57. Attached as **Appendix "F"** is a copy of the Shell Requirement to Pay.

29. In addition to the Shell Requirement to Pay, on March 29, 2010 the CRA issued a Requirement to Pay to Pennecon Heavy Civil Ltd. ("**Pennecon**") (the "**Pennecon Requirement to Pay**") pursuant to section 227(4) of the ITA. The Pennecon Requirement to Pay directed Pennecon to deliver to the CRA any monies owed to Atcon Construction in connection with the alleged liability of Atcon Construction under subsection 227(10.1) of the ITA, in the maximum amount of $4,750,074.57. Attached as **Appendix "G"** is a copy of the Pennecon Requirement to Pay.

30. As has been previously reported to this Honourable Court, Atcon Construction provided equipment rental and management services to Pennecon in respect of a construction project at the Vale Inco Harbour Processing Plant located in Long Harbour, Newfoundland & Labrador. Such services were provided pursuant to the terms and

conditions of an equipment rental and management services agreement dated June 1, 2009 between Atcon Construction, Pennecon, and Pennecon Atcon Limited Partnership[2] (the "**Pennecon Contract**"). As of the date of this Third Report, Pennecon is indebted to Atcon Construction in the amount of approximately $3,558,985 in respect of services provided by Atcon Construction under the Pennecon Contract.

31. The Receiver understands that the Shell Requirement to Pay and the Pennecon Requirement to Pay were issued by the CRA in connection with the Notices of Assessment and the alleged unremitted employee income tax, CPP and EI source deductions that were originally assessed against Ledwell.

32. In a letter dated April 7, 2010 from CRA to the Receiver (the "**April 7 Letter**"), the CRA confirmed its position that Atcon Construction was indebted to the CRA in the amount of $4,772,749.85 with respect to unremitted source deductions, and of such amount, $3,784,276.68 were trust funds pursuant to the ITA, the Canada Pension Plan and the *Employment Insurance Act* (Canada) and formed no part of the property of Atcon Construction subject to the Receivership Order. In the April 7 Letter, the CRA demanded that the Receiver pay to the CRA the trust funds amount. Attached as **Appendix "H"** is a copy of the April 7 Letter.

ATCON CONSTRUCTION AND BUILDERS' LIEN CLAIMANTS

Emeco

33. As has previously been reported to this Honourable Court, the Receiver understands that Atcon Construction was a party to arrangements with Emeco Canada Limited ("**Emeco**"), pursuant to which Emeco financed or leased heavy equipment to Atcon Construction. Some of such heavy equipment was used by Atcon Construction in providing services under the Albian Contract.

34. On April 15, 2010, Emeco filed a statement of lien upon interest in Crown materials (the "**Emeco Builders Lien**") with the Government of Alberta pursuant to sections 34 and 36 of the *Builders Lien Act* (Alberta) (the "**Builders Lien Act**") in the amount of

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[2] Pennecon Atcon Limited Partnership is a joint venture between Pennecon and Atcon Construction, which was established pursuant to limited partnership agreement.

$272,895.22 (the "**Emeco Builders Lien Amount**"). The Emeco Builders Lien was filed by Emeco in respect of the interest of Shell in minerals in Alberta Crown Oil Sands Lease No. 7277080T13, which the Receiver understands is with respect to the Albian Oil Sands where Atcon Construction performed services under the Albian Contract. Attached as **Appendix "I"** is a copy of the Emeco Builders Lien.

35. The Receiver and Emeco, through their respective counsel, have discussed the quantum of the Emeco Builders Lien Amount. Following such discussions, it was determined that a portion of the Emeco Builders Lien Amount, in the amount of $77,542.50, represented *per diem* amounts for equipment used by Atcon Construction post March 1, 2010. In accordance with the Order of Justice Riordon dated March 22, 2010 granted in the CCAA proceedings and the Order of Justice Riordon dated April 1, 2010 granted in these proceedings, the Receiver, for and on behalf of Atcon Construction, paid to Emeco the sum of $77,542.50. As a result of the payments, the net amount of the Emeco Builders Lien Amount is $195,352.72.

Caterpillar

36. The Receiver understands that Atcon Construction was a party to arrangements with Caterpillar Financial Services Limited ("**Caterpillar**"), pursuant to which Caterpillar financed or leased heavy equipment to Atcon Construction. Some of such heavy equipment was used by Atcon Construction in providing services under the Albian Contract.

37. On April 29, 2010, Caterpillar filed a statement of lien upon interest in Crown materials (the "**Caterpillar Builders Lien**") with the Government of Alberta pursuant to sections 34 and 36 of the Builders Lien Act in the amount of $3,739,011 (the "**Caterpillar Builders Lien Amount**"). The Caterpillar Builders Lien was filed by Caterpillar in respect of the interest of Shell in minerals in Alberta Crown Oil Sands Lease No. 7277080T13. Attached as **Appendix "J"** is a copy of the Caterpillar Builders Lien.

38. In addition to the Caterpillar Builders Lien, Caterpillar filed statements of lien on May 6, 2010 upon interest in Crown materials pursuant to sections 34 and 36 of the Builders Lien Act in the amount of $3,739,011 in respect of the interest of Shell in minerals

respectively in Alberta Crown Oil Sands Lease No. 072 7288080T90 and Alberta Crown Oil Sands Lease No. 072 728009BT30 (collectively, the "**Additional Caterpillar Builders Liens**"). Attached as **Appendix "K"** are copies of these statements of lien.

39. In an effort to obtain information as to the validity and quantum of the Caterpillar Builders Lien, on May 11, 2010, the Receiver, through its counsel, requested that Caterpillar provide a detailed breakdown of the amounts that formed the basis of the Caterpillar Builders Lien Amount, such as information regarding the pieces of equipment that the amounts apply to and when the equipment was used by Atcon Construction in connection with the Albian Contract.

40. The Receiver understands that Caterpillar intends to submit documentation to the Receiver on May 19, 2010 that Caterpillar believes supports the quantum and validity of the Caterpillar Builders Lien and the Caterpillar Builders Lien Amount.

The Receiver

41. As noted above, the Receivership Order authorized the Receiver to, among other things, to receive and collect all monies and accounts now owed or hereafter owing to Atcon Construction and to exercise all remedies of Atcon Construction in collecting such monies. The Receiver, as an officer of the Court, has a duty to facilitate and enhance the realization of the Property for the benefits of all creditors of Atcon Construction.

42. As a result of the duties and obligations of the Receiver, the Receiver filed a statement of lien upon interest in Crown materials (the "**Receiver Builders Lien**", and together with the Emeco Builder Lien, the Caterpillar Builders Lien and the Additional Builders Liens, the "**Builders Liens**") with the Government of Alberta pursuant to sections 34 and 36 of the Builders Lien Act in the amount of $10,236,322.97 in connection with the outstanding receivable owed under the Albian Contract. The Receiver Builders Lien was filed by the Receiver in respect of the interest of Shell in minerals in Alberta Crown Oil Sands Lease No. 7277080T13. Attached as **Appendix "L"** is a copy of the Receiver Builders Lien.

PAYMENT OF SHELL RECEIVABLE

43. As is discussed in the First Report of the Receiver dated April 21, 2010 (the "**First Report**"), the Receiver, directly and through its counsel, had numerous discussions with Shell, CRA, Caterpillar, Emeco, the Bank and the Province of New Brunswick in an attempt to reach a consensual resolution prior to April 21, 2010 as to the payment of the Shell Receivable and the potential terms and conditions attached to any such payment of the Shell Receivable by Shell. As noted in the First Report, the Receiver was focused on reaching a consensual resolution that protected the interests of all stakeholders of Atcon Construction that may have an interest in the Shell Receivable.

44. In the First Report, and in connection with the Receiver's motion originally returnable on April 23, 2010, the Receiver recommended to this Honourable Court that an Order be granted authorizing and directing Shell to pay, from the Shell Receivable: (a) to the Receiver an amount equal to the Shell Requirement to Pay, to be held on certain terms and conditions; (b) to the Alberta Court the Emeco Builders Lien Amount plus costs (as the First Report was filed with this Honourable Court prior to the filing of the Caterpillar Builders Lien and the Receiver Builders Lien); and (c) the balance to the Receiver.

45. Following discussions with parties with an interest in the Shell Receivable prior to the hearing of the Receiver's motion scheduled for April 23, 2010, it became apparent to the Receiver that a consensual resolution regarding payment of the Shell Receivable would not be achieved prior to the motion. As a result, at the hearing of the April 23, 2010 motion, the Receiver requested, and this Honourable Court granted, an adjournment of the Receiver's motion to May 12, 2010, so that the interested parties would have additional time to attempt to reach a consensual resolution regarding payment of the Shell Receivable.

46. Following the adjournment of the Receiver's motion to May 12, 2010, the Receiver, through its legal counsel, engaged in numerous discussions with Shell, CRA and the Bank regarding the terms of a potential draft Order. As such discussions were had on a

without prejudice basis, the Receiver is not in a position to disclose the contents of such discussions in this Third Report. However, on May 11, 2010, counsel to the Receiver wrote to this Honourable Court and advised the Court that, while the interested parties continued to discuss the matters relating to the Shell Receivable, the Receiver would not be in a position to submit a draft Order to the Court that had been agreed to by all interested parties prior to the motion scheduled for May 12, 2010 at 1:30 pm AST. As a result, the Receiver requested that its motion be further adjourned to a date during the week of May 17, 2010. On May 12, 2010, this Honourable Court agreed to adjourn the Receiver's motion with respect to payment of the Shell Receivable to May 21, 2010 at 1:30 p.m. AST.

47. On May 12, 2010, Shell, through its counsel, confirmed to the parties on the service list in this proceeding that if an agreement could not be achieved regarding the Shell Receivable, Shell would bring an application returnable on May 21, 2010 (or such date set by this Honourable Court) to lift the stay of proceedings contained in the Receivership Order to permit Shell to pay the Shell Receivable into the Alberta Court pursuant to the Builders' Lien Act.

48. The Receiver made further attempts, and had additional discussions with interested parties following the May 12, 2010 motion, to reach a consensual resolution regarding payment of the Shell Receivable. Despite the efforts of all parties, as of the date of this Third Report, the Receiver is not in a position to submit a draft Order to this Honourable Court that deals with the disposition of the Shell Receivable and has been agreed to by all interested parties.

49. However, the Receiver has proposed a form of draft Order to the interested parties that the Receiver believes will protect the interests and rights of all claimants to the Shell Receivable, including the interests of the beneficiaries of Court-ordered charges granted in these proceedings, and will permit Shell to be extricated from the Atcon Construction receivership proceedings and have the Builders' Liens discharged. The Receiver proposes that this Honourable Court grant an Order:

(a) authorizing and directing Shell to pay to the Receiver the Albian Account Receivable and the Sharkbite Account Receivable, to be held by the Receiver in interest-bearing trust accounts pending further Order of this Honourable Court on notice to all parties on the service list in this proceeding;

(b) that the funds held by the Receiver shall stand in the place and stead of the Shell Receivable, subject to any claims to or upon the Shell Receivable;

(c) that payment of the Shell Receivable is without prejudice to the rights and arguments of interested parties as to the validity, quantum and priority of any claim to or upon the Shell Receivable;

(d) the Albian Amount shall stand as security for the respective Claims of Caterpillar, Emeco and the Receiver in respect of the Builders' Liens as if the Albian Amount was paid into the Alberta Court pursuant to Section 27 of the Builders' Lien Act;

(e) that the Builders' Liens be discharged and vacated from the property of Shell by the Receiver, Emeco and Caterpillar; and

(f) the Builders' Lien Act shall continue to apply *Mutatis Mutandis*.

50. The Receiver is of the view that the proposed payment mechanism protects and preserves the rights of all claimants, including the rights of the lien claimants under the Builders Liens and the Builders' Lien Act, avoids multiple proceedings, and provides the interested parties with additional time to discuss a consensual resolution. In the event that the disposition of the Shell Receivable funds held by the Receiver cannot be agreed to by June 4, 2010, the Receiver will bring a motion seeking the advice and direction of this Honourable Court as to disposition of the Shell Receivable, on no less than seven (7) days written notice to all parties on the service list in this proceeding.

RELIEF SOUGHT BY THE RECEIVER

51. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver regarding payment of the Shell Receivable to the Receiver, on the terms and conditions set out in the draft Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May 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 Hickey, CA•CIRP
Senior Vice President