

**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**

**MOTION RECORD  
(Returnable November 5, 2012)  
(Re Granting Additional Powers to the CRO)**

October 26, 2012

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

**Ashley John Taylor** LSUC#: 39932E  
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Lawyers for the Applicants

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**1**

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**NOTICE OF MOTION  
(Returnable November 5, 2012)  
(Re Granting Additional Powers to the CRO)**

Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Monday, November 5, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form contained in the Motion Record at Tab 3, granting to the CRO the powers necessary to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such settlements, with the prior consent of FTI Consulting Canada Inc. in its capacity as Court-appointed officer of the

Timminco Entities (the "**Monitor**"); and such other and further relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

2. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Order of the Honourable Mr. Justice Morawetz dated January 3, 2012;
3. On August 17, 2012, by Order of the Honourable Mr. Justice Newbould (the "**CRO Order**"), Russell Hill was appointed CRO of the Timminco Entities;
4. While substantially all of the Timminco Entities' assets have been sold, there remain some assets which are still owned by the Timminco Entities, including certain claims of the Timminco Entities;
5. The Timminco Entities wish to be able to settle these and other claims which may arise in the course of the winding up of the Timminco Entities' business without incurring the costs of seeking court approval;
6. Any claims will be settled only with the consent of the Monitor;
7. The power to settle claims is an appropriate additional power for the CRO to exercise;
8. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
9. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended;
10. Such further grounds as counsel may advise and this Court may see fit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Sean Dunphy sworn October 26, 2012, and the exhibits attached thereto; and
2. Such further and other materials as counsel may advise and this Court may permit.

October 26, 2012

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Lawyers for the Applicants

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.

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RE ADDITIONAL CRO POWERS)**

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**2**

**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 October 26, 2012 re Granting Additional Powers to the CRO)**

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**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.
2. This affidavit 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 granting to the CRO the powers necessary to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such

settlements, with the prior consent of FTI Consulting Canada Inc. in its capacity as Court-appointed officer of the Timminco Entities (the “**Monitor**”).

## **BACKGROUND**

3. The Timminco Entities’ primary business, the production and sale of silicon, was carried on principally through BSI, a Québec-based wholly-owned subsidiary of Timminco. BSI purchased silicon metal produced by Québec Silicon Limited Partnership (“**QSLP**”) for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. QSLP was a production partnership between BSI (51%) and Dow Corning Corporation (49%).

4. Due to a number of factors, the Timminco Entities were facing severe liquidity issues and were unable to meet their ongoing payment obligations. As such, the Timminco Entities were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012 (the “**Initial Order**”). A copy of the Initial Order is available, together with all other filings in the CCAA proceedings, on the Monitor’s website at: <http://cfcanada.fticonsulting.com/timminco>.

## **RECENT ACTIVITIES OF THE TIMMINCO ENTITIES**

5. The Timminco Entities have worked and continue to work diligently to wind up their estates and these CCAA proceedings.

*Appointment of a CRO*

6. Shortly prior the resignation of all of their directors and officers, the Timminco Entities sought to appoint the CRO. On August 17, 2012, by Order of the Honourable Mr. Justice Newbould (the “**CRO Order**”), Russell Hill was appointed CRO of the Timminco Entities. The CRO’s powers are set out in an engagement letter dated July 24, 2012 and the CRO Order and include, but are not limited to, the following:

- (a) the power to take steps for the preservation and protection of the remaining assets of the Timminco Entities;
- (b) the power to plan and oversee the orderly wind-down and disposition of the Timminco Entities’ property;
- (c) the power to take any steps required to be taken by the Timminco Entities under any Order of the Court;
- (d) the power to engage in such other related activities as may appear necessary or desirable; and
- (e) the power to take any steps, enter into any agreements or incur any obligations as the CRO deems necessary or incidental to the exercise of the aforesaid powers.

The powers set out in the CRO Order do not explicitly include the power to settle claims. A copy of the CRO Order is attached hereto as **Exhibit “A”**.

7. Since its appointment, the CRO has, among other things:
- a. continued adjudication of a working capital adjustment dispute with QSI Partners Ltd., the purchaser of substantially all of the Timminco Entities' silicon metal business;
  - b. initiated discussions with stakeholders regarding the sale of the Timminco Entities' remaining real property and other assets;
  - c. commenced review of on-going compliance costs and impact on sales prospects regarding the real property located at 962 Magnesium Road in Haley, Ontario (the "**Haley Property**");
  - d. overseen pending litigation in Texas regarding a former investment of Timminco in a United States company (now liquidated) named Applied Magnesium which is on the verge of settlement (described below); and
  - e. overseen a settlement of certain payroll-related taxation issues in Quebec.

### **Remaining Assets**

8. While substantially all of the Timminco Entities' assets have been sold pursuant to sales transactions with Grupo FerroAtlantica, S.A. and with QSI Partners Ltd., there remain some assets which are still owned by the Timminco Entities, including, among others, the following:

- the Haley Property;
- the real property located at 5355 Chemin De Fer in Bécancour, Québec;

- real property located at 90 Tycos Drive in Toronto, Ontario;
- real property located at 54 Hauts-Fourneaux in Beauharnois, Québec;
- a former silica fume tailings site in Quebec;
- shares in US and other subsidiaries of Timminco (none of which are currently carrying on business but which own certain real estate outside Memphis, Tennessee);
- Maple Leafs seasons tickets; and
- certain claims of the Timminco Entities which are described in greater detail below.

*Metrobank Claim*

9. Timminco and another party (together, the “**Plaintiffs**”) commenced an action in the Southern District of Texas against, among others, Metrobank N.A. (together with the other defendants, the “**Defendants**”), seeking damages for payment of outstanding receivables (the “**Metrobank Claim**”). Dickinson Wright LLP (“**Dickinson Wright**”) is counsel to the Plaintiffs.

10. A settlement has been negotiated among the parties pursuant to which the Plaintiffs will receive \$125,000 in full and final settlement of all claims. The proposed settlement will enable Timminco to recover approximately \$75,000 in respect of the fees and expenses which it has expended in pursuing this claim after paying the outstanding fees of Dickinson Wright under Timminco’s fee arrangement with such firm.

11. The Timminco Entities, with the assistance of their CRO, have assessed the Defendants' settlement offer in the context of the current status of the litigation as well as the Timminco Entities' CCAA proceedings and determined that it is in the best interest of the Timminco Entities' stakeholders to settle the Metrobank Claim at the offered amount. I have discussed the matter with the Monitor who has indicated that it agrees with my recommendation. In the interests of not revealing any matters which might prejudice the case should the settlement fail to be completed for any reason, I have included only a general description of the matter herein.

12. While the Timminco Entities are not aware of any other material claims at this time, certain claims may arise and need to be settled in the ordinary course, as the wind up continues.

#### **THE NEED FOR INCREASED CRO POWERS**

13. The Timminco Entities wish to be able to settle claims such as the Metrobank Claim which they, with the Monitor's consent, deem appropriate to settle, without incurring the costs of seeking court approval. The power to settle claims will be subject to the claims procedure set out in the Order of the Honourable Mr. Justice Morawetz of July 15, 2012.

14. The Timminco Entities believe that granting the CRO the power to settle claims subject to the Monitor's approval will maximize cost efficiencies and provide the necessary flexibility to settle claims in a timely manner. This will result in reductions in

costs which is in the best interests of the Timminco Entities' stakeholders, which may share in a larger pool of funds as a result.

15. The CRO is mandated to, among other things, oversee the orderly wind-down and disposition of the Timminco Entities' property. The power to settle claims, actions and suits of the Timminco Entities is an appropriate additional power for the CRO to exercise in its overall mandate to oversee the orderly wind-up and disposition of the Timminco Entities' remaining assets.

16. The CRO's power to settle claims will be subject to the prior approval of the Monitor. The Monitor supports the within motion.

#### PURPOSE OF AFFIDAVIT

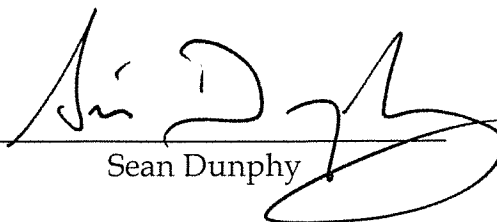
17. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, Province of Ontario on  
October 26, 2012.



Kathryn Esaw

Commissioner for Taking Affidavits



Sean Dunphy



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

Court File No. CV12-9539-00CL

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

**ONTARIO**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF SEAN DUNPHY  
(SWORN OCTOBER 26, 2012)**

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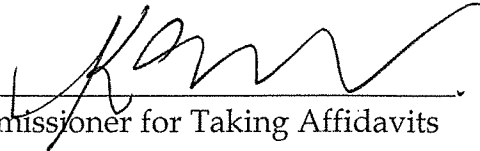
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Lawyers for the Applicants

**A**

This is Exhibit "A"  
to the affidavit of Sean Dunphy,  
sworn before me on the  
26th day of October, 2012

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
 ) FRIDAY, THE 17<sup>TH</sup> DAY  
JUSTICE NEWBOULD )  
 ) DAY OF AUGUST, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS 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.

(the "Applicants")



ORDER  
(CRO Appointment)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (collectively, the "Timminco Entities") for, *inter alia*, (i) an order appointing Russell Hill Advisory Services Inc. ("Russell Hill") as Chief Restructuring Officer ("CRO") over the Timminco Entities and approving of the CRO Agreement (defined below) between the Timminco Entities and Russell Hill Advisory Services Inc., was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Peter A.M. Kalins sworn August 13, 2012 and the Twelfth Report of FTI Consulting Canada Inc. in its capacity as the monitor of the Timminco Entities (the "Monitor"), and on hearing the submissions of counsel to the Timminco Entities, the Monitor, the Ministry of Environment, Investissement

Quebec, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

*Service*

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

*Approval of the Monitor's Activities*

2. **THIS COURT ORDERS** that the Tenth Report of the Monitor dated June 1, 2012 and the activities of the Monitor set out therein are hereby approved.

*Appointment of CRO*

3. **THIS COURT ORDERS** that Russell Hill is hereby appointed CRO over the Timminco Entities, an officer of this Court, and shall have the powers and obligations set out in the engagement letter dated July 24, 2012 in the form attached to the ~~Confidential Supplement to the~~ Twelfth Report of the Monitor (the "CRO Agreement"), including, without limitation:

- (a) the power to take steps for the preservation and protection of the remaining assets of the Timminco Entities (the "Property");

- (b) the power to plan and oversee the orderly wind-down and disposition of the Property;
- (c) the power to negotiate and enter into agreements on behalf of the Timminco Entities with respect to the sale of the Property;
- (d) the power to direct the Timminco Entities to apply to Court for any vesting order or orders which may be necessary or appropriate in order to convey the Property to a purchaser or purchasers thereof;
- (e) the power to take any steps required to be taken by the Timminco Entities under any Order of the Court, including without limitation, the Claims Procedure Order dated June 15, 2012;
- (f) the power to apply to Court for an order authorizing and directing the Timminco Entities to distribute any sales proceeds received by the Timminco Entities with respect to the Property or otherwise;
- (g) the power to engage in such other related activities as may appear necessary or desirable;
- (h) the power to provide information to the Monitor regarding the business and affairs of the Timminco Entities;
- (i) the power to take any steps, enter into any agreements or incur any obligations as the CRO deems necessary or incidental to the exercise of

the aforesaid powers, with such agreements and obligations to be those of the Timminco Entities and not of the CRO personally;

- (j) the power to apply to the Court for an order authorizing and directing the Timminco Entities to make a voluntary assignment in bankruptcy;
  - (k) the power to apply to Court for an order and authorizing and directing the Timminco Entities to abandon any of the Property;
  - (l) the power to exercise such shareholder rights as may be available to the Timminco Entities, including without limitation to appoint any director or officer of any subsidiary of the Timminco Entities;
  - (m) in consultation with Stikeman Elliott LLP, the power to direct the Timminco Entities to commence any proceeding and seek any order, or respond to any motion or application brought by any other person, in these CCAA proceedings or otherwise; and
  - (n) the power to apply to Court to seek, advice and direction with respect to any of the CRO's powers or duties as set out in the CRO Agreement.
4. **THIS COURT ORDERS** that the CRO Agreement is approved and the Timminco Entities are authorized to perform all of their obligations pursuant to the CRO Agreement.

5. **THIS COURT ORDERS** that the CRO shall not take possession of the Property (as defined in the CRO Agreement) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the business or the Property, or any part thereof. Without limiting the foregoing, the CRO shall not, as a result of this Order or anything done pursuant to its duties and powers pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Civil Code of Québec, the *Québec Environment Quality Act*, the *Ontario Mining Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**").
  
6. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the CRO as an officer of this Court, neither the CRO, nor any officer, director, employee, or agent of the CRO, including without limitation, Sean



Dunphy, shall be deemed to be a director or trustee of any of the Timminco Entities.

✓  
→, notwithstanding paragraph 5 hereof, ✓  
J.J.

7. **THIS COURT ORDERS** that neither the CRO, nor any officer, director, employee, or agent of the CRO, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

8. **THIS COURT ORDERS** that the CCAA Entities shall indemnify and hold harmless the CRO and any officers, directors, employees or agents of the CRO who may assist the CRO with the exercise of its powers and obligations under this Order (collectively with the CRO, the "**CRO Indemnified Parties**") with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the appointment of the CRO or the fulfilling of the CRO's duties in carrying out the provisions of this Order, including any claims or liabilities subject to indemnification pursuant to the CRO Agreement, except to the extent that the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct. The CRO Indemnified Parties shall be treated as unaffected and the foregoing indemnity shall be treated as unaffected and may not be compromised in any

plan of arrangement or compromise filed by the Timminco Entities under the CCAA, or any proposal filed by the CCAA Entities under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA").

9. **THIS COURT ORDERS** that the fees and expenses payable to Russell Hill pursuant to the CRO Agreement, including by way of indemnification, are entitled to the benefit of the Administration Charge, as defined in this Court's Initial Order dated January 2, 2012 (the "Initial Order").

10. **THIS COURT ORDERS** that <sup>✓</sup>no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO Indemnified Parties, and all rights and remedies of any Person against or in respect of the CRO Indemnified Parties are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the CRO and the Monitor. Notice of any such motion seeking leave of this Court shall be served upon the CRO and the Monitor at least seven (7) days prior to the return date of any such motion for leave.

25. ✓  
the ✓  
CCAA,

11. **THIS COURT ORDERS** that the Timminco Entities' indemnity in favour of the CRO Indemnified Parties shall survive any termination, replacement or discharge of the CRO.

*Miscellaneous*

12. **THIS COURT ORDERS** that notwithstanding the resignation of the directors and officers of the Timminco Entities (the "D&O") and subject to the restrictions in paragraph 28 of the Initial Order, the Timminco Entities are authorized and directed to pay the reasonable legal fees of counsel for the D&O in respect of claims made against the D&O pursuant to the claims process authorized under the Claims Procedure Order dated June 15, 2012 or otherwise, in accordance with the indemnity obligations of the Timminco Entities contained in paragraph 26 of the Initial Order which are secured by the charge granted in paragraph 27 of the Initial Order, without prejudice to the rights of any D&O to seek further directions from this Honourable Court, on notice to the Monitor and the CRO, regarding the obligation of the Timminco Entities to compensate the D&O for reasonable legal fees relating to any pre-filing claims made against them to the extent that the D&O do not have coverage under any director and officer insurance policy or to the extent that such coverage is insufficient to pay amounts indemnified by the Timminco Entities.
  
13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor, the CRO and their respective agents in carrying out the terms of this Order. All

courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that, except as specifically provided for herein, nothing in this Order shall vary or amend any order or endorsement previously granted in these proceedings.

  
\_\_\_\_\_

ENTERED AT / ENREGISTRÉ À TORONTO:  
ON / BOOK NO:  
LE / DANS LE RÉGISTRE NO.:

**AUG 17 2012**

REMARKS:



**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 BÉCANCOUR SILICON INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER  
(CRO Appointment)**

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Lawyers for the Applicants

**3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) MONDAY, THE 5<sup>TH</sup> DAY OF  
 ) NOVEMBER, 2012  
JUSTICE MORAWETZ )

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENTS 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.

ORDER  
(Re Granting Additional Powers to the CRO)

**THIS MOTION**, made by Timminco Limited and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco Limited, the "**Timminco Entities**") for an order granting to Russell Hill Advisory Services Inc., in its capacity as the Chief Restructuring Officer ("**CRO**") of the Timminco Entities, the powers necessary to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such settlements, with the prior consent of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Timminco Entities (the "**Monitor**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Sean Dunphy sworn October 26, 2012, and on hearing the submissions of counsel to the Timminco Entities and the Monitor, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined shall have the meaning contained in the Order of this Court dated August 17, 2012, approving the appointment of the CRO (the "**CRO Appointment Order**").

*Service*

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

*Granting Settlement Powers to the CRO*

3. **THIS COURT ORDERS** that, in addition to the powers set out in the CRO Appointment Order but subject to the claims process approved by this Court in the Order dated June 15, 2012 (the "**Claims Procedure Order**"), the CRO is hereby authorized and empowered, but not obligated, to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such settlements with the prior written consent of the Monitor.



4. **THIS COURT ORDERS** that neither the CRO, nor any officer, director, employee, or agent of the CRO, shall incur any liability or obligation as a result of its carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

5. **THIS COURT ORDERS** that the indemnity provided to the CRO Indemnified Parties shall extend to the CRO Indemnified Parties with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the fulfilling of the CRO's duties in carrying out the provisions of this Order, except to the extent that the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct.

6. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation in providing any consent to settle claims to the CRO pursuant to this Order, and shall have all the protections given it by the CCAA and the Initial Order or as an officer of this Court, including the stay of proceedings in its favour.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor, the CRO and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such

orders and to provide such assistance to the Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER  
(Additional CRO Powers)**

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

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable November 5, 2012)  
(Re Granting Additional Powers to the CRO)**

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