

**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
TWENTIETH REPORT OF THE RECEIVER
August 4, 2011**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia 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 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; and
 - (b) Atcon Construction Inc., 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.
2. The Receivership Order authorized the Receiver to, among other things:
 - (a) settle, extend or compromise any indebtedness owing to the Respondents; and
 - (b) 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 and on behalf of any of the Respondents, for any purpose pursuant to the Receivership Order.
3. The purpose of this Supplement to the Twentieth Report (the "**Supplemental Report**") is to provide information to this Honourable Court on an agreement that has been reached between Bryce, MAC and the Receiver to settle any outstanding matters between the parties in connection with the Bryce Lease (as defined below) and the proposed sale of the Airport Hanger to MAC.

TERMS OF REFERENCE

4. 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.
5. All references to monetary amounts in this Supplemental Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Supplemental Report are as defined in the Twentieth Report.
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).

SETTLEMENT WITH BRYCE HOLDINGS INC.

8. As described in greater detail in the Twentieth Report, the Receiver and MAC entered into an agreement of purchase and sale with respect to an Airport Hanger on April 13, 2011. The sale is conditional on:
 - (a) the Receiver obtaining Court approval of the sale transaction, and

- (b) the nullification of the lease dated December 1, 2010 between Bryce and MAC (the “**Bryce Lease**”).
9. The Receiver was initially unable to obtain an acknowledgement from Bryce that the Bryce Lease was of no force and effect. Accordingly, on July 22, 2011, the Receiver served its Twentieth Report and Notice of Motion on the service list requesting an Order, *inter alia*, authorizing and approving the sale of the Airport Hanger to MAC and declaring that the Bryce Lease is void and of no force or effect.
10. Subsequent to service of the Twentieth Report, the Receiver was advised by Dale Mattinson of MAC that an agreement had been reached with Bryce pursuant to which Bryce would be prepared to acknowledge that the Bryce Lease is void and of no force and effect. The Receiver reviewed the terms of the proposed tri-partite agreement and concluded that entering into such an agreement would be in the best interests of the stakeholders of Atcon Logistics.
11. On July 26, 2011, the Receiver wrote a letter to MAC and Bryce to confirm the terms of the proposed agreement (the “**Settlement Letter**”). The essential terms of the agreement are as follows:
- (a) Bryce confirms that the Bryce Lease is null and void and of no force and effect;
 - (b) Bryce will not oppose the Receiver’s motion, returnable August 15, 2011, for approval of the sale of the Airport Hanger to MAC;
 - (c) MAC will pay the sum of \$5,000 to Bryce in connection with its legal fees;
 - (d) MAC confirms that the condition of sale relating to the nullification of the Bryce Lease has been satisfied or waived;
 - (e) The Receiver confirms that it will not pursue Bryce for any damages under or in connection with the Agreement of Purchase and Sale dated November 12, 2010 between Bryce and the Receiver (the “**Bryce APS**”); and
 - (f) The Receiver will release to Bryce the \$1,000 deposit that it holds in connection with the Bryce APS.
12. The Settlement Letter was accepted by MAC on July 27, 2011 and by Bryce on August 2, 2011. A copy of the Settlement Letter, executed in counterparts by each of the parties, is attached hereto as **Appendix “A”**.

13. As a consequence of the agreement reached with Bryce and MAC, the Receiver does not expect to pursue its request for a declaration from this Honourable Court that the Bryce Lease is void and of no force or effect when the Receiver attends on the motion for approval of the sale of the Airport Hanger to Bryce on August 15, 2011.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of August, 2011

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

By:

A handwritten signature in black ink, appearing to be 'G. Kinsman', written over a horizontal line.

George C. Kinsman, CA•CIRP
Senior Vice President