

**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 OF ARRANGEMENT OF  
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

**MOTION RECORD  
(Extending Stay Period to December 31, 2014)**

September 24, 2014

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

**Steven J. Weisz**, LSUC # 32102C  
Tel: 416-863-2616  
Fax: 416-863-2653

**Aryo Shalviri**, LSUC # 63867A  
Tel: 416-863-2962

Lawyers for the Monitor, FTI Consulting  
Canada Inc.

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF TIMMINCO LIMITED  
AND BÉCANCOUR SILICON INC.

(Applicants)





**SERVICE LIST**

<b>GENERAL</b>	
<p><b>TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.</b> Sun Life Financial Tower 150 King Street West, Suite 2401 Toronto, ON M5H 1J9</p> <p><b>Applicants</b></p>	<p><b>Doug Fastuca</b> Tel: 416-364-5171 Email: <a href="mailto:dfastuca@timminco.com">dfastuca@timminco.com</a></p> <p><b>Greg Donaldson</b> Tel: 416-364-5698 Fax: 416-364-3451 Email: <a href="mailto:gdonaldson@timminco.com">gdonaldson@timminco.com</a></p>
<p><b>STIKEMAN ELLIOTT LLP</b> 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p><b>Lawyers for the Applicants</b></p>	<p><b>Ashley J. Taylor</b> Tel: 416-869-5236 Fax: 416-947-0866 Email: <a href="mailto:ataylor@stikeman.com">ataylor@stikeman.com</a></p> <p><b>Daphne MacKenzie</b> Tel: 416-869-5695 Email: <a href="mailto:dmackenzie@stikeman.com">dmackenzie@stikeman.com</a></p> <p><b>Pat O'Kelly</b> Tel: 416-869-5633 Email: <a href="mailto:pokelly@stikeman.com">pokelly@stikeman.com</a></p> <p><b>Dan Murdoch</b> Tel: 416-869-5529 Email: <a href="mailto:dmurdoch@stikeman.com">dmurdoch@stikeman.com</a></p> <p><b>Maria Konyukhova</b> Tel: 416-869-5230 Email: <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a></p> <p><b>Kathryn Esaw</b> Tel: 416-869-6820 Fax: 416-947-0866 Email: <a href="mailto:kesaw@stikeman.com">kesaw@stikeman.com</a></p>

<p><b>FTI CONSULTING CANADA INC.</b> TD Waterhouse Tower 79 Wellington Street, Suite 2010 Toronto, ON M5K 1G8</p> <p><b>Monitor</b></p>	<p><b>Nigel D. Meakin</b> Tel: 416-649-8065 Email: <a href="mailto:nigel.meakin@fticonsulting.com">nigel.meakin@fticonsulting.com</a></p> <p><b>Toni Vanderlaan</b> Tel: 416-649-8075 Fax: 416-649-8101 Email: <a href="mailto:toni.vanderlaan@fticonsulting.com">toni.vanderlaan@fticonsulting.com</a></p>
<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p><b>Lawyers for the Monitor</b></p>	<p><b>Steven J. Weisz</b> Tel: 416-863-2616 Email: <a href="mailto:steven.weisz@blakes.com">steven.weisz@blakes.com</a></p> <p><b>Linc Rogers</b> Tel: 416-863-4168 Fax: 416-863-2653 Email: <a href="mailto:linc.rogers@blakes.com">linc.rogers@blakes.com</a></p>
<p><b>INVESTISSEMENT QUÉBEC</b> 393 Rue Saint-Jaques, Suite 500 Montréal, QC H2Y 1N9</p>	<p><b>Danièle Leroux</b> Tel: 514-873-0439 Fax: 514-873-9917 Email: <a href="mailto:daniele.leroux@invest-quebec.com">daniele.leroux@invest-quebec.com</a></p> <p><b>Iya Toure</b> Email: <a href="mailto:iya.toure@invest-quebec.com">iya.toure@invest-quebec.com</a></p> <p><b>Christine Fillion</b> Email: <a href="mailto:christine.fillion@invest-quebec.com">christine.fillion@invest-quebec.com</a></p> <p><b>Francois Lamothe</b> Email: <a href="mailto:francois.lamothe@invest-quebec.com">francois.lamothe@invest-quebec.com</a></p> <p><b>Lilianne Monier</b> Email: <a href="mailto:liliane.monier@invest-quebec.com">liliane.monier@invest-quebec.com</a></p>
<p><b>FASKEN MARTINEAU DUMOULIN LLP</b> 140 Grande Allee Est, Suite 800 Quebec City, QC G1R 5M8</p> <p>333 Bay Street Suite 2400 Toronto, ON M5H 2T6</p> <p><b>Lawyers for Investissement Quebec</b></p>	<p><b>Charles Mercier</b> Tel: 1-418-640-2046 Email: <a href="mailto:cmercier@fasken.com">cmercier@fasken.com</a></p> <p><b>Claude Girard</b> Tel: 418-640-2050 Fax: 418-647-2455 Email: <a href="mailto:cgirard@fasken.com">cgirard@fasken.com</a></p> <p><b>Aubrey Kauffman</b> Tel: 1-418-868-3538 Fax: 1-418-364-7813 Email: <a href="mailto:akauffman@fasken.com">akauffman@fasken.com</a></p>
<p><b>MCCARTHY TÉTRAULT</b> Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6</p> <p><b>Lawyers for AMG Advanced Metallurgical Group N.V.</b></p>	<p><b>James Gage</b> Tel: 416-601-7539 Fax: 416-868-0673 Email: <a href="mailto:jgage@mccarthy.ca">jgage@mccarthy.ca</a></p>

<b>RAYMOND CHABOT GRANT THORNTON</b> 140 Grande Allée, Est, Suite 200 Québec City, QC G1R 5P7	<b>Jean Chiasson</b> Tel: 1-418-647-3204 Fax: 1-418-647-9279 Email: <a href="mailto:chiasson.jean@rcgt.com">chiasson.jean@rcgt.com</a>
<b>QUÉBEC SILICON LIMITED PARTNERSHIP</b> 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8	<b>Rene Boisvert</b> Tel: 1-819-294-9001 Email: <a href="mailto:rene.boisvert@quebecsilicium.com">rene.boisvert@quebecsilicium.com</a>
<b>QUÉBEC SILICON GENERAL PARTNER INC.</b> 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8	<b>Rene Boisvert</b> Tel: 1-819-294-9001 Email: <a href="mailto:rene.boisvert@quebecsilicium.com">rene.boisvert@quebecsilicium.com</a>
<b>DOW CORNING CORPORATION</b> 2200 West Salzburg Road Midland, MI 48686-0994	<b>Cornell Boggs</b> Email: <a href="mailto:cornell.boggs@dowcorning.com">cornell.boggs@dowcorning.com</a> <b>John Tierney</b> Email: <a href="mailto:john.tierney@dowcorning.com">john.tierney@dowcorning.com</a>
<b>MCCARTHY TÉTRAULT</b> 1000 De La Gauchetière Street West, Suite 2500 Montréal, QC H3B 0A2  Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6  <b>Counsel to Dow Corning Corporation</b>	<b>Barbara J. Boake</b> Tel: 416-601-7557 Email: <a href="mailto:bboake@mccarthy.ca">bboake@mccarthy.ca</a> <b>Sharon Kour</b> Tel: 416-601-8305 Email: <a href="mailto:skour@mccarthy.ca">skour@mccarthy.ca</a> <b>Elder Marques</b> Tel: 416-601-7822 Fax: 416-868-0673 Email: <a href="mailto:emarques@mccarthy.ca">emarques@mccarthy.ca</a>
<b>SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP</b> Four Times Square New York, NY 10036  <b>Counsel to Down Corning Corporation</b>	<b>David J. Friedman</b> Fax: 1-212-735-2000 Email: <a href="mailto:david.friedman@skadden.com">david.friedman@skadden.com</a>
<b>KIM ORR BARRISTERS</b> 200 Front Street West, Suite 2300 Toronto, ON M5V 3K2	<b>James Orr</b> Tel: 416-349-6571 Fax: 416-598-0601 Email: <a href="mailto:jo@kimorr.ca">jo@kimorr.ca</a>
<b>BAKER &amp; MCKENZIE LLP</b> Brookfield Place 181 Bay Street, Suite 2100 Toronto, ON M5J 2T3	<b>Chris Besant</b> Tel: 416-865-2318 Email: <a href="mailto:chris.besant@bakermckenzie.com">chris.besant@bakermckenzie.com</a> <b>Frank Spizzirri</b> Tel: 416-865-6940 Fax: 416-863-6275 Email: <a href="mailto:frank.spizzirri@bakermckenzie.com">frank.spizzirri@bakermckenzie.com</a>

<p><b>OSLER HOSKIN &amp; HARCOURT LLP</b> 1 First Canadian Place Toronto, ON M5X 1B8</p> <p><b>Lawyers for Wacker Chemie AG</b></p>	<p><b>Steven Golick</b> Tel: 416-862-6704 Email: <a href="mailto:sgolick@osler.com">sgolick@osler.com</a></p> <p><b>Andrea Lockhart</b> Tel: 416-862-6829 Fax: 416-862-6666 Email: <a href="mailto:alockhart@osler.com">alockhart@osler.com</a></p>
<p><b>BENNETT JONES LLP</b> One First Canadian Place Suite 3400 Toronto, ON M5X 1A4</p> <p><b>Lawyers for John Walsh</b></p>	<p><b>Derek J. Bell</b> Tel: 416-777-4638 Fax: 416-863-1716 Email: <a href="mailto:belld@bennettjones.com">belld@bennettjones.com</a></p> <p><b>Robert Staley</b> Tel: 416-777-4857 Fax: 416-863-1716 E-mail: <a href="mailto:staleyr@bennettjones.ca">staleyr@bennettjones.ca</a></p>
<p><b>GOWLING LAFLEUR HENDERSON LLP</b> 1 Place Ville Marie, Suite 3700 Montreal, QC H3B 3P4</p> <p><b>Lawyers for Wajax Equipment</b></p>	<p><b>Geneviève Cloutier</b> Tel: 1-514-392-9448 Fax: 1-514-876-9048 Email: <a href="mailto:genevieve.cloutier@gowlings.com">genevieve.cloutier@gowlings.com</a></p>
<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> First Canadian Place, Suite 44 Toronto, ON M5X 1B1</p> <p><b>Lawyers for J. Thomas Timmins</b></p>	<p><b>Robin Schwill</b> Tel: 416-863-5502 Fax: 416-863-0871 Email: <a href="mailto:rschwill@dwpv.com">rschwill@dwpv.com</a></p>
<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> First Canadian Place, Suite 44 Toronto, ON M5X 1B1</p> <p><b>Lawyers for Grupo Ferroatlantica, S.A.</b></p>	<p><b>Natalie Renner</b> Tel: 416-367-7489 Fax: 416-863-0871 Email: <a href="mailto:nrenner@dwpv.com">nrenner@dwpv.com</a></p>
<p><b>STOCKWOODS LLP</b> 77 King Street West, Suite 4130 Toronto, ON M5K 1H1</p> <p><b>Lawyers for Photon Consulting LLC, Rogol Energy Consulting LLC and Michael Rogol</b></p>	<p><b>Paul Le Vay</b> Tel: 416-593-2493 Email: <a href="mailto:paulv@stockwoods.ca">paulv@stockwoods.ca</a></p> <p><b>Brendan Van Niejenhuis</b> Tel: 416-593-2487 Email: <a href="mailto:brendanvn@stockwoods.ca">brendanvn@stockwoods.ca</a></p>
<p><b>LANGLOIS KRONSTROM DESJARDINS LLP</b> 1002 Sherbrooke Street West, Suite 2800 Montreal, QC H3A 3L6</p> <p><b>SHIBLEY RIGHTON LLP</b> 250 University Avenue, Suite 700 Toronto, ON M5H 3E2</p> <p><b>Lawyers for BSI Non-Union Employee Pension Committee and BSI Union Employee Pension Committee</b></p>	<p><b>Tina Hobday</b> Tel: 514-282-7816 Email: <a href="mailto:tina.hobday@lkd.ca">tina.hobday@lkd.ca</a></p> <p><b>Thomas McRae</b> Tel: 416-214-5206 Fax: 416-214-5400 Email: <a href="mailto:thomas.mcrae@shibleyrighton.com">thomas.mcrae@shibleyrighton.com</a></p>

<b>CASSELS BROCK LAWYERS</b> 2100 Scotia Plaza 40 Kings Street West Toronto, ON M5H 3C2	<b>Shayne Kukulowicz</b> Tel: 416-860-6463 Email: <a href="mailto:skukulowicz@casselsbrock.com">skukulowicz@casselsbrock.com</a> <b>Jane Dietrich</b> Tel: 416-860-5223 Fax: 416-360-8877 Email: <a href="mailto:jdietrich@casselsbrock.com">jdietrich@casselsbrock.com</a>
<b>PETER A.M. KALINS</b>	Email: <a href="mailto:peter.kalins@sympatico.ca">peter.kalins@sympatico.ca</a>
<b>RUSSELL HILL ADVISORY SERVICE INC.</b> c/o Timminco Limited Sun Life Financial Tower 150 King Street West, Suite 2401 Toronto, ON M5H 1J9 <b>Chief Restructuring Officer</b>	<b>Sean Dunphy</b> Fax: 416-364-3451 Email: <a href="mailto:sdunphy@timminco.com">sdunphy@timminco.com</a>
<b>TOWNSHIP OF WHITEWATER REGION</b> 44 Main Street PO Box 40 Cobden, ON K0J 1K0	<b>Christine FitzSimons, CAO/Clerk</b> Tel: 613-646-2282 Email: <a href="mailto:cfitzsimons@whitewaterregion.ca">cfitzsimons@whitewaterregion.ca</a>  <b>Annette Mantifel, Treasurer/Deputy CAO</b> Tel: 613-646-2282 Email: <a href="mailto:amantifel@whitewaterregion.ca">amantifel@whitewaterregion.ca</a>
<b>CITY OF BÉCANCOUR</b> City Hall 1295 Av. Nicolas-Perrot Becancour, QC G9H 1A1	<b>Via Courier</b>  Tel: 819-294-6500 Fax: 819-294-6535
<b>PENSION PLANS REPRESENTATIVES</b>	
<b>BSI NON-UNION EMPLOYEE PENSION COMMITTEE</b>	
 	<b>Maria Spensieri</b> Email: <a href="mailto:maria.spensieri@quebecsilicium.com">maria.spensieri@quebecsilicium.com</a> <b>René Boisvert</b> Email: <a href="mailto:rene.boisvert@quebecsilicium.com">rene.boisvert@quebecsilicium.com</a>
<b>BSI NON UNION EMPLOYEE PENSION COMMITTEE</b>	
 	<b>Carl Rivard</b> Email: <a href="mailto:carl.rivard@resolutefp.com">carl.rivard@resolutefp.com</a> <b>Patrick Gauthier</b> <a href="mailto:patrick.gauthier@quebecsilicium.com">patrick.gauthier@quebecsilicium.com</a>

<p><b>SUPERINTENDENT OF FINANCIAL SERVICES</b> 5160 Yonge Street PO Box 85 Toronto, ON M2N 6L9</p>	<p><b>Mark Bailey</b> Tel: 416-590-7555 Email: <a href="mailto:mark.bailey@fsco.gov.on.ca">mark.bailey@fsco.gov.on.ca</a></p> <p><b>Deborah McPhail</b> Tel: 416-226-7764 Email: <a href="mailto:dmcphail@fsco.gov.on.ca">dmcphail@fsco.gov.on.ca</a></p> <p><b>Stephen Scharbach</b> Tel: 416-590-7224 Fax: 416-590-7070 Email: <a href="mailto:stephen.scharbach@fsco.gov.on.ca">stephen.scharbach@fsco.gov.on.ca</a></p> <p><b>Jessica Spence</b> Email: <a href="mailto:jessica.spence@fsco.gov.on.ca">jessica.spence@fsco.gov.on.ca</a></p>
<p><b>RÉGIE DES RENTES DU QUÉBEC</b> Direction des régimes de retraite Régies de rentes due Québec Case postale 5200 Québec, QC G1K 7S9</p>	<p><b>Philippe Auger-Giroux</b> Tel: 1-418- 657-8715 ext. 3927 Fax: 1-418-643-9590 Email: <a href="mailto:philippe.auger-giroux@rrq.gouv.qc.ca">philippe.auger-giroux@rrq.gouv.qc.ca</a></p>
<p><b>KOSKIE MINKSY LLP</b> 20 Queen Street West Suite 900 Toronto, ON M5H 3R3</p> <p><b>Lawyers for Mercer (Canada) Limited, the administration of the Haley Pension Plan</b></p>	<p><b>Andrew Hatnay</b> Tel: 416-595-2083 Email: <a href="mailto:ahatnay@kmlaw.ca">ahatnay@kmlaw.ca</a></p> <p><b>Demetrios Yiokaris</b> Tel: 416-595-2130 Email: <a href="mailto:dyiokaris@kmlaw.ca">dyiokaris@kmlaw.ca</a></p> <p><b>James Harnum</b> Tel: 416-542-6285 Fax: 416-201-2872 Email: <a href="mailto:jharnum@kmlaw.ca">jharnum@kmlaw.ca</a></p>
<p><b>UNIONS</b></p>	
<p><b>LA SECTION LOCALE 184 DE SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER</b> 6500, rue Yvon-Trudeau Bécancour, QC G9H 2V8 7080, boul, Marion Trois-Rivières, QC G9A 6G4</p>	<p><b>Jean Simoneau</b> Email: <a href="mailto:scep184@gmail.com">scep184@gmail.com</a></p> <p><b>Rene Gauthier</b> Tel: 819-378-4696 Email: <a href="mailto:rgauthier@scep.ca">rgauthier@scep.ca</a></p>
<p><b>CaleyWray</b> 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5</p>	<p><b>Denis W. Ellickson</b> Tel: 416-775-4678 Fax: 416-366-4678 Email: <a href="mailto:ellicksond@caleywray.com">ellicksond@caleywray.com</a></p> <p><b>Jesse B. Kugler</b> Tel: 416-775-4677 Fax: 416-366-3673 Email: <a href="mailto:kuglerj@caleywray.com">kuglerj@caleywray.com</a></p>

<b>THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION</b> 2285 Saint-Laurent Boulevard, Suite D-11 Ottawa, ON K1G 4Z7	<b>David Lipton</b> Tel: 1-613-260-7205 ext. 232 Email: <a href="mailto:dlipton@usw.com">dlipton@usw.com</a>
<b>SACK GOLDBLATT MITCHELL LLP</b> 20 Dundas Street West, Suite 1100 Toronto, ON M5G 2G8 <b>Counsel for The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union</b>	<b>Charles Sinclair</b> Tel: 416-979-4234 Fax: 416-591-7333 Email: <a href="mailto:csinclair@sgmlaw.com">csinclair@sgmlaw.com</a>
<b>PPSA CREDITORS</b>	
<b>PRODAIR CANADA LTEE</b> 7475 Boulevard Newman, Suite 311 La Salle, QC H8N 1X3	<b>Via Courier</b>
<b>SERVICES FINANCIERS CIT LTEE</b> 5035 South Service Road Burlington, ON L7R 4C8	<b>Isobel Fraser</b> Tel: 905-633-2097 Fax: 905-633-2130 Email: <a href="mailto:isobel.fraser@cit.com">isobel.fraser@cit.com</a>
<b>GE VFS CANADA LIMITED PARTNERSHIP</b> 2300 Meadowvale Boulevard, Suite 200 Mississauga, ON L5N 5P9	<b>Via Courier</b>
<b>SERVICES FINANCIERS CATERPILLAR LTEE</b> 5575 North Service Road, Suite 600 Burlington, ON L7C 6M1	<b>Kellie Wellenreiter</b> Tel: 1-289-313-1238 Email: <a href="mailto:kellie.wellenreiter@cat.com">kellie.wellenreiter@cat.com</a>
<b>DCFS CANADA CORP.</b> 2680 Matheson Boulevard East, Suite 500 Mississauga, ON L4W 0A5	<b>Via Courier</b>
<b>SERVICES FINANCIERS MERCEDES-BENZ</b> 2680 Matheson Boulevard East, Suite 500 Mississauga, ON L4W 0A5	<b>Via Courier</b>
<b>GE CAPITAL VEHICLE AND EQUIPMENT LEASING INC.</b> 2300 Meadowvale Boulevard, 2 <sup>nd</sup> Floor Mississauga, ON L5N 5P9	<b>Via Courier</b>
<b>ENDRAS BMW</b> 100 Achilles Rd. Ajax, ON L1Z 0C5	<b>Via Courier</b>



<p><b>DOCUMENT DIRECTION</b>  c/o De Lage Landen Financial Services Canada Inc.  3450 Superior Court, Unit 1  Oakville, ON L6L 0C4</p>	<p><b>Faseeh Ahmad</b>  Tel: 1-855-732-2818  Fax: 1-866-318-3447  Email: <a href="mailto:fahmad@leasedirect.com">fahmad@leasedirect.com</a></p>
<p><b>BMW CANADA INC.</b>  50 Ultimate Drive  Richmond Hill, ON L4S 0C8</p>	<p><b>Via Courier</b></p>
<p><b>TOYOTA CREDIT CANADA INC.</b>  80 Micro court, Suite 200  Markham, ON L3R 9Z5</p>	<p><b>Via Courier</b></p>
<p><b>GOVERNMENT AGENCIES</b></p>	
<p><b>DEPARTMENT OF JUSTICE  ONTARIO REGIONAL OFFICE</b>  130 King Street West, Suite 3400  Toronto, ON M5X 1K6   <b>Attorney General of Canada</b></p>	<p><b>Diane Winters</b>  Tel: (416) 973-3172  Fax : (416) 973-0810  Email : <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p>
<p><b>CANADA REVENUE AGENCY</b>  130 King Street West, Suite 3400  Toronto, ON M5X 1K6   <b>Lawyer for Canada Revenue Agency</b></p>	<p><b>Diane Winters</b>  Tel: (416) 973-3172  Fax : (416) 973-0810  Email : <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p>
<p><b>AGENCY OF REVENUE DU QUEBEC</b>  1600 Boulevard René-Lévesque Ouest, 3e étage  Sector R23 CPF  Montréal, QC H3H 2V2</p>	<p><b>Via Courier</b></p>
<p><b>MINISTÈRE DE LA JUSTICE DU QUÉBEC</b>  1200, route de l'Église, 6e étage  Québec City, QC G1V 4M1</p>	<p><b>Via Courier</b></p>
<p><b>MINISTÈRE DU DÉVELOPPEMENT DURABLE, DE  L'ENVIRONNEMENT ET DES PARCS</b>  Édifce Marie-Guyart, 5e étage  675 boulevard René-Lévesque Est  Québec, QC G1R 5V7</p>	<p><b>Emmanuelle Gervais-Cadrin</b>  Tel: 418-521-3816  Fax: 418-646-0908  Email: <a href="mailto:emmanuelle.gervais-cadrin@mddep.gouv.qc.ca">emmanuelle.gervais-cadrin@mddep.gouv.qc.ca</a></p>
<p><b>MINISTRY OF REVENUE (ONTARIO)</b>  Insolvency Unit  33 King Street West – 6<sup>th</sup> Floor  Oshawa, ON L1H 8H5</p>	<p><b>Email : <a href="mailto:Insolvency.unit@ontario.ca">Insolvency.unit@ontario.ca</a></b></p>
<p><b>MINISTRY OF THE ATTORNEY GENERAL  (ONTARIO)</b>  McMurtry-Scott Building  720 Bay Street, 11<sup>th</sup> Floor  Toronto, ON M7A 2S9</p>	<p><b>Via Courier</b></p>

<b>MINISTRY OF THE ENVIRONMENT</b> Legal Services Branch 135 St. Clair Avenue West Toronto, ON M4V 1P5	<b>Mario Faieta</b> Tel: (416) 314-6482 Fax: (416) 314-6579 Email: <a href="mailto:mario.faieta@ontario.ca">mario.faieta@ontario.ca</a>
<b>ONTARIO MINISTRY OF NORTHERN DEVELOPMENT, MINES AND FORESTRY</b> Rm. M2-24, Macdonald Block 900 Bay Street Toronto, ON M7A 1C3	<b>Via Courier</b>
<b>MINISTRY OF NORTHERN DEVELOPMENT, MINES AND FORESTRY</b> 933 Ramsey Lake Road, B4 Sudbury, ON P3E 6B5	<b>Via Courier</b> <b>Ms. C. Blancher-Smith</b> Director of Mine Rehabilitation Tel: (705) 670-5784
<b>MINISTRY OF THE ATTORNEY GENERAL</b> Crown Law Office 720 Bay Street, 8 <sup>th</sup> Floor Toronto, ON M5G 2K1  <b>Lawyers for Ontario Ministry of Northern Development and Mines</b>	<b>Ronald Carr</b> Tel: 416-326-2704 Fax: 416-326-4181 Email: <a href="mailto:ronald.carr@ontario.ca">ronald.carr@ontario.ca</a>  <b>Lisa Brost</b> Tel: 416-325-9806 Email: <a href="mailto:lisa.brost@ontario.ca">lisa.brost@ontario.ca</a>

**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 OF ARRANGEMENT OF  
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

**I N D E X**

<b><u>TAB NO.</u></b>		<b><u>PAGE NO.</u></b>
1	Notice of Motion (Extending the Stay Period until December 31, 2014) returnable September 29, 2014	1
2	Twenty-Sixth Report of the Monitor, dated September 24, 2014	6
3	Draft Order dated September 24, 2014	13

# Tab 1

**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 OF ARRANGEMENT OF  
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

**NOTICE OF MOTION**

**(Extending Stay Period to December 31, 2014)**

FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Timminco Limited and its wholly owned subsidiary, Bécancour Silicon Inc. ("**BSI**", and together with Timminco Limited, the "**Timminco Entities**"), will make a motion to a judge presiding over the Commercial List on September 29, 2014, at 8:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an Order substantially in the form of the draft Order included in the Motion Record:

- (a) abridging the time for service of the Notice of Motion and the Motion Record, such that this motion is properly returnable on September 29, 2014;
- (b) extending the Stay Period (as defined below) until December 31, 2014; and

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- (c) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (d) On January 3, 2012, 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**");
- (e) Pursuant to the Initial Order, the Honourable Mr. Justice Morawetz granted a stay of proceedings against the Timminco Entities until February 2, 2012 (the "**Stay Period**");
- (f) The Stay Period has been extended a number of times and currently expires on September 30, 2014;
- (g) On December 16, 2013, the Honourable Mr. Justice Newbould issued an order expanding the powers of the Monitor to enable the Monitor to complete the estate in the name of and on behalf of the Timminco Entities;
- (h) On July 23, 2014, pursuant to the June 24, 2014 Order of the Honourable Mr. Regional Senior Justice Morawetz, the Monitor made an interim distribution of \$1,145,778.08 on account of the deemed trust claim in respect of the solvency deficit of the Timminco Limited pension plan (the "**Haley Deemed Trust**");

- 3 -

- (i) The quanta of the BSI Deemed Trust Claims (as defined in the Twenty-Fifth Report of the Monitor dated June 9, 2014, filed (the “**Twenty-Fifth Report**”)) has now been agreed between the BSI Pension Committees (as defined in the Twenty-Fifth Report), IQ (as defined in the Twenty-Fifth Report) and the Monitor;
- (j) A final distribution of any remaining funds in the Timminco estate will be made on account of the Haley Deemed Trust once the Monitor has completed the necessary steps to finalize the CCAA proceedings;
- (k) Any remaining funds in the BSI estate following the completion of the necessary steps to finalize the CCAA proceedings will be paid to IQ on account of its secured claim;
- (l) The only known steps to finalize the CCAA proceedings are (a) filing of certain tax returns, (b) completing the distributions and matters described in the Twenty-Sixth Report, (c) completing statutory and administrative duties and filings, and (d) terminating the CCAA proceedings and discharging the Monitor;
- (m) Additional time is required to finalize the CCAA proceedings and the Timminco Entities appear to have sufficient funding for the extension of the Stay Period until December 31, 2014;
- (n) Rules 1.04 and 2.03 of the *Rules of Civil Procedure*; and

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- (o) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (i) The Twenty-Fifth Report, filed;
- (ii) The Twenty-Sixth Report, filed; and
- (iii) Such further and other material as counsel may submit and this Honourable Court may permit.

September 24, 2014

**Steven J. Weisz**, LSUC # 32102C

Tel: 416-863-2616

Fax: 416-863-2653

**Aryo Shalviri**, LSUC # 63867A

Tel: 416-863-2962

Lawyers for the Monitor, FTI Consulting Canada  
Inc.

**TO: SERVICE LIST ATTACHED TO THE MOTION RECORD**



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 OF ARRANGEMENT OF TIMMINCO LIMITED  
AND BÉCANCOUR SILICON INC.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

NOTICE OF MOTION  
(Extending Stay Period to December 31, 2014)

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

**Steven J. Weisz**, LSUC # 32102C  
Tel: 416-863-2616  
Fax: 416-863-2653

**Aryo Shalviri**, LSUC # 63867A  
Tel: 416-863-2962

Lawyers for the Monitor, FTI Consulting Canada  
Inc.

# Tab 2

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

**Timminco Limited  
Bécancour Silicon Inc.**

**TWENTY-SIXTH REPORT OF THE MONITOR**

**September 24, 2014**

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.

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

**INTRODUCTION**

1. On January 3, 2012, Timminco Limited (“**Timminco**”) and its wholly owned subsidiary, Bécancour Silicon Inc. (“**BSI**”, 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 Timminco Entities until February 2, 2012, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Timminco Entities (the “**Monitor**”). The proceedings commenced by the Timminco Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The Stay Period has been extended a number of times. Pursuant to the Order of the Honourable Mr. Regional Senior Justice Morawetz granted June 10, 2014 (the “**June 10 Order**”) the Stay Period currently expires on September 30, 2014.

3. On June 15, 2012, the Honourable Mr. Justice Morawetz granted an order approving a procedure for the submission, review and adjudication of claims against the Timminco Entities and of claims against the directors and officers of the Timminco Entities (the “**Claims Procedure Order**”). The Claims Bar Date was set at 5:00 p.m. Toronto time on July 23, 2012. The Monitor has reviewed all claims and been in contact with various claimants in order to attempt to resolve a variety of outstanding issues.
4. By Order of the Honourable Mr. Justice Newbould dated August 17, 2012, Russell Hill Advisory Services Inc. (“**Russell Hill**”) was appointed as Chief Restructuring Officer (the “**CRO**”) of the Timminco Entities and the engagement letter dated July 24, 2012, between Russell Hill and the Timminco Entities (the “**CRO Agreement**”) was approved.
5. The CRO Agreement was for an initial term of six months with any extension to be negotiated with the Monitor subject to approval of the Court. The CRO Agreement was extended a number of times pursuant to the terms of the CRO Extension Agreement dated April 25, 2013 approved by the Court on May 14, 2013.
6. The CRO was discharged on December 16, 2013 pursuant to the provisions of the December 16 Order. On the same date, Mr. Justice Newbould issued an Order (the “**Monitor Powers Order**”) expanding the powers of the Monitor to enable the Monitor to complete the estate in the name of and on behalf of the Timminco Entities.
7. To date, the Monitor has filed twenty-five reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor’s Twenty-Sixth Report is to:
  - (a) Inform the Court of the payment of an interim distribution on account of the Haley Deemed Trust;

- (b) Inform the Court of the agreement of the quanta of the BSI Deemed Trust Claims;
- (c) Update the Court on the matters remaining to be completed in order to finalize the CCAA Proceedings; and
- (d) Request the granting of an Order extending the Stay Period until December 31, 2014.

### **TERMS OF REFERENCE**

8. In preparing this report, the Monitor has relied upon unaudited financial information of the Timminco Entities, the Timminco Entities' books and records, certain financial information prepared by the Timminco Entities and discussions with various parties.
9. Except as described in this Report:
  - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook;
  - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook;
10. 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.

11. The Monitor has prepared this Report in connection with the motion described in its Notice of Motion dated September 24, 2014. The Report should not be relied on for other purposes.
12. 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 previous reports of the Monitor, the Initial Order or other Order of the Court issued in the CCAA Proceedings.

#### **INTERIM DISTRIBUTION ON ACCOUNT OF THE HALEY DEEMED TRUST**

13. On July 23, 2014, pursuant to the Order of the Honourable Mr. Regional Senior Justice Morawetz granted June 24, 2014, the Monitor made an interim distribution of \$1,145,778.08 on account of the Haley Deemed Trust.
14. A final distribution of any remaining funds in the Timminco estate will be made on account of the Haley Deemed Trust once the Monitor has completed the necessary steps to finalize the CCAA Proceedings.

#### **THE BSI DEEMED TRUST CLAIMS**

15. The quanta the BSI Deemed Trust Claims has now been agreed between the BSI Pension Committees, IQ and the Monitor as follows:
  - (a) BSI Union Plan - \$2,164,495.00 as at September 30, 2014 plus interest of \$175.07 per diem thereafter; and
  - (b) BSI Non-union Plan - \$252,697.00 as at September 30, 2014 plus interest of \$16.40 per diem thereafter.

16. Pursuant to the Reimbursement Agreement, IQ will refund to the Monitor sufficient monies to pay the BSI Deemed Trust Claims in full. Any remaining funds in the BSI estate following completion of the necessary steps to finalize the CCAA Proceedings will be paid to IQ on account of its secured claim.

#### **MATTERS REMAINING TO BE COMPLETED**

17. The only known significant activities remaining to be completed prior to the termination of the CCAA Proceedings and the discharge of the Monitor are as follows:
  - (a) Filing of tax returns necessary to enable the collection of certain tax refunds;
  - (b) Completing the distributions described herein and matters related thereto;
  - (c) Statutory and administrative duties and filings; and
  - (d) Termination of CCAA Proceedings and discharge of Monitor and matters ancillary thereto.

#### **EXTENSION OF THE STAY PERIOD**

18. The Stay Period currently expires on September 30, 2014. Additional time is required for the Timminco Entities to complete the remaining matters in the CCAA Proceedings as described earlier in this report. Accordingly, the Timminco Entities now seek an extension of the Stay Period to December 31, 2014.
19. As at the date of this report, the Monitor holds cash of approximately \$991,000 on behalf of the Timminco Entities. The Timminco Entities therefore appear to have sufficient funding for the extension of the Stay Period.



20. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to December 30, 2014.
21. The Monitor also believes that the Timminco Entities have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

The Monitor respectfully submits to the Court this, its Twenty-Sixth Report.

Dated this 24<sup>th</sup> day of September, 2014.

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



Nigel D. Meakin  
Senior Managing Director

# Tab 3

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. REGIONAL	)	MONDAY, THE 29 <sup>TH</sup> DAY
	)	
SENIOR JUSTICE MORAWETZ	)	OF SEPTEMBER 2014

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**

**(Extending Stay Period to December 31, 2014)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Timminco Limited and its wholly owned subsidiary, Bécancour Silicon Inc. ("**BSI**", and together with Timminco Limited, the "**Timminco Entities**") for an order extending the Stay Period (as defined in the Initial Order) until December 31, 2014 was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Twenty-Sixth Report of the Monitor dated September 24, 2014, filed (the "**Twenty-Sixth Report**"), and on hearing the submissions of counsel for 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 the time for service of the Notice of Motion and the Motion Record is abridged, such that this motion is properly returnable today.

2. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order) be and is hereby extended to December 31, 2014.

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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 OF ARRANGEMENT OF TIMMINCO LIMITED  
AND BÉCANCOUR SILICON INC.

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

Proceeding Commenced at Toronto

**ORDER**

**(EXTENDING STAY PERIOD TO DECEMBER  
31, 2014)**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

**Steven J. Weisz, LSUC # 32102C**  
Tel: 416-863-2616  
Fax: 416-863-2653

**Aryo Shalviri, LSUC # 63867A**  
Tel: 416-863-2962

Lawyers for the Monitor, FTI Consulting  
Canada Inc.

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 OF ARRANGEMENT OF TIMMINCO LIMITED  
AND BÉCANCOUR SILICON INC.

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

Proceeding Commenced at Toronto

**MOTION RECORD**

**(Extending Stay Period to December 31, 2014)  
Returnable September 29, 2014**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

**Steven J. Weisz, LSUC # 32102C**

Tel: 416-863-2616  
Fax: 416-863-2653

**Aryo Shalviri, LSUC # 63867A**

Tel: 416-863-2962

Lawyers for the Monitor, FTI Consulting Canada  
Inc.