

COURT OF APPEAL FOR ONTARIO

BETWEEN :

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

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO TIMMINCO LIMITED AND
BECANCOUR SILICON INC.**

APPLICANTS

**NOTICE OF MOTION
(returnable in writing)**

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW") will make a motion which will be heard by the court in writing 36 days after service of the USW's motion record, factum and transcripts, if any, or on the filing of USW's reply factum, if any, whichever is earlier.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing.

THE MOTION IS FOR:

- (a) [an order granting leave to appeal the order and endorsement of the Honourable Justice Morawetz dated February 9, 2012;](#)
- (b) [costs of this motion; and](#)
- (c) [such further and other relief as this Honourable Court considers just.](#)

THE GROUNDS FOR THE MOTION ARE:

- (a) The Applicant Timminco Limited is the sponsor and plan administrator of the Retirement Pension Plan for the Haley Plant Hourly Employees of Timmico Metals, A Division of Timminco Limited (the “Haley Pension Plan”). The hourly employees covered by the Haley Pension Plan were represented by the USW;
- (b) The Haley Pension Plan was terminated effective August 1, 2008 and is in the process of being wound up;
- (c) As of August 1, 2011, the deficit remaining in the Haley Pension Plan is estimated to be \$3,102,900;
- (d) On January 3, 2012, the Applicants were granted protection from their creditors pursuant to the CCAA in the form on an Initial Order obtained without notice to either the USW or the Haley Pension Plan, amongst others;
- (e) On January 27, 2012, the Applicants brought a motion seeking an order approving a Debtor-in-Possession facility and granting a charge on the current and future assets, undertakings and properties of the Timminco Entities in favour of the DIP Lender in priority to, amongst others, the Haley Pension Plan. The Applicants’ motion was opposed by the USW and by the Communications, Energy and Paperworkers Union of Canada;

- (f) On February 9, 2012, the Court released its decision approving the DIP Facility and granting priority to the DIP Charge. In so doing, the Court invoked the doctrine of paramountcy;
- (g) It is submitted that the Court erred in invoking paramountcy and made its decision in reliance upon an inadequate factual record;
- (h) The issues raised in this appeal are significant to the practice; they are significant to these proceedings; they are meritorious;
- (i) Section 14 of the CCAA;
- (j) Rule 61.03.1 of the *Rules of Civil Procedure*; and
- (k) The USW relies on 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:

- (a) material from the records before the Court at the January 27, 2012 motion; and
- (b) such further and other material as counsel may advise and this Honourable Court permit.

February 24, 2012

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TO: [SERVICE 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 BECANCOUR SILICON INC.

Court File No:

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **TORONTO**

**NOTICE OF MOTION
(RETURNABLE IN WRITING)**

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