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

SECOND SUPPLEMENT TO THE ELEVENTH REPORT OF THE RECEIVER AND TWELFTH REPORT OF THE RECEIVER

March 7, 2011
(SUN LIFE AND OPI)

INTRODUCTION AND PURPOSE

1. This report is the second supplement (the "**Second Supplemental Report**") to the Eleventh Report of the Receiver dated November 17, 2010 (the "**Eleventh Report**") and the Twelfth Report of the Receiver dated November 17, 2010 (the "**Twelfth Report**"). The Second Supplemental Report should be read together with the Eleventh Report, the Twelfth Report and the Supplement to the Eleventh Report of the Receiver and the Twelfth Report of the Receiver dated February 28, 2011 (the "**First Supplemental Report**").

TERMS OF REFERENCE

2. In preparing this Second Supplemental 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 Supplemental Report or relied upon by the Receiver in preparing this Second Supplemental 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.

3. All references to monetary amounts in this Second Supplemental Report are in Canadian dollars unless otherwise noted.

4. Capitalized terms not defined in this Second Supplemental Report are as defined in the Eleventh Report, the Twelfth Report or the First Supplemental Report.

5. 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).

TOZER AFFIDAVIT

Receiver's Activities

6. In paragraph 11 of the Affidavit of Robert W. Tozer sworn March 1, 2011 (the "**Tozer Affidavit**"), Mr Tozer states that the Eleventh Report "contains several errors and misstatements". In paragraph 20 of the Tozer Affidavit, Mr. Tozer states that "Since May 2010, the Receiver has taken a position adverse to me, in favour of the major creditors." In paragraph 32 of the Tozer Affidavit, Mr. Tozer states that the Receiver "has become an adversary with respect to me, in violation of his duty. This created an atmosphere of hostility and distrust…".

7. The Receiver is an officer of the Court. The Receiver has carried out its duties in a fair, honest and even-handed way. The Receiver has taken steps that it regards as appropriate. The Receiver is not an adversary with respect to Mr. Tozer, though it is clear that Mr. Tozer disagrees with positions taken by the Receiver in respect of the Sun Life Policy.

8. In paragraph 32 of the Tozer Affidavit, Mr. Tozer states that "the Receiver…seeks to deprive me of my pension fund…". That is not correct. The Receiver, in bringing a motion with respect to the Sun Life Policy, seeks to recover property which, based on the information available to the Receiver, is Property of Atcon Group, in accordance with the authority granted to the Receiver by this Honourable Court in paragraph 3 of the Receivership Order.

9. In paragraph 21 of the Tozer Affidavit, Mr. Tozer states that "The "Receiver's lawyer has threatened to sue me personally." That is not correct. The Receiver does wish to report to this Honourable Court that, pursuant to the authority granted by the Court to the Receiver in paragraph 3 of the Receivership Order to: (i) take possession and control of all of the Property; (ii) receive, preserve and protect the Property; (iii) receive and collect all accounts and monies owed to the Respondents; and (iv) initiate proceedings with respect to the Property, the Receiver has commenced an action in the Province of New Brunswick against Mr. Tozer in his capacity as a shareholder of Atcon Group, and in his capacity as a trustee of The Robert Tozer Family Trust (2008), a shareholder of Atcon Group, for amounts listed as being owed by the shareholders to Atcon Group and Atcon

Management Services Inc. on the books and records of such Respondents. The statement of claim is in the process of being served.

10. In paragraph 14 of the Tozer Affidavit, Mr. Tozer states that he was “guarded by Chris Mediratta, a Vice-President of Ernst & Young, from Toronto…”, who Mr. Tozer alleges was “generally being a nuisance…was overbearing and hostile” and “challenged my taking a picture of my family…”. As set out in the Eleventh Report and the First Supplemental Report, the Receiver has confirmed that Mr. Mediratta met with Mr. Tozer on May 31 and June 1, 2010, during which time Mr. Mediratta raised the issue of the Sun Life Policy. While these matters do not seem to be relevant to the matters in issue on the Receiver’s motion, the Receiver notes that it has reviewed these matters with Mr. Mediratta and believes that Mr. Tozer’s description is not correct.

<u>Premiums under Sun Life Policy</u>

11. In paragraph 10 of the Tozer Affidavit, Mr. Tozer states that, since 2002, the premiums under the Sun Life Policy “were deducted from the dividends which were being credited to the policy.” The Receiver confirmed in paragraph 14 of the Eleventh Report that Sun Life had informed the Receiver that this premium payment arrangement commenced in 2002. Sun Life has also provided to the Receiver a copy of the Request for Premium Offset dated October 17, 2001 signed by “Atco”, a copy of which is attached hereto as **Appendix “A”**, and a policy statement current as of April 14, 2010, a copy of which is attached hereto as **Appendix “B”**.

12. As set out in paragraph 14 of the Eleventh Report, the Receiver requested confirmation from Sun Life as to whether it had any information as to how the premiums under the Sun Life Policy were paid prior to 2002, as the Receiver was unable to locate any documentation in the books and records of the Respondents. Sun Life has informed the Receiver that information as to payments of premiums under the Sun Life Policy prior to April 2002 is not readily accessible to it. If this information is provided by Sun Life, the Receiver will provide the information to the service list and the Court.

Intention of the Sun Life Policy

13. In paragraph 17 of the Tozer Affidavit, Mr. Tozer states that "I considered it my policy, and the company was holding it for me until I retired…". The Receiver has been unable to locate any documentation in the books and records of the Respondents to support Mr. Tozer's assertion. The only documentation that the Receiver has obtained from April 1992 with respect to the Sun Life Policy is the original Application for Insurance dated April 14, 1992 (the "**Application**"). A redacted copy of the Application is attached hereto as **Appendix "C"**. The information that has been redacted by the Receiver relates to Mr. Tozer's personal health history. The Application contains no reference to Mr. Tozer owning the Sun Life Policy or that Mr. Tozer would take the Sun Life Policy with him upon his retirement.

WAYE AFFIDAVIT

14. Mr. Mediratta has confirmed to the Receiver that he disagrees with the statements made by Mr. Dana Waye in paragraphs 9 – 12 of the Affidavit of Dana Waye sworn February 25, 2011 (the "**Waye Affidavit**") and stands by the information contained in the Eleventh Report with respect to his conversation with Mr. Waye regarding the Sun Life Statement. Mr. Mediratta denies making the statement that Mr. Waye has attributed to him in paragraph 11 of the Waye Affidavit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of March 2011

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