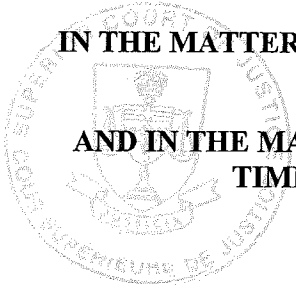


ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

THE HONOURABLE )  
)  
JUSTICE MORAWETZ )

*THURSDAY*  
~~WEDNESDAY~~, THE 10<sup>th</sup> DAY OF  
OCTOBER 2012



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

**ORDER**  
**(Approval of Priority Claim Adjudication Protocol)**

This Motion, made by Investissement Québec for an order approving the Priority Claim Adjudication Protocol and referring the adjudication of the BSI Pension Reimbursement Claims to the Superior Court of Québec (Commercial Division) was heard this day at 330 University Avenue, Toronto, ON.

On the consent of counsel for Timminco Limited and Bécancour Silicon Inc., FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco entities, Investissement Québec, Mercer Canada, the administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") and BSI Union and Non-Union employee Pension Committees:

1. **THIS COURT ORDERS** that the Priority Claim Adjudication Protocol, attached hereto as Schedule "A", be and the same is hereby authorized and approved.
2. **THIS COURT ORDERS** that the adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims, all as defined in the attached Priority Claim Adjudication Protocol, be and the same is hereby referred exclusively to the Superior Court of Québec (Commercial Division) to be determined in accordance with the Priority Claim Adjudication Protocol.
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of the Superior Court of Québec (Commercial Division) to give effect to this order and to adjudicate whether the BSI Pension Reimbursement Claims constitute Priority Claims in accordance with the terms of the Priority Claims Adjudication Protocol.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

*[Handwritten Signature]*

OCT 19 2012

**SCHEDULE "A"**

Court File No. CV-12-9539-00CL

**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

**PRIORITY CLAIM ADJUDICATION PROTOCOL**

**A. OVERVIEW**

1. In accordance with the Reimbursement Agreement (the "**Reimbursement Agreement**") among Investissement Québec ("**IQ**"), FTI Consulting Canada Inc., as court-appointed Monitor, and Bécancour Silicon Inc., dated August 28, 2012 and the August 28, 2012 Interim Distribution Order (the "**Interim Distribution Order**")<sup>1</sup>, two (2) sets of claims have been designated as Reimbursement Claims, namely:

- (i) a claim on behalf of Mercer Canada ("**Mercer**"), as administrator of the Haley Pension Plan, and on behalf of the beneficiaries of that plan (the "**Mercer Reimbursement Claim**"), which claim is supported by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("**USW**"); and
- (ii) a claim by Le Comité de retraite du Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc. and a claim by Le Comité de retraite du Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (collectively the "**BSI Pension Committees**") (the "**BSI Pension Reimbursement Claims**").

2. IQ disputes that the above Reimbursement Claims have priority over the IQ Security and the parties do not anticipate the dispute will be resolved through the consented resolution process

---

<sup>1</sup> Unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Reimbursement Agreement and the Interim Distribution Order.

provided for in the Interim Distribution Order. Accordingly, an adjudication is required to determine whether such Reimbursement Claims constitute Priority Claims.

The following is the protocol for the adjudication of whether the Reimbursement Claims constitute Priority Claims.

## **B. THE MERCER REIMBURSEMENT CLAIM**

1. The Mercer Reimbursement Claim shall be adjudicated by way of a motion before this Court wherein Mercer and USW will be the moving parties and IQ will be the respondent. If at any time Mercer shall cease the prosecution of the Mercer Reimbursement Claim, the USW shall be entitled to prosecute the Mercer Reimbursement Claim in the place and stead of Mercer.

As issues to be adjudicated regarding the Mercer Reimbursement Claim (such as, by way of example, substantive consolidation) may impact on other stakeholders of BSI or Timminco, the motion material hereafter described shall be served on the service list herein. Any creditor of the Timminco Entities or the Monitor, or the Timminco Entities themselves (“**Interested Stakeholders**”) shall have the right to file material and participate in the motion proceedings in accordance with the following timetable:

- (i) Mercer and USW, if so advised, will deliver moving party motion material by October 29, 2012;
- (ii) IQ and Interested Stakeholders, if any, shall deliver responding material by November 30, 2012;
- (iii) Mercer and USW will deliver reply material, if so advised, by December 17, 2012;
- (iv) cross-examinations on filed affidavits, if required, will be conducted during the week of January 13, 2012. During this period, the examination of Peter Kalins, (a former officer and director of Timminco and BSI) as a witness to the motion, shall be conducted if consented to by Peter Kalins or if an appropriate court order has been obtained;
- (v) Mercer and USW, if so advised, will deliver moving party’s facts by January 25, 2013;
- (vi) IQ and any Interested Stakeholders will deliver responding facts by February 13, 2013;
- (vii) Mercer and USW will deliver reply facts by February 20, 2013, if so advised; and
- (viii) the hearing of the motion will take place during the week of February 25, 2013.

2. In determining whether the Mercer Reimbursement Claim constitutes a Priority Claim, the determination of the quantum of such Priority Claim shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

### **C. THE BSI PENSION REIMBURSEMENT CLAIMS**

1. The adjudication of whether the BSI Reimbursement Claims constitute Priority Claims shall be referred exclusively to the Superior Court of Québec (Commercial Division) wherein the BSI Pension Committees will be the moving parties and IQ will be the respondent in accordance with the following timetable:

- (i) the BSI Pension Committees shall deliver their motion to institute proceedings within 60 days after the Order is made referring this matter to the Superior Court of Québec (Commercial Division);
- (ii) IQ and any Interested Stakeholders shall deliver their Statement of Defence within 30 days after receipt of the motion to institute proceedings;
- (iii) the BSI Pension Committees shall have up to 30 days after receipt of the IQ defence to deliver their response, if any;
- (iv) examinations, if necessary, are to be conducted by January 11, 2013;
- (v) written arguments and joint books of procedure and exhibits shall be delivered at least 2 weeks before the hearing of the motion; and
- (vi) the hearing of the motion is to be scheduled between February 18, 2013 and March 15, 2013 based upon a 1-2 day hearing.

For greater certainty, any appeal from an order of the Superior Court of Québec (Commercial Division) herein shall be to the Court of Appeal of Québec.

2. In determining whether the BSI Reimbursement Claims constitute Priority Claims, the determination of the quantum of such Priority Claims shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

### **D. MONITOR'S REPORT**

1. The Monitor, if it deems it necessary and appropriate to do so, may file a report with the court in connection with adjudication of either Reimbursement Claim.

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

Court File No. CV-12-9539-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List  
Proceedings commenced at  
TORONTO**

**ORDER**  
(Approval of Priority Claim Adjudication Protocol)

**Fasken Martineau DuMoulin LLP**  
Barristers and Solicitors  
Patent and Trade-mark Agents  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Aubrey E. Kauffman (LSUC: 18829N)**

Tel: 416 868 3538  
Fax: 416 364 7813

Lawyers for Investissement Québec

**CITATION:** Timminco Limited (Re), 2012 ONSC 5959  
**COURT FILE NO.:** CV-12-9539-00CL  
**DATE:** 20121018

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

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

**RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants**

**BEFORE: MORAWETZ J.**

**COUNSEL: S. J. Weisz, for FTI Consulting Canada Inc., in its capacity as court-  
appointed Monitor of the Timminco Entities**


**HEARD: OCTOBER 18, 2012**

**ENDORSEMENT**

[1] On consent of Timminco Limited and Bécancour Silicon Inc., FIT Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco Entities, Investissement Québec, Mercer Canada, the Administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) and BSI Union and Non-Union Employee Pension Committees, the Priority Claim Adjudication Protocol is approved. The adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims is referred to the Superior Court of Québec (Commercial Division) to be determined in accordance with the terms of the Priority Claims Adjudication Protocol.

[2] This determination has been made pursuant to s. 17 of the CCAA, and I express my thanks, in advance, to the Superior Court of Québec.

[3] To the extent leave is required to proceed, such leave is granted.

  
MORAWETZ J.

**Date:** October 18, 2012