

**ONTARIO  
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TIMMINCO LIMITED AND  
BÉCANCOUR SILICON INC.

Applicants

**AFFIDAVIT OF  
J. THOMAS TIMMINS  
(Sworn May 14, 2012)**

I, J. Thomas Timmins, of the Village of North Barrington, in the State of Illinois, U.S.A., MAKE OATH AND SAY:

1. I am the counterparty to an agreement made with Timminco Limited as of September 19, 1996 as amended by way of a letter agreement dated May 28, 2001 (collectively, the "**Consulting Agreement**"). As such I have personal knowledge of the matters to which I depose herein. To the extent that I do not have personal knowledge, I verily believe the information to which I depose.

**Background**

2. I am the former Chief Executive Officer of Timminco Limited ("**Timminco**"). I have been associated with Timminco and its predecessor companies since the late 1950's. I have broad experience in the North American and international

metal markets having held positions in operations, sales, marketing and general management.

3. I resigned my position as Timminco's Chief Executive Officer on May 28, 2001 but remained on as a director of Timminco until mid 2007 at which time I resigned from the board of Timminco and then sold all of my remaining equity interests in Timminco.

4. This affidavit is sworn in response to the Applicant's cross-motion for an order declaring that Timminco's obligations under the Consulting Agreement constitute pre-filing obligations.

#### **The Consulting Agreement**

5. A copy of the Consulting Agreement is attached as Exhibits "A" and "B" to my affidavit filed in these proceedings and sworn on April 12, 2012 (the "**April 12 Affidavit**") which affidavit is contained at Tab 2 to my motion record and notice of motion dated April 12, 2012 served in response to Timminco's notice of disclaimer of the Consulting Agreement pursuant to Section 32 of the *Companies' Creditors Arrangement Act* (the "**CCAA**").

6. It is important to note that one of my obligations under the Consulting Agreement contained at Section 2 thereof, is that I "shall, whenever from time to time requested by [Timminco], and within the limits from time to time of [my] physical and other abilities, to consult with [Timminco] and advise [Timminco] on matters relating to its business and affairs; ..." [emphasis added]

7. Accordingly, it was always technically incumbent upon Timminco to request such services from me upon which I then had the obligation to provide such services pursuant to the terms of the Consulting Agreement.

8. Section 5 of the Consulting Agreement also contains a broad and continuing non-compete obligation and non-disclosure obligation.

**Consulting and Advising on Matters Relating to Timminco's Business and Affairs**

9. As stated in the April 12 Affidavit, whether or not formally requested to do so by Timminco, I did in fact consult and advise Timminco on matters relating to its business and affairs up until my resignation as a director of Timminco in 2007 and I remain willing to do so today.

10. In particular, I had a number of private conversations with Dr. Schimmelbusch, particularly in the early period of his term as CEO of Timminco. These conversations addressed topics ranging from organization and personnel matters, competition and pricing aspects, marketing, and research and development initiatives.

11. I also, as an example, introduced him to a major outside shareholder over lunch in June 2003 in Toronto and, in July 2003, accompanied him to Saltzgitter, near Hannover, Germany, to introduce him to senior executives of Saltzgitter A.G., a large German steel manufacturer that was then working on a pioneering project for the production of flat-rolled magnesium sheet. Saltzgitter A.G. was a significant potential customer for Timminco at the time.

12. I also travelled to Philadelphia a number of times to meet with him, and several times in Toronto, to discuss a considerable variety of issues related to Timminco's business and affairs.

13. These are just a few examples. Given more time, I could likely come up with a number of additional specific examples.

**Consulting Agreement is Not a Retirement Benefit**

14. Just because the Consulting Agreement became effective upon the date of my resignation as Timminco's CEO does not make it a termination or retirement benefit.

15. Indeed, the preamble to the Consulting Agreement, which was entered into five years before my resignation, clearly states otherwise. It was an agreement to ensure that my knowledge and experience remained available to Timminco following the end of my employment by Timminco and to ensure that I would not engage in activities which were competitive with Timminco's business which I certainly could have done through my investment company, Timmins Investments Limited. This has always been my understanding of the intent of the Consulting Agreement.

16. Indeed, while the letter agreement dated May 28, 2001 did deal with a number of termination of employment issues, it specifically did not amend the original 1996 agreement other than to simply fix the monthly payment amount.

17. In fact, there were no pension or retirement benefits for me to forego at the time of my resignation. The pension plan in which I had participated in prior to my resignation was terminated and wound up in 1998 with lump-sum entitlements paid out.

**DIP Agreement**

18. I was never served with the notice of motion to approve the DIP Agreement as referred to in Mr. Kalin's affidavit sworn May 7, 2012.

19. I find it astonishing for Mr. Kalins to say that Timminco can choose to ignore the provisions of Section 32 of the CCAA by simply taking the position that amounts continuing to be owed under the Consulting Agreement are pre-filing amounts and, on that basis, not provide for them in cash flows and a DIP Agreement approved by this Court, without notice to me, and then be able to say that even if such amounts are post filing amounts they cannot be paid as a result of being a breach of such DIP Agreement because Timminco failed to put them in the cash flows. This cannot be right.

**Claim Amount**

20. On the day of filing my April 13 Affidavit, I received a quote from Manulife Investments for the value of an annuity which would pay out the equivalent monthly consulting fee payment (before tax) from May 1, 2012 onward until my death. This quote values the annuity at approximately \$2.6 million. A copy of this quote is attached hereto as Exhibit "A".

SWORN BEFORE ME in  
the City of Chicago, in the  
State of Illinois, this 14  
day of May, 2012

Sharon Toenies

Notary Public

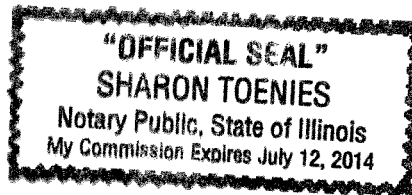
J. Thomas Timmins

J. Thomas Timmins



This is Exhibit "A"  
referred to in the Affidavit of  
J. Thomas Timmins  
sworn before me  
this 14 day of May, 2012

*Sharon Toenies*  
\_\_\_\_\_  
Notary Public



**Immediate Annuity Quote****Annuitant Primary Life**

Name: Valued Client  
Sex: Male  
Date of Birth: 9-Mar-1931

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**Deposit**      **Premium Amount:**                      **\$2,556,073.72**  
Rate Effective Date:                      12-Apr-2012  
Purchase Date:                              12-May-2012

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**Annuity Details**      Annuity Type:                              Single Life  
Tax Status:                                  Non-Registered (Prescribed)  
Unreported Interest Gains:                      \$0.00  
Source of Funds:                              External  
**Income Amount:**                              **\$20,833.00 Monthly**  
Annual Taxable Portion:                      \$0.00  
Income Start Date:                              1-Jun-2012  
  
Index Rate                                      0.00%  
  
Return of Premium                              Yes  
ROP Interest Rate                              0.00%  
Guaranteed Period                              3 years, 0 months

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Contracts cannot be changed or surrendered.  
Quotations are only valid for April 12, 2012  
This quotation assumes that all aspects of it comply with any applicable pension benefit legislation.

The taxable portions illustrated are based on our understanding of the current Income Tax Act and may be subject to change.

If this is non-registered, the annual taxable portion shown assumes this is a Prescribed Annuity, however current tax rules may disqualify this tax treatment.  
A Non-prescribed Tax Ledger can be supplied upon request.

The following quote(s) are for illustrative purposes only and are not binding for sales purposes. When funds are available for deposit by close of the business day please advise and firm quote(s) can be provided.

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**Developed for:**

Quotation(s) are only valid on the date prepared  
Prepared On: April 12, 2012  
Reference #: KP12041410

**Presented by:**

Tel:  
Fax:  
Email:

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R.S.C. 1985, c. C-36  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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Court File No. 12-CL-9539-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF J. THOMAS TIMMINS  
(Sworn May 14, 2012)**

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