

**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 SEAN DUNPHY  
(Sworn August 31, 2012 re Interim Distribution)**

I, SEAN DUNPHY, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the President of Russell Hill Advisory Services Inc. ("**Russell Hill**"), the Court-appointed Chief Restructuring Officer ("**CRO**") of Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**" or the "**Applicants**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is supplementary to the affidavit sworn by me on August 23, 2012 (the "**August 23 Affidavit**")<sup>1</sup> and is sworn in connection with the Timminco Entities' motion for an Order substantially in the form of the draft Order included in the Motion Record at Tab 3 authorizing and directing the Monitor make the Interim

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<sup>1</sup> All capitalized terms used herein but not otherwise described shall have the meaning attributed to them in the August 23 Affidavit.

Distribution to Investissement Québec (“IQ”) in accordance with the provisions of the agreement dated August 28, 2012 between BSI, IQ and the Monitor (the “**Reimbursement Agreement**”).

## **ASSET SALE<sup>2</sup>**

3. Substantially all of BSI’s operating assets have been sold pursuant to sales transactions with Grupo FerroAtlantica, S.A. (the “**Ferro Transaction**”) and with QSI Partners Ltd. (“QSI”) (the “**QSI Transaction**” and together with the Ferro Transaction, the “**Sale Transactions**”). The Ferro Transaction was approved by the Court on May 22, 2012 and closed on June 14, 2012 and the QSI Transaction was approved by the Court on June 1, 2012 and closed on June 13, 2012. The net proceeds of the Sale Transactions totalled approximately \$30 million.

4. The QSI Transaction was entered into pursuant to an agreement of purchase and sale dated April 25, 2012, as amended by the amending agreement dated June 1, 2012 (together, the “**QSI Agreement**”). A copy of the QSI Agreement is attached hereto as **Exhibit “B”**.

### ***Purchase Price and Post-Closing Adjustments***

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<sup>2</sup> Further information about the sale of BSI’s assets is described in greater detail in the affidavit of Peter A.M. Kalins sworn May 9, 2012 (the “**Kalins Affidavit**”), a copy of which is attached hereto as **Exhibit “A”** (without exhibits). Capitalized terms used in this section of my affidavit but not otherwise defined shall have the meaning as set out in the Kalins Affidavit.

5. Under the QSI Agreement, the purchase price of the assets to be sold under the QSI Transaction was approximately \$32 million, subject to a BSI Working Capital Purchase Price Adjustment (described in greater detail at paragraphs 27-29 of the Kalins Affidavit and at section 3.7 of the QSI Agreement).

6. The calculation of the BSI Working Capital Purchase Price Adjustment is determined in accordance with the QSI Agreement, a document entered into after significant negotiation between QSI and the Timminco Entities. The relevant provisions of the QSI Agreement are as follows:

**3.6 Preparation of BSI Working Capital Statement**

(a) Within 20 Business Days following the Closing Date (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Purchaser will prepare and deliver to the Vendors and the Monitor a draft statement of BSI Working Capital (the "Draft Statement of BSI Working Capital") prepared as of the Closing Date. The Draft Statement of BSI Working Capital will be prepared in accordance with IFRS consistent with the Estimated BSI Working Capital Statement referred to in Schedule "L", provided that it is consistent with IFRS.

(b) The Vendors will have 10 Business Days to review the Draft Statement of BSI Working Capital following receipt of it and the Vendors must notify the Purchaser in writing if they have any objections to the Draft Statement of BSI Working Capital within such 10 Business Day period. The notice of objection must contain a statement of the basis of the Vendors' objections.

(c) If the Vendors send a notice of objection of the Draft Statement of BSI Working Capital in accordance with Section 3.6(b), the Parties will work expeditiously and in good faith in an attempt to resolve such objections following the date of notification by the Vendors to the Purchaser of such objections. Failing resolution of any objection to the Draft Statement of BSI Working Capital raised by the Vendors, within 90 days following the date of notification by the Vendors to the Purchaser of such objections, the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the Draft Statement of BSI Working Capital.

...

(e) If the Vendors send a notice of objection within the 5 Business Day period, the Parties will revise the Draft Statement of BSI Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section 3.6(c) within two Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised Draft Statement of BSI Working Capital will be final,

conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of BSI Working Capital will become the "Statement of BSI Working Capital" on the next Business Day following revision of the Draft Statement of BSI Working Capital under this Section 3.6(e).

7. On July 12, 2012, in accordance with section 3.6(a) of the QSI Agreement, QSI delivered to BSI a working capital adjustment statement (the "**Draft Statement of BSI Working Capital**"), which indicated that QSI owed BSI approximately \$430,000 as a result of closing working capital being higher than the minimum specified in the QSI Agreement. A copy of the Draft Statement of BSI Working Capital is attached hereto as **Exhibit "C"**.

8. By letter dated July 19, 2012, in accordance with section 3.6(b) of the QSI Agreement BSI objected to the amount of the Draft Statement of BSI Working Capital and has asserted that QSI owes approximately \$2.4 million. A copy of the objection registered by BSI is attached hereto as **Exhibit "D"**. The parties have not been able to resolve their differences regarding the BSI Working Capital Purchase Price Adjustment. However, the only dispute between the parties until August 30, 2012 was how much QSI owed BSI.

## **INTERIM DISTRIBUTION TO IQ**

9. As described in greater detail in the August 23, Affidavit, IQ is a secured creditor of BSI pursuant to the Secured Term Loan. As at August 17, 2012, the amount outstanding under the Secured Term Loan totalled approximately \$29 million, with interest accruing in the amount of approximately \$10,000 per day.

10. In order to stop the continuing accrual of interest on the Secured Term Loan while preserving the ability for other creditors of BSI to assert a claim ranking in priority to IQ and to provide for reimbursement should any Priority Claim be established, the Reimbursement Agreement was entered into, a final copy of which is attached hereto.

11. The Reimbursement Agreement contemplated a partial repayment of approximately \$27 million which accounted for certain reserves to be held by the Monitor to pay certain Court-Ordered charges and future payables.

12. The parties appeared before the Court on August 28, 2012 to seek approval of the Reimbursement Agreement and the authorization and direction for the Monitor to make the Interim Distribution. On August 28, 2012, counsel to QSI requested that an additional \$2 million be reserved (the "**Temporary Reserve**") in favour of any amounts that may come due under the QSI Agreement.

13. Counsel to the Timminco Entities, the Monitor and IQ agreed to QSI's request on the basis that, if QSI did not object to the release of the Temporary Reserve, such Temporary Reserve could be released to IQ on August 30, 2012 after 5 p.m.

14. On August 28, 2012, the Honourable Mr. Justice Newbould granted the Interim Distribution Order, which authorized and directed the Monitor to make a distribution to IQ in the amount of approximately \$25 million in partial repayment of BSI's indebtedness to IQ. The Interim Distribution Order directed the Monitor to

release the Temporary Reserve any time after 5 p.m. on August 30, 2012. A copy of the Interim Distribution Order is attached hereto as **Exhibit "E"**.

*QSI's Objection to Release of the Temporary Reserve*

15. At 4:58 p.m. on the evening of August 30, 2012, Lee Cassey, counsel to QSI, delivered to counsel to the Monitor and the Timminco Entities written objection of the release of the Temporary Reserve on the basis that:

QSI has not collected CAD 66,710 from Mineraux Mart. This amount is not collectible. Also to-date QSI has not been able to sell CAD 1,687,969 of inventory (including CAD 1,015,000 of Fersi 96%) that has no value.

A copy of Mr. Cassey's email is attached hereto as **Exhibit "F"**.

16. The affidavit of Steven Lebowitz dated August 30, 2012 states that certain "manifest errors" were discovered by QSI, rendering the Draft Statement of BSI Working Capital, prepared by QSI, invalid. This is the first objection by QSI to its own Draft Statement of BSI Working Capital received by BSI to date.

17. The issue of the treatment of an account receivable under IFRS is not a manifest error. Manifest error was intended to address any error so obvious that it would be apparent on its face. On a plain reading of the QSI Agreement, allowing the withdrawal of the Draft Statement of BSI Working Capital due to a misinterpretation of accounts receivable would render sections 3.6 (c) and (e) meaningless.

18. Regardless of whether a manifest error was made by QSI, section 3.8 of the QSI Agreement governs the distribution of proceeds once the Draft Statement of BSI Working Capital has been prepared:

**3.8 Sufficiency of Funds**

The Vendors will not distribute an amount of the Purchase Price equal to C\$4,509,000 (or, after preparation of the Draft Statement of BSI Working Capital, such lesser amount equal to the difference between C\$4,509,000 and the BSI Working Capital amount shown on the Draft Statement of BSI Working Capital) until the Statement of BSI Working Capital is determined in accordance with Section 3.6.

19. The BSI Working Capital amount shown on the Draft Statement of BSI Working Capital is \$4.937 million, which, under the terms of the QSI Agreement, entitles BSI to \$428,000. Accordingly no holdback in favour of QSI is required.

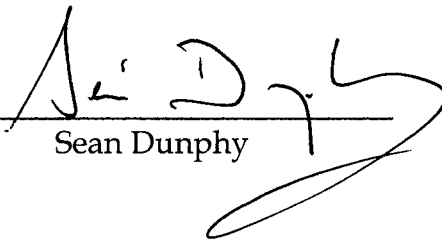
20. As noted above, the provisions of the QSI Agreement were the subject of significant negotiation between QSI and the Timminco Entities. In accordance with section 3.8, QSI cannot place any restrictions on the distribution of funds at this stage.

**PURPOSE OF AFFIDAVIT**

21. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

SWORN BEFORE ME at the City of  
Montreal, Province of Quebec on  
August 31, 2012.

Maire-Claude David  
Commissioner for Taking Affidavits

  
Sean Dunphy



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Proceeding commenced at Toronto

**AFFIDAVIT OF SEAN DUNPHY  
(SWORN AUGUST 31, 2012)**

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