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

FIFTH REPORT OF THE RECEIVER
July 23, 2010

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the "**Bank**") pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen's Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings of:

    (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. (collectively, the "**Atcon Holding Companies**") pursuant to the Receivership Order dated March 2, 2010 (the "**March 2 Order**"); and

    (b) Atcon Management Services Inc., Atcon Civil Inc., Dycon Construction Ltd., Atcon Structures Inc. (collectively, the "**Atcon Payroll Companies**"), Atcon Construction Inc. ("**Atcon Construction**") and Envirem Technologies Inc. pursuant to an Order dated March 30, 2010 (the "**March 30 Order**", and together with the March 2 Order, the "**Receivership Order**").

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

    (a) take possession and control of the Property;

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

    (c) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

    (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction in which the purchase price exceeds $100,000 or the aggregate purchase price for all such transactions exceeds $1,000,000;

(e) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(f) engage consultants, appraisers, agents, experts and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order; and

(g) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

3. The purpose of this Fifth Report is to report to this Honourable Court on matters relating to the activities of the Receiver relating to certain Property of the Respondents and request that this Honourable Court grant an Order, *inter alia*:

(a) authorizing and approving the Receiver conducting a tender process with respect to the sale of the Atcon Eastern Assets (as defined herein) pursuant to the terms and conditions of the Tender Information Package (as defined herein) and the Tender Process (as defined herein); and

(b) authorizing and approving the Receiver executing the Auction Agreement (as defined herein) with respect to the sale of the Atcon Western Assets (as defined herein) and providing that any of the Atcon Western Assets sold by Century (as defined herein) to a purchaser shall vest in the purchaser free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Fifth 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 Fifth Report or relied upon by the Receiver in preparing this Fifth 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 Fifth Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Fifth 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).

RECEIVERSHIP OF THE RESPONDENTS

Commencement of Receivership Proceedings

8. As set out above, EYI was appointed as Receiver of the Property of: (a) the Atcon Holding Companies pursuant to the March 2 Order; and (b) the Atcon Payroll Companies, Atcon Construction and Envirem Technologies Inc. pursuant to the March 30 Order. The appointment of EYI as Receiver of the Atcon Holding Companies was effective as of 12:01 am AST on March 1, 2010, pursuant to paragraph 39 of the March 2 Order. The appointment of EYI as Receiver of the Atcon Payroll Companies and Atcon Construction was effective as of March 30, 2010, pursuant to the March 30 Order.

9. With respect to Envirem Technologies Inc., pursuant to paragraph 4 of the March 30 Order, the appointment of EYI as Receiver was of no force or effect until the issuance by EYI, in its capacity as the Court-appointed CCAA monitor of Envirem Technologies Inc. (the "**Monitor**"), of the Monitor's Certificate in accordance with the Order of the Court dated March 22, 2010 granted in the CCAA proceedings bearing Court File No. N/M/16/10 (the "**CCAA Proceedings**") in order to complete an asset sale transaction, or until further Order of the Court. Envirem Technologies Inc. changed its name to 058545

N.B. Inc. effective April 28, 2010 and is hereinafter referred to as "**058545**". The Monitor issued the Monitor's Certificate on April 28, 2010, and as a result, the appointment of EYI as Receiver of 058545 became effective as of April 28, 2010.

Recovery of Property of the Respondents

10. Since its appointment, the Receiver has taken steps, in accordance with the provisions of the Receivership Order, to take possession and control of the respective Property of the Atcon Holding Companies and Atcon Construction and the Atcon Payroll Companies located at 626 Newcastle Boulevard, Miramichi, New Brunswick and various other owned properties in the Miramichi and surrounding areas.

11. Additionally, as has been previously disclosed to this Honourable Court, Atcon Construction carried on business as a provider of construction services in New Brunswick, Newfoundland and Labrador, Alberta, and the Northwest Territories. As a result, upon its appointment, the Receiver took steps to take possession and control of the leased and owned Property of Atcon Construction located on current or former construction job sites, construction storage areas or quarries in Newfoundland and Labrador, Alberta, the Northwest Territories and New Brunswick.

ASSETS OF THE RESPONDENTS

12. The Receiver, with the assistance of former employees of the Respondents engaged by the Receiver on a term-and-task basis, undertook a physical inventory of the tangible Property of the Respondents.

Atcon Eastern Assets

13. Since its appointment, and based on its review of the books and records of the Respondents and discussions with former employees of the Respondents, the Receiver believes it has recovered all of the Property of the Respondents located in New Brunswick. As discussed in greater detail below, the Receiver has identified the assets and property set out in **Appendix "A"** attached hereto (collectively, the "**Atcon Eastern Assets**") as being Property of Atcon Construction suitable to forming the basis of a tender

sale process and potential *en bloc* sale of construction and quarry related assets. As a brief summary, the Atcon Eastern Assets include:

(a) leased and owned quarry real property and related inventory, construction equipment, conveyors, permits and licenses, and other assets used in connection with mining of basalt and gabro aggregates at quarries located in Belledune, Miramichi and Woodstock, New Brunswick;

(b) real property, commercial office buildings, and office furnishings located at various locations in Miramichi, Pointe-Verte, Wayerton, Centre Napan, Barnaby, Curventon, and Exmoor, New Brunswick; and

(c) various construction machinery (such as cranes, crushers, and excavators), construction equipment (such as forklifts, loaders, and generators) inventory and raw materials, and vehicles and trailers.

14. As a result, the Atcon Eastern Assets do not include all of the Property of the Respondents that has been recovered by the Receiver in New Brunswick or Newfoundland & Labrador, such as cash, accounts receivable, investments, books and records, certain intangible property owned by the Respondents and certain equipment in Newfoundland & Labrador. The Atcon Eastern Assets also do not include real property owned by certain of the Respondents municipally known as 67-69 General Manson Way, Miramichi, New Brunswick (the "**General Manson Way Property**") and 170 Walsh Avenue, Miramichi, New Brunswick (the "**Walsh Property**"). Such real properties were previously occupied by Atcon Industrial Services Inc. ("**Atcon Industrial**"), and a number of assets owned by Atcon Industrial continue to be situated on the real properties. The Receiver is currently in discussions with the Court-appointed receiver of Atcon Industrial regarding potential *en bloc* sale transactions for the Atcon Industrial assets and the General Manson Way Property and the Walsh Property, and thus has decided not to include such real properties in the listing of the Atcon Eastern Assets that is to be subject to the proposed Tender Process (as defined and discussed herein).

<u>Atcon Western Assets</u>

15. The Property of the Respondents located in Alberta and The Northwest Territories that has been recovered by the Receiver includes the assets set out in **Appendix "B"** attached hereto (collectively, the "**Atcon Western Assets**"). The Receiver believes it has recovered all of the Property of the Respondents located in Alberta and The Northwest Territories. As a brief summary, the Atcon Western Assets include various construction machinery and equipment (such as excavators, generators, solar powered signs and other construction items), vehicles and trailers.

TENDER AND AUCTION SALES PROCESSES

16. Pursuant to subparagraph 3(m) of the Receivership Order, the Receiver has been authorized and empowered by this Honourable Court to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. Additionally, pursuant to subparagraph 3(e) of the Receivership Order, the Receiver has been authorized and empowered by this Honourable Court to engage consultants, appraisers, agents, experts and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order.

17. In accordance with the provisions of the Receivership Order, upon taking possession and control of the Property, the Receiver contacted a number of auctioneers, liquidators and appraisers in an attempt to determine the most fair and effective method to solicit offers for the Property that would result in the Receiver obtaining the best price for the Property for the benefit of the stakeholders of the Respondents.

<u>Atcon Eastern Assets</u>

18. With respect to the Atcon Eastern Assets, based on the discussions with appraisers, liquidators and auctioneers, and the Receiver's experience in conducting sales of similar assets in insolvency proceedings in New Brunswick, Nova Scotia, Prince Edward Island

and Newfoundland & Labrador, the Receiver has determined that the best method to solicit offers for the Atcon Eastern Assets is to conduct a tender process.

19. The Receiver is of the view that the Atcon Eastern Assets lend themselves to potential *en bloc* bids, as the Property is composed of tangible assets and real property related to construction and quarry operations in New Brunswick that may be purchased for use in construction and quarry operations. As a result, the Receiver believes a greater price can be achieved for the Atcon Eastern Assets through a tender process, and there is a greater opportunity that an *en bloc* transaction might have a greater potential to create an operating business which would create employment for New Brunswickers, as opposed to an auction/liquidation sale. The tender process does not foreclose the ability of the Receiver to:

(a) entertain an *en bloc* tender offer in the tender process from an auctioneer or liquidator in the event that such an offer was in the best interests of the stakeholders of the Respondents with an interest in the Atcon Eastern Assets;

(b) accept tender bids for an individual parcel or a few parcels of assets thereby making the tender process attractive to prospective purchasers who are not interested in a significant *en bloc* purchase but are interested only in one or more individual parcels of assets; or

(c) conduct a public auction or private sale of all or any portion of the Atcon Eastern Assets after completion of the tender process, should the tender process not produce offers that are determined by the Receiver to be acceptable.

20. Attached hereto as **Appendix "C"** is a copy of the Receiver's proposed tender information package for the Atcon Eastern Assets (the "**Tender Information Package**"). The marketing process and timelines associated with the Tender Information Package (the "**Tender Process**") are summarized below:

(a) advertising of the Tender Process for the Atcon Eastern Assets for a 4-week period commencing on July 31, 2010 in the Telegraph Journal, Times & Transcript, Fredericton Gleaner, and l'Acadie Nouvelle, and in the National

Edition of the Globe & Mail commencing August 4, 2010 and in four (4) weekly periodicals;

(b) the Receiver has maintained a listing of prospective buyers who have previously contacted the Receiver to indicate their interest in the Atcon Eastern Assets and the Receiver will notify these parties of the tender sale for the Atcon Eastern Assets;

(c) the Receiver has developed a listing of industry participants and construction associations across Canada who will be directly notified of the Tender Process by the Receiver in order to generate wide visibility for the tender sale of the Atcon Eastern Assets;

(d) the Receiver will facilitate site viewings by potential purchasers of the Atcon Eastern Assets, the majority of which are located at the General Manson Way Property, prior to the tender close date;

(e) sealed tenders to be received on or before August 31, 2010 for the purchase, on an "as is, where is" basis, of all or part of the Atcon Eastern Assets, subject to terms and conditions of sale commonly used in receivership asset sales, including the provision of a 15% deposit;

(f) the date for the Receiver communicating the acceptance of tenders, subject to, where applicable, the Receiver obtaining Court approval, is on or before September 10, 2010; and

(g) the Atcon Eastern Assets subject to a successful sale transactions are to be removed from the General Manson Way Property within 30 days of the date Court approval was obtained with respect to the applicable sale transaction.

21. The Receiver is of the view that the Tender Process is a fair and effective method to solicit offers for the Atcon Eastern Assets and recommends that this Honourable Court authorize and approve the Receiver to conduct a sale or sales of the Atcon Eastern Assets pursuant to the terms and conditions of the Tender Process.

Atcon Western Assets

22. With respect to the Atcon Western Assets, the Receiver is of the view that, as the Atcon Western Assets comprise small construction pieces that are remotely situated on leased lands in Fort McKay, Alberta, it is likely that a competitive auction process conducted on site will generate the maximum return for the Atcon Construction receivership estate. The Receiver is of the view that a tender process for the Atcon Western Assets could potentially result in certain assets remaining unsold, which would necessitate a secondary auction sale or private sale process with the estate of the Respondents incurring additional costs and expenses to conduct the secondary process. As a result, the Receiver is of the view that the best method to maximize realizations for the Atcon Western Assets is for a public auction of the Atcon Western Assets to be conducted.

23. The Receiver contacted two (2) auctioneers/liquidators and requested proposals for the sale of the Atcon Western Assets to be conducted by the auctioneer/liquidator at a public auction to be held in Fort McKay, Alberta. The auctioneers/liquidators were given the opportunity to provide auction services with a net minimum guaranteed return to the receivership estates and a percentage sharing arrangement between the auctioneer and the Receiver in the event that the net minimum guarantee amount is exceeded.

24. The Receiver reviewed and analyzed the 2 proposals it received. The details with regard to the proposals submitted to the Receiver for the Atcon Western Assets will be set out in a supplement to the Fifth Report, which will be made available to this Honourable Court prior to the hearing of the motion in respect of this Fifth Report and will be subject to a request for a sealing order.

25. Century Services Inc. ("**Century**") had previously been engaged by the Receiver to perform an independent appraisal of the Atcon Western Assets. As such they had an enhanced understanding of the specific assets available for sale. Century offered a net minimum guarantee to the Receiver as part of its auction proposal, thereby providing the Atcon Construction receivership estate with a minimum realization guarantee from the Atcon Western Assets, for their appraised value less standard commission and selling expenses, regardless of the ultimate success of the auction process. As a result of the net

minimum guarantee, Century's familiarity with the Atcon Western Assets and their competitive commission structure, the Receiver believed it to be in the best interest of the Atcon Construction estate to pursue the Century proposal.

26. The Receiver and Century entered into an auction agreement dated July 15, 2010 (the "**Auction Agreement**"). A redacted version of the Auction Agreement is attached hereto as **Appendix "D"**. An unredacted version of the Auction Agreement will be included as an appendix to the supplement to the Fifth Report, which will be made available to the Court prior the hearing of the motion in respect of the Fifth Report and will be subject to a request for a sealing order.

27. The Auction Agreement provides that the Atcon Western Assets are to be free and clear of all liens and encumbrances. As a result, the Receiver is requesting that this Honourable Court grant an Order that provides that, upon payment of the purchase price by the purchaser and a bill of sale being issued by Century to a purchaser of any of the Atcon Western Assets at the public auction, title to the property sold by Century will vest in the purchaser free and clear of any claims, liens and encumbrances against any of the Atcon Western Assets being purchased.

28. The Receiver believes Century is the auctioneer that has provided the auction proposal that will provide the greatest benefit for the receivership estate and recommends that this Honourable Court approve the Auction Agreement entered into with Century.

RELIEF SOUGHT BY THE RECEIVER

29. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:

    (a) authorizing and approving the Receiver conducting a tender process with respect to the sale of the Atcon Eastern Assets pursuant to the terms and conditions of the Atcon Tender Package and the marketing process and timelines comprising the Tender Process; and

    (b) authorizing and approving the Receiver entering into the Auction Agreement with Century with respect to the sale of the Atcon Western Assets and providing that any of the Atcon Western Assets sold by Century to a purchaser shall vest in the purchaser free and clear of any liens or encumbrances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July 2010

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

By:

Paul D. Hickey, CA•CIRP
Senior Vice President

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Appendix “A” – Listing of Atcon Eastern Assets

can be found at www.ey.com/ca/atcon

Appendix “B” – Listing of Atcon Western Assets

can be found at www.ey.com/ca/atcon

Appendix "C" – Tender Information Package

can be found at www.ey.com/ca/atcon

Appendix “D” – Redacted Auction Agreement

can be found at www.ey.com/ca/atcon