

**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 12, 2012)**

January 5, 2012

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**ONTARIO  
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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**Applicants**

**NOTICE OF MOTION  
(Returnable January 12, 2012 Re Special Payments, KERPs  
and Administration Charge and D&O Charge Super-Priority)**

Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Thursday, January 12, 2012 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 attached to the Motion Record at Tab 3:
  - (a) suspending the Timminco Entities' obligations to make special payments with respect to the Pension Plans (as defined below);

- (b) granting super-priority to the Administration Charge and the D&O Charge, as these terms are defined in the Initial Order of the Ontario Superior Court of Justice dated January 3, 2012 (the “**Initial Order**”);
- (c) approving key employee retention plans (the “**KERPs**”) offered by the Timminco Entities to certain employees deemed critical to a successful restructuring and a charge on the current and future assets, undertakings and properties of the Timminco Entities to secure the Timminco Entities’ obligations under the KERPs (the “**KERP Charge**”);
- (d) sealing the confidential supplement (the “**Confidential Supplement**”) to the First Report of FTI Consulting Canada Inc. (the “**Monitor**”); and
- (e) such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

2. Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation and produces solar grade silicon through Timminco Solar, an unincorporated division of BSI.
3. The Timminco Entities are facing severe liquidity issues, are unable to meet various financial covenants set out in their senior secured credit facility and do not have the liquidity needed to meet their ongoing payment obligations.

4. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the Initial Order.
5. The Timminco Entities are unable to make the contributions other than normal cost contributions in respect of their pension plans.
6. The Initial Order granted the D&O Charge and the Administration Charge.
7. Under the Initial Order, the D&O Charge and the first \$500,000 of the Administration Charge rank in priority to the existing security interest of Investissement Quebec ("IQ"), but behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including any deemed trust created under the Ontario *Pension Benefits Act* or the Québec *Supplemental Pension Plans Act* (collectively, the "Encumbrances").
8. The Timminco Entities are seeking priority over the Encumbrances for the D&O Charge and the Administration Charge and will serve the parties listed in Schedule "A" to this Notice of Motion with the Motion Record and any ancillary materials. The personal information of certain of the pension committee members has been redacted due to privacy concerns.
9. The Timminco Entities offered a limited number of their key employees a KERP.

10. The KERPs are necessary to ensure these key employees continue their employment with the Timminco Entities throughout the Timminco Entities' CCAA proceedings.

11. In order to secure the amounts payable under the KERPs, a KERP Charge is necessary.

12. The KERPs, unredacted copies of which are appended to the Confidential Supplement, contain individually identifiable personal and financial information and the confidential supplement to the First Report of the Monitor should be sealed.

13. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.

14. Rules 2.03, 3.02 and 37 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended and section 137 of the Ontario Courts of Justice Act, R.S.O. 1990, c. C.43 as amended.

15. Such further and other grounds as counsel may advise and this court may permit.

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

- 1) the Affidavit of Peter A.M. Kalins sworn January 5, 2012, and the exhibits attached thereto;



- 2) the First Report of the Monitor, to be filed; and
- 3) such further and other materials as counsel may advise and this Court may permit.

January 5, 2012

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE JANUARY 12, 2011)**

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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 OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**Applicants**

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(as at January 5, 2012)**

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**TAB 2**

**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)

**AFFIDAVIT OF PETER A.M. KALINS  
(sworn January 5, 2012 re Comeback Motion)**

I, PETER A.M. KALINS, of the City of Toronto, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the President, General Counsel and Corporate Secretary of the Applicant Timminco Limited ("**Timminco**") and the President, General Counsel and Corporate Secretary, as well as a director of the Applicant 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 support of a motion brought by the Timminco Entities seeking an order substantially in the form of the draft Order included with the Motion Record:

- (a) Suspending the Timminco Entities' obligations to make Pension Contributions with respect to the Pension Plans (as these terms are defined below);
- (b) Granting super-priority to the Administration Charge and the D&O Charge (as these terms are defined below);
- (c) Approving key employee retention plans (the "**KERPs**") offered by the Timminco Entities to certain employees deemed critical to a successful restructuring and a charge over the Property (as defined below) to secure the Timminco Entities' obligations under the KERPs (the "**KERP Charge**"); and
- (d) Sealing the confidential supplement (the "**Confidential Supplement**") to the First Report of the Monitor (as defined below).

## **BACKGROUND**

3. Timminco produces silicon metal through its 51%-owned production partnership with an indirect subsidiary of Dow Corning Corporation ("**DCC**") for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. Timminco also produces solar grade silicon through Timminco Solar, an



unincorporated division of Timminco's wholly-owned subsidiary BSI ("**Timminco Solar**"), for customers in the solar photovoltaic industry.

4. As described in greater detail in the affidavit sworn by me on January 2, 2012 in support of the Timminco Entities' application for protection under the CCAA (the "**Initial Order Affidavit**"), the Timminco Entities are facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume long-term supply contract at below market prices, a decrease in the demand and market price for solar grade silicon, failure to recoup their capital expenditures incurred in connection with development of their solar grade operations, and the inability to secure additional funding. The Timminco Entities are also facing significant pension and environmental remediation legacy costs and financial costs related to large outstanding debts. A significant portion of the legacy costs are as a result of discontinued operations relating to Timminco's former magnesium business.

5. As a result, the Timminco Entities were unable to meet various financial covenants set out in their senior secured credit facility and do not have the liquidity needed to meet their ongoing payment obligations. Without the protection of the CCAA, a shut-down of operations was inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers.

6. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the Initial Order of the Ontario Superior Court of Justice dated January 3, 2012 (the "Initial Order"). FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "Monitor") in the CCAA proceedings. Copies of the Initial Order and the Initial Order Affidavit (without Exhibits) are attached hereto as **Exhibit "A"** and **Exhibit "B"**, respectively, and are available, together with all other filings in the CCAA proceedings, on the Monitor's website at: <http://cfcanada.fticonsulting.com/timminco>.

7. Further details regarding the background to this CCAA proceeding are set out in the Initial Order Affidavit and, unless relevant to the present motion, are not repeated herein. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Initial Order Affidavit.

#### **TIMMINCO ENTITIES' CASH POSITION AND CASH FLOWS**

8. As at December 31, 2011, the Timminco Entities' consolidated cash balance was approximately \$2.4 million.

9. The Timminco Entities prepared and filed in support of their CCAA application a 30-day consolidated cash flow forecast for the period January 3, 2012 to February 3, 2012 (the "Cashflow Forecast") that forecasts the Timminco Entities' receipts,

disbursements and financing requirements. A copy of the Cashflow Forecast is attached hereto as **Exhibit "C"**.

10. The Cashflow Forecast estimates that for the period January 3, 2012 to February 3, 2012, the Timminco Entities will have total receipts of approximately \$5.5 million, total operating disbursements of approximately \$7.7 million for net cash outflow of approximately \$2.2 million. The ending cash position as at February 3, 2012 is estimated to be \$157,000.

11. As the Cashflow Forecast demonstrates, the Timminco Entities' cash position is extremely constrained and reaches very low levels during the forecast period.

12. The Timminco Entities approached their existing stakeholders and third party lenders in an effort to secure a suitable debtor-in-possession (DIP) facility. The Timminco Entities' existing stakeholders, Bank of America, N.A, Investissement Quebec ("IQ") and AMG Advanced Metallurgical Group N.V., declined to advance any funds to the Timminco Entities at this time. Two third party lenders also refused to enter into negotiations regarding the provision of DIP facility.

13. The Timminco Entities did engage in negotiations with a third party lender with respect to providing DIP financing, but to date have not been able to finalize those negotiations. The Timminco Entities are continuing to attempt to negotiate an appropriate DIP facility in order to maintain sufficient liquidity throughout their CCAA

proceedings. Based on the latest cashflow forecast and subject to the underlying assumptions thereto, the Timminco Entities currently estimate that additional funding will be required by mid-February in order to avoid an interruption in operations.

## **REQUEST TO SUSPEND THE PAYMENT OF CERTAIN PENSION CONTRIBUTIONS**

14. The Timminco Entities sponsor the following three pension plans (collectively, the "**Pension Plans**"):

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

### *Haley Pension Plan*

15. The Haley Pension plan, sponsored and administered by Timminco, applies to former hourly employees at Timminco's magnesium facility in Haley, Ontario.

16. The Haley Pension Plan was terminated effective as of August 1, 2008 and accordingly, no normal cost contributions are payable in connection with the Haley Pension Plan. As required by the Ontario *Pension Benefits Act* (the "PBA"), a wind-up valuation in respect of the Haley Pension Plan was filed with the Financial Services Commission of Ontario ("FSCO") detailing the plan's funded status as of the wind-up date, and each year thereafter. As of August 1, 2008, the Haley Pension Plan was in a deficit position on a wind-up basis of \$5,606,700. The PBA requires that the wind-up deficit be paid down in equal annual installments payable annually in advance over a period of no more than five years.

17. As of August 1, 2010, the date of the most recently filed valuation report, the Haley Pension Plan had a wind-up deficit of \$3,922,700. Contributions to the Haley Pension Plan are payable annually in advance every August 1. Contributions in respect of the period from August 1, 2008 to July 31, 2011 totalling \$4,712,400 were remitted to the plan. Contributions in respect of the period from August 1, 2011 to July 31, 2012 were estimated to be \$1,598,500 and have not been remitted to the plan.

18. According to preliminary estimates calculated by the Haley Pension Plan's actuaries, despite Timminco having made contributions of approximately \$4,712,400 during the period from August 1, 2008 to July 31, 2011, as of August 1, 2011, the deficit remaining in the Haley Pension Plan is \$3,102,900.

*Bécancour Non-Union Pension Plan*

19. The Bécancour Non-Union Pension Plan, sponsored by BSI, is an on-going pension plan with both defined benefit (“DB”) and defined contribution provisions. The plan has four active members and 32 retired and deferred vested members (including surviving spouses).

20. The most recently filed actuarial valuation of the Bécancour Non-Union Pension Plan performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Non-Union Pension Plan was \$3,239,600.

21. In 2011, normal cost contributions payable to this plan totaled approximately \$9,525 per month (or 16.8% of payroll). Amortization payments owing to this plan totaled approximately \$41,710 per month. All contributions in respect of the plan were paid when due in accordance with the Québec *Supplemental Pension Plans Act* (the “QSPPA”) and regulations.

*Bécancour Union Pension Plan*

22. The BSI-sponsored Bécancour Union Pension Plan is an on-going DB pension plan with two active members and 98 retired and deferred vested members (including surviving spouses).

23. The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Union Pension Plan was \$7,939,500.

24. In 2011, normal cost contributions payable to the plan totaled approximately \$7,083 per month (or 14.7% of payroll). Amortization payments owing to this plan totaled approximately \$95,300 per month. All contributions in respect of the plan were paid when due in accordance with the QSPPA and regulations.

25. BSI unionized employees have the option to transfer their employment to QSLP, under the form of the existing collective bargaining agreement. In the event of such transfer, their pension membership in the Bécancour Union Pension Plan will be transferred to the Quebec Silicon Union Pension Plan (as defined and described in greater detail in the Initial Order Affidavit). Also, in the event that any BSI non-union employees transfer employment to QSLP, their pension membership in the Bécancour Non-Union Pension Plan would be transferred to the Quebec Silicon Non-Union Pension Plan (as defined and described in greater detail in the Initial Order Affidavit). I am advised by Andrea Boctor of Stikeman Elliott LLP, counsel to the Timminco Entities, and do verily believe that if all of the active members of the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan transfer their employment to QSLP, the Régie des rentes du Québec would have the authority to order that the plans be wound up.

*Pension Plan Deficiencies and the Timminco Entities' CCAA Proceedings*

26. The assets of the Pension Plans have been severely impacted by market volatility and decreasing long-term interest rates in recent years, resulting in increased deficiencies in the Pension Plans. As a result, the special payments payable with respect to the Haley Plan also increased. As at 2010, total annual special payments for the final three years of the wind-up of the Haley Pension Plan were \$1,598,500 for 2010, \$1,397,000 for 2011 and \$1,162,000 for 2012, payable in advance annually every August 1. By contrast, in 2011 total annual special payments to the Haley Pension Plan for the remaining two years of the wind-up increased to \$1,728,700 for each of 2011 and 2012.

*Suspension of Certain Pension Contributions*

27. As is evident from the Cashflow Forecast, the Timminco Entities do not have the funds necessary to make any contributions to the Pension Plans other than (a) contributions in respect of normal cost, (b) contributions to the defined contribution provision of the BSI Non-Union Pension Plan, and (c) employee contributions deducted from pay (together, the "**Normal Cost Contributions**"). Timminco currently owes approximately \$1.6 million in respect of special payments to the Haley Pension Plan. In addition, assuming the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan are not terminated, as at January 31, 2012, the Timminco Entities will owe approximately \$140,000 in respect of amortization payments under those plans. If the



Timminco Entities are required to make the pension contributions other than Normal Cost Contributions (the “**Pension Contributions**”), they will not have sufficient funds to continue operating and will be forced to cease operating to the detriment of their stakeholders, including their employees and pensioners.

28. The Timminco Entities intend to make all normal cost contributions when due. However, management of the Timminco Entities does not anticipate an improvement in their cashflows that would permit the making of Pension Contributions with respect to the Pension Plans during these CCAA proceedings.

#### **SUPER-PRIORITY FOR ADMINISTRATION CHARGE AND D&O CHARGE**

29. The Initial Order granted a charge on the assets, property and undertakings of the Timminco Entities (the “**Property**”) in the maximum amount of \$1 million to secure the fees and disbursements of counsel to the Timminco Entities, the Monitor and the Monitor’s counsel incurred with respect to the CCAA proceedings (the “**Administration Charge**”). The Initial Order also granted a charge on the Property in the maximum amount of \$400,000 as security for the indemnity granted in favour of the directors and officers of the Timminco Entities against obligations and liabilities that they may incur in such capacity after the commencement of the CCAA proceedings (the “**D&O Charge**”).

30. The Initial Order provides that the D&O Charge and the first \$500,000 of the Administration Charge rank in priority to the existing security interest of IQ, but behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including any deemed trust created under the PBA or the QSPPA (collectively, the “**Encumbrances**”). The Initial Order further provides that the Timminco Entities or the beneficiaries of the Administration Charge and the D&O Charge shall be at liberty to seek priority ahead of the Encumbrances on notice to parties likely to be affected by such priority.

31. It is proposed that the Administration Charge and the D&O Charge will rank ahead of all of the Encumbrances, including any deemed trusts created under provincial pension legislation.

32. I am informed by Kathryn Esaw of Stikeman Elliott LLP and do verily believe that this motion will be served on, among others: (a) IQ, Bank of America, N.A., all personal property security registrants shown on searches of the personal property security registers in Ontario and in Quebec; (b) the members of the pension plan committees for the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan, FSCO; the Régie de rentes du Québec, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union and La Section Locale 184 De Syndicat Canadien Des Communications, De L'énergie Et Du Papier; and (c) various government entities,

including Ontario and Quebec environmental agencies and federal and provincial taxing authorities.

### **KERPS AND KERP CHARGE**

33. In order to ensure the continued participation of certain employees of the Timminco Entities, the Timminco Entities have offered a limited number of key employees a KERP. A copy of the standard form of KERP is attached hereto as **Exhibit "D"**. Copies of the unredacted KERPs with the personal information of each participant are attached to the Confidential Supplement.

34. The employees offered the KERPs (the "**KERP Participants**") will receive a bonus payment as an incentive to continue their employment with the Timminco Entities for the duration of the CCAA proceedings. Pursuant to the terms of the KERPs, the KERP Participants will not receive any payments under the KERPs until both of the Timminco Entities have either:

- implemented a plan of compromise or arrangement as contemplated by the CCAA;
- concluded an asset sale for all or substantially all of the assets of the entity; or
- terminated their CCAA proceedings, including by order of a Judge of the Ontario Superior Court of Justice.

35. In order to receive payments under the KERPs, the KERP Participants cannot have resigned, been terminated with cause or have failed to perform his or her duties and responsibilities diligently, faithfully and honestly.

36. The list of KERP Participants was formulated by the Chief Executive Officer (not himself a KERP Participant) in consultation with the Special Committee of the Board of Directors of Timminco and the Monitor and was approved by the Board of Directors of Timminco. In the opinion of the Chief Executive Officer and the Special Committee of the Board of Directors of Timminco, all of the KERP Participants are critical to the Timminco Entities' CCAA proceeding as they are experienced employees who have played central roles in the restructuring initiatives taken to date and will play critical roles in the steps taken in the future.

37. The aggregate amount payable under the KERPs is \$269,000. In order to secure the amounts payable under the KERPs, the Timminco Entities are seeking an Order approving the KERP Charge in the maximum amount of \$269,000. The KERP Charge is proposed to rank immediately subsequent to the Administration Charge and ahead of the D&O Charge.

#### **SEALING THE CONFIDENTIAL SUPPLEMENT**

38. The Confidential Supplement will contain individually identifiable personal and financial information of the KERP Participants. In order to protect the KERP

Participants and to minimize disruption during the CCAA proceedings, the Timminco Entities seek an order sealing the Confidential Supplement pending further order of this Court.

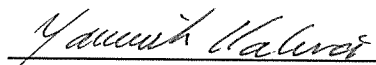
### **SUMMARY OF THE PROPOSED RANKINGS OF THE COURT-ORDERED CHARGES**

39. The effect of the proposed Court-ordered charges in relation to each other:
- (a) First - the Administration Charge (to the maximum amount of \$1 million);
  - (b) Second - the KERP Charge (in the maximum amount of \$269,000); and
  - (c) Third - the D&O Charge (in the maximum amount of \$400,000).
40. It is proposed that all of these Court-ordered charges will rank ahead of all of the Encumbrances, including any deemed trusts created under provincial pension legislation. The Timminco Entities require the services of the beneficiaries of the Court-ordered charges in order to pursue a successful restructuring of their business and/or finances. The Timminco Entities' management believes that absent charges in priority to the Encumbrances, the Timminco Entities will be deprived of services being provided by the beneficiaries of these charges to the detriment of the Timminco Entities' stakeholders and the Timminco Entities' ability to accomplish a successful restructuring will be frustrated.

**PURPOSE OF AFFIDAVIT**

41. This affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 hereof and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on January 5, 2012.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a  
Commissioner etc., Province of Ontario,  
while a student-at-law.  
Expires April 12, 2013.

  
\_\_\_\_\_  
Peter A.M. Kalins

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  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER A.M. KALINS**  
**(SWORN JANUARY 5, 2012)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
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**Ashley John Taylor** LSUC#: 39932E  
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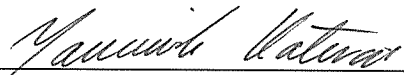
**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-5230  
Fax: (416) 947-0866

Lawyers for the Applicants

A



This is Exhibit "A"  
to the affidavit of Peter A.M. Kalins,  
sworn before me on the 5<sup>th</sup> day  
of January, 2012

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a  
Commissioner etc., Province of Ontario,  
while a student-at-law.  
Expires April 12, 2013.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE 3RD  
JUSTICE MORAWETZ ) 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**

**INITIAL ORDER**

**THIS APPLICATION**, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Peter A.M. Kalins sworn January 2, 2012 and the Exhibits attached thereto (the "**Kalins Affidavit**"), and on being advised that Investissement Québec ("**IQ**") was given notice of this application, and on hearing the submissions of counsel for the Timminco Entities and FTI Consulting Canada Inc. and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor (the "**Monitor**"),

**SERVICE**

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

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Timminco Entities are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that one or both of the Timminco Entities shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Timminco Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Timminco Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Timminco Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Timminco Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the

Kalins Affidavit or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Timminco Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Timminco Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, notwithstanding anything to the contrary contained herein, the Timminco Entities are authorized and empowered to continue to negotiate discounts on their invoices with customers in exchange for early payment at discount rates consistent with rates previously provided by the Timminco Entities ~~of~~ <sup>and</sup> as approved by the Monitor or the Court and is authorized and empowered to continue to accept such discounted amounts in full satisfaction of the associated gross amount owing by such customer.

7. **THIS COURT ORDERS** that the Timminco Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and similar amounts owed to any Assistants, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- b) the fees and disbursements of any Assistants retained or employed by the Timminco Entities in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Timminco Entities shall be entitled but not required to pay all reasonable expenses incurred by the Timminco Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b) payment for goods or services actually supplied to the Timminco Entities following the date of this Order.

9. **THIS COURT ORDERS** that the Timminco Entities shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes;
- b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Timminco Entities in connection with the sale of goods and services by the Timminco Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the

date of this Order but not required to be remitted until on or after the date of this Order, and

- c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Timminco Entities.

10. **THIS COURT ORDERS** that until a real property lease or a lease with respect to use of a portable structure is assigned, disclaimed or resiliated in accordance with the CCAA, the Timminco Entities shall pay all amounts constituting rent or payable as rent under real property leases or a lease with respect to use of portable structure (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Timminco Entities and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Timminco Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Timminco Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12. **THIS COURT ORDERS** that Québec Silicon Limited Partnership ("QSLP") and Québec Silicon General Partner Inc. ("QSGP") shall provide access to the Timminco Entities or permit the Timminco Entities to make, retain and take away copies of books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of QSLP, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "QSLP Records") and grant to the Timminco Entities unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of QSLP Records, or the granting of access to QSLP Records, which may not be disclosed or provided to the Timminco Entities due to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that QSLP and QSGP shall provide access to the Timminco Entities or permit the Timminco Entities to make, retain and take away copies of books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of BSI, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "BSI Records") and grant to the Timminco Entities unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 13 or in paragraph 12 of this Order shall require the delivery of BSI Records, or the granting of access to BSI Records, which may not be disclosed or provided to the Timminco Entities due to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

14. **THIS COURT ORDERS** that if any QSLP Records or BSI Records are stored or otherwise contained on a computer or other electronic system of information storage,

whether by independent service provider or otherwise, all individuals, firms, corporations, or any other entities in possession or control of such QSLP Records or BSI Records shall forthwith give unfettered access to the Timminco Entities for the purpose of allowing the Timminco Entities to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Timminco Entities deem expedient, and shall not alter, erase or destroy any QSLP Records or BSI Records without the prior written consent of the Timminco Entities. Further, for the purposes of this paragraph, all Persons shall provide the Timminco Entities with all such assistance in gaining immediate access to the information in the records as the Timminco Entities may require including providing the Timminco Entities with instructions on the use of any computer or other system and providing the Timminco Entities with any and all access codes, account names and account numbers that may be required to gain access to the information.

## **RESTRUCTURING**

15. **THIS COURT ORDERS** that the Timminco Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate,
- b) terminate the employment of such of its employees or Assistants or temporarily lay off such of its employees or Assistants as it deems appropriate, and
- c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,



- d) all of the foregoing to permit the Timminco Entities to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. **THIS COURT ORDERS** that the Timminco Entities shall provide each of the relevant landlords with notice of the Timminco Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Timminco Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Timminco Entities, or by further Order of this Court upon application by the Timminco Entities on at least two (2) days' notice to such landlord and any such secured creditors. If the Timminco Entities disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Timminco Entities' claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Timminco Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Timminco Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the Timminco Entities of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers

advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE TIMMINCO ENTITIES OR THE PROPERTY**

18. **THIS COURT ORDERS** that until and including February 2, 2012, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Timminco Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Timminco Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Timminco Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

19. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Timminco Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Timminco Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Timminco Entities to carry on any business which the Timminco Entities are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

20. **THIS COURT ORDERS** that, without limiting anything contained in paragraphs 19 and 21 hereof, any and all rights, remedies, modifications of existing rights and events deemed to occur pursuant to the QSLP Agreements (as defined in the paragraph 23 of the Kalins Affidavit) upon or as a result of (a) an Act of Insolvency (as

that term is used in the Kalins Affidavit) occurring with respect to BSI, (b) any default or non-performance by the Timminco Entities, (c) the making or filing of these proceedings, or (d) any allegation, admission or evidence in these proceedings, are hereby stayed and suspended except with the written consent of the Timminco Entities and the Monitor, or leave of this Court. Without limiting the foregoing, the operation of any provision of any QSLP Agreement that purports to (y) effect or cause a cessation of any rights of the Timminco Entities, or (z) to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend or modify such agreement or arrangement as a result of any default or non-performance by or the insolvency of the Timminco Entities, the making or filing of these proceedings, or any allegation, admission or evidence in these proceedings, is hereby stayed and restrained and any steps or actions purported to be taken by any counterparty to any of the QSLP Agreements and any event that is deemed to have occurred in respect of the QSLP Agreements shall be null and void and of no effect.

#### **NO INTERFERENCE WITH RIGHTS**

21. **THIS COURT ORDERS** that during the Stay Period, no Person having oral or written agreements with the Timminco Entities shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform or provide any right, renewal right, contract, agreement, licence, permit or access right in favour of or held by the Timminco Entities, including without limitation, access rights held by BSI with respect to the Quebec Silicon Real Property and the Becancour Properties (as these terms are defined in the Kalins Affidavit), except with the written consent of the Timminco Entities and the Monitor, or leave of this Court.

#### **CONTINUATION OF SUPPLY**

22. **THIS COURT ORDERS** that during the Stay Period, all Persons, including QSLP and QSGP, having oral or written agreements with the Timminco Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services,

centralized banking services, payroll services, insurance, transportation services, utility, customs clearing or other services to the Business or the Timminco Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Timminco Entities, and that the Timminco Entities shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Timminco Entities in accordance with normal payment practices of the Timminco Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Timminco Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

23. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Timminco Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

24. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Timminco Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Timminco Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or