

**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 January 30, 2013)
(Re Stay Extension to March 15, 2013 and
Extension of the Term of the CRO Agreement**

January 25, 2013

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**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

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Applicants

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TAB	DOCUMENT
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2.	Affidavit of Sean Dunphy, sworn January 25, 2013
A.	Exhibit "A" - Form of extension agreement
3.	Draft Order

TAB 1

**ONTARIO
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Applicants

**NOTICE OF MOTION
(Returnable January 30, 2013)
(Re Stay Extension to March 15, 2013 and
Extension of the Term of the CRO Agreement)**

Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. (together with Timminco, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Wednesday, January 30, 2013 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 of the draft Order included in the Motion Record:

- (a) Extending the Stay Period (as defined in the Initial Order of the Honourable Justice Morawetz dated January 3, 2012) to March 15, 2013;
- (b) Extending the appointment of the CRO (as defined below) to March 15, 2013; and

(c) Granting such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to the Initial Order;
2. By Order of the Honourable Mr. Justice Newbould, Russell Hill Advisory Services was appointed Chief Restructuring Officer ("CRO") of the Timminco Entities on August 17, 2012;
3. The term of the CRO's appointment is set to expire on January 31, 2013;
4. Additional steps remain to be taken to wind up the estates of the Timminco Entities, which can only be done with the continued participation of the CRO;
5. The Timminco Entities have sufficient funds available through to March 15, 2013;
6. The Timminco Entities has acted and continue to act in good faith and with due diligence;
7. The Monitor has indicated that it supports the granting of the relief sought on this Motion;
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; and
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 January 25, 2012, and the exhibits attached thereto; and
- 2) such further and other materials as counsel may advise and this Court may permit.

January 25, 2013

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE JANUARY 30, 2013)
(RE STAY EXTENSION TO MARCH 15, 2013
AND EXTENSION OF THE TERM OF THE
CRO AGREEMENT)**

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TAB 2

**ONTARIO
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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 January 25, 2013 re Stay Extension
and Extension of the Term of the CRO Agreement)**

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 (the "**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, extending the Stay Period (as defined below) until March 15, 2013 (the "**Stay Extension**"), extending the term of the CRO Agreement (as defined below) to March 15, 2013, and such other and further relief as this Court deems appropriate.

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, indirectly, 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 CCAA pursuant to the initial order of the Honourable Mr. Justice Morawetz dated January 3, 2012 (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court"). FTI Consulting Canada Inc. was appointed as the Monitor pursuant to 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>.

STATUS OF CCAA PROCEEDINGS

Claims Procedure and Priority Claims Process

5. Pursuant to an Order granted by the Court on June 15, 2012 (the "Claims Procedure Order"), the Timminco Entities called for claims against the Timminco

Entities and the Directors and Officers of the Timminco Entities. The Claims Bar Date (as defined in the Claims Procedure Order) was July 23, 2012. Claims totalling approximately \$280 million and approximately \$700,000 were filed against the Timminco Entities and the Directors and Officers of the Timminco Entities, respectively. The Monitor and its counsel continue to review such claims and the status of their review is commented upon in the Monitor's reports to the Court.

6. Investissement Québec ("IQ") is a secured creditor of BSI with claims totalling approximately \$29 million, as of August 17, 2012. In order to stop the continuing accrual of interest from depleting the estate of the assets remaining for unsecured creditors (interest was then accruing at the rate of approximately \$8,000 per day) while preserving the ability of other creditors of BSI to assert a claim ranking in priority to IQ (a "**Priority Claim**"), the Timminco Entities, IQ and the Monitor entered into an agreement (the "**Reimbursement Agreement**") which contemplated an interim distribution to IQ while providing that IQ would repay to BSI (by way of payment to the Monitor) such portion of the distribution as may be necessary to satisfy a Priority Claim. As a result, subject to any valid Priority Claim, almost all of IQ's secured claim was able to be repaid in August.

7. In accordance with the terms of the Reimbursement Agreement, two claims filed pursuant to the Claims Procedure Order were ultimately determined to be potential Priority Claims. The Timminco Entities, the Monitor and IQ, in consultation with the claimants, developed a procedure for the adjudication of these claims, which was