

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

**ATLAS BLOCK CO. LIMITED, ATLAS BLOCK (BROCKVILLE) LTD. and
1035162 ONTARIO INC. o/a ATLAS BLOCK TRUCKING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER
SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985 c. B-3**

**FOURTH REPORT TO THE COURT
SUBMITTED BY KPMG INC.,
IN ITS CAPACITY AS RECEIVER OF**

**ATLAS BLOCK CO. LIMITED
ATLAS BLOCK (BROCKVILLE) LTD. AND
1035162 ONTARIO INC.**

February 10, 2014

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1.0 INTRODUCTION AND PURPOSE

1.1 Introduction

- 1.1.1** Atlas Block Co. Limited (“Atlas Block”), Atlas Block (Brockville) Ltd. (“Atlas Brockville”) (collectively “Atlas” or the “Company”) and 1035162 Ontario Inc. o/a Atlas Block Trucking are a family-owned group of companies that manufacture a range of brick and concrete building and landscaping products including paving stones, masonry, concrete brick and concrete veneers and concrete blocks. Atlas products are sold directly to industrial and commercial construction contractors, residential builders, brick layers and homeowners, as well as through a dealership network throughout Ontario, Michigan and New York State.
- 1.1.2** Atlas Block was formed by the amalgamation of the similarly-named Atlas Block Co. Limited, 1204453 Ontario Inc. and 1204454 Ontario Inc., pursuant to the Ontario Business Corporations Act (the “OBCA”) on January 1, 2006. Atlas Block is owned by Donald Gordon and his children, Laura Vaughan and Paul Gordon.
- 1.1.3** Atlas Brockville is a wholly-owned subsidiary of Atlas Block, formed by the amalgamation of the similarly-named Atlas Block (Brockville) Ltd., and 1045937 Ontario Inc., pursuant to the OBCA, on January 1, 2007.
- 1.1.4** Atlas Block Trucking was incorporated pursuant to the OBCA on December 1, 1993. Atlas Block Trucking is owned by Donald Gordon and Laura Vaughan. Atlas Block Trucking formerly provided trucking services to Atlas Block and Atlas Brockville, but its assets and operations were sold and Atlas Block Trucking is now essentially a shell corporation.
- 1.1.5** Atlas’ head office was located at 15288 Highway 12, Midland, Ontario. Atlas Block operated a concrete product manufacturing plant from the same premises as the head office, and a much larger manufacturing plant located at 2108 Flos Road 4 East, Hillsdale, Ontario (the “Hillsdale Plant”) as well. Each location also had a large yard for storage of inventory and a small warehouse and retail store facilities. Atlas Brockville operated a manufacturing plant from premises located at 3007 County Road 29, Brockville, Ontario but the plant was shut down at the beginning of September 2013. Atlas Brockville maintained inventory at its yard and retail store facilities at the same premises. All premises are owned by Atlas.
- 1.1.6** According to a report obtained by RBC from Atlas on July 15, 2013, Atlas was in default of certain financial covenants under the Forbearance Agreement as at June 30, 2013 and therefore was in breach of the Forbearance Agreement. Accordingly, on July 16, 2013 RBC’s counsel issued a notice of default under the Forbearance Agreement to Atlas advising, among other things, that the forbearance period had terminated. On August 6, 2013 RBC filed an application for the appointment of a receiver (the “Application”).
- 1.1.7** At about the time RBC filed the Application, Atlas informed RBC, and its other secured lenders, that its new consultant was very close to refinancing its debts with a new lender and that the new lender was performing its due diligence. RBC agreed to adjourn the Application awaiting the results of the new lender’s due diligence. On or about the last week of September, 2013 RBC was informed that the refinancing of Atlas’ debts would not be completed. Accordingly, RBC brought the Application forward on October 4, 2013.

1.1.8 On October 4, 2013, the Honourable Justice Brown of the Ontario Superior Court of Justice, issued an order (the “Appointment Order”) appointing KPMG Inc. as receiver of Atlas (the “Receiver”).

1.1.9 On November 20, 2013, the Receiver filed the first court report in respect of Atlas (the “First Report”). The First Report dealt entirely with the claims of Holcim (Canada) Inc. (“Holcim”) and G. Tackaberry & Sons Construction Co. Ltd. (“Tackaberry”). A copy of the First Report, without appendices, is attached as **Appendix A**. Since the filing of the First Report, the Receiver has also filed two other reports primarily dealing with the Receiver’s operations and sale of Atlas assets and the distribution of the sale proceeds.

1.2 Purpose of the Receiver’s Fourth Report

1.2.1 This constitutes the Receiver’s **Fourth Report** to the Court in this matter and is filed to provide additional information in the context of the Receiver’s application for advice and direction in respect of the construction lien and/or trust claims of Holcim and Tackaberry.

2.0 TRACEABILITY OF PRODUCTION INPUTS AND FINISHED GOODS INVENTORY

- 2.1** As described in the First Report, Holcim supplied bulk loads of cement powder to all three of Atlas' production facilities (the "Holcim Product"). The Holcim Product had no specific identifying markings nor could it in any way be otherwise differentiated from one shipment to the next. The Holcim Product was used in the production of all of Atlas' manufactured products and there is no way to determine which particular shipment of Holcim Product was incorporated into any particular product.
- 2.2** Similarly, Tackaberry supplied aggregates (the "Tackaberry Product") only to the Brockville plant, which shut down at the beginning of September, 2013. The Tackaberry product was incorporated into all of the products produced at the Brockville plant. The Tackaberry Product did not have any distinguishing markings and could not in any way be differentiated from one shipment to the next. There is no way to determine which Tackaberry Product was incorporated into any particular Atlas finished goods.
- 2.3** Also as described in the First Report, Atlas produced finished goods for inventory and not for specific customer orders. Accordingly, production was based on estimated demand trends and not specific customer requests. Thus, shipment of product to customers was based on what was in the yard at the time of a customer's phone call and not specific production runs. In addition, inventory produced was generic and did not have any identifying markings such as serial numbers on an item by item basis.
- 2.4** In addition, not all Atlas inventory items contained Holcim Product or Tackaberry Product as many of Atlas' inventory items were purchased from third party suppliers and resold by Atlas to its customers.
- 2.5** Holcim filed the affidavit of Shawn Arnold dated January 17, 2014 (the "Arnold January Affidavit"). A copy of the Holcim January Affidavit is attached as **Appendix B**. In the Holcim January Affidavit at paragraph 10, Holcim states "Atlas' accounting program could trace the products supplied to a specific construction project". This statement could be misinterpreted. Atlas' accounting system can trace the **type** of product delivered to a construction project but not a **specific** block produced on a specific date. The Atlas accounting system can indicate that a certain quantity of a certain type of inventory item was shipped but that is all. Atlas' accounting system cannot verify if the Holcim product included in those inventory items, if any, was already paid for or not or which specific Holcim Product was used to make that inventory item.
- 2.6** At paragraph 14 (a) of the Holcim January Affidavit, Holcim states "for each product Atlas sold there was a unique product number and description". This statement could also be misinterpreted. Each of Atlas' inventory types had a specific product code. For example, all cement blocks that were 20 cm in width were included in the "BL20" product code but there were millions of these blocks produced and one block could not be specifically identified from another block. Each individual block did not have its own product number or description.
- 2.7** In paragraphs 23 through 82 of the Holcim January Affidavit, Holcim states that they have "been able to identify the following information related to the supply by Atlas of material containing Holcim's cement powder to specific construction projects". The Receiver reviewed the specific invoices of several of these projects and determined that significant portions of the billings for these projects were for products that were purchased and resold by Atlas and therefore had no Holcim cement content in them. In fact, those projects that Holcim indicated were supplied

“mainly bricks” by Atlas had no Holcim cement content as the bricks were purchased by Atlas directly from Hanson Brick and Hanson Brick delivered the bricks directly to the construction site. In addition, the majority of invoices include charges for freight, skids, an environmental charge and HST. Many invoices related to the resale of angle iron, veneers and sills purchased from third parties and brought into Atlas’ general inventory but not delivered to the construction sites directly. Thus, the construction receivable figures used in the Holcim January Affidavit are not specifically related to the Holcim Product and therefore not traced or linked to the Holcim Product directly at all.

- 2.8** Atlas’ invoices and shipping documents do not indicate when the product that is being sold was produced. A sample of an invoice and shipping document is attached as **Appendix C**. Therefore, the inventory items cannot be traced to a specific production date or purchase date and therefore there is no way to know if the components that make up the items being sold have been paid for or not.
- 2.9** Holcim filed an affidavit dated November 29, 2013 (the “Holcim November Affidavit”), a copy of which is attached as **Appendix D**. In paragraph 21 of the Holcim November Affidavit, Holcim states that “Atlas had approximately \$3,500,000 in accounts receivable for sales to third party project contractors”. The Receiver has not been able to determine the exact amounts in Atlas’ accounts receivable that relate to specific construction projects. However, the Receiver was informed by Atlas’ management that approximately 50% of the outstanding accounts receivable of approximately \$4.8 million related to construction projects. Accordingly, the accounts receivable figure of \$3.5 million appears overstated. The specific construction projects listed in the Holcim January Affidavit total approximately \$1.95 million. This amount is more consistent with the estimate of 50% of the outstanding accounts receivable.
- 2.10** As noted above, as at the date of the Receiver’s appointment, Atlas’ had approximately \$4.8 million in outstanding accounts receivable due from approximately 500 customers. As at January 15, 2014, the Receiver had collected approximately \$3.6 million, or 75%, of those outstanding receivables.
- 2.11** It does not appear that there is any way to directly trace a specific supply by Holcim or Tackaberry to a specific inventory item (such as a specific block produced). In addition, there does not appear to be a way to trace a specific inventory item (such as a specific block produced) to a specific construction project. The figures included in the Holcim November Affidavit and the Holcim January Affidavit are based on Holcim’s estimates and supposition and not direct tracing of the Holcim Product.

3.0 CEMENTITIOUS CONTENT OF PRODUCTS

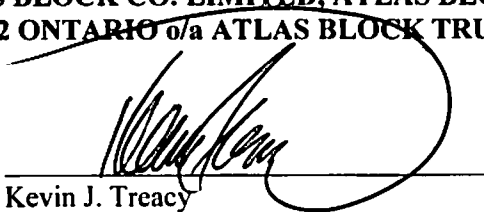
- 3.1** In the Holcim January Affidavit in paragraph 16, Holcim indicates that 47.5% of the cost of Atlas' production of all manufactured items (including blocks, landscape products, pavers and veneers) is cement powder. However, the remainder of the paragraph goes on to indicate that the cementitious content of various Atlas blocks vary depending on the type of block and some blocks only have a 33.3% cementitious content.
- 3.2** In paragraphs 24 through 82 of the Holcim January Affidavit, Holcim indicates that a significant quantity of the construction projects listed received "mainly LTWT" product", which is light weight block. As set out in paragraph 16 of the Holcim January Affidavit, Holcim states that the cementitious content of a light weight block is between 33.3% and 35.3%, which is substantially different from the average of 47.5% Holcim has used to calculate its estimate of its claim.

4.0 CONCLUSION

- 4.1 The Receiver respectfully submits this **Fourth Report** to this Court in support of the Receiver's motion for advice and direction with respect to the claims of Holcim and Tackaberry.

All of which is respectfully submitted this 0th day of February, 2014.

KPMG INC.
COURT-APPOINTED RECEIVER OF
ATLAS BLOCK CO. LIMITED, ATLAS BLOCK (BROCKVILLE) LTD. and
1035162 ONTARIO o/a ATLAS BLOCK TRUCKING


Per: Kevin J. Treacy
Senior Vice President