

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

**Timminco Limited
Bécancour Silicon Inc.**

FIRST REPORT OF THE MONITOR

January 6, 2012

**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.

**FIRST REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 3, 2011, Timminco Limited (“**Timminco**”) and Bécancour Silicon Inc. (“**Bécancour**”, together with Timminco, the “**Timminco Entities**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Applicants until February 2, 2012, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Applicants (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The purpose of this, the Monitor’s First Report, is to inform the Court on the following:
 - (a) The state of the business and affairs of the Timminco Entities and the causes of their financial difficulty and insolvency;

- (b) The Timminco Entities' weekly cash flow forecast to February 2, 2012 (the "**January 2 Forecast**");
 - (c) The Timminco Entities' request for approval of a key employee retention plan (the "**KERP**") and the granting of a charge to secure the Timminco Entities obligations thereunder (the "**KERP Charge**"), and the Monitor's recommendations on the foregoing;
 - (d) The Timminco Entities' request for approval to suspend their obligation to make contributions to the Pension Plans other than (i) contributions in respect of normal cost; (ii) contributions to the defined contribution provision of the BSI Non-Union Pension Plan; and (iii) employee contributions deducted from pay (together, the "Normal Cost Contributions" and contributions other than Normal Cost Contributions being "Special Payments") with respect to the three pension plans sponsored by the Timminco Entities (the "Pension Plans") and the Monitor's recommendation thereon;
 - (e) The Timminco Entities' request for an Order granting super-priority to the Administration Charge, the KERP Charge and the D&O Charge and the Monitor's recommendation thereon.
3. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

4. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the affidavit of Mr. Peter Kalins, President, General Counsel and Corporate Secretary of Timminco, sworn January 5, 2011, and filed in support of the Applicants' motion (the "**January 5 Affidavit**") or in the Initial Order.
5. This report should be read in conjunction with the affidavit of Mr. Kalins sworn January 2, 2011, and filed in support of the initial application under the CCAA (the "**January 2 Affidavit**") and the January 5 Affidavit as certain information contained therein has not been included in this report in order to avoid unnecessary duplication.

THE TIMMINCO ENTITIES' BUSINESS & AFFAIRS AND CAUSES OF INSOLVENCY

6. The Timminco Entities are in the business of the sale of silicon metal and the production and sale of solar grade silicon. Operations are carried out in Bécancour, Quebec. The Timminco head office is located in Toronto, Ontario.
7. The business and affairs of the Applicants and the causes of their insolvency are described in the January 2 Affidavit. The Monitor has reviewed the January 2 Affidavit and has discussed the business and affairs of the Timminco Entities and the causes of their insolvency with senior management personnel of the Timminco Entities and the Timminco Entities' advisors. Based on the foregoing, the Monitor believes that the January 2 Affidavit provides a fair summary of the business and affairs of the Timminco Entities and the causes of their insolvency.

THE TIMMINCO ENTITIES' CASH FLOW FORECAST

8. The January 2 Forecast, together with management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA, was attached as Exhibit N to the January 2 Affidavit. The January 2 Forecast shows a negative net cash flow from operations of approximately \$2.2 million in the period January 3 to February 3, 2012 and is summarized below:

	\$000
Receipts:	
Sales and receivables	5,454.0
Government receivables	0.0
Total Receipts	5,454.0
Disbursements:	
Materials	4,619.0
QSLP Obligation	0.0
Operating Expenses	2,242.0
Restructuring Expenses	794.0
Total Disbursements	7,655.0
Net Cash Flow	(2,201.0)
Opening Cash	2,358.0
Net Cash Flow	(2,201.0)
Closing Cash	157.0

9. Section 23(1)(b) of the CCAA states that the Monitor shall:

“review the company’s cash-flow statement as to its reasonableness and file a report with the court on the monitor’s findings”

10. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1 (“CAIRP SOP 09-1”), the Monitor hereby reports as follows:

- (a) The January 2 Forecast has been prepared by the management of the Timminco Entities for the purpose described in Note 1 thereto, using the Probable and Hypothetical Assumptions set out in Notes 2 to 8 thereto.

- (b) The Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Timminco Entities. Since Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the January 2 Forecast. The Monitor has also reviewed the support provided by management of the Applicants for the Probable Assumptions, and the preparation and presentation of the Cash-Flow Statement.

- (c) Based on its review, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
 - (i) The Hypothetical Assumptions are not consistent with the purpose of the January 2 Forecast;

 - (ii) As at the date of this report, the Probable Assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the January 2 Forecast, given the Hypothetical Assumptions; or

 - (iii) The January 2 Forecast does not reflect the Probable and Hypothetical Assumptions.

- (d) Since the January 2 Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the January 2 Forecast will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by the Monitor in preparing this report.
- (e) The January 2 Forecast has been prepared solely for the purpose described in Note 1 on the face of the January 2 Forecast and readers are cautioned that it may not be appropriate for other purposes.

REQUEST FOR APPROVAL OF THE KEY EMPLOYEE RETENTION PLAN

THE KERP

- 11. The Timminco Entities seek the approval of the KERP and the granting of the KERP Charge. If approved, a limited number of employees, each of whom is considered by the Timminco Entities to be critical to the successful completion of the CCAA Proceedings, will participate in the KERP (the “**KERP Participants**”).
- 12. The maximum aggregate of payments under the KERP is \$269,000. Each of the KERP Participants has received a letter in the form attached hereto as Appendix A (each a “**KERP Agreement**”) pursuant to which a payment of a set sum would be payable to the KERP Participant upon the occurrence of the earliest of one of the following events with respect to each of the Timminco Entities:
 - (a) The implementation of a plan of compromise or arrangement as contemplated by the CCAA
 - (b) The sale of all or substantially all of the assets of the entity; or

- (c) The termination of the CCAA Proceeding in respect of the entity, including without limitation the issuance of an order by a Judge of the Ontario Superior Court of Justice declaring that the CCAA Proceeding in respect of the entity is terminated.
13. The Monitor has prepared a confidential supplement to the First Report (the “**Confidential Supplement**”) which shows the specific amount payable to each KERP Participant, together with certain other personal information for each KERP Participant. In order to protect the KERP Participants and to minimize any disruption during the CCAA Proceedings, the Timminco Entities seek an order sealing the Confidential Supplement.

THE MONITOR’S COMMENTS AND RECOMMENDATION

14. Until the proclamation of amendments to the CCAA and its regulations on September 18, 2009, there was no central repository of data on CCAA cases. While employee retention plans are sometimes approved in CCAA cases, the details of such plans are usually treated as confidential and decisions on Court approval are rarely reported. Accordingly, exhaustive research on employee retention plans approved in CCAA cases is difficult, if not impossible.
15. The Monitor has, however, been able to review information available in respect of nine employee retention plans approved in CCAA cases in 2008 and 2009. In addition, utilizing the list of CCAA cases since September 18, 2009 maintained by the Office of the Superintendent of Bankruptcy, the Monitor has identified and reviewed information from nine further cases where employee retention plans have been approved. Based on the information available to the Monitor, the aforementioned plans are summarized at Appendix B.

16. The Monitor concurs with the Timminco Entities position that the departure of the KERP Participants could be detrimental to the business and operations of the Timminco Entities and could impair the likelihood of a successful outcome to the CCAA Proceedings and that the approval of the KERP should provide incentive for the KERP Participants to remain in their employment for the duration of the restructuring process.
17. From its review of the court-approved retention plans as described above, the Monitor is satisfied that the KERP is consistent with current practice for retention plans in the context of a CCAA proceeding and that the quantum of the proposed payments under the KERP, both to individuals and in the aggregate, are reasonable in the circumstances.
18. Based on the totality of the foregoing, the Monitor is of the opinion that the KERP is reasonable in the circumstances and its implementation would be beneficial to the Timminco Entities and their stakeholders. Accordingly, the Monitor respectfully recommends that the KERP be approved by this Honourable Court. The Monitor also supports the granting of the KERP Charge to secure the obligations under the KERP.

REQUEST FOR APPROVAL TO SUSPEND SPECIAL PAYMENTS

19. The Timminco Entities seek approval to suspend Special Payments in order to maintain sufficient liquidity to continue operations for the benefit of all stakeholders, including employees and pensioners.
20. Based on the January 2 Forecast, it is clear that the Timminco Entities have insufficient liquidity to make the Special Payments at this time.

21. The Monitor is of the view that the continuation of operations while a buyer or investor is sought for the business will likely assist in the maximization of recoveries for stakeholders. Accordingly, the Monitor supports the Timminco Entities' request for approval to suspend Special Payments.

REQUEST FOR SUPER-PRIORITY FOR COURT-ORDERED CHARGES

22. In accordance with paragraph 40 of the Initial Order, the Timminco Entities seek priority over the Encumbrances, including any deemed trust created under the Ontario *Pension Benefits Act* or the Québec *Supplemental Pensions Act*, on notice to those parties likely to be affected by such priority, for the Administration Charge, the KERP Charge and the D&O Charge (collectively, the “**Charges**”).
23. The Timminco Entities could not continue the CCAA Proceedings without legal counsel. The appointment of a monitor is mandated by statute and the availability of independent legal advice is critical to the ability of a monitor to undertake its role. The ongoing support of the KERP Participants and of the Directors and Officers would also be beneficial to the Timminco Entities efforts to maximize recoveries for their stakeholders through the CCAA Proceedings. In the Monitor's view, it is not unreasonable for those parties to be assured that amounts covered by the Charges are not at risk, as they potentially could be if the Charges are not afforded priority over the Encumbrances.
24. Accordingly, the Monitor supports the Timminco Entities request for priority over the Encumbrances for the Charges.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 6th day of January, 2012.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Timminco Limited and Bécancour Silicon Inc.



Nigel D. Meakin
Senior Managing Director



Toni Vanderlaan
Managing Director

Appendix A

Template KERP Agreement



TIMMINCO LIMITED
Sun Life Financial Tower
150 King Street West
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Toronto, Ontario
M5H 1J9 Canada

Telephone: (416) 364-5171
Fax: (416) 364-3451
www.timminco.com

STRICTLY PRIVATE AND CONFIDENTIAL

January 4, 2012

Dear *

RE: Incentive Payment

As Timminco Limited and Becancour Silicon Inc. (together, the "**Timminco Entities**") enter this challenging period of their operations, the Timminco Entities would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Timminco Entities as XX, particularly at this time.

In consideration of your ongoing loyalty to the Timminco Entities, the Timminco Entities are offering you the following incentive as part of the Timminco Entities' key employee retention program (the "**KERP**"), which shall be in addition to your regular salary, existing benefits, and an annual bonus in respect of the 2011 year: a single \$XX,XXX cash payment payable in full upon the occurrence of the earliest of one of the following events with respect to each of the Timminco Entities: (a) the implementation of a plan of compromise or arrangement as contemplated by the *Companies' Creditors Arrangement Act* (the "**CCAA**"); (b) the sale of all or substantially all of the assets of the entity; or (c) the termination of the CCAA proceeding in respect of the entity, including without limitation the issuance of an order by a Judge of the Ontario Superior Court of Justice declaring that the CCAA proceeding in respect of the entity is terminated. As security for the obligations of the Timminco Entities to make the payments set out herein, the Timminco Entities intend to create a charge over the property of the Timminco Entities (the "**KERP Charge**"). The KERP Charge is intended to rank below the Administration Charge but senior to D&O Charge and the DIP Charge. The Timminco Entities will apply to the Ontario Superior Court of Justice for approval of the KERP Charge at the Timminco Entities' next court appearance, which is scheduled for January 12, 2012.

The proposal outlined above was approved by Timminco's Board of Directors on January 2, 2012.

In order to receive the incentive bonus described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and

legal advisors (other than any disclosure required by law), and (b) at the time such payments would be payable you cannot have (i) resigned, (ii) been terminated with cause; or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly; provided that any non-payment of the incentive bonus described above on the basis of facts or circumstances described in clauses (ii) and (iii) shall first be approved by Timminco's Board of Directors.

Sincerely,

Douglas Fastuca
Chief Executive Officer,
Timminco Limited

cc: Ashley Taylor, *Stikeman Elliott LLP*
Nigel Meakin, *FTI Consulting Canada Inc.*

Appendix B

Summary of KERP Arrangements Approved in Other CCAA Cases

CCAA Debtor(s)	Filing Jurisdiction	Employees Covered	Individual Payments	Total Cost
Earth First Canada Inc.	Alberta	11 (subset of total)	Unknown	\$775,500
Challenger Energy Corp.	Alberta	2 (all)	20%-26% salary increase plus bonus of 1 year's salary	\$484,000 plus salary cost
Oilexco Incorporated et al	Alberta	38 (all)	3 months' salary	US\$2 million
Semcanada Crude Company	Alberta	22 (all)	Existing bonuses plus severance of greater of contract or 6 months	\$6.3 million
Semcams ULC	Alberta	331 (all)	Existing bonuses plus severance in accordance with policy plus bonus of 6 months' salary for senior management, 3 month's for others	\$9.1 million
Semcanada Energy Company	Alberta	64 (all)	Unknown	4% of net liquidation recoveries + \$200,000. \$1.6 million at midpoint of liquidation range
Quebecor World Inc.	Quebec	575 (subset)	Unknown	\$33.7 million
Nortel Networks et al	Ontario	972 (subset)	Unknown	Up to \$45 million
Canwest Global Communications Corp. et al	Ontario	20 (subset)	Unknown	\$5.9 million
Brainhunter Inc. et al	Ontario	(a) 1; (b) 10 (subset)	(a) \$50,000 per month 2 months (b) unknow, payable on earlier of 4 months, sale or termination	\$290,000
Canwest Publishing Inc. et al	Ontario	135 (subset) plus unknown others	Unknown	\$6.9 million
Davie Yards Inc./Chantiers Davie Inc.	Quebec	21 (subset)	Unknown	Unknown
ConjuChem Biotechnologies Inc.	Quebec	11 (all)	Unknown	\$587,000
Boutique Jacob Inc.	Quebec	6 (subset)	Unknown	\$484,000
Altus Energy Services Ltd. and Nuso Northern Manufacturing Ltd.	Alberta	15 (subset)	Unknown. Payable on plan, sale or termination of proceedings	\$290,700
Newpage Port Hawkesbury Corp.	Nova Scotia	Unknown subset	Unknown	\$298,000
Sterling Shoes et al	British Columbia	Unknown subset	33% on substantial completion of liquidation or 3 months, 33% on execution of a definitive sale agreement, 33% on sale or restructuring transaction	\$500,000
Oilsands Quest et al	Alberta	19 (all)	75% of salary after 1 year, pro-rated if terminated. Plan in place year before filing but approved and confirmed in Initial Order as payment post-filing	\$964,000
Oilsands Quest et al	Alberta	7 (unclear)	Unknown. 50% payable after 7 months, 50% after 13 months	\$603,250