

**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

**AMENDED AND RESTATED FOURTEENTH REPORT OF THE RECEIVER
(Approval of Suncor Settlement Agreement)
November 30, 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 granted in these proceedings (the “**March 30 Order**”, and the March 30 Order together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver to, among other things:
 - (a) take possession and control of the Property and any and 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 hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies;
 - (d) settle, extend or compromise any indebtedness owing to the Respondents;

- (e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name of and on behalf of any of the Respondents, for any purpose pursuant to this Order;
 - (f) initiate, prosecute and continue the prosecution of any and all proceedings and defend all proceedings now pending or hereafter instituted with respect to any of the Property and to settle or compromise any such proceedings; and
 - (g) engage consultants, appraisers, agents and experts, among other persons, to assist with the exercise of the Receiver's powers and duties.
3. The purpose of this Amended and Restated Fourteenth Report (the "**Fourteenth Report**") is to report to this Honourable Court on the status of matters relating to Suncor (as defined below) and recommend that this Honourable Court grant an Order authorizing and approving the execution of the Suncor Settlement Agreement (as defined below) by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement, and authorizing and empowering the Receiver to utilize the Suncor settlement amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

4. In preparing this Fourteenth 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 Fourteenth Report or relied upon by the Receiver in preparing this

Fourteenth 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 Fourteenth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Fourteenth 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).

SUNCOR

Background

8. Pursuant to the terms of the Highway 63 Interchange Engineering, Procurement and Construction, Multiple Use Contract No. 4600004026 with an effective date of August 11, 2006 between Atcon Construction and Suncor Energy Oil Sands Limited Partnership ("**Suncor LP**") (the "**Suncor Contract**"), Atcon Construction was engaged by Suncor LP to provide certain engineering, procurement and construction materials and services in respect of the construction of roadway infrastructure improvements at Highway # 63, which is adjacent to the Suncor oil sands operations located north of Fort McMurray, Alberta (the "**Suncor Project**").
9. The services to be performed by Atcon Construction under the Suncor Contract pertained to the construction of an interchange between Highway # 63 and the Voyageur Oil Sands access road, a bridge structure carrying the access road over Highway # 63 and related loop roads, ramps and service roads on and adjacent to the interchange.

Commencement of the Action re Suncor Contract

10. The Receiver understands, based on its discussions with certain former employees of Atcon Construction, that there were a number of disputed billing issues between Atcon

Construction and Suncor LP in connection with the services provided by Atcon Construction under the Suncor Contract.

11. As a result, on May 14, 2009, Atcon Construction, as plaintiff, commenced an action by way of statement of claim against Suncor LP, Suncor Energy Inc. and Suncor Energy Services Inc. (collectively, “**Suncor**”), as defendants, with the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary, bearing Action Number 0901-07234 (the “**Action**”). Attached hereto and marked as **Appendix “A”** is a copy of the Atcon Construction statement of claim dated May 14, 2009 that was issued in the Action.
12. Following the commencement of the Action, the Receiver understands that a number of without prejudice meetings, discussions and correspondence occurred between Atcon Construction and Suncor from June 2009 to September 2009 in an attempt to resolve the outstanding issues with respect to the Suncor Contract to each party’s mutual satisfaction.
13. The Receiver understands that, by early October 2009, the outstanding issues had not been resolved by Suncor and Atcon Construction and the without prejudice discussions had reached an impasse. As a result, at the time of the commencement of these proceedings with respect to Atcon Construction in March 2010, the outstanding issues with respect to the Suncor Contract and the Action had not been resolved.

Commencement of Receivership Proceeding

14. Following the commencement of these proceedings, and in accordance with the Receiver’s authority to collect all monies and accounts owed to Atcon Construction under paragraph 3(g) of the Receivership Order, the Receiver sent a letter to Suncor dated April 9, 2010 demanding payment of the amount owed by Suncor to Atcon Construction, based on the books and records of Atcon Construction.
15. In a written response dated April 29, 2010, counsel to Suncor notified the Receiver that Suncor’s position was that no amounts were owed by Suncor to Atcon Construction. Suncor’s counsel confirmed that Suncor disputed the allegations made by Atcon Construction in the Action and would, if required, aggressively defend the lawsuit. Suncor’s counsel also confirmed that it expected to file a counterclaim seeking set off of

any amounts alleged to be owing to Atcon Construction and seeking additional damages against Atcon Construction relating to breach of contract issues with respect to the Suncor Contract.

16. The Receiver retained Gowling Lafleur Henderson LLP (“**Gowlings**”), legal counsel to Atcon Construction with respect to the Suncor Contract and the Action, as its legal counsel with respect to the Action. The Receiver also engaged certain former employees of Atcon Construction to assist the Receiver in matters relating to the Suncor Contract and the Action.
17. Following its discussions with former Atcon Construction employees and Gowlings, the Receiver instructed Gowlings to commence without prejudice discussions with counsel to Suncor regarding matters relating to the Action and the Suncor Contract.

Settlement of the Action

18. The Receiver reports that, as a result of the without prejudice discussions, a settlement of the Action has been reached between the Receiver and Suncor, subject to the Receiver obtaining this Honourable Court’s approval of the settlement. Attached hereto and marked as **Appendix “B”** is a redacted copy of the settlement agreement and release effective November 10, 2010 between the Receiver and Suncor (the “**Suncor Settlement Agreement**”).
19. The Suncor Settlement Agreement provides that, subject to the approval of this Honourable Court:
 - (a) Suncor will pay to the Receiver an agreed upon settlement amount and will release the Receiver and Atcon Construction with respect to all potential claims held by Suncor in connection with the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action; and
 - (b) in consideration of receipt of the settlement amount, the Action will be dismissed by the Receiver and the Receiver, and Atcon Construction by the Receiver, will release Suncor in connection with all potential claims held by the Receiver and

Atcon Construction with respect to the Suncor Project, the Suncor Contract and matters alleged by Atcon Construction in the Action.

20. The Receiver reports that an unredacted copy of the Suncor Settlement Agreement will be provided to the Court as an appendix to a supplemental report prior to the hearing of the motion scheduled for December 3, 2010 (the “**Supplemental Report**”).
21. The Receiver will be seeking a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents’ stakeholders and to the successful completion of the Action in the event that the Suncor Settlement Agreement is not approved by this Honourable Court.
22. The Receiver is in a position to publicly report that it is of the view that the Suncor Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Action and the Suncor Contract, on the basis that:
 - (a) the Bank and the Province of New Brunswick, which the Receiver understands to be the parties that likely have the priority proprietary interests in any amounts recovered by the Receiver in connection with the Action and the Suncor Contract, each concur with the terms of the Suncor Settlement Agreement and the quantum of the settlement amount to be paid by Suncor;
 - (b) Gowlings, the Receiver’s legal counsel with respect to the Action, and formerly Atcon Construction’s counsel with respect to the Action, has recommended that the Receiver accept the settlement set out in the Suncor Settlement Agreement; and
 - (c) in the event that the Suncor Settlement Agreement is not approved by this Honourable Court, time consuming and costly litigation would be necessary to resolve the issues between the parties, perhaps in the Provinces of New Brunswick and Alberta, and there is no guarantee that the Receiver would be successful in realizing as much or more for the Atcon Construction receivership

estate as it will pursuant to the Suncor Settlement Agreement as a result of such litigation.

23. As a result of the foregoing, and the information provided to the Court in the Supplemental Report, the Receiver recommends that this Honourable Court approve the Suncor Settlement Agreement.

RELIEF SOUGHT BY THE RECEIVER

24. The Receiver respectfully requests that this Court grant an order authorizing and approving the execution of the Suncor Settlement Agreement by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Suncor Settlement Agreement, and authorizing and empowering the Receiver to utilize the Suncor settlement amount for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th 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