

**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

FACTUM OF THE APPLICANTS

(Motion returnable March 9, 2012)

**(Re Authorization and Direction to Enter into the Stalking Horse Agreement,
Approval of the Bidding Procedures and Other Relief)**

Dated: March 7, 2012

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
Fax: (416) 947-0866

Lawyers for the Applicants

**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 BECANCOUR SILICON INC.

Applicants

FACTUM OF THE APPLICANTS
(Motion Returnable March 9, 2012 Re Authorization and Direction to Enter into the Stalking Horse Agreement, Approval of the Bidding Procedures and Other Relief)

PART I - INTRODUCTION

1. Timminco Limited ("**Timminco**") and Becancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order of the Ontario Superior Court of Justice dated January 3, 2012 (the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "**Monitor**") in these CCAA proceedings.

2. This motion is brought by the Timminco Entities seeking an order substantially in the form of the draft order included with the Motion Record for, *inter alia*, the following relief:

- (a) permitting the Timminco Entities to postpone the annual meeting of the shareholders;
- (b) approving the sales process with respect to the Stalking Horse Assets (as defined in the Bidding Procedures), including:
 - (i) authorizing and directing the Timminco Entities to enter into the Stalking Horse Agreement (as defined below);
 - (ii) approving certain protections granted to the Stalking Horse Bidder (as defined below) pursuant to the Stalking Horse Agreement; and
 - (iii) approving the Bidding Procedures (as defined below).

PART II - THE FACTS¹

BACKGROUND

3. Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. Timminco also produces solar grade silicon through Timminco Solar, an unincorporated division of Timminco's wholly-owned subsidiary BSI, for customers in the solar photovoltaic industry.

¹ Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Affidavit of Peter A.M. Kalins sworn March 2, 2012 (the "March 2 Affidavit").

March 2 Affidavit at para. 3, Motion Record, Tab 2

4. The Timminco Entities were facing and continue to face severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume long-term supply contract at below market prices, a decrease in the demand and market price for solar grade silicon, failure to recoup their capital expenditures incurred in connection with development of their solar grade operations, and inability to secure additional funding. The Timminco Entities are also facing significant pension and environmental remediation legacy costs and financial costs related to large outstanding debts. A significant portion of the legacy costs are as a result of discontinued operations relating to Timminco's former magnesium business.

March 2 Affidavit at para. 4, Motion Record, Tab 2

5. As a result, the Timminco Entities were unable to meet various financial covenants set out in their senior secured credit facility and did not have the liquidity needed to meet their ongoing payment obligations.

March 2 Affidavit at para. 5, Motion Record, Tab 2

6. The Timminco Entities, in consultation with the Monitor, determined that it was in the best interests of the Timminco Entities and their stakeholders to commence a marketing process for the potential sale of all or substantially all of their assets forthwith.

March 2 Affidavit at para. 32, Motion Record, Tab 2

POSTPONEMENT OF ANNUAL MEETING OF SHAREHOLDERS

7. Timminco is a public company continued under the *Canada Business Corporations Act* (the “CBCA”) with common shares listed and publicly traded on the Toronto Stock Exchange (the “TSX”). On February 6, 2012, the TSX delisted the shares of Timminco.

March 2 Affidavit at para. 25, Motion Record, Tab 2

8. Pursuant to section 133(1)(b) of the CBCA, Timminco is required to call an annual meeting of its shareholders by no later than June 30, 2012.

March 2 Affidavit at para. 26, Motion Record, Tab 2

9. The Timminco Entities are seeking to postpone the annual meeting of the shareholders during the Stay Period so that the Timminco Entities’ senior management can concentrate on the CCAA proceedings, instead of diverting their attention to the preparation for and holding of the annual meeting.

March 2 Affidavit at paras. 27-28, Motion Record, Tab 2

SALES PROCESS

10. It was a condition of the agreement entered into with QSI Partners Ltd. (the “Stalking Horse Bidder”) pursuant to which the Stalking Horse Bidder agreed to extend to the Timminco Entities a DIP facility (the “DIP Agreement”) that the Stalking Horse Bidder be granted a period of exclusivity during which the Timminco Entities could not solicit or entertain offers from any person other than the DIP Lender for the acquisition of substantially all of the assets of the Timminco Entities (the “Assets”) until January 31, 2012 (the “Exclusivity Period”) in order to provide the Stalking Horse

Bidder with the opportunity to prepare a “stalking horse bid” for consideration by the Timminco Entities. If the Stalking Horse Bidder submitted a “stalking horse bid” on or prior to January 31, 2012, in form and substance that the Timminco Entities were willing to consider, acting reasonably, the Exclusivity Period was to be extended one week to February 7, 2012. The Timminco Entities were not obligated to accept any such bid and failure to execute an agreement in respect of any “stalking horse bid” would have no effect on the availability of the DIP Facility.

March 2 Affidavit at para. 33, Motion Record, Tab 2

11. The Stalking Horse Bidder submitted a “stalking horse bid” (the “**Stalking Horse Bid**”) on January 31, 2012 in form and substance that the Timminco Entities were willing to consider and the Exclusivity Period was extended to February 7, 2012 and then again to February 13, 2012. Following expiration of the Exclusivity Period, the parties continued negotiations on a non-exclusive basis.

March 2 Affidavit at para. 34, Motion Record, Tab 2

12. Following negotiations with the Stalking Horse Bidder, on March 2, 2012, the Timminco Entities entered into an Agreement of Purchase and Sale (the “**Stalking Horse Agreement**”) with the Stalking Horse Bidder, as purchaser, and Globe Specialty Metals, Inc., a corporation incorporated under the laws of Delaware, as guarantor, (the “**Guarantor**”), subject to Court approval.

March 2 Affidavit at para. 36, Motion Record, Tab 2

13. One of the terms of the Stalking Horse Agreement is that, upon entry of the Bidding Procedures Order, the Timminco Entities will be deemed to acknowledge receipt from the Stalking Horse Bidder of a deposit (the “**Deposit**”) of 15% of the Closing Cash Purchase Price (excluding any adjustment contemplated under Section 3.7 thereof) pursuant to the credit and set off arrangement contemplated under an amendment to the DIP Agreement dated March 1, 2012 (the “**DIP Amendment**”). Approval of the DIP Amendment and a corresponding amendment to the DIP Order are being sought contemporaneously as part of this motion.

March 2 Affidavit at para. 43, Motion Record, Tab 2

14. The DIP Amendment and the other terms of the Stalking Horse Agreement are detailed in, *inter alia*, paragraphs 36 to 46 of the March 2 Affidavit.

March 2 Affidavit at paras. 36-46, Motion Record, Tab 2

15. The Timminco Entities are seeking authorization and direction to enter into the Stalking Horse Agreement for the purpose of creating a “stalking horse” sales process and auction in order to maximize the purchase price to be obtained for the Stalking Horse Assets. If no other bidder submits a superior bid for the assets subject to the Stalking Horse Agreement, the Stalking Horse Bidder will be selected as the Successful Bid and the Timminco Entities will return to Court to seek approval thereof.

March 2 Affidavit at para. 47, Motion Record, Tab 2

16. In consideration for the Stalking Horse Bidder’s expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid and the

preparation of the Stalking Horse Agreement, the Stalking Horse Bidder shall be entitled to an expense reimbursement for its legal and other costs incurred in connection with the Stalking Horse Bid in an amount of C\$500,000 (the "**Expense Reimbursement**"), payable by the Timminco Entities to the Stalking Horse Bidder only in the event that a Successful Bid other than the Stalking Horse Bid is accepted and the transaction contemplated thereby is completed. The Expense Reimbursement shall be payable to the Stalking Horse Bidder out of the sale proceeds derived from and upon completion of the Successful Bid (other than the Stalking Horse Bid).

March 2 Affidavit at para. 45, Motion Record, Tab 2

17. The Timminco Entities, in consultation with the Monitor and the Stalking Horse Bidder, also developed bidding procedures which are proposed to govern the Timminco Entities' sales process relating to solicitation by the Timminco Entities of one or more superior bid(s) for their Stalking Horse Assets to that contemplated by the Stalking Horse Agreement (the "**Bidding Procedures**").

March 2 Affidavit at para. 50, Motion Record, Tab 2

18. The Bidding Procedures are described in, *inter alia*, paragraphs 50 to 57 of the March 2 Affidavit and provide for: the first round of bids to be submitted by March 26, 2012; the second round of bids by April 16, 2012; an auction to take place on April 24, 2012; and seeking Court approval of and closing (if approved) the successful bid by June 20, 2012.

March 2 Affidavit at paras. 50-57, Motion Record, Tab 2

PART III - ISSUES

19. The issues on this motion are whether this Court should (a) permit the Timminco Entities to postpone the annual meeting of the shareholders; and (b) approve the sales process with respect to the Stalking Horse Assets proposed by the Timminco Entities, including, (i) entering into the Stalking Horse Agreement, (ii) the Expense Reimbursement, and (iii) the Bidding Procedures.

PART IV - LAW AND ARGUMENT

The Timminco Entities should be Permitted to Postpone the Annual Meeting of the Shareholders Pending the Resolution of the CCAA Proceedings

20. The remedial nature of the CCAA confers broad powers on courts in order to facilitate the restructuring of insolvent companies. Their jurisdiction stems, *inter alia*, from section 11 of the CCAA which provides that a court may, "subject to the restrictions set out in [the CCAA]... make any order it considers appropriate in the circumstances" and from the courts' inherent jurisdiction to fill in the gaps of the CCAA to give effect to its objects.

Re Nortel Networks Corp., (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]) ("Nortel"), Applicants' Book of Authorities, Tab 1 at para 30.

CCAA, s. 11

Re Canadian Red Cross Society (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div.) ("Canadian Red Cross"), Applicants' Book of Authorities, Tab 2 at para. 43.

21. In *Century Services v. Canada (Attorney General)*, Justice Deschamps, speaking for the majority, noted the wide discretion section 11 affords and held that orders granted under that section should advance the policy objectives underlying the CCAA.

Century Services v. Canada (Attorney General), 2010 SCC 60 at para. 70, Applicants' Book of Authorities, Tab 3.

22. This Court has found that the request to postpone the obligation to call and hold annual meetings is appropriate and that the court has the jurisdiction to grant such a request.

Re Canwest Global Communications Corp., (2009), O.J. No 4286 (Ont. S.C.J. [Comm. List]), Applicants' Book of Authorities, Tab 4 at paras. 53-54.

Re Nortel Networks Corp., (2009), O.J. No 614 (Ont. S.C.J. [Comm. List]), Applicants' Book of Authorities, Tab 5 at para 8.

23. It is respectfully submitted that permitting the Timminco Entities to postpone the annual meeting of the shareholders will facilitate the CCAA proceedings by allowing the Timminco Entities' senior management to focus on the proceedings and the implementation of a successful going concern sale of the Timminco Entities' businesses.

24. Further, the expense associated with the preparation of an annual meeting of shareholders has not been provided for in the DIP Lender-approved cash flow forecasts.

March 2 Affidavit at para. 28, Motion Record, Tab 2

25. Shareholders and other stakeholders of the Timminco Entities can continue to access financial and other information through the Timminco Entities' court filings which are easily accessible on the Monitor's Website and through press releases.

March 2 Affidavit at para. 30, Motion Record, Tab 2

The Court has Broad Discretion Under the CCAA to Approve the Proposed Sales Process

26. As noted above at paragraph 20, the CCAA confers broad powers on courts to facilitate the restructuring of insolvent companies.

Nortel, Applicants' Book of Authorities, Tab 1 at para 30.

CCAA, s. 11

Canadian Red Cross, Applicants' Book of Authorities, Tab 2 at para. 43.

27. CCAA courts have repeatedly noted that the purpose of the CCAA is to preserve the benefit of a going concern business for all stakeholders, or "the whole economic community".

Citibank Canada v. Chase Manhattan Bank of Canada (1991), 5 C.B.R. (3d) 165 (Ont. Gen. Div.), Applicants' Book of Authorities Tab 6 at 188-189.

28. In accordance with these principles, courts across Canada have, in appropriate cases, exercised their jurisdiction to approve a sale of assets, even in the absence of a plan of arrangement being tendered to stakeholders for a vote.

Nortel, Applicants' Book of Authorities, Tab 1 at para. 30.

29. In *Re Tiger Brand Knitting Co.*, Justice Campbell approved a sales process involving a stalking horse bid, in which a substantial portion of the CCAA debtor's business would be sold, on the basis that "a sale of assets rather than a restructuring of the Company was the more likely result of the ongoing effort".

Re Tiger Brand Knitting Co. (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J.), Applicants' Book of Authorities, Tab 7 at para. 10.

30. In *Nortel, supra*, Justice Morawetz articulated certain factors drawn from jurisprudence that the court should consider when determining whether to authorize a sales process in a CCAA proceeding:

- (a) Is a sale transaction warranted at this time?
- (b) Will the sale benefit the whole "economic community"?
- (c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?

Nortel, Applicants' Book of Authorities, Tab 1 at para. 49.

31. In approving the "stalking horse" agreement in *Nortel, supra* for the purpose of conducting the "stalking horse" bidding process, including, a break-up fee and expense reimbursement in favour of the "stalking horse" bidder, Justice Morawetz also took into account that the proposed sales process provided for an auction to be conducted prior to the sale approval motion.

Nortel, Applicants' Book of Authorities, Tab 1 at paras. 51 & 58.

32. In considering whether to approve a sales process under the CCAA, the courts should also consider that any proposed sales resulting from the sales process will be carefully scrutinized under section 36 of the CCAA.

CCAA, s. 36

Re Brainhunter Inc. (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J.), Applicants' Book of Authorities, Tab 8 at paras 16 & 17.

The Proposed Sales Process Should be Approved

33. In the case at bar, the Timminco Entities, in consultation with the Monitor, determined shortly after filing that it was in the best interests of the Timminco Entities and their stakeholders to commence a marketing process for the potential sale of all or substantially all of their assets forthwith. One or more sale transactions for the Assets of the Timminco Entities will benefit their whole economic community because, among other things, they: (a) should maximize the purchase price obtained by the Timminco Entities for their Assets over values that could be obtained in piecemeal liquidation and shutdown of operations; and (b) will avoid the detrimental consequences of the Timminco Entities' cessation of operations on QSLP operations (which relies heavily on the continued purchase of silicon metal by BSI).

March 2 Affidavit at para. 32, Motion Record, Tab 2

34. The Timminco Entities' management is of the view that the Stalking Horse Agreement presents the best alternative in the circumstances as it creates a "floor" purchase price, delineates the majority of the assets for sale, and will maximize the purchase price to be obtained for the Stalking Horse Assets.

March 2 Affidavit at para. 48, Motion Record, Tab 2

35. Management is also of the view that the quantum of the Expense Reimbursement is reasonable in light of the amount of the proposed purchase price under the Stalking Horse Agreement and the Stalking Horse Bidder's expenditure of time and money in

the preparation of the Stalking Horse Agreement and Bidding Procedures. As well, the Expense Reimbursement will only be paid from sale proceeds in circumstances where a Successful Bid (other than the Stalking Horse Bid) is accepted, and the transaction closes.

March 2 Affidavit at para. 48, Motion Record, Tab 2

36. The Bidding Procedures were designed to provide a fair and efficient process for maximizing the value of the Stalking Horse Assets for the benefit of all of the Timminco Entities' stakeholders.

March 2 Affidavit at para. 56, Motion Record, Tab 2

37. An important feature of the Bidding Procedures is that they preserve flexibility for the Timminco Entities to consider and accept Portion Bids or investment bids.

March 2 Affidavit at para. 56, Motion Record, Tab 2

38. The implementation of the Bidding Procedures will be conducted with the assistance and supervision of the Monitor.

March 2 Affidavit at paras. 50, 52 & 55, Motion Record, Tab 2

39. The Timminco Entities anticipate that the Stalking Horse Agreement will cause a number of other potential purchasers to bid for the Stalking Horse Assets. The Timminco Entities will return to Court to seek approval of the highest and/or best bid to emerge from the auction process and will aim to satisfy the elements established by the Court and the CCAA for such approval. The Timminco Entities' creditors are not prejudiced by the sales process and retain their rights to raise any concerns over or

objections to a proposed sale, an opportunity which will be afforded them at any and all motions to approve an asset sale.

March 2 Affidavit at para. 47, Motion Record, Tab 2

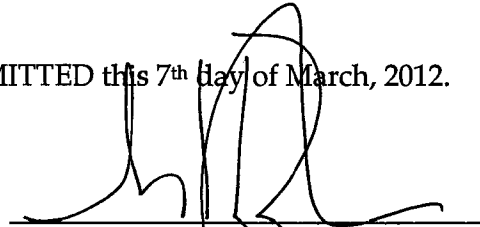
40. In the view of the Timminco Entities' management, the Bidding Procedures and the Stalking Horse Agreement represent the best alternative in the circumstances to maximize the benefit to the BSI stakeholders. The Monitor supports the Timminco Entities entering into the Stalking Horse Agreement and approval of the Bidding Procedures.

March 2 Affidavit at paras. 48 & 49, Motion Record, Tab 2

PART V - ORDER REQUESTED

41. The Timminco Entities therefore request an Order substantially in the form of the draft Order attached at Tab 3 of the Timminco Entities' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of March, 2012.



Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Nortel Networks Corp. (Re)*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]).
2. *Canadian Red Cross Society (Re)* (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div.).
3. *Century Services v. Canada (Attorney General)*, 2010 SCC 60.
4. *Re Canwest Global Communications Corp.*, (2009), O.J. No 4286 (Ont. S.C.J. [Comm. List]).
5. *Nortel Networks Corp. (Re)*, (2009), O.J. No 614 (Ont. S.C.J. [Comm. List]).
6. *Citibank Canada v. Chase Manhattan Bank of Canada* (1991), 5 C.B.R. (3^d) 165 (Ont. Gen. Div.).
7. *Tiger Brand Knitting Co. (Re)* (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J.).
8. *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J.).

SCHEDULE "B"
RELEVANT STATUTES

1. *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*

...

11. General power of court

Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

Stays, etc. – other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority – secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority – other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

...

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors – related persons

...

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction – employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

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

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

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

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(RETURNABLE MARCH 9, 2012)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley J. Taylor LSUC#: 39932E
Tel: (416) 869- 5246
Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230
Kathryn Esaw LSUC# 58264F
Tel: (416) 869-6820
Fax: (416) 947-0866

Lawyers for Applicants