

**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

**THIRTEENTH REPORT OF THE RECEIVER
November 18, 2010**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. (“**EYI**”) was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the “**March 2 Order**”); and
 - (b) Atcon Construction Inc. (“**Atcon Construction**”), Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated March 30, 2010 (the “**March 30 Order**”, and the March 30 Order 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) receive and collect all monies and accounts then owed or thereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies;
 - (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 of all transactions less than \$100,000 exceeds \$1,000,000;

- (e) take any steps reasonably incidental to the exercise of the powers under the Receivership Order; and
 - (f) apply to this Honourable Court for advice and directions in the discharge of its powers and duties under the Receivership Order.
3. The purpose of this Thirteenth Report is to provide additional information to this Honourable Court with respect to matters that were before the Court on a motion heard in these proceedings on October 28, 2010 in connection with the Tenth Report of the Receiver dated October 22, 2010 (the “**Tenth Report**”).

TERMS OF REFERENCE

4. In preparing this Thirteenth 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 certain of the former 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 Thirteenth Report or relied upon by the Receiver in preparing this Thirteenth 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 Thirteenth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Thirteenth 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).

OCTOBER 28, 2010 MOTION

8. As is set out in greater detail in the Tenth Report, the Receiver brought a motion in these proceedings, which was returnable before this Honourable Court on October 28, 2010, seeking, among other things, the Court's approval of the proposed sale of certain equipment owned by Atcon Construction to Premier Construction Ltd. ("**Premier**"). A copy of the Tenth Report (without appendices) is attached hereto as **Appendix "A"**.
9. During the hearing of the motion, this Honourable Court requested additional information from the Receiver with respect to the following:
 - (a) the status of a Miller Bobcat Welder 250, 10,000 watt 100426 WE - 4, Serial Number LF122326 (the "**Welder**") identified as missing in the appraisal obtained by the Receiver from Fitzpatrick's Auctioneering Services Limited ("**Fitzpatrick's**"); and
 - (b) the status of equipment that was originally intended to be purchased by Premier but was subsequently released by the Receiver to Caterpillar Financial Services Limited ("**Caterpillar**").

Status of the Welder

10. As set out in paragraphs 8 and 9 of the Tenth Report, property of Atcon Construction was located at the Long Harbour Nickel Processing Plant Site in Long Harbour, Newfoundland & Labrador (the "**Long Harbour Site**") and utilized by Pennecon Heavy Civil Ltd. ("**Pennecon**") in connection with a joint venture entered into between Atcon Construction and certain entities related to Pennecon.
11. The Receiver understands, based on its communications with representatives of Pennecon and the Respondents, that the Welder had been identified by Pennecon as being stolen from the Long Harbour Site prior to March 1, 2010, which is the date EYI was appointed

as Monitor of Atcon Construction in the *Companies' Creditors Arrangement Act* proceedings bearing Court File No. N/M/16/10 (the "**CCAA Proceedings**").

12. As set out in paragraph 19 of the Tenth Report, following its appointment the Receiver arranged for Fitzpatrick's to prepare an appraisal of certain pieces of equipment owned by Atcon Construction and located at the Long Harbour Site. The Receiver understands that the listing of Atcon Construction property that was provided to Fitzpatrick's and which identified the Welder as having been stolen was prepared by a representative of Pennecon.
13. A copy of the Fitzpatrick's appraisal dated July 19, 2010 (the "**Fitzpatrick's Appraisal**") was appended to the Supplement to the Tenth Report of the Receiver dated October 27, 2010 (the "**Supplemental Report**"), a copy of which was provided to this Honourable Court. As set out in paragraph 20 of the Tenth Report, the Receiver sought a sealing order with respect to this Supplemental Report due to the sensitive commercial information contained therein and in the appendices attached thereto. A sealing order was granted by this Honourable Court with respect to the Supplemental Report on October 28, 2010. A copy of the Order is attached hereto as **Appendix "B"**.
14. During the hearing of the motion with respect to the Tenth Report and the Supplemental Report, this Honourable Court requested additional information with respect to the status of the Welder, as it was noted in the Fitzpatrick's Appraisal that Fitzpatrick's was unable to locate the Welder in completing its appraisal of the assets of Atcon Construction.
15. The Receiver has discussed the status of the Welder with its Newfoundland & Labrador counsel. Counsel has confirmed to the Receiver that there were no registrations in existence against the serial number of the Welder with the Newfoundland & Labrador Personal Property Registry System (the "**PPRS**") as of November 1, 2010. Additionally, counsel has confirmed to the Receiver that the Welder is not specifically mentioned in any registrations filed with the PPRS against "Atcon Construction Inc." as of June 22, 2010. Lastly, counsel conducted a search of the Welder's serial number with the Newfoundland & Labrador Department of Motor Vehicles ("**DMV**") and has confirmed

to the Receiver that as of November 1, 2010 there were no registrations with the DMV that refer to the serial number of the Welder.

16. As a result of the information provided to the Receiver set out above, the Receiver reports to this Honourable Court that on November 8, 2010, the Receiver filed a missing property report with respect to the Welder with the district office of the Royal Canadian Mounted Police (“**RCMP**”) located in Whitbourne, Newfoundland & Labrador. The Receiver has provided all of the information available to it with respect to the Welder to the RCMP.
17. It is the Receiver’s view that, given the period of time that has elapsed since the Welder was likely removed from the Long Harbour Site, it is unlikely that the Welder will be recovered by the Receiver for the benefit of the Respondents’ stakeholders. However, in the event that the Receiver obtains further information with respect to the Welder, the Receiver will report to this Honourable Court as soon as reasonably possible following receipt of such information.

Caterpillar Equipment

18. As set out in paragraphs 26-27 of the Tenth Report, the proposed purchase of Atcon Construction equipment by Premier originally included three (3) pieces of equipment that were subject to a promissory note in favour of Caterpillar.
19. During the hearing of the motion on October 28, 2010, this Honourable Court requested further information as to the terms of the promissory note and the release of the Equipment to Caterpillar.
20. The Receiver has confirmed that the 3 pieces of equipment released to Caterpillar and referred to in the Tenth Report are more specifically described as follows (collectively, the “**Equipment**”):
 - (a) 1989 Telsmith 36/46 Crusher Jaw, Unit# CR-1, Serial Number 222M7824;
 - (b) 1998 JC 20 ton Float Trailer, Unit# LB-3, Serial Number 2J9C3V5C6WK001248;and

- (c) 2000 Talbert 60 ton Float Trailer, Unit# LB-2, Serial Number 40FWK604XY1019040.
21. With respect to the release of the Equipment to Caterpillar, an Order was granted in the CCAA Proceedings on March 22, 2010 (the “**Equipment Order**”) that set out, among other things, a detailed mechanism for the release of equipment no longer being used by Atcon Construction and other Atcon companies to carry on business to lessors of equipment. A copy of the Equipment Order is attached hereto as **Appendix “C”**.
 22. Pursuant to paragraph 5 of the Equipment Order, once a determination had been made that certain equipment was no longer being used by the applicable Atcon companies to carry on their businesses, EYI in its capacity as Monitor in the CCAA Proceedings was required to issue a certificate confirming that the applicable lessor of equipment was to proceed to take possession, control and management of such equipment. The Equipment Order states that the Monitor had made no assessment of any claims to equipment made by lessors of equipment and was not obligated to conduct an assessment of claims prior to the issuance of an equipment certificate and release of equipment.
 23. In the context of the equipment release mechanism established by the Equipment Order, the Monitor issued to Caterpillar an equipment release certificate dated March 25, 2010 (the “**Caterpillar Certificate**”). A copy of the Caterpillar Certificate is attached hereto as **Appendix “D”**. The Receiver notes that the equipment to be released to Caterpillar listed on Schedule “A” to the Caterpillar Certificate includes equipment related to a “Promissory Note/Security Agreement” identified as Contract 58941, which is discussed in further detail below.
 24. During the hearing of the Receiver’s motions on October 28, 2010, Caterpillar’s counsel confirmed that it would consult Caterpillar and provide additional information as to Caterpillar’s interest in the Equipment.
 25. The Receiver reports that it has obtained the following documents in connection with the Equipment, copies of which are attached hereto as **Appendix “E”**:

- (a) a financing proposal dated April 15, 2008 from Caterpillar to Atcon Construction (the “**Financing Proposal**”);
 - (b) a security agreement dated April 28, 2008 granted by Atcon Construction in favour of Caterpillar (the “**Security Agreement**”); and
 - (c) a promissory note dated May 27, 2008 granted by Atcon Construction in favour of Caterpillar (the “**Promissory Note**”).
26. Pursuant to the terms of the Financing Proposal, Caterpillar offered to provide a term loan to Atcon Construction in the amount of \$1,500,000. As part of the Financing Proposal, Caterpillar indicated that it would take security over certain equipment. As set out in the Financing Proposal, the Equipment is listed as equipment over which Atcon Construction would be required to grant security over in connection with the financing offered by Caterpillar in the Financing Proposal.
27. Pursuant to the terms of the Security Agreement, Atcon Construction granted a security interest in personal property listed in Schedule “A” to the Security Agreement as general and continuing collateral security for the due payment and performance of the Liabilities, which is defined in the Security Agreement to include all present and future indebtedness and liability of Atcon Construction to Caterpillar. The Receiver reports that the Equipment is listed in Schedule “A” of the Security Agreement.
28. Pursuant to the terms of the Promissory Note, Atcon Construction promised to pay to Caterpillar the principal amount of \$1,500,000.
29. As a result, the Receiver understands that Atcon Construction granted a security interest in the Equipment in favour of Caterpillar as general and continuing collateral security for the due payment and performance of all present and future indebtedness and liability of Atcon Construction to Caterpillar. The Receiver further understands that the liabilities secured by the Security Agreement would include amounts owed to Caterpillar under the Promissory Note. Additionally, the Receiver understands that the reference to “Promissory Note/Security Agreement” identified as Contract 58941 in the Caterpillar

Certificate is a reference to the Financing Proposal, the Security Agreement and the Promissory Note.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of November, 2010

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

By: 

Paul D. Hickey, CA•CIRP
Senior Vice President