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

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

February 28, 2011
(SUN LIFE AND OPI)

INTRODUCTION AND PURPOSE

1. This supplement (the "**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**") should be read together with the Eleventh Report and the Twelfth Report and is filed in response to a request made by counsel to Mr. Robert Tozer for additional information regarding the matters detailed in the Eleventh Report and the Twelfth Report, which are before the Honourable Court in connection with the Receiver's motion returnable on March 18, 2011. Attached hereto and marked as **Appendix "A"** is a copy of the letter dated February 24, 2011 from counsel to Mr. Tozer to counsel to the Receiver.

TERMS OF REFERENCE

2. In preparing this 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 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 Supplemental Report are in Canadian dollars unless otherwise noted.

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

SUN LIFE POLICY

6. The existence of the Sun Life Policy came to the Receiver's attention on May 19, 2010 as a result of correspondence from Mr. Tozer to the Receiver requesting that two (2) insurance policies be transferred into his name. As a result of this correspondence, Mr. Christopher Mediratta, CA CIRP, of the Receiver's office, contacted Ms. Lisa Godin, the former controller of the Atcon group of companies, to obtain further details on the insurance policies. Ms. Godin subsequently provided information regarding the 2 insurance policies referred to by Mr. Tozer. Ms. Godin also provided information on a third insurance policy, the Sun Life Policy, which was not referenced by Mr. Tozer in his correspondence.

7. Upon becoming aware of the Sun Life Policy, Mr. George C. Kinsman CA CIRP, of the Receiver's office, and Mr. Mediratta reviewed the audited financial statements of Atcon Group for the fiscal years ending January 31, 2008 and January 31, 2009, the Atcon Group trial balance for February 2010, Atcon Group's 2009 and 2010 banking records and journal entries, and Atcon Group's paper files for any correspondence with Sun Life Financial or copies of the Sun Life Policy, in an attempt to obtain further information regarding the Sun Life Policy.

8. Subsequent to the document review, Mr. Mediratta met with Mr. Tozer on May 31, 2010 and June 1, 2010 in Miramichi, NB to discuss various matters relating to the Atcon group of companies. As set out in paragraphs 16-18 of the Eleventh Report, during the discussions between Messrs. Mediratta and Tozer, Mr. Mediratta informed Mr. Tozer of the Receiver's position regarding the cash surrender value of the Sun Life Policy. It was Mr. Mediratta's understanding that Mr. Tozer was contemplating paying the cash surrender of the Sun Life Policy to the Receiver in order to obtain title to the Sun Life Policy, as is evidenced by Mr. Mediratta's June 3, 2010 email attached as Appendix "E" to the Eleventh Report. The notion of the cash surrender value of the Sun Life Policy being held in trust for Mr. Tozer's benefit was not discussed, as the Receiver first became

aware of this notion upon reviewing the letter dated June 4, 2010 from Mr. James Mockler, then counsel to Mr. Tozer, to Sun Life Financial, a copy of which is attached as Appendix "F" to the Eleventh Report.

9. Upon becoming aware of Mr. Tozer's position regarding the alleged existence of a trust in his favour, the Receiver attempted to obtain additional information by reviewing Mr. Tozer's most recent T4 statements, as the Receiver assumed that the provision of such a benefit would form a taxable employment benefit that would be reported on Mr. Tozer's taxable earnings statement. Additionally, Mr. Kinsman discussed the Sun Life Policy and whether it formed part of Mr. Tozer's employment package with Ms. Katrina Donovan, the former chief financial officer of Atcon group of companies, and Ms. Patricia Davis, Deputy Director, Credit Solutions with Atlantic Credit Solutions Group of The Bank of Nova Scotia, the operating lender to the Atcon group of companies. Mr. Mediratta also discussed this matter with Ms. Godin and Ms. Winnie Hennessy, the former payroll supervisor for the Atcon group of companies.

10. Further to paragraph 31 of the Eleventh Report, the Receiver reports that neither Ms. Donovan, Ms. Godin nor Ms. Hennessy, respectively the former chief financial officer, controller and payroll supervisor for the Atcon group of companies, nor Ms. Davis, the main contact person at the Bank in connection with matters relating to the Atcon group of companies, were of the understanding that the cash surrender value of the Sun Life Policy formed part of Mr. Tozer's employment/compensation package.

11. Further to paragraph 30 of the Eleventh Report, it was Mr. Mediratta that discussed the Sun Life Policy with Mr. Dana Waye, a Sun Life Financial insurance agent operating in Miramichi, NB. Mr. Mockler, as then counsel to Mr. Tozer, suggested that the Receiver discuss the Sun Life Policy with Mr. Waye, as Mr. Waye was the individual that sold the Sun Life Policy and would have knowledge of its intended use. As set out in paragraph 30 of the Eleventh Report, Mr. Waye had no information that supported Mr. Tozer's assertion that the cash surrender value of the Sun Life Policy was intended to be held in trust for his benefit.

OPI

12. In paragraph 21 of the Twelfth Report, the Receiver reported to this Honourable Court that it was unaware of any evidence that Atcon Group had transferred its interest in the 1,000 shares of OPI acquired in connection with the November 2003 Share Issuance. The Receiver reports that Mr. Tozer has averred in an affidavit sworn March 12, 2010 and filed in the *Companies' Creditors Arrangement Act* proceedings of Atcon Construction Inc. et al, Court File No. N/M/16/10 (the "**Tozer Affidavit**") that each of the companies listed on a corporate organization chart attached thereto were direct or indirect wholly owned subsidiaries of Atcon Group or Atcon Holdings Inc. One of the companies listed on the chart as a 100% subsidiary of Atcon Group is OPI. The Tozer Affidavit was sworn following the appointment of the Receiver in these proceedings over the property, assets and undertakings of Atcon Group on March 1, 2010. Attached hereto and respectively marked as **Appendix "B"** and **Appendix "C"** are copies of the Tozer Affidavit (without exhibits") and the corporate organization chart.

13. Further to the information contained in paragraph 21 of the Twelfth Report, the Receiver reports that Mr. Kent Lindholm of Grant Thornton Sweden AB, OPI's auditor since at least November 2001, has informed the Receiver that he is unaware of any share certificates being issued in connection with the November 2003 Share Issuance.

14. Additionally, the Receiver discussed the November 2003 Share Issuance with Mr. Magnus Knape of Advokatfirman Glimstedt, a Swedish law firm that acted for OPI and Vanerply on various matters. Mr. Knape advised Mr. Daniel Parolin of the Receiver's office that Advokatfirman Glimstedt did not act for OPI in connection with the November 2003 Share Issuance.

15. Lastly, the Receiver's Swedish counsel, Mannheimer Swartling, has attempted to confirm whether OPI had legal counsel in connection with the November 2003 Share Issuance. Mannheimer Swartling discussed matters relating to the share holdings of OPI with Linklaters, which appears, based on documents in the books and records of Atcon Group, to have been Swedish counsel to Atcon Group in connection with its acquisition of the December 2000 Share Certificates. Based on such discussions, Mannheimer Swartling

has informed the Receiver that it appears that Linklaters did not act for Atcon Group following the December 2000 Share Certificates acquisition. Mannheimer Swartling has also confirmed to the Receiver that Mr. Lindholm was listed as the contact person with the Swedish Companies Registration Office in connection with the November 2003 Share Issuance, and that no legal counsel was listed in connection with the November 2003 Share Issuance Documents.

16. As a result, the Receiver reports to this Honourable Court that it has been unable to locate information as to whether OPI had retained Swedish counsel in connection with the November 2003 Share Issuance.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of February 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

APPENDIX “A”

SMITH & SMITH
BARRISTERS & SOLICITORS
155 PLEASANT STREET
MIRAMICHI, NEW BRUNSWICK

GERALD F. SMITH, Q.C., P.C.
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February 24, 2011

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

Attention: Sam P. Rappos

Dear Mr. Rappos:

Re: Receivership of Atcon Group Inc.

We request information and clarification concerning the 11th Report of the Receiver as follows. There is a concern the Receiver may not have consulted the appropriate people for information.

1) Paragraph 11 – details as to how it came to the Receiver's attention, including individuals and documents.

2) Paragraph 13 – what books and records were reviewed, with dates of the records, and the name of the reviewers.

3) Paragraph 16 – the name of the representative, and copies of his raw notes or other recordings.

4) Paragraphs 17 & 18 – same details as requested for paragraph 16. Regarding paragraph 18, how was the concept of trust put to Mr. Tozer?

5) Paragraph 21 – names of the former members of management and employees. As well, advise why there would be a taxable benefit related to this policy. As to the last sentence, identify the persons referred to and the questions put to them, as well as their answers.

6) Paragraph 30 – who was involved, and provide copies of notes and recordings.

7) Paragraph 31 – identify the persons involved, including the representative of the bank, and provide all information given to the Receiver or its agent concerning the policy.

With respect to the 12th Report of the Receiver:

8) Did the Receiver's Swedish counsel make inquiries to the lawyer who represented OPI at the time the second 1000 share allotment was considered in 2003?

This information would be in the possession of whoever drafted the Receiver's Report, hopefully the Receiver himself. We would like to have it by February 28th to avoid delay.

Yours very truly,

SMITH & SMITH

Gerald F. Smith, Q.C.

GFS/st

APPENDIX "B"

Court File No.: N/M/16/10

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

COURT OF QUEEN'S BENCH OF N.B.
RECEIVED AND FILED
MAR 12 2010
REÇU ET DÉPOSÉ
COUR DU BANC DE LA REINE DU N.-B.

-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. and ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

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 CONSTRUCTION INC., ATCON INDUSTRIAL SERVICES 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

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, and ATCON LOGISTICS INC.

PURSUANT TO Section 22 of The *Judicature Act,* R.S.N.B. 1973, c. 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, and ATCON LOGISTICS INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

AFFIDAVIT

I, **ROBERT W. TOZER**, of the City of Miramichi, in the County of Northumberland and Province of New Brunswick, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President and sole director of each of the Respondent companies ("the Companies") and as such have personal knowledge of the matters deposed to herein unless otherwise stated and where so stated I believe the same to be true.

OVERVIEW

2. The group of Companies began business in 1978 and has since become the largest employer in Northeastern New Brunswick, employing at times more that 1,800 New Brunswickers with a payroll of over $76 million. In 2008, the Companies issued 1830 T-4's to their employees and 1153 were issued to employees in 2009. Approximately 90% of the Companies' employees reside in the Miramichi region. The core business of the

Companies since its inception has been construction, and over the years annual revenues grew to over $300 million by expanding service offerings and geographic market place.

CORPORATE STRUCTURE OF COMPANIES

3. Each of the Companies is incorporated under the *Business Corporations Act* (New Brunswick) with a registered office located in Miramichi, New Brunswick.

4. Atcon Construction Inc., Atcon Industrial Services Inc. and Envirem Technologies Inc. are the primary operating companies of the Group. These two companies and each of the other Companies are direct or indirect wholly owned subsidiaries of either Atcon Group Inc. or Atcon Holdings Inc. Annexed as Exhibit "1" is an organization chart setting out the corporate structure of the group of Companies.

5. In September 2009 an Advisory Board was put in place at the request of the Province of New Brunswick to oversee an informal preliminary restructuring plan for the Companies dated September 11, 2009 (the "2009 Restructuring Plan"). The Plan was developed by Ernst Young, on behalf of the Bank, and presented to the Companies. The members of the Advisory Board were Purdy Crawford, Bruce McCubbin, Bruce Richmond, Don Cameron, John Puckering and Jim Lutes.

6. The Advisory Board dissolved prior to the filing of the Notices of Application by the Bank of Nova Scotia ("BNS").

7. In January, 2010, BNS requested that the Companies obtain expert advice to determine the cash requirements for the Companies on a go-forward basis. The Companies retained PricewaterhouseCoopers Inc. ("PWC") for this purpose.

THE COMPANIES' BUSINESS

8. The core business of the companies is construction and industrial fabrication. On the construction side, the core business segments are earthworks, concrete, and structures (i.e. bridges). On the fabrication side the core business segments are crushers, heavy structural steel, steel bridges, and miscellaneous fabrication.

9. Envirem Technologies Inc. is an environmental waste management business and is currently operational and profitable. The average EBITDA for the Company is approximately $1.6 million.

10. Clients retain Atcon Construction Inc. in the earthworks segment for: road construction for remote and industrial sites; siteworks including mass excavation on industrial sites such as Alberta's oil sands, mining sites such as Vale Inco's Newfoundland smelter, and power plants; and Muskeg removal projects. In the concrete segment, Atcon Construction Inc.'s focus is on industrial sites such as the Shell Jackpine site, and foundations at Vale Inco's smelter in Newfoundland. In the structures segment Atcon Construction Inc. has completed construction of steel and/or concrete bridges which has been a core business for the company for 30 years and will continue to be in the future.

11. Atcon Industrial Services Inc.'s main fabrication clients include Michelin, Metso, and Provincial Departments of Transportation across Canada.

12. The Vänerply AB facility in Otterbäcken, Sweden is one of the leading producers of plywood in Sweden. Held by Atcon Group Inc., that business is consistently profitable, has money in the bank, and has no debt. Prior to the recent economic downturn, I took part in negotiations to sell the company for approximately $42 million.

13. Over the past 4 to 5 years, the Companies varied their core construction business into mechanical type projects in the Alberta oil sands regions such as steel tank construction on a fixed price basis, pipe installation, steel erection, and mechanical installation. From

a cashflow and profitability standpoint, these projects have not been successful for the Group. Due in part to the lack of success with these projects, the Applicants committed in its 2009 Restructuring Plan to change their focus to concentrate on their core business model of earthworks, concrete and structures, as well as the fabrication business.

FINANCING ACTIVITIES IN 2009

14. In June, 2009 the Companies completed a refinancing with the Bank of Nova Scotia ("BNS") and entered into a new credit agreement with BNS (the "BNS Credit Agreement"). The BNS Credit Agreement provided for an increase in the operating facility available to the applicants to $40 million, as well as 4 term loans in the aggregate amount of approximately $50.6 million.

15. The interest rate charged by the BNS for the guaranteed loans was prime plus 3.5%. Therefore, in approximately 9 months, the BNS has received approximately $1.3 million in interest on this loan, guaranteed by the Province of New Brunswick. In addition, BNS charged the Companies fees in the amount of $1,212,500 related to this refinancing. A copy of a summary sheet related to the June 2009 financing, showing where the funds were allocated, is attached as Exhibit 2. As a result of the financing, BNS has received over $2.5 million in fees and interest to date.

16. In September, 2009 the Companies entered into an amendment to the BNS Credit Agreement which provided for an additional term loan facility of $9.4 million for working capital for the purpose of executing the 2009 Restructuring Plan. The amended BNS Credit Agreement also reduced the credit limit on the operating facility from $40 million to approximately $28.5 million. The Province of New Brunswick relinquished some of its security over certain assets of the Applicants in favour of the Bank in connection with the new term loan.

17. In September/October, 2009 the Companies entered into forbearance agreements with BNS, the Province of New Brunswick and GE Capital in contemplation of the

Applicants carrying out of the 2009 Restructuring Plan. These forbearance agreements expired January 31, 2010. I raised concern with BNS that the expiry date on those agreements did not give sufficient time for meaningful restructuring activity but I was reassured by Patti David at BNS in Halifax that the date meant nothing and not to worry about it.

BANK ACCOUNTS AND CASH MANAGEMENT

18. The Companies operate a centralized cash management system. Daily financial requirements of the Group are funded by a revolving operating facility with BNS that is provided to Atcon Holdings Inc. with an unlimited guarantee from each of the other companies.

CURRENT STATUS OF THE COMPANIES

Financial Status

19. The BNS, in the material supporting its Applications for a Receivership Order and a CCAA Order, allege that the companies owe approximately $250 million. A copy of the report relied upon by BNS is attached as Exhibit 3. However, these figures include operating leases of approximately $96 million representing lease payments to the end of each lease, which are not considered debt. The companies anticipate, upon return of the leases, only an anticipated shortfall in the total amount of $4-5 million.

20. In addition, there are a number of other entries on Exhibit 3 which reflect amounts already paid by the Companies or that overstate the debt. I believe that the Monitor, with due diligence, will rectify and restate these debts.

21. The Companies' largest secured creditor is BNS. A significant portion of the BNS loans are guaranteed by the Province of New Brunswick. When the Province of New

Brunswick pays their security to BNS from the sale of the assets, the Bank's total exposure on its loans will only be $19.5 million.

Efforts to Restructure

22. Over the last several months the Companies have taken steps to address the challenges facing their business operations, in particular by completing the refinancing with BNS in June 2009 as amended in September 2009, and seeking and obtaining certain guarantees from the Province of New Brunswick in connection with that refinancing. The Companies also recognized that the required a formal restructuring plan and as a result the 2009 Restructuring Plan was put in place, to be carried out under the supervision of the Atcon Advisory Board and overseen by Ernst & Young ("E&Y") on behalf of BNS.

23. The main component of the 2009 Restructuring Plan was to refocus the Companies to their core business operations of construction and industrial fabrication. The 2009 Restructuring Plan provided for the sale of non-core business operations and assets including, but not limited to, the sale of the shares of Envirem Technologies Inc..

24. By December of 2009 it became apparent that the 2009 Restructuring Plan was not going to be successful. The Companies, under the direction of the Advisory Board, prepared a comprehensive business and financial plan to the year-end of January 31, 2011 (the "Business and Financial Plan") which was presented to BNS and the Province of New Brunswick in early January, 2010.

25. BNS and the Province of New Brunswick did not approve the Business and Financial Plan. As a result, negotiations with all creditors and stakeholders of the Companies have continued in the attempt to form a viable informal proposal to allow the Companies to continue its core construction and fabrication operations. However, E & Y have consistently told me not to bid any future work for the Companies, which I find inconsistent with any Plan of Arrangement.

26. Although Atcon Construction was recently advised by a customer that Atcon's offer to perform certain work has been accepted, I have been advised by E&Y that the income that will be generated will not be reflected on the projected cash flow statements to be provided to the Court. This work, worth approximately $11 million, will commence in May 2010 and continue for approximately 10 months.

27. At stated previously in paragraph 7, PWC was retained to determine the Companies cash flow requirements. As part of PWC's engagement, it also made a recommendation that the Companies consider and prepare for a possible formal restructuring under the CCAA.

28. The Companies, at the direction of the Advisory Board, engaged the law firm of Stewart McKelvey Stirling Scales to assist in the preparation of the appropriate Court documents to seek CCAA protection for <u>all</u> of the Companies as a group, to allow for a consideration of complete restructuring for long term viability. A copy of the first page of the first draft, dated February 18, 2010, of an affidavit in support of such an application is attached as Exhibit 4.

<u>FEBRUARY 28, 2010</u>

29. On February 28, 2010 I received a call from Jamile Seath of BNS, Rocco Fabiano of BNS, Matthew Harris, Atlantic Canada Manager of E&Y and Paul Hickey, Senior Vice President of E&Y. The substance of the conversation was BNS and E&Y asking what I wanted to do with the Companies as the matter was proceeding to Court the next day for what I understood was CCAA application for all of the companies. Mr. Seath set out the following plan of action for consideration and decision that same evening:

    a. In conjunction with the CCAA restructuring, the Construction Company should try to work with Shell and the Leasing Company for a new season of construction work and to provide equipment for the Muskeg contract, that contract and other existing contracts would be moved to a new company that the Bank insisted be set up in my daughter's name;

b. BNS would finance the Company to do this, by offering a credit facility in the $5-7 million range;

c. The new company would try to get work from another available Shell contract as well, worth approximately $32 million.

30. At this time, there was a significant account receivable from Shell, in the amount of $16 million. In part because of the uncertainty surrounding the Companies, Shell was insisting in a set off of certain amounts. I was advised during my phone call with Mr. Seath of February 28, 2010 that before we could move on the new company, confirmation in writing would have to be obtained from Shell whereby Shell paid the entire amount outstanding, with no set off.

31. At the end of the conversation, Mr. Fabiano demanded to know if I would support the filing the next day. I told him I would think about it over night which made Mr. Seath angry.

MARCH 1, 2010

32. At approximately noon on March 1, 2010, based on my understanding that BNS was seeking CCAA protection for all of the Companies as a group, and on the understanding that the BNS would be seeking a Plan of Arrangements for the Companies to continue viability, I agreed not to contest the filing but not to support it either. I signed a letter, a copy of which is attached as Exhibit 5, stating:

> **"Re: CCAA Application**
>
> **Please be advised that Atcon Construction, Atcon Industrial Services Inc., Envirem Technologies Inc., Atcon Management Services , Atcon Civil Ltd., Dycon Construction Ltd., and Atcon Structures Inc. do not oppose the CCAA application being heard today."**

33. I did not attend the hearing on March 1, 2010 and only in the days following did I understand that the BNS was realizing on security with a Receiver.

MARCH 3, 2010

34. On March 3, 2010 I traveled to Calgary to meet with representatives of Shell to discuss the current situation and to attempt to salvage as much of the existing contract work as possible for the purpose of the restructuring. Mr. Harris advised me that his concern at this meeting was to limit any offsets by Shell from the account receivable.

35. Prior to the meeting with Shell representatives, I met with Matthew Harris in the E&Y office in Calgary to develop a plan for the meeting. By this time, E&Y had been appointed as Monitor and I understood Mr. Harris was there acting in his capacity as Monitor.

36. I was present at the meeting to allay any fears and reassure Shell that the Company would be there next winter. Shell is a very valuable client to the Companies on a go-forward basis. During the preparatory meeting, however, Mr. Harris confirmed to me that he was there only to collect money for the Bank. His statement was:

"I am just a little guy from Halifax here to collect money for the Bank."

MARCH 4, 2010

37. On March 4, 2010, prior to the meeting with Shell in Calgary, I called David Daum, VP Special Loans at BNS. The purpose of my call was to confirm the terms of the new company to be set up for the Shell contracts, in preparation for my meeting with Shell to provide assurances to the customer. Mr. Daum confirmed to me during that call that the BNS would provide no support for a new company and that the BNS would provide no further support to the Companies as soon as the Shell Muskeg contract work stopped for the season in approximately two weeks.

38. The Shell (Muskeg) contract is a 3 year contract with work running from approximately November to March of each year. March 2010 will mark the end of the second year of this 3 year contract. Atcon construction receives approximately $25-27 million each year for this work.

39. There are other contracts available for the Companies that would generate at least another $20 million. This work would take place in the summer of 2010.

MARCH 8, 2010

40. On March 8, 2010 I spoke with Paul Hickey of E&Y, regarding the status of the proposed sale of Envirem as neither BNS or the Monitor had discussed it with me since the CCAA order. Mr. Hickey responded to the effect that "confidentially" they had changed the deal to an asset sale from a share sale. He told me E&Y was selling the assets, property, inventory and receivables and then would bankrupt the company. I asked about the trade payables and Canada Revenue Agency ("CRA") and he advised me that they would receive nothing. I had previously assured CRA and dozens of other creditors that the company would pay its outstanding account upon the sale of the company.

41. As an example, Envirem owes approximately $15,000 to a family owned tire shop. I recently spoke to the owners' widow and assured her that the account would be paid with the funds realized on the sale.

42. Envirem is a viable company that has significant value to be realized with an investment of working capital in the amount of perhaps $1 million.

43. As a result, I have no confidence that E&Y, as Monitor, or BNS are committed to the development of a restructuring plan aimed at the survival of the Companies.

44. I was advised by Gordie Burns and believe that Tracy Vincent of Shell has confirmed that of the $8 million outstanding, Shell will be paying $4,546,891.93 million to Atcon Construction Inc. on Monday March 15, 2010. An additional $8.4 million is anticipated in early April. A copy of correspondence received from Shell confirming this is attached as Exhibit 6.

45. On a go-forward basis, for the 10 weeks ending March 15, 2010, Atcon Construction had one of its best quarters in its history.

Total Revenue (approximately)	$22 million
Total costs (including leases/ labour)	($13.1 million)
Cash Generated	$8.9 million

46. If the money from Shell is available to the Companies, in all probability, DIP financing should not be required. As a back-up position I have made arrangements for $1.5 million in DIP financing if necessary.

47. As I am the founder of the Companies and the sole director of each of them, I have considerable knowledge and experience in dealing with the business of the Companies and am of the view that my continued participation with the Companies will be a key element to a successful restructuring. I have no interest in abandoning the companies to bankruptcy and seeing numerous tradespersons and suppliers remain unpaid. My intent is to strive for a successful restructuring whereby those liabilities would be paid in full and employment would continue for the 1000+ families who rely on these companies for their livelihood. To do so, I am committed to working with the Companies toward a restructuring plan for the nominal remuneration of $1 per week.

48. I believe that with restructuring and concentration on the Companies' core businesses, much of the business can be preserved, along with the employment for the Companies' employees. With protection from creditors in the short term while restructuring takes place, the Companies' should be able to meet their obligations as they become due.

49. The Companies propose that BDO Canada Limited ("**BDO**") be appointed Monitor for this proceeding. BDO is not the auditor for the Applicants. BDO has consented to act as Monitor.

50. The Companies also request that the Court grant a charge in favour of the Companies' counsel and in favour of BDO, as Monitor, and its' counsel, to secure the payment of fees and expenses incurred in connection with this proceeding. The Companies seek to amend the Initial Order to reflect this.

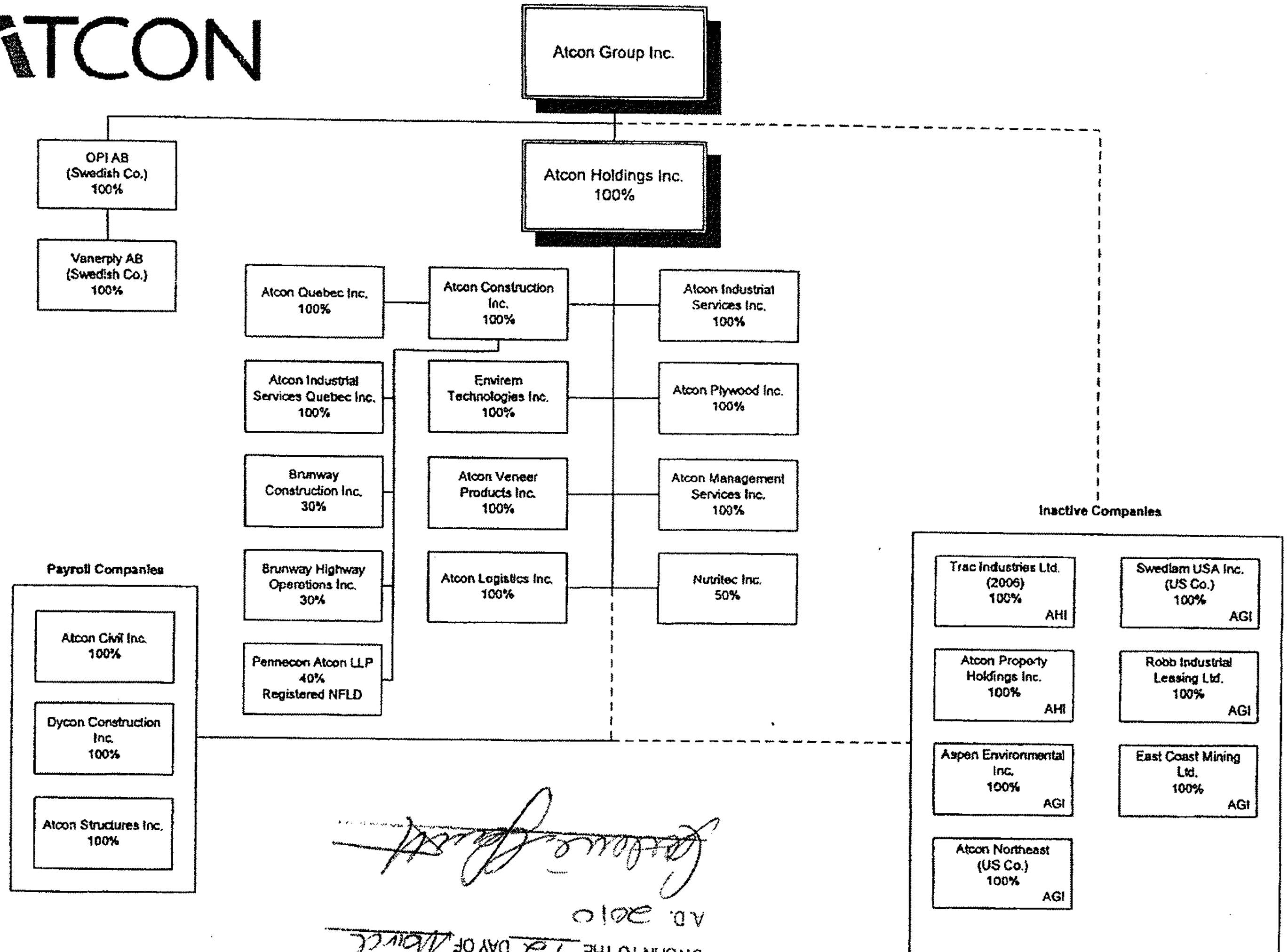
51. Because I believe it is crucial that all of the Companies be considered together under a proposed restructuring and plan of arrangement, I have instructed my counsel to appeal the Court's Receivership Order dated March 2, 2010. I am advised by the solicitor, James Mockler, and believe that the Notice of Appeal was filed with the Court of Appeal on March 11, 2010, a copy of which is attached hereto and marked as Exhibit 6.

52. I swear this Affidavit in support of the Companies' request that the Initial Order of March 2, 2010 be varied and amended and that the Receivorship Order be stayed pending the appeal thereof.

SWORN TO before me at the City of Miramichi, and County of Northumberland Province of New Brunswick, this 12th day of March, 2010.	)	
A COMMISSIONER OF OATHS BEING A SOLICITOR Catherine A. Fawcett	)	**Robert W. Tozer**

APPENDIX "C"

ATCON



THIS IS EXHIBIT 1 OF THE AFFIDAVIT OF
Robert Tozer
SWORN TO THE 12 DAY OF March
A.D. 2010