

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE MORAWETZ) MONDAY, THE 16TH
 DAY OF JANUARY, 2012

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
(Re Special Payments, KERPs and Super-Priority of
Administration Charge and D&O Charge)**

THIS MOTION, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") for an order, *inter alia*, (a) suspending the Timminco Entities' special payment obligations with respect to their Pension Plans (as defined below), (b) approving the KERPs and KERP Charge (both as defined below), and (c) granting super-priority to the Administration Charge and the D&O Charge (both as defined in the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012 (the "**Initial Order**"), was heard Thursday, January 12, 2012 at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Peter A.M. Kalins sworn January 5, 2012 and the Exhibits attached thereto (the "**Comeback Affidavit**"), the First Report (the "**First Report**") of FTI Consulting Canada Inc. in its capacity as the Court-appointed Monitor of the Timminco Entities (the "**Monitor**"), the Confidential Supplement to

the First Report, and the Second Report of the Monitor, and on being advised that those parties disclosed on the Service List attached to the Notice of Motion as Schedule "A", including, Investissement Québec ("IQ") and Bank of America, N.A., and (b) the members of the pension plan committees for Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan (as these terms are defined in the Comeback Affidavit), La Section Locale 184 De Syndicat Canadien des Communciations, de l'Energie et du Papier ("CEP"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), the Superintendent of Financial Services, and the Régie Des Rentes Du Québec, were served with the Notice of Motion and Motion Record, and on hearing the submissions of counsel for the Timminco Entities, the Monitor, IQ, CEP, USW, the Superintendent of Financial Services and AMG Advanced Metallurgical Group N.V., no one appearing for any other person on the service list, although duly served as appears from the affidavits of service of Kathryn Esaw sworn January 6, 2012 and January 10, 2012, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SUSPENSION OF SPECIAL PAYMENTS UNDER PENSION PLANS

2. **THIS COURT ORDERS** that the Timminco Entities' obligations to make all contributions or payments (other than normal cost contributions, contributions to a defined contribution provision, and employee contributions deducted from pay) ("**Pension Contributions**") to the following pension plans (together, the "**Pension Plans**") are hereby suspended pending further order of this Court:

- (a) the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042);
- (b) the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063); and
- (c) the Retirement Pension Plan for The Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648).

3. **THIS COURT ORDERS** that the directors, officers, officials and agents of the Timminco Entities shall not incur any liability as a result of the failure of the Timminco Entities to make the Pension Contributions during the Stay Period (as defined in the Initial Order).

KEY EMPLOYEE RETENTION PLANS

4. **THIS COURT ORDERS** that the Timminco Entities' key employee retention plans (the "KERPs") in the forms attached to the confidential supplement to the First Report of the Monitor (the "**Confidential Supplement**") are hereby approved and the Timminco Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the KERPs.

5. **THIS COURT ORDERS** that the employees of the Timminco Entities subject to the KERPs shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property (as defined in the Initial Order), which charge shall not exceed an aggregate amount of \$269,000, to secure amounts owing to such employees under the KERPs. The KERP Charge shall have the priority set out in paragraphs 9 and 10 hereof.

6. **THIS COURT ORDERS** that the filing, registration or perfection of the KERP Charge shall not be required, and that the KERP Charge shall be valid and

enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

7. **THIS COURT ORDERS** that the KERP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the KERP Charges shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances (as defined below), contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Timminco Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the KERP Charge shall not create or be deemed to constitute a breach by the Timminco Entities of any Agreement to which either of them is a party;
- (b) the KERP Charge beneficiaries shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the KERP Charge; and
- (c) the payments made by the Timminco Entities pursuant to this Order and the granting of the KERP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

8. **THIS COURT ORDERS** that the KERP Charge created by this Order over leases of real property in Canada shall only be a charge in the Timminco Entities' interest in such real property leases.

PRIORITY OF CHARGES

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge, as first established in paragraph 38 of the Initial Order, and the KERP Charge (collectively, the "**Charges**"), as among them, shall from this date forth be as follows:

First - the Administration Charge (to a maximum amount of \$1 million);

Second - the KERP Charge (to a maximum amount of \$269,000); and

Third - the D&O Charge (to a maximum amount of \$400,000).

10. **THIS COURT ORDERS** that, notwithstanding paragraph 40 of the Initial Order, the Charges shall constitute charges on the Property and, subject to section 11.8(8) of the CCAA, such Charges shall rank ahead in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, including without limitation any deemed trust created under the Ontario *Pension Benefits Act*, or the Quebec *Supplemental Pension Plans Act* in favour of any person.


11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Timminco Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Timminco Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Charges or further Order of this Court.

SEALING THE CONFIDENTIAL SUPPLEMENT

12. **THIS COURT ORDERS** that, subject to further order of this Court, the Confidential Supplement shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

GENERAL

13. **THIS COURT ORDERS** that any interested party (including the Timminco Entities and the Monitor) may bring a motion to this Court to vary or amend this Order (provided that the beneficiary of any Charge shall be entitled to rely on the Charges up to and including the day on which such Charge or the priority granted to such Charge may be varied or amended), which motion must be returnable by no later than February 2, 2012 or such later date as the parties affected may agree, on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB - 7 2012

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

Proceeding commenced at Toronto

**ORDER
(Re Special Payments, KERPs and Super-
Priority of Administration Charge and D&O
Charge)**

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