

**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 June 30, 2015)
Returnable March 30, 2015**

March 25, 2015

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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 June 30, 2015)

FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the “**Monitor**”) of Timminco Limited (“**Timminco**”) and its wholly owned subsidiary, Bécancour Silicon Inc. (“**BSI**”, and together with Timminco, the “**Timminco Entities**”), will make a motion to a judge presiding over the Commercial List on March 30, 2015, at 8:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8th 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 March 30, 2015;
- (b) extending the Stay Period (as defined below) until June 30, 2015; 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 March 31, 2015;
- (g) On June 15, 2012, the Honourable Mr. Justice Morawetz granted an order *inter alia* (a) 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, and (b) setting a claims bar date at 5:00 p.m. Toronto Time on July 23, 2012.
- (h) The Monitor has reviewed all claims and been in contact with the various claimants in order to attempt to resolve a variety of outstanding issues.

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- (i) 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;
- (j) As of the date of the Twenty-Eighth Report of the Monitor dated March 25, 2015, filed (the “**Twenty-Eighth Report**”), the Monitor holds approximately \$987,000 on behalf of the Timminco Entities;
- (k) The Monitor has faced significant difficulties and delays in dealing with (i) Revenue Canada with respect to the collection of approximately \$109,000 in HST refunds owing to Timminco (the “**Timminco Refund**”), and (ii) Revenu Quebec with respect to the collection of approximately \$192,000 in tax refunds owing to BSI (the “**BSI Refund**”, and together with the Timminco Refund, the “**Tax Refunds**”);
- (l) The Monitor has caused the Timminco Entities to file missing tax returns without which taxation authorities were refusing to release the Tax Refunds owing to the Timminco Entities;
- (m) The remaining step to obtain the Timminco Refund is for Revenue Canada to redirect or reissue the refund cheque incorrectly sent to Timminco’s former address;
- (n) The remaining steps to obtain the BSI Refund is for Revenu Quebec to complete its review of the subsequent information provided by the Monitor on behalf of

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BSI, which review is expected to take several weeks and to address or deal with any other matters that arise from such review;

- (o) The only known steps to finalize the CCAA proceedings are (a) the collection of the Tax Refunds and completion of ancillary matters related thereto, (b) completing the final distributions of proceeds in accordance with prior Orders of the Court and matters related thereto, (c) completing statutory and administrative duties and filings, and (d) terminating the CCAA proceedings and discharging the Monitor;
- (p) 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 June 30, 2015;
- (q) The Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to June 30, 2015;
- (r) The Monitor believes that the Timminco Entities have acted, and are acting in good faith and with due diligence;
- (s) Rules 1.04 and 2.03 of the *Rules of Civil Procedure*; and
- (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

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

March 25, 2015

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TO: SERVICE LIST ATTACHED TO THE MOTION RECORD

**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)

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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

NOTICE OF MOTION
(Extending Stay Period to June 30, 2015)

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TAB 2

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

**Timminco Limited
Bécancour Silicon Inc.**

TWENTY-EIGHTH REPORT OF THE MONITOR

March 25, 2015

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-EIGHTH 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 December 22, 2014 (the “**December 22 Order**”) the Stay Period currently expires on March 31, 2015.
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 Order of the Honourable Mr. Justice Newbould. 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-seven reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor's Twenty-Eighth Report is to:
 - (a) Update the Court on recent activities of the Monitor and the outstanding matters remaining to be completed in order to finalize the CCAA Proceedings; and
 - (b) Request the granting of an Order extending the Stay Period until June 30, 2015.

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 March 25, 2015. 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.

RECENT ACTIVITIES AND MATTERS REMAINING TO BE COMPLETED

13. The Monitor had been optimistic that the CCAA Proceedings would be complete prior to March 31, 2015. However, significant difficulties and delays have been encountered in dealing with the relevant tax authorities with respect to the collection of approximately \$109,000 in HST refunds from Revenue Canada owing to Timminco (the "**Timminco Refund**") and approximately \$192,000 in tax refunds from Revenu Quebec owing to BSI (the "**BSI Refund**").
14. The Timminco Entities had failed to file certain tax returns, without which the taxation authorities refused to release the tax refunds owing to the Timminco Entities. Consequently, the Monitor caused the Timminco Entities to file those tax returns in November 2014 in order to enable recovery of the tax refunds.

15. Revenue Canada had informed the Monitor that it had issued the cheque for the Timminco Refund but that cheque was not received by the Monitor. On making enquiries with Revenue Canada, it was found that the cheque had been mailed to Timminco's former address, notwithstanding that Revenue Canada had been instructed to use, and had been using, the Monitor's address for all correspondence. Revenue Canada has informed the Monitor that it will redirect or reissue the refund cheque but to date the cheque has not been received.
16. Revenu Quebec would not recognize the Monitor as an authorized representative of BSI for the purposes of communicating with Revenu Quebec and it is only very recently that the Monitor has been successful in obtaining such recognition after many weeks of endeavouring to resolve the situation without the need to seek the assistance of the Court.
17. Revenu Quebec also requested additional information to be filed, all of which has now been provided by the Monitor on behalf of BSI. Revenu Quebec has informed the Monitor that it will likely be several weeks before Revenu Quebec completes its review of the information and issues the BSI Refund.
18. 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) The collection of the Timminco Refund and the BSI Refund and matters related thereto;
 - (b) Completing the final distributions of proceeds in accordance with prior Orders of the Court 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

19. The Stay Period currently expires on March 31, 2015. 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 June 30, 2015.
20. As at the date of this report, the Monitor holds cash of approximately \$987,000 on behalf of the Timminco Entities. The Timminco Entities therefore have sufficient funding for the extension of the Stay Period.
21. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to June 30, 2015.
22. 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-Eighth Report.

Dated this 25th day of March, 2015.

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



Nigel D. Meakin
Senior Managing Director

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

TWENTY-EIGHTH REPORT OF THE MONITOR
DATED MARCH 25, 2015

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Lawyers for the Monitor, FTI Consulting Canada Inc.

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. REGIONAL)	MONDAY, THE 30 th DAY
)	
SENIOR JUSTICE MORAWETZ)	OF MARCH 2015

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 June 30, 2015)

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 June 30, 2015 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Eighth Report of the Monitor dated March 25, 2015, filed (the "**Twenty-Eighth 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 June 30, 2015.
-

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
 JUNE 30, 2015)**

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 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 June 30, 2015)
Returnable March 30, 2015

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