

arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Timminco Entities or this Court.

25. **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 of QSGP serving as BSI's nominated or appointed representatives on the Board of Directors of QSGP or any of the former, current or future officers of the Timminco Entities also serving as officers of QSGP (collectively, the "QSGP/BSI Directors") with respect to any claim against the QSGP/BSI Directors that arose before the date hereof and that relates to any obligations of QSGP or QSLP whereby the QSGP/BSI Directors are alleged under any law to be liable in their capacity as directors or officers of QSGP for the payment or performance of such obligations, until a compromise or arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Timminco Entities or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Timminco Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Timminco Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Timminco Entities shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for the indemnity provided in paragraph 26 of this Order. The D&O Charge shall have the priority set out in paragraphs 38 and 40 herein.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Timminco Entities' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Timminco Entities with the powers and obligations set out in the CCAA or set forth herein and that the Timminco Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Timminco Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Timminco Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Timminco Entities in the development of the Plan and any amendments to the Plan;

- (d) assist the Timminco Entities, to the extent required by the Timminco Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Timminco Entities, to the extent that is necessary to adequately assess the Timminco Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) hold and administer funds in connection with arrangements made among the Timminco Entities, any counter-parties, and the Monitor, or by Order of this Court; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or

other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Civil Code of Québec, the Québec *Environment Quality Act*, the Ontario *Mining Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Timminco Entities with information provided by the Timminco Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Timminco Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Timminco Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Timminco Entities shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, by the Timminco Entities as part of the costs of these proceedings. The Timminco Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Timminco Entities on a weekly basis and, in addition, the Timminco Entities are hereby authorized and directed to pay to the Monitor, counsel to the Monitor, and counsel to the Timminco Entities, retainers in the amounts of \$75,000, \$30,000 and \$100,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that ~~at the request of the Timminco Entities, any party of interest, or this Court,~~ the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Timminco Entities' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - the Administration Charge (to the maximum amount of \$500,000);

Second - the D&O Charge (to the maximum amount of \$400,000); and

Third - the Administration Charge (to the maximum amount of \$500,000) ranking behind all Encumbrances (as defined below) pending return of the Comeback Motion (as defined below).

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that, the Charges shall constitute a charge on the Property and the D&O Charge and the Administration Charge to a maximum amount of \$500,000 shall rank ahead in priority to the existing security interests 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 Ontario *Pension Benefits Act* or the Quebec *Supplemental Pension Plans Act* (collectively, the "Encumbrances") in favour of any Persons that have not been served with notice of this application. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority (it being the intention of the Timminco Entities to seek priority for the Charges ahead of all such Encumbrances at the Comeback Motion.

41. **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 D&O Charge and the Administration Charge, or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the "Chargées") 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 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, 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 Charges shall not create or be deemed to constitute a breach by the Timminco Entities of any Agreement to which it is a party;
- (b) none of the Chargées shall 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 Charges; and
- (c) the payments made by the Timminco Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any 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.

#### **SERVICE AND NOTICE**

44. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in *The Globe and Mail*, National Edition, and *La Presse*, in French, once a week for two weeks a notice containing the information prescribed under the CCAA, and (b) within five

business days after the date of this Order (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Timminco Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

45. **THIS COURT ORDERS** that the Timminco Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Timminco Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Timminco Entities and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. **THIS COURT ORDERS** that the Timminco Entities, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/timminco>.

47. **THIS COURT ORDERS** that the Timminco Entities are authorized ~~to serve~~ their court materials with respect to the comeback motion expected to be heard ~~the week of~~ January <sup>12,</sup> 2012 (the "Comeback Motion") by forwarding a copy of this Order and any additional materials to be filed with respect to the Comeback Motion by electronic transmission, where available, or by courier to the parties likely to be affected by the



relief to be sought on the Comeback Motion at such parties' respective addresses as last shown on the records of the Timminco Entities as soon as practicable. The Timminco Entities shall serve the beneficiaries of the BSI Non-Union Pension Plan, the BSI Union Pension Plan and the Haley Pension Plan by serving in the manner described above the pension plan committees for the BSI Non-Union Pension Plan and the BSI Union Pension Plan, Financial Services Commission of Ontario, and the Régie Des Rentes Du Québec.

#### **GENERAL**

48. **THIS COURT ORDERS** that the Timminco Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Timminco Entities, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Timminco Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Timminco Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Timminco Entities and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Timminco Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order

and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. **THIS COURT ORDERS** that any interested party (including the Timminco Entities and the Monitor) may apply to this Court to vary or amend this Order 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.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in black ink, appearing to be "J. D. ...", is written over a horizontal line.

REGISTERED AT / INSCRIT À TORONTO  
DEPT. BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 3 2012

FILED BY:

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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 OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANOUR SILICON INC.

Court File No. 12-22-9539-0001

(Applicants)

**ONTARIO  
SUPERIOR COURT OF JUSTICE COMMERCIAL  
LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor LSUC#: 39932E**  
Tel: (416) 869-5236

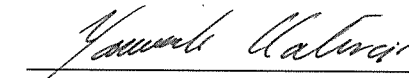
**Maria Konyukhova LSUC#: 52880V**  
Tel: (416) 869-5230

**Kathryn Esaw LSUC#: 5826F**  
Tel: (416) 869-6820  
Fax: (416) 861-0445

Lawyers for the Monitor

**B**

This is Exhibit "B"  
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**

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 2, 2012 in support of Initial CCAA Application)**

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 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. I have also reviewed the records, press releases, and public filings of the Timminco Entities and have spoken with certain of the directors, officers and/or employees of the Timminco Entities, as necessary, and where I have relied upon such information do verily believe such information to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

**I. INTRODUCTION**

3. This affidavit is sworn in support of an application by the Timminco Entities for an order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

4. Timminco produces silicon metal through its 51%-owned production partnership with 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.

5. As described in greater detail below, 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 severe decrease in the demand and market price for solar grade silicon as a result of a collapse in the polysilicon market and overall solar market, 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. As a result, the Timminco Entities are unable to meet various financial and other covenants with their secured lenders and do not have the liquidity needed to meet their ongoing payment obligations.

6. The Timminco Entities have been unable to successfully restructure their operations and capital structure outside of formal insolvency proceedings and are now insolvent and unable to meet their liabilities as they become due. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers. CCAA protection will allow the Timminco Entities to maintain operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations and corporate structure.

7. The board of directors of Timminco has authorized this Application. Pursuant to a unanimous shareholder declaration which removed the directorial powers from the directors of BSI and consolidated the decision making with Timminco through its board of directors (as described below), the board of directors of Timminco has also authorized this filing on behalf of BSI.

## II. THE TIMMINCO ENTITIES

### Overview

8. Timminco produces silicon metal through Québec Silicon Limited Partnership (“QSLP”), its 51%-owned production partnership with DCC. Timminco Solar, a division of Timminco’s wholly owned subsidiary BSI, produces solar grade silicon.

9. Silicon metal is used by the chemical, aluminum, electronics and solar industries and is a key raw material in both consumer and industrial products such as cosmetics, solar panels, sealants and computer components. QSLP is one of the largest producers of silicon metal in North America.

10. Solar grade silicon is derived by purifying silicon metal and may be used by the solar photovoltaic industry as an alternative raw material to polysilicon for the production of solar cells.

11. As of November 30, 2011, the Timminco Entities had approximately 23 employees, approximately 346 retirees in their active and wound-up pension plans, and owned operating and non-operating facilities in Ontario and Québec.

### Corporate Structure

12. Timminco is a public company incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (the “CBCA”). Timminco’s common shares are listed and publicly traded on the Toronto Stock Exchange (“TSX”). AMG Advanced Metallurgical Group N.V. (“AMG”) is Timminco’s largest shareholder holding approximately 42% of Timminco’s issued and outstanding common shares. Timminco’s principal office is located at 150 King Street West, Suite 2401 in Toronto, Ontario.

13. Timminco owns 100% of the shares of BSI, a corporation subject to the *Québec Business Corporations Act*, R.S.Q., c S-31.1, with its principal office located at 6500 Rue Yvon-Trudeau in Bécancour, Québec.



14. As described in greater detail below, BSI owns, directly and indirectly, 51% of the limited partnership units of QSLP and directly owns 51% of the shares of Québec Silicon General Partner Inc. ("QSGP"), the general partner of QSLP. Dow Corning Canada, Inc. ("DCC Canada"), an indirect subsidiary of DCC, owns approximately 49% of the limited partnership units of QSLP, and DC Global Holdings S.a.r.l., a subsidiary of DCC, owns approximately 49% of the shares of QSGP. Protection under the CCAA with respect to QSLP or QSGP (collectively, "Québec Silicon") is not being sought on this application.

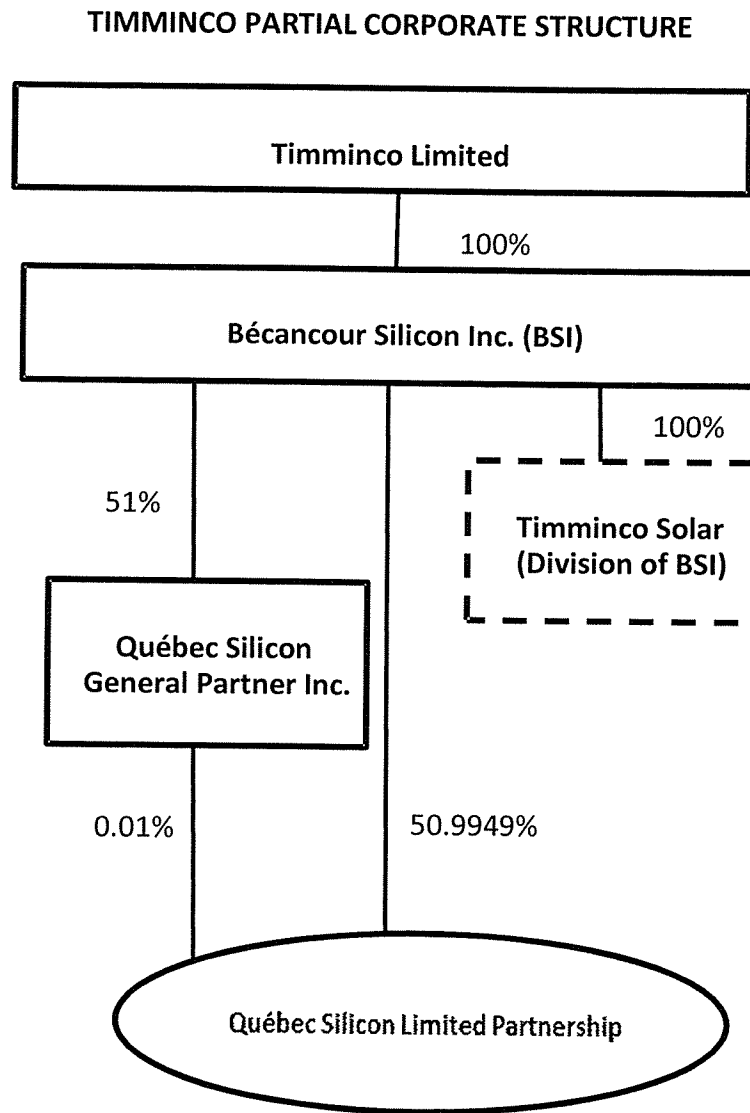
15. Timminco also has the following inactive subsidiaries:

- (a) Timminco Silicon Holdings Limited is a wholly-owned subsidiary of Timminco incorporated under the CBCA and is not carrying on, and has never carried on, any operations;
- (b) Timminco Holdings Corporation, a wholly-owned subsidiary of Timminco, is incorporated under the laws of Delaware and owns 100% of the shares of Timminco Corporation and Timminco Properties Inc., which owns 100% of the shares of Timminco Technologies Inc. and Timminco Adhesives Corporation. These entities operated Timminco's former U.S. specialty metals, chromium smelting, adhesives, magnesium extrusion and other legacy businesses and are no longer carrying on any operations. However, the Timminco Corporation still has some legacy environmental liabilities in the United States, and Timminco Properties still owns certain vacant industrial property in the United States; and
- (c) Timminco S.A., incorporated under the laws of Switzerland, formerly operated as the European sales office for Timminco's former magnesium extrusion and specialty metals business and is no longer carrying on any business. Timminco owns 94% of the shares of Timminco S.A. and the remaining 6% of the shares are held in trust for the benefit of Timminco.

16. Timminco also owns 19.5% of Applied Magnesium International Limited ("AMI"), a corporation incorporated under the laws of the British Virgin Islands. AMI operates Timminco's former magnesium business through various subsidiaries in the United States, Mexico, China and Australia, some of which were formerly subsidiaries of Timminco.

17. No relief is being sought on this application with respect to any of these entities.

18. The following chart demonstrates the corporate structure of the Timminco Entities and Québec Silicon, with the percentages reflecting equity interests. A full corporate chart of the Timminco Entities and all of their subsidiaries is attached hereto as **Exhibit "A"**.



19. In order to consolidate and streamline corporate decision making, Timminco executed a unanimous shareholder declaration on January 2, 2012, which removed the directorial powers from the directors of BSI and consolidated the decision making of the Timminco Entities with Timminco through its board of directors.

The Businesses of the Timminco Entities

*Silicon Metal and Production Partnership with DCC*

20. BSI formed Québec Silicon for the purpose of acquiring all of BSI's silicon metal assets, excluding the solar grade silicon assets and certain other silicon-related assets. On August 10, 2010, BSI, DCC and Timminco entered into a Framework Agreement (the "**Framework Agreement**") which set out certain key terms of their joint venture and the relationship between them with respect to same. Due to the commercially sensitive nature of the information contained in the Framework Agreement, a redacted copy of the Framework Agreement is attached hereto as **Exhibit "B"**.

21. Pursuant to the Framework Agreement, DCC acquired a 49% equity interest in Québec Silicon and BSI retained a 51% equity interest in Québec Silicon. In exchange for the transfer, BSI received the majority 51,000 limited partnership units in QSLP, 51% of the shares of QSGP, net cash proceeds of approximately US\$40 million on the closing of the transaction contemplated by the Framework Agreement and is also entitled to receive an "earn out" of up to US\$10 million upon the achievement by Québec Silicon of certain performance objectives tied to cost reduction and capacity increases. Based on the performance of Québec Silicon during the last 12-month period, BSI has determined not to invoke its right to receive any payment on account of the earn out at this time.

22. On September 30, 2010, BSI transferred all of the silicon metal production assets (including property, plant, equipment, and certain net working capital items) and related liabilities to Québec Silicon pursuant to the Business Transfer Agreement dated September 30, 2010 (the "**Transfer Agreement**"). The Transfer Agreement is attached hereto as **Exhibit "C"**. None of BSI's solar grade silicon assets nor the Silica Fumes Property (as defined below) were transferred to Québec Silicon. In addition, certain liabilities associated with BSI's silicon metal operations, including certain pension liabilities, were not transferred to Québec Silicon.

23. On October 1, 2010, upon the closing of the transaction contemplated by the Framework Agreement, BSI, DCC Canada, QSGP, QSLP and/or Timminco entered into, among

other things, the following agreements governing the production partnership (collectively, the “QSLP Agreements”):

*Limited Partnership Agreement*

- (a) An amended and restated limited partnership agreement between BSI, DCC Canada and QSGP dated October 1, 2010 (the “**Limited Partnership Agreement**”). Among other things, the Limited Partnership Agreement provides that profits and losses are allocated between DCC Canada and BSI based on their respective equity interests in QSLP. The Limited Partnership Agreement also (i) sets forth the obligations to BSI and DCC Canada to make capital contributions to QSLP in certain circumstances; (ii) prohibits BSI and DCC Canada from effecting any transfer, sale or assignment of QSLP units until October 1, 2015 without the prior written permission of the non-transferring party; and (iii) provides for certain put and call rights in favour of DCC Canada in respect of BSI’s equity interest in QSLP upon the occurrence of certain events such as a change in control, an act of insolvency or other defaults by BSI. A copy of the Limited Partnership Agreement is attached hereto as **Exhibit “D”**.

*Shareholders Agreement*

- (b) Shareholders agreement between QSGP and its two shareholders dated October 1, 2010 (the “**Shareholders Agreement**”). Among other things, the Shareholders Agreement provides for the governance and the composition and decision-making of the board of directors of QSGP (as the general partner of QSLP) and prohibits the shareholders from effecting any transfer, sale or assignment of QSGP shares until October 1, 2015 without the prior written permission of the non-transferring party. A copy of the Shareholders Agreement is attached hereto as **Exhibit “E”**.

*Supply Agreement*

- (c) An output and supply agreement dated October 1, 2010 among BSI, DCC and QSLP (the “**Supply Agreement**”) pursuant to which BSI and DCC are entitled to

a supply allocation of QSLP's silicon metal production that is proportionate to their equity interest in QSLP. In the fourth quarter of 2010 and in 2011, QSLP allocated to BSI more than BSI's 51% allocation entitlement to QSLP's production of silicon metal. As a result, BSI and DCC agreed that DCC would be entitled to receive more than DCC's 49% allocation entitlement in 2012. BSI and DCC purchase silicon metal from QSLP at a price based on the actual full cost of production, plus a fixed margin. Due to the commercially sensitive nature of the information contained in the Supply Agreement, a redacted copy of the Supply Agreement is attached hereto as **Exhibit "F"**.

*Other Agreements*

- (d) Lease Agreement dated September 30, 2010 between QSLP and BSI (the "**Lease Agreement**") pursuant to which BSI leases from QSLP space located in the administration building located at the Québec Silicon Real Property (as defined below) for use by certain of BSI's management employees.
- (e) Agency Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Agency Agreement**") pursuant to which BSI, as agent, sells silica fumes and other by-products produced from QSLP's silicon metal operations in exchange for commission.
- (f) Shared Expenses Agreement dated October 1, 2010 (as amended) between QSLP and BSI (the "**Shared Expense Agreement**") pursuant to which QSLP allows BSI access to a laboratory located on the Québec Silicon Real Property, which BSI uses for quality control purposes.
- (g) Shared Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Shared Services Agreement**") pursuant to which Québec Silicon must make certain key employees of Québec Silicon available to provide services to BSI including in respect of finance, human resources, maintenance, information technology and logistics.

- (h) Timminco Support Agreement dated September 30, 2010 between Timminco and QSLP (the "Timminco Support Agreement") pursuant to which QSLP is entitled to receive legal, financial and other professional support services of employees of Timminco.
- (i) Bécancour LP Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, and BSI/DCC Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, pursuant to which the parties thereto granted certain rights to other parties thereto regarding the use and ownership of certain intellectual property relating to silicon metal productions and operations.

24. The terms of the above agreements provide that certain events are deemed to occur and purport to entitle DCC Canada, QSLP, and/or QSGP to take certain steps if BSI becomes a Defaulting Special Partner (as defined in the Limited Partnership Agreement) as a result of, among other things, application for an order under the CCAA or becoming insolvent as defined under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), including the following:

- (a) Section 16.4 of the Limited Partnership Agreement provides that a Defaulting Special Partner shall lose the right to vote its Partnership Interest and to attend meetings of the Partners (as these terms are defined in the Limited Partnership Agreement).
- (b) Section 16.5 of the Limited Partnership Agreement provides that the Non-Defaulting Special Partner shall have the right to purchase, at its option, the Partnership Interest of the Defaulting Special Partner for a purchase price equal to the fair market value of such Partnership Interest.
- (c) Under Section 9 of the Shareholders Agreement, upon a Shareholder (as defined in the Shareholders Agreement) becoming a Defaulting Partner under the Limited Partnership Agreement: (i) such Shareholder shall cease to nominate directors to the board of directors of QSGP, (ii) each director designated by such Shareholder then in place shall be deemed to have resigned from office, and (iii)

such Shareholder shall not exercise the voting rights attached to its shares and its shares will be disregarded for the purposes of any vote.

- (d) The Lease Agreement, the Agency Agreement, the Shared Services Agreement, the Shared Expenses Agreement, and the Timminco Support Agreement provide that QSLP has the right to terminate these agreements when BSI no longer has the ability to appoint a majority of the board of directors of QSGP or when BSI becomes insolvent or takes the benefit of any legislation for insolvent debtors.

25. Notwithstanding the transfer of the silicon metal assets to Québec Silicon, after the closing of the transaction contemplated by the Framework Agreement, BSI retained its silicon metal customer relationships with the intention of continuing to honour all existing contracts with such customers through its proportional off-take of Québec Silicon's production. BSI purchases substantially all of its silicon metal for re-sale to its customers from Québec Silicon. In addition, Québec Silicon employs certain production technologies to produce certain grades of silicon metal that BSI is required to supply to its customers, and which cannot be purchased from silicon metal suppliers other than Québec Silicon. Therefore, BSI is highly dependent on Québec Silicon for its supply of silicon metal required to satisfy BSI's commitments to its customers. Moreover, as all of BSI's silicon metal purchases from Québec Silicon are on a "cost-plus" basis, whereas BSI's sales to its customers are generally on a "fixed price" basis, BSI is also highly dependent on Québec Silicon's operational efficiency for its profitability.

26. After QSLP completes production of silicon metal to BSI's specifications, which typically occurs on a continuing basis, QSLP transfers the finished product to a warehousing facility located on the Québec Silicon Real Property (as defined below) and adjacent to QSLP's production facility. QSLP loads BSI's finished goods from storage to rail cars, trucks or shipping containers as required by BSI for its customers. Following the transfer into storage and the issuance of the related invoice by QSLP, title to the finished product passes to BSI and forms part of BSI's inventory. The silicon metal product is then shipped to BSI's customers, located in Canada and internationally, via road, railroad or sea (depending on the customer's requirements).

27. Substantially all of the silicon metal that BSI purchases from Québec Silicon is sold to one long standing customer (the "Key Customer"). The remainder of BSI's allocation is sold to other customers on short-term contracts and into the spot market.

28. In February 2010, prior to the creation of the production partnership with DCC, BSI executed a long-term contract with the Key Customer to supply silicon metal over the next five years. In May 2011, BSI executed a new long-term silicon metal supply contract with the Key Customer which, among other things, replaced the previous contractual relationship, provided for amended pricing and additional silicon metal volumes and extended the supply commitments through to the end of 2015 (as amended, the "Key Customer Agreement"). Pricing for silicon metal under the Key Customer Agreement is fixed, subject to annual negotiations, and denominated in Euros.

29. The base quantity to be delivered under the Key Customer Agreement represents substantially all of BSI's anticipated allocation of up to 51% of the silicon metal output from Québec Silicon for at least the next three years. Moreover, whereas BSI's volume of silicon metal supplied by Québec Silicon is based on a percentage of Québec Silicon's total production, which may fluctuate from year to year, BSI's volume commitments to the Key Customer are fixed according to the Key Customer Agreement.

30. The Key Customer Agreement contains annual call and put options in respect of the supply commitments starting in 2012 based on the upper and lower limits of the defined price range for annual negotiations. In November 2011, following annual pricing negotiations, the Key Customer exercised its call option for the full volume of silicon metal products in 2012 at the upper limit of such range, which according to the Key Customer Agreement is at a price that is lower than the current fixed price for 2011.

31. In September 2011, with a view to improving the Timminco Entities' cash position, BSI and the Key Customer amended the Key Customer Agreement to reduce the base quantity for 2012 by an agreed volume which instead will be supplied by BSI to Sudamin Holding S.P.R.L. ("Sudamin"), a wholly-owned subsidiary of AMG. Sudamin concurrently committed to sell such volume to the Key Customer in the third quarter of 2012. BSI received a net pre-payment



from Sudamin of approximately \$4.8 million in September 2011 for such future deliveries in 2012.

*Solar Grade Silicon and the Timminco Solar Division*

32. Timminco Solar produces solar grade silicon pursuant to a proprietary and patented metallurgical-based process to purify silicon metal into solar grade silicon. The solar grade silicon is expected to have the chemical composition and other characteristics that would allow it to be used for the manufacture of solar photovoltaic cells. A solar panel, comprised of several solar cells, captures energy from sunlight and converts it into electricity by the photovoltaic effect.

33. Traditionally, solar cells are made using polysilicon, which is a highly purified form of silicon metal that is produced through a capital and energy intensive chemical based process. Certain elements (known as dopants) are added to the polysilicon to achieve the desired chemical composition of silicon for the production of solar cells. Timminco Solar's solar grade silicon may be an economic alternative to polysilicon, on the basis that it can be produced in a process that is less capital intensive with lower operating costs than the process that produces polysilicon. However, its profitability is highly dependent on the demand of the solar photovoltaic industry, the price of polysilicon and the receptivity of its customers to use solar grade silicon as an alternative to polysilicon.

34. BSI owns two solar grade silicon manufacturing facilities and an ingoting facility located in Bécancour, Québec (described in greater detail below).

35. BSI holds certain patents with respect to its metallurgical-based processes used to purify silicon metal into solar grade silicon. In particular, patents have been granted in the U.S., Canada, Georgia, Mexico, Malaysia and South Africa in respect of the Solidification Process (the "**Solidification Patent**") and in Canada, China, Mexico, Egypt, Georgia, South Africa, and the Eurasian Patent Organization in respect of the Rotary Drum Furnace Process (the "**Rotary Drum Patent**"). On the Rotary Drum Patent, Timminco has applied for a patent in the U.S., which remains outstanding.

36. Following the drastic decrease in the demand for and price of polysilicon (from approximately US\$400 per kilogram in 2008 to approximately US\$45 per kilogram in 2009) and solar grade silicon in 2009 (as described in greater detail below), and the resulting termination of customer commitments to buy Timminco Solar's solar grade silicon, in January 2010, Timminco Solar ceased active production of its solar grade silicon.

37. Since cessation of active production, Timminco Solar has continued to focus on improving the efficiency of the technology through continued research and testing. The Timminco Entities have invested significant funds in solar grade silicon capital equipment, development and expanding new customer markets for solar grade silicon in 2011.

38. Timminco Solar had planned to re-launch production of its solar grade silicon in early 2012, subject to achieving certain quality and cost benchmarks, market demand and customer commitments. However, an oversupply of polysilicon in the market in the latter half of 2011 has resulted in polysilicon prices that are at historical lows of approximately \$27 per kilogram. The result is that the market for Timminco Solar's solar grade silicon continues to be unfavourable and therefore precludes a re-launch of production.

39. Timminco Solar continues its efforts to sell its remaining inventories of solar grade silicon that were produced prior to the curtailment of production in early 2010, and that have been produced since then in connection with ongoing research and testing. Timminco Solar sells such inventory directly to end customers and also through distributors and sales agents. For example, BSI has entered into a sales agency agreement with AMG Conversion Ltd. ("**AMG Conversion**"), a wholly-owned subsidiary of AMG, whereby AMG Conversion acts as BSI's non-exclusive agent for the sale of BSI's existing solar grade inventory in consideration for a commission of 5% of the gross invoice price.

#### *Silica Fumes*

40. BSI also sells silica fumes, which are a non-hazardous by-product from the silicon metal manufacturing process. Silica fumes are used by the construction industry as an ingredient in cement for marine structures or bridge foundations and also serve as a thermal insulator.

41. Until 1993, when a market for silica fumes developed, BSI disposed of its silica fumes at its Silicon Fumes Property (as defined below). Starting in 1995, BSI began extracting the silica fumes from its disposal site for sale to third parties. The extraction process is carried out during the spring, summer and fall. Extraction of silica fumes from this site is expected to cease in the second half of 2012.

### Supply Chain

42. Québec Silicon is BSI's primary supplier of silicon metal, and sole supplier of certain grades of silicon metal, for resale to BSI's customers. The continued supply of silicon metal from Québec Silicon is critical to the Timminco Entities' silicon metal business. A disruption of such supply could severely impact the Timminco Entities' silicon metal business.

43. BSI is also highly dependent on Québec Silicon for many other services including, among other things, in respect of shared employees, IT systems, quality control and leased premises as described earlier. A disruption of such services would severely impact all of the Timminco Entities' silicon metal, solar grade silicon and silica fume businesses.

44. In addition, the Timminco Entities are highly dependent on other suppliers for the continued operation of the solar grade silicon and silica fumes businesses. These include suppliers of raw materials (including silicon metal, oxygen and electricity for solar grade silicon purification operations), providers of logistics/transport and warehousing services, and providers of ingoting services (including AMG Conversion).

### Employees

45. As at November 30, 2011, BSI had approximately 13 employees of which 10 were salaried and three were paid on an hourly basis. BSI's hourly employees are subject to a collective bargaining agreement dated February 28, 2011 (the "**Collective Bargaining Agreement**") and are represented by the Communication, Energy and Paper Union (the "**Union**"). The Collective Bargaining Agreement applies to both BSI's and Québec Silicon's unionized employees, and expires April 2013.

46. The Timminco Entities formerly employed approximately 24 hourly employees at their magnesium facility (the disposition of which is described in more detail below) who were subject to a collective bargaining agreement effective from June 1, 2007 to May 31, 2010 and were represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “**United Steelworkers**”). This collective bargaining agreement is no longer in force due to the wind up of the Timminco Entities’ magnesium business in 2009.

47. As at November 30, 2011, Timminco had approximately 10 employees, all of which were salaried.

48. BSI also has employee sharing arrangements with QSLP with respect to approximately 15 designated non-union employees of QSLP pursuant to the Shared Services Agreement. Under the Shared Services Agreement, shared employees allocate a specified percentage of their time to perform services for BSI and BSI must reimburse QSLP for the prorated portion of all salary and benefits paid to such shared employees.

### Properties and Facilities

#### *The Bécancour Properties – the Solar Grade Silicon Facilities and the Ingotting Facility*

49. BSI owns a 36.7 acre parcel of real property located at 5500 Yvon-Trudeau Street, Bécancour, Québec and owns, as beneficial owner, a 4.6 acre parcel of real property located at 6400 Yvon-Trudeau Street, Bécancour, Québec (together, the “**Bécancour Properties**”) where BSI’s solar grade silicon production facilities, known as “HP1” and “HP2”, respectively, (the “**Solar Grade Silicon Production Facilities**”) and an ingotting facility (the “**Ingotting Facility**”) are located.

50. The Solar Grade Silicon Production Facilities were built between 2007 and 2009 and are currently used for the development of Timminco Solar’s solar grade silicon purification process, with the majority of the equipment being idled pending re-commencement of commercial production.

51. Timminco Solar operates the Ingotting Facility for research and development and quality control purposes. The ingotting equipment located at the Ingotting Facility, which includes crystallization furnaces manufactured by ALD Vacuum Technologies GmbH, a subsidiary of AMG, is owned by AMG Conversion. Timminco Solar uses the ingotting equipment, for a specified fee, pursuant to a memorandum of understanding (as amended and extended) with AMG Conversion. Timminco Solar must continue to have access to and use of the ingotting equipment in order to be able to continue its solar grade silicon research, development and quality control.

52. BSI transferred the property that is adjacent to and surrounding the Bécancour Properties to QSLP (the "**Québec Silicon Real Property**"). The Québec Silicon Real Property includes several large manufacturing buildings, an administrative building and other ancillary buildings. QSLP operates its silicon metal manufacturing facility (the "**Silicon Metal Facility**") on this property and leases a part of the administrative building to BSI for use as administrative offices. Pursuant to the Lease Agreement, BSI pays nominal rent for such leased premises and approximately 20% of the taxes and other operating costs incurred with respect to the administrative building.

53. Since the sale of the Québec Silicon Real Property, access to the Bécancour Properties is only available through the Québec Silicon Real Property. As provided for in the Framework Agreement, BSI is to continue to have, among other things, access to the HP2 facility through the Québec Silicon Real Property, parking, ability to install telephone and other lines, pursuant to an agreement between QSLP and BSI that is currently being negotiated and the form of which had already been agreed upon by the parties. BSI must continue to have access to the HP2 facility via the Québec Silicon Real Property in order to be able to continue its solar grade silicon operations.

#### *The Silica Fumes Property*

54. BSI also owns real property located at 5355 Chemin-de-Fer, Bécancour, Québec (the "**Silica Fumes Property**") from which BSI extracts the silica fumes for sale to third parties. There are certain environmental remediation issues with respect to this property (as discussed in greater detail below).

*Magnesium Facility - Haley, Ontario*

55. Until June 2008, the Timminco Entities operated a dolomite mine and a magnesium manufacturing and extrusion, and special metals manufacturing, facilities located at 962 Magnesium Road in Haley, Ontario (the "**Haley Property**"). This property is owned by Timminco and is currently vacant and undergoing environmental monitoring and mine closure rehabilitation (as described in greater detail below).

*Adhesives Facility - Toronto, Ontario*

56. Timminco owns an industrial property located at 90 Tycos Drive in Toronto, Ontario (the "**Toronto Property**") that is currently leased to a third party under a long-term lease. Timminco has ongoing environmental monitoring and remediation obligations with respect to the Toronto Property as a result of legacy operations at that site relating to Timminco's former adhesives business (as discussed in greater detail below).

*Ferrosilicon Facility - Beauharnois, Québec*

57. Timminco also formerly operated a ferrosilicon facility located at 54 Hauts-Fourneaux in Beauharnois, Québec (the "**Beauharnois Property**"). On December 1, 2004, Timminco entered into an agreement of purchase and sale concerning the sale of the Beauharnois Property to a purchaser who agreed to assume all environmental liabilities associated with the Beauharnois Property (described in greater detail below). Timminco received the full purchase price from the purchaser. However, title to the Beauharnois Property is only scheduled to pass to the purchaser in 2013, subject to certain conditions. In the event that the purchaser fails to satisfactorily remediate the Beauharnois Property by October 2013, title will not pass and beneficial ownership of the Beauharnois Property will revert back to Timminco. In such event, Timminco will be entitled to retain the purchase price, but will be responsible for the environmental remediation obligations for the Beauharnois Property.

### Cash Management System

58. In the ordinary course of its business Timminco uses a centralized cash management system (the "Cash Management System") to, among other things, collect funds and pay expenses associated with their operations.

59. Timminco maintains four bank accounts, one Canadian dollar disbursement account (the "Canadian Dollar Disbursement Account"), one Canadian dollar master account, one US dollar account (the "US Dollar Account"), and one Euro account with Bank of America.

60. Disbursements are made from the Canadian Dollar Disbursement Account and the US Dollar Account as required to operate the business. The Timminco payroll is funded through the Canadian Dollar Disbursement Account, except for the payroll for the Chief Executive Officer of Timminco and the General Manager of Timminco Solar, which is funded out of the US Dollar Account. Timminco uses ADP Canada Payroll Technologies to disburse payroll directly to employees and to make necessary statutory remittances.

61. Timminco maintains also maintains nine bank accounts, three Canadian dollar accounts, three US dollar accounts and three Euro accounts with Bank of America for BSI consisting of a disbursement account, a receipt account and a master account for each of the three currencies. At the end of each business day, the disbursement accounts and receipt accounts are swept into the master account for each respective currency. Payroll is calculated by BSI and funds are disbursed to individual employees via Caisse Populaires who receives a lump sum transfer from BSI. Statutory remittances are made at the same time directly through the Bank of America Canadian Dollar Disbursement Account.

62. Cash payments from customers are typically received by wire payment and deposited directly into Timminco's primary bank account. Payments that are received in the form of cheques are deposited into a local branch of the Toronto-Dominion Bank and transferred directly to Timminco's accounts at Bank of America.

63. Continued access to the Cash Management System is critical to the ongoing business of the Applicants.

**Assets**

64. The Timminco Entities' assets, as reflected in the unaudited consolidated financial statements of Timminco Limited<sup>1</sup> for the quarter ended September 30, 2011 ("Q3 2011"), had a net book value of approximately \$126 million and consisted of the following:

Current Assets		
Cash and equivalents	\$ 2,798,000	
Restricted cash	\$ 10,000	
Accounts receivable	\$ 7,315,000	
Due from related companies	\$ 2,244,000	
Inventory	\$ 7,710,000	
Finished goods consigned to related company	\$ -	
Prepaid expenses	\$ 182,000	
<b>Total Current Assets</b>		<b>\$ 20,259,000</b>
Due from related companies	\$ -	
Long term receivables	\$ 2,272,000	
Long term inventories	\$ 2,199,000	
Property, plant and equipment	\$ 57,065,000	
Investments	\$ 43,673,000	
Intangible assets	\$ 1,507,000	
<b>Total Assets</b>		<b>\$125,975,000</b>

65. Property, plant and equipment consist primarily of BSI's interest in the Bécancour Properties and the buildings and equipment located thereon.

66. Investments are comprised of BSI's equity interest in Québec Silicon.

67. The Timminco Entities have also commenced an action in the Southern District of Texas against, among others, Applied Magnesium USA, Inc. and Metrobank N.A., seeking damages in the amount of \$3 million for payment of outstanding receivables.

68. In addition to the foregoing, as at fiscal year ended December 31, 2010, the Timminco Entities had the following tax losses:

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<sup>1</sup> The consolidated financial statements include the results of Timminco, BSI and Timminco's US inactive subsidiaries (described above). The assets, liabilities, and financial results of these inactive subsidiaries are negligible and have negligible impact on the results reported in the consolidated financial statements.



- (a) Canadian tax loss carry forwards amounting to \$159.3 million expiring between 2013 and 2029; and
- (b) U.S. federal tax loss carry forwards in the amount of \$22.5 million expiring between 2012 and 2028.

### **Intercompany Indebtedness**

69. Timminco has been extending funds over the years to BSI, on an unsecured basis, to provide capital to BSI to support growth opportunities and fund operating cash flow deficits. These funding activities have resulted in intercompany indebtedness in the approximate amount of \$136 million as at November 30, 2011.

### **Liabilities**

70. As at September 30 2011, the Timminco Entities had liabilities totalling approximately \$89 million. The principal debt obligations of the Timminco Entities are described in more detail below.

#### **Senior Secured Credit Facility**

71. BSI has a secured revolving credit facility (the “**Senior Secured Credit Facility**”) with Bank of America, N.A. (“**Bank of America**”) under which BSI could draw up to \$20 million, subject to a borrowing base calculation and \$5 million availability block. The Senior Secured Credit Facility is governed by a loan and security agreement dated December 15, 2010 (the “**Senior Credit Agreement**”) which terminates on December 15, 2013. The Senior Credit Agreement was subsequently amended by five different amendments dated June 13, 2011, July 29, 2011, September 30, 2011, November 4, 2011, and November 30, 2011 (collectively, the “**Senior Credit Amendments**”). Copies of the Senior Credit Agreement and the Senior Credit Amendments are available upon request.

72. Under the Senior Credit Agreement, the Timminco Entities are required to, among other things, meet minimum levels of earnings before interest, taxes, depreciation and amortization (“**EBITDA**”) and restrict capital expenditures to certain maximum levels. The failure to meet these covenants constitutes an event of default. In an event of default, any credit

issued under the Senior Secured Credit Facility may become immediately due and payable and the Senior Credit Agreement may be terminated at Bank of America's option.

73. Timminco has guaranteed BSI's obligations under the Senior Credit Facility. The Timminco Entities' obligations under the Senior Credit Agreement and related guarantee are secured by substantially all of the assets of the Timminco Entities, including BSI's equity interest in QSLP, pursuant to a general security agreement in Ontario and a deed of hypothec in Québec. Copies of the guarantee and security agreements granted by the Timminco Entities are available upon request.

74. As at the time of swearing this affidavit, the Senior Credit Facility is undrawn. Further, Bank of America has notified the Timminco Entities that it has increased the Availability Reserve (as defined in the Senior Credit Agreement) by \$3 million, the immediate consequence of which is that no further borrowing is permitted under the Senior Credit Facility.

#### Secured Term Loan

75. Pursuant to a term loan agreement dated July 10, 2009 (the "**Term Loan Agreement**"), BSI received a secured term loan from Investissement Québec ("**IQ**") in the principal amount of \$25 million (the "**Secured Term Loan**"). A copy of the Term Loan Agreement is attached hereto as Exhibit "**G**".

76. The Secured Term Loan is secured by a guarantee from Timminco and a charge upon all of BSI's assets, including BSI's equity interest in QSLP, and is subordinated to the obligations of the Timminco Entities under the Senior Credit Agreement. Copies of the guarantee granted by Timminco and of the hypothec granted by BSI are attached hereto collectively as Exhibit "**H**".

77. The Secured Term Loan is interest-bearing at a variable rate of Canada prime plus 9%, which is currently approximately 12% per annum, with interest payable monthly until maturity, which originally was August 31, 2011. In March 2010, IQ agreed to defer interest payments for a six month period in 2010 and in August 2011, IQ agreed to capitalize the deferred interest of \$1.4 million, resulting in the current principal amount of \$26.4 million.

78. In connection with the extension of the Senior Credit Agreement, on December 15, 2010, the Secured Term Loan was amended to, among other things, extend the maturity date by eight years to July 16, 2019. As a result of such amendments, the Secured Term Loan is repayable in 84 fixed, consecutive monthly instalments in the amount of \$175,000 starting on August 12, 2012 and additional annual instalments, due on June 30 of each year starting in June 2013, in amounts based on BSI's defined adjusted cash flow for the preceding year. Copies of these amendments are attached hereto collectively as **Exhibit "I"**.

79. Under the Secured Term Loan, BSI is obligated to maintain certain working capital and debt to equity ratios. Further, a default under either the Senior Credit Agreement or the AMG Note (as defined and discussed below) constitutes a default under the Secured Term Loan upon which the entire amount of the Secured Term Loan is immediately due and payable.

#### AMG Note

80. In December 2009, BSI issued an unsecured convertible promissory note to AMG, Timminco's largest shareholder, in consideration for a loan of US\$5 million. An amended and restated note (the "**AMG Note**") was executed on December 15, 2010 that extended the maturity date of the loan from January 3, 2011 to January 3, 2014. Beginning January 1, 2011, interest on the AMG Note was set at 14%, payable monthly in arrears. A copy of the AMG Note is available upon request.

81. AMG has the right to convert any outstanding principal amounts owing under the AMG Note into common shares of Timminco at a rate of \$0.26 per common share. AMG has not exercised this right.

82. A default under either the Senior Credit Agreement or the Secured Term Loan constitutes a default under the AMG Note upon which the entire amount of the AMG Note is immediately due and payable.

#### Employee-Related Liabilities

83. As of September 30, 2011, the Timminco Entities owed approximately \$21.9 million in employee future benefits, including pension, post-retirement and termination benefits.

*Termination Benefits*

84. Timminco owes termination benefits in the approximate amount of \$4.3 million to former employees and certain former officers of Timminco described below.

85. In connection with management changes in the second quarter of 2011, three officers (collectively, the “**Former Officers**”) resigned in August 2011. Timminco finalized agreements with each of the Former Officers for termination benefits pursuant to which Timminco agreed to make cash payments in 2011 and to continue to provide certain post-employment benefits to the Former Officers for up to two years. The total cost of such cash payments and post-employment benefits is approximately \$0.3 million.

86. Timminco also issued non-interest bearing convertible promissory notes in September and October 2011 to two of the Former Officers in the principal amounts of approximately US\$0.4 million and \$0.8 million (collectively, the “**Former Officer Notes**”). The Former Officer Notes are payable in monthly installments in cash or, at the sole option of Timminco, in freely tradable common shares of Timminco, which Timminco can exercise starting in February and March 2012, respectively. Approximately \$0.1 million in monthly cash payments are due under the Former Officer Notes before Timminco is able to exercise its equity settlement options.

87. In connection with Timminco’s decision not to continue its active pursuit of a potential new silicon metal production facility in Iceland, Timminco has also agreed to sell all of its equity interest in its Icelandic majority-owned subsidiary, Thorsil ehf. (“**Thorsil**”) to a Former Officer for nominal consideration. In connection with the sale of Thorsil, Timminco has agreed to provide certain technical support for the project and to pay certain payables of Thorsil and to waive its claims for reimbursement of certain project-related expenses, in the aggregate amounts of approximately \$0.1 million.

88. In addition, Timminco has entered into a consulting agreement (the “**Consulting Agreement**”) with one of the Former Officers, whereby he would provide certain advisory services in respect of silicon metal projects, at the request of Timminco. The Consulting Agreement, which expires on September 30, 2012, provides for the payment of total minimum consulting fees of US\$0.1 million.

89. Pursuant to a consulting agreement dated September 19, 1996, the founder and former Chief Executive Officer of Timminco is entitled to monthly payments of approximately US\$23,000.

*Pension Liabilities*

90. The Timminco Entities sponsor the following three defined benefit pension plans:

- (a) Timminco sponsors 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**"). The Haley Pension Plan applies to former hourly employees at Timminco's magnesium facility in Haley, Ontario. Timminco is the administrator of the Haley Pension Plan. The Haley Pension Plan was terminated effective as of August 1, 2008. 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. The most recently filed valuation report in respect of the Haley Pension Plan was performed as of August 1, 2010. As of August 1, 2010 the Haley Pension Plan had a wind-up deficit of \$3,922,700. Contributions made in respect of the period from August 1, 2010 to July 31, 2011 totalled \$1,598,500. 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. According to preliminary results calculated by the Haley Pension Plan's actuaries, despite Timminco having made contributions of approximately \$4,712,400 in respect of the period from August 1, 2008 to July 31, 2011, as of August 1, 2011, the deficit remaining the Haley Pension Plan is estimated to be \$3,102,900.

- (b) BSI sponsors the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042) (the “**Bécancour Non-Union Pension Plan**”). The Bécancour Non-Union Pension Plan is an on-going pension plan with both defined benefit (“DB”) and defined contribution (“DC”) provisions. The plan has 6 active members and 32 retired and deferred vested members (including surviving spouses). 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 Non-Union Pension Plan was \$3,239,600. In 2011, normal cost contributions owing to this plan totaled approximately \$9,525 per month (or 16.8% of payroll) and special payments owing to the plan total approximately \$41,710 per month. All contributions owing to the plan in accordance with the Québec *Supplemental Pension Plans Act* (the “**QSPPA**”) and regulations thereunder have been paid when due.
- (c) BSI also sponsors the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) (the “**Bécancour Union Pension Plan**”). The Bécancour Union Pension Plan is an on-going DB pension plan with 3 active members and 98 retired and deferred vested members (including surviving spouses). 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. In 2011, normal cost contributions owing to the plan total approximately \$7,083 per month (or 14.7% of payroll) and special payments owing to the plan total approximately \$95,300 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

91. The assets of the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan have been severely impacted by market volatility and decreasing long-term interest rates in the years preceding this application, which led to increases in the deficiencies in these 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 2011 and \$1,492,000 for 2012.

92. Due to the severe liquidity crisis faced by the Timminco Entities, they are unable to make the special payments required to be made with respect to the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan and intend to seek an order from the Court (on notice to the pension plan committees and the Ontario and Québec pension regulators) permitting the Timminco Entities to suspend these special payments.

93. In addition to the above described pension plans, QSLP sponsors the following two defined benefit pension plans (the "**Québec Silicon Pension Plans**") with respect to which the Timminco Entities have certain ongoing obligations:

- (a) Régime de rentes pour les employés non syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32159) (the "**Québec Silicon Non-Union Pension Plan**"). The Québec Silicon Non-Union Pension Plan was established as a spinoff plan to the Bécancour Non-Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Non-Union Pension Plan is an on-going pension plan with 35 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Non-Union Pension Plan was \$2,056,300. Normal cost contributions owing to the plan starting January 2012 total approximately \$24,791 per month. Special payments owing to the plan starting January 2012 total approximately \$29,303 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.
- (b) Régime de rentes pour les employés syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32160) (the "**Québec Silicon Union Pension Plan**"). The Québec Silicon Union Pension Plan was established as a

spinoff plan to the Bécancour Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Union Pension Plan is an on-going pension plan with 110 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Union Pension Plan was \$3,684,100. Normal cost contributions owing to the plan starting January 2012 total approximately \$51,227 per month. Special payments owing to the plan starting January 2012 total approximately \$47,743 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

94. The Timminco Entities do not, in the ordinary course, contribute to the Québec Silicon Pension Plans; however, to the extent QSLP is required to make additional payments into these plans that it cannot fund from its cash flows, each of BSI and DCC Canada are obligated to fund its pro rata portion thereof to QSLP pursuant to the Limited Partnership Agreement.

#### *Post-Retirement Benefits*

95. Timminco provides medical and dental post-retirement benefits to 13 former hourly and four former salaried employees at Timminco's magnesium facility in Haley, Ontario, who were on disability prior to the closure of that facility. The four salaried employees also receive benefits in the form of RRSP contributions. The monthly cost of such post-retirement benefits to Timminco is approximately \$15,000. BSI also sponsors a non-pension post-retirement plan which provides eligible retirees with life insurance, medical, dental coverage.

96. In addition, as referenced above, pursuant to the Framework Agreement BSI is liable for up to \$5 million in the aggregate in post-retirement benefits of any employees transferred to QSLP who retire on or before September 30, 2016. As at the date of this affidavit, no payments have been made with respect to such benefits.

#### Mine Rehabilitation Liabilities

97. Timminco has a mine closure plan with respect to the former mining operations at the Haley Property, as set forth in the certified mine closure plan dated September 2003 and acknowledged by the Ministry of Northern Development and Mines (Ontario) ("MNDM") as of



May 1, 2006, as amended by the certified mine closure plan amendment dated May 2011 and acknowledged by the MNNDM as of July 27, 2011 (as amended, the "**Haley Mine Closure Plan**"). The Haley Mine Closure Plan sets forth the undertakings of Timminco to rehabilitate the Haley Property. Although Timminco has made significant progress towards achieving the required outcomes pursuant to the Haley Mine Closure Plan, there are several on-going activities and outstanding items that have yet to be fully addressed, and in some cases require further approval or input from the MNNDM.

98. Timminco was originally required to provide to the MNNDM approximately \$1.68 million as financial assurance, payable in instalments over a five-year period starting in 2006, which amount was the original estimated active closure costs. As at the end of 2010, Timminco had deposited a total of \$1.46 million with the MNNDM as financial assurance. In August 2011, the MNNDM returned approximately \$0.48 million to Timminco on account of the rehabilitation work that had been completed and the estimated outstanding closure costs to comply with the Haley Mine Closure Plan at that time. Currently the balance of deposits held by the MNNDM as financial assurance is approximately \$0.98 million. In the event that any revised estimate of costs to perform the outstanding closure activities under the Haley Mine Closure Plan exceeds such amount, the MNNDM may require that Timminco provide additional financial assurance.

#### Environmental Liabilities

99. As referenced above, there are environmental monitoring and remediation obligations with the relevant Ontario and Québec government agencies with respect to some of the Timminco Entities' current and former operations.

#### *The Haley Property*

100. Timminco performs ongoing monitoring of groundwater and surface water at the Haley Property. Future remediation requirements may be influenced by the results of that monitoring. Similarly, future monitoring requirements may be influenced by the results of ongoing remediation.

*The Silica Fumes Property*

101. BSI has certain remediation obligations with respect to the Silica Fumes Property resulting from historical silica fumes disposal at this site. Pursuant to a Certificate of Authorization issued by the Québec Minister of Sustainable Development, Environment and Parks in February 2009, BSI is required to remediate the disposal site in accordance with the requirements set out in the Certificate of Authorization.

102. As at September 30, 2011, the future costs relating to site restoration and remediation relating to the Silica Fumes Property were estimated to be \$1.3 million.

*The Beauharnois Property*

103. The Ministry of Sustainable Development, Environment and Parks (Québec) approved a remediation plan in respect of the Beauharnois Property effective October 2003. Such plan includes various activities designed to restore the site to a natural state, and a requirement for an annual environmental follow-up program for groundwater to measure the pace of the remediation work. The plan requires the remediation work to be completed within ten years (by October 2013).

104. Although the purchaser of the Beauharnois Property has agreed to assume responsibility for compliance with the remediation plan, in the event that the purchaser fails to satisfactorily remediate the Beauharnois Property before October 2013, beneficial ownership of the Beauharnois Property will revert to Timminco. Timminco continues to monitor the purchaser's remediation efforts at the Beauharnois Property and has engaged an environmental consultant to monitor progress of the remediation plan. As at the end of 2010, the purchaser's remediation efforts were behind schedule and it was estimated that only 15% of the remediation work was complete. The estimated cost of the remaining remediation work was \$1.4 million as at September 30, 2011.

*The Toronto Property*

105. An investigation conducted in February 2005 of the groundwater pump-and-treat system at the Toronto Property identified certain environmental risks associated with potential

source areas at the property, arising from historical operations, which had not been addressed by prior remedial activities. The Ministry of the Environment (Ontario) issued an order in October 2007 requiring Timminco to implement the plan that Timminco had developed for further investigations and remedial activities. Pursuant to that plan, Timminco has repaired and upgraded the pump-and-treat system and expects that, with continued operation of the system, active remediation of the groundwater is occurring and contaminant concentrations within the plume will decrease over time. Timminco performs ongoing groundwater monitoring and future remediation requirements will be based on the results of that monitoring. As at September 30, 2011, the present value of estimated future costs relating to the remediation of the Toronto Property were estimated to be \$0.6 million.

*BSI's Indemnity With Respect to QSLP's Environmental Undertakings*

106. Pursuant to the Framework Agreement, the Timminco Entities have also agreed to indemnify QSLP for all expenditures to comply with certain environmental undertakings included in the Certificate of Authorization granted by the Québec Minister of Sustainable Development, Environment and Parks to QSLP regarding the operation of the silicon metal facilities. The environmental undertakings included in the Certificate of Authorization must be completed by December 31, 2012 and as at September 30, 2011, were estimated to be \$0.7 million.

107. As at September 30, 2011, the Timminco Entities' total liability for all environmental remediation, compliance and monitoring costs (including indemnification to QSLP) was assessed at approximately \$4.0 million. In addition, as at September 30, 2011, the present value of estimated future costs relating to mine rehabilitation liabilities (as discussed in greater detail above) was estimated to be \$4.8 million.

Class Action Litigation against Timminco

108. Timminco, among others, has been named as a defendant in a potential class action lawsuit filed in the Ontario Superior Court of Justice on May 14, 2009. Other defendants include current directors and officers of the Timminco Entities. The claims relate to, among other things, potential contraventions of disclosure obligations under the Ontario *Securities Act*, R.S.O. c. S-5 (the "**Securities Act**"). The plaintiff, on his behalf and on behalf of the

shareholders he seeks to represent, alleges that Timminco and others made misrepresentations about BSI's (Timminco Solar's) solar grade silicon production process and is claiming damages exceeding \$540 million. The plaintiff has not obtained leave to commence proceeding under Part 23.1 of the Securities Act, nor has the action been certified as a class action. Timminco's insurers have been put on notice with respect to this action. The action is being vigorously defended.

Air Products Settlement

109. In September 2008, BSI and Air Products Canada Limited ("Air Products") entered into an agreement whereby Air Products would install an oxygen production facility on BSI's property and supply oxygen to BSI for a fixed monthly amount. In January 2010, the parties agreed to terminate the agreement and pursuant to a settlement agreement dated December 20, 2010 the total settlement amount agreed was approximately \$4.3 million, subject to an interest rate of 7.8%. The Timminco Entities agreed to make monthly payments to Air Products over 2011-2013 as follows:

- (a) \$78,207 per month starting January 1, 2011,
- (b) \$206,628 per month starting January 1, 2012; and
- (c) \$125,000 per month starting January 1, 2013.

110. The most recent payment was made on December 1, 2011.

Other Liabilities

111. In addition to the foregoing, as at November 30, 2011, the Timminco Entities had approximately \$20.1 million of accrued and unpaid liabilities, including:

	(\$ Million)
Trade Payables	2.0
Accrued Payroll (including statutory liabilities) and Accrued Vacation Pay	0.8
Accrued Audit and Taxes	0.6
Accrued Professional Services	0.7
Accrued Bonus and Accrued Supplementary Executive Retirement Plan	0.3
Accrual for share based payments	0.7
Other Payables and Accrued Liabilities	1.1
Trade Payables to Related Companies	8.9
Trade Finance from Related Companies	5.0
<b>Total Liabilities</b>	<b>20.1</b>

### III. FINANCIAL DIFFICULTIES AND THE NEED FOR CCAA PROTECTION

#### Financial Difficulties

112. As discussed above, demand for solar grade silicon is highly dependent on the demand of the solar energy industry, the price of polysilicon and the receptivity of the Timminco Entities' customers to use its products as an alternative to polysilicon. In the third quarter of 2008, when the credit crisis hit all sectors of the world economy, including the solar energy and silicon industries, the demand for and price of polysilicon decreased dramatically causing the demand for solar grade silicon to virtually disappear and its price to drop drastically. As a result of this drastic reduction in demand and price, many of Timminco Solar's customers cancelled or renegotiated their contracts for supply of solar grade silicon and demanded repayment of the substantial deposits they provided in connection with the supply contracts.

113. As a result, the Timminco Entities have been unable to generate any meaningful revenue from Timminco Solar or to recoup their capital expenditures incurred in connection with these

operations totalling approximately \$117 million, including the construction of the Solar Grade Silicon Production Facilities from 2007 to 2009.

114. In 2009, a slow-down in the chemical, aluminum and steel industries, due to the recession of 2009, caused the demand and spot price of silicon metal to decline. In May 2009, BSI (then owner of all of the silicon metal assets that are currently owned by Québec Silicon) shut down silicon metal operations entirely. As demand for silicon metal began to recover later in 2009, BSI restarted silicon metal production, operating again at full capacity starting in November 2009.

115. In order to generate a base level of demand, in late 2009 BSI procured the commitment of the Key Customer to purchase sufficient volumes of silicon metal. In exchange, BSI agreed to supply a substantial volume of silicon metal to such customer over a five-year term, based on fixed prices and an annual price adjustment mechanism that were established at a time of relatively low silicon metal prices. As a result, even though silicon metal prices rose in 2010 and 2011, BSI has been unable to take full advantage of rising market prices for silicon metal due to its high volume long-term contract with the Key Customer. The price fixed under this contract has been below the spot market prices for the duration of 2011 and the Timminco Entities continue to operate on a very low profit margin with respect to their silicon metal operations.

116. Moreover, the silicon metal pricing agreed upon with the Key Customer in late 2009 was denominated in Euros. As the value of the Euro relative to the Canadian dollar has dropped significantly since then, the revenues earned by BSI from such sales has accordingly decreased.

117. As discussed above, BSI is entitled to 51% of the silicon metal output of Québec Silicon, which as of October 1, 2010, owns all of BSI's former silicon metal operation. Such entitlement represents only approximately half of the silicon metal and related revenues that were available to BSI prior to October 2010.

118. As a result of the poor performance of the solar grade silicon and silicon metal operations as described above, the Timminco Entities have been experiencing increasing net operating losses over the last few years.

119. The Timminco Entities continue to suffer severe strains on their cash flow as a result of the foregoing and their ongoing payment obligations with respect to the settlement agreements, environmental remediation obligations, employee termination arrangements, pension plan funding obligations, financing burdens and other overhead costs discussed above.

### **Financial Results**

120. For all the reasons described above, the Timminco Entities' sales levels decreased from \$160 million in the fiscal year ended December 31, 2007 and \$252.6 million in the fiscal year ended December 31, 2008 ("FY2008") to \$104.6 million in the fiscal year ended December 31, 2009 ("FY2009")<sup>2</sup>. Sales levels increased slightly in the fiscal year ended December 31, 2010 ("FY2010")<sup>3</sup>, but remained low at \$133 million.

121. At the same time, operating expenses increased from \$141.7 million in FY2009 to \$155.8 million in FY2010.

122. As a result, the Timminco Entities' net operating profit, which was \$12 million in FY2008, has been reduced to net operating losses of \$74.2 million in FY2009 and \$57.8 million in FY2010.

123. Similarly, the Timminco Entities' earnings before interest, taxes, depreciation and amortization ("EBITDA") declined from \$21.3 million in FY2008 to negative \$50.9 million in FY2009 and negative \$38.9 million in FY2010. The Timminco Entities' EBITDA for the first three quarters of 2011 was negative \$4.3 million.

124. The Timminco Entities reported a net loss of \$134.2 million in FY2009, a net loss of \$95.7 million in FY2010, and a net loss of \$15.8 million in the first three quarters of 2011.

125. Between January 1, 2011 and September 30, 2011, the Timminco Entities' cash position decreased 62% from \$7.5 million to \$2.8 million. As at December 31, 2011, the Timminco Entities' cash position was \$2.4 million.

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<sup>2</sup> Commencing in 2007 and ending in 2009, the Timminco Entities disposed of their magnesium business which contributed to the decline in sales levels.

126. Copies of the Timminco Entities' consolidated financial statements for the past 12 months are attached as the following Exhibits:

**Exhibit "J"** - 2010 Annual Audited Consolidated Financial Statements and Management Discussion and Analysis

**Exhibit "K"** - First Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

**Exhibit "L"** - Second Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

**Exhibit "M"** - Third Quarter 2011 Interim Consolidated Financial Statements and Management Discussion and Analysis

#### **Responses to Financial Difficulties**

127. In response to the financial difficulties described above, the Timminco Entities have undertaken extensive efforts to reorganize their corporate and operating structures and to sell various assets in order to generate operating capital.

128. In 2010, as described above, the Timminco Entities transferred the silicon metal production business to QSLP pursuant to a joint venture with DCC in exchange for, among other things, a 51% interest and a US\$40 million cash payment. Proceeds from the sale were used to repay the then outstanding loan to Bank of America.

129. In 2009, 2010 and 2011, the Timminco Entities attempted to improve their liquidity by completing equity offerings, pursuant to which investors (including AMG) purchased additional common shares of Timminco which resulted in gross proceeds to Timminco of approximately \$47.3 million.

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<sup>3</sup> As described in greater detail above, on September 30, 2010, BSI transferred all of its silicon metal production assets to QSLP which impacted BSI's sales and expenses levels.



130. In 2009 and 2010, the Timminco Entities also settled the claims for the return of deposits made by certain solar grade silicon customers (as described above) by issuing common shares of Timminco.

131. In addition and as described in greater detail above, with a view to improving the Timminco Entities' cash position, BSI received a net pre-payment of approximately \$4.8 million in September 2011 for future deliveries in 2012 to Sudamin.

132. Since August 2011, Timminco has attempted to reduce its overhead costs through the rationalization of its head office and the termination of several members of the management team, including the management changes announced on August 31, 2011.

133. In October 2011, QSLP extended its trade credit terms to BSI from 30 days after invoice to 45 days. Further extensions of credit by QSLP are unavailable at this time.

134. The Timminco Entities have also sought various forms of financing and financial relief from Bank of America, IQ, and AMG since 2009.

135. Bank of America is unwilling to grant further waivers of EBITDA financial covenants in the Senior Credit Agreement without further financial relief from IQ. As described above Bank of America has effectively precluded any further borrowings under the Senior Secured Credit Facility by increasing the Availability Reserve.

136. IQ has in the past provided relief to the Timminco Entities with respect to their indebtedness to IQ. The Timminco Entities sought further relief from IQ beginning in September 2011; however, further relief has not been forthcoming. On or about December 15, 2011, representatives of the Timminco Entities and IQ met to discuss the Timminco Entities' liquidity crisis and the possibility of the Timminco Entities applying for protection under the CCAA and seeking Court-ordered charges in priority to the security held by IQ. IQ was subsequently advised of the anticipated return date of the within application and provided with a copy of the Timminco Entities' application materials.

137. AMG is unwilling to invest further capital or provide other forms of financial relief to the Timminco Entities.

138. The management of the Timminco Entities are of the view that no additional financing is available to the Timminco Entities (other than the DIP Facility defined and described in greater detail below). In addition, any additional financing will not provide an adequate solution to the Timminco Entities' substantial legacy costs.

**The Timminco Entities are Insolvent**

139. Since the period ending March 31, 2011 ("Q1 2011"), the Timminco Entities have not met the minimum EBITDA levels required under the terms of the Senior Credit Agreement and did not meet the revised minimum EBIDTA requirements for the year to date period ended November 30, 2011. Although Bank of America has waived or agreed to amend the minimum EBITDA requirements for certain prior periods, Bank of America has not waived the covenant or revised the minimum EBITDA requirement for the period ending November 30, 2011. Accordingly, the Timminco Entities have defaulted under the Senior Credit Agreement.

140. Although no amounts are currently outstanding under the Senior Secured Credit Facility, an event of default under the Senior Credit Agreement triggers a default under the Secured Term Loan and under the AMG Note. A default under the Secured Term Loan entitles IQ to exercise certain remedies, including acceleration of payment of all amounts due under the Secured Term Loan. A default under the AMG Note triggers an automatic acceleration of payment of all amounts under the AMG Note. The Timminco Entities do not have sufficient liquidity to satisfy such accelerated payment obligations arising from an event of default under the Senior Credit Agreement.

141. In addition, the Timminco Entities failed to make various payments due on December 31, 2011, including interest payment payable to IQ under the Secured Term Loan and AMG under the AMG Note.

142. Accordingly, Timminco and BSI are insolvent. The Timminco Entities cannot meet their liabilities as they come due and do not have sufficient cash to fund their operations. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers. CCAA protection will allow the Timminco Entities to maintain operations while

giving them the necessary time to consult with their stakeholders regarding the future of their business operations and structure.

#### FUNDING OF THESE PROCEEDINGS

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

144. The Timminco Entities have prepared a 30-day consolidated cash flow forecast for the period of 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 and a report containing the prescribed representations of the Timminco Entities regarding the preparation of the Cashflow Forecast are attached collectively as **Exhibit "N"**.

145. The Cashflow Forecast estimates that for the period of 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.

146. It is anticipated that the Timminco Entities' forecast liquidity requirements during the early stages of the CCAA Proceedings will be met by funds generated from their accounts receivable. However, as the Cashflow Forecast demonstrates, the Timminco Entities' cash position reaches low levels during the Cashflow Forecast period.

147. The Timminco Entities approached their existing stakeholders and third party lenders in an effort to secure a suitable DIP facility. Bank of America, AMG, IQ and two third party lenders declined to advance any funds to the Timminco Entities at this time.

148. The Timminco Entities engaged in negotiations with a third party lender with respect to providing DIP financing, but to date have not completed those negotiations. The Timminco Entities intend to continue to attempt to negotiate an appropriate DIP facility following commencement of these proceedings.

#### IV. PROPOSED INITIAL ORDER

##### Administration Charge

149. The Timminco Entities seek 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 incurred in connection with services rendered to the Timminco Entities both before and after the commencement of the CCAA proceedings by counsel to the Timminco Entities, the Monitor (if appointed) and the Monitor’s counsel (the “**Administration Charge**”).

150. The Timminco Entities worked with the proposed monitor to estimate the proposed quantum of the Administration Charge and believe it to be reasonable and appropriate in view of the complexities of the Timminco Entities’ CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

151. The Initial Order provides that the Administration Charge shall rank ahead in priority to the existing security interests 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 Ontario *Pension Benefits Act* or the Québec *Supplemental Pension Plans Act* (collectively, the “**Encumbrances**”) in favour of any persons that have not been served with notice of this application.

152. I am advised by Kathryn Esaw of Stikeman Elliott LLP, counsel to the Timminco Entities, that IQ was advised of the anticipated return date of this application and has received copies of the Timminco Entities’ Application materials.

153. The Timminco Entities intend to return to Court and seek an Order granting super-priority ranking to the Administration Charge ahead of the Encumbrances including, *inter alia*, any deemed trusts created under provincial pension legislation on the Comeback Motion (as defined below).

##### Directors’ and Officers’ Provisions

154. To ensure the ongoing stability of the Timminco Entities' business during the CCAA period, the Timminco Entities require the continued participation of their directors, officers, managers and employees.

155. The Timminco Entities are seeking typical provisions staying all proceedings against the directors and officers of Timminco and BSI with respect to all claims against the directors or officers that relate 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 of the Timminco Entities.

156. There are several directors on the board of directors of BSI that also serve on the board of directors of QSGP and several common officers. Due to the intertwined nature of the Timminco Entities' and QSLP's businesses and in order to allow these directors and officers to focus on the restructuring of the Timminco Entities, the Timminco Entities are also seeking to extend the stay of proceedings in favour of those directors and officers in their capacity as directors or officers of QSGP.

157. I am advised by Kathryn Esaw of Stikeman Elliott LLP, counsel to the Timminco Entities, and do verily believe that in certain circumstances directors can be held liable for certain obligations of a company owing to employees and government entities. As of January 2, 2012, the Timminco Entities are potentially liable for accrued but unpaid vacation pay, wages, and source deductions in the aggregate amount of approximately \$240,198.

158. The Timminco Entities maintain directors' and officers' liability insurance (the "D&O Insurance") for the directors and officers of Timminco and BSI. The current D&O Insurance policies provide a total of \$15 million in coverage (plus certain additional amounts in respect of Side A D.I.C. coverage). In addition, there are also contractual indemnities which have been given to the directors and officers by Timminco and BSI. The Timminco Entities do not have sufficient funds to satisfy those indemnities should their directors and officers be found responsible for the full amount of the potential directors' liabilities. In addition, under the D&O Insurance the deductible for certain claims is \$100,000 and the presence of a large number of exclusions creates a degree of uncertainty.

159. The directors and officers of the Timminco Entities have indicated that, due to the significant personal exposure associated with the Timminco Entities' aforementioned liabilities, they cannot continue their service with the Timminco Entities unless the Initial Order grants a charge on the Property in the amount of \$400,000 (the "D&O Charge"). The D&O Charge is proposed to rank immediately after the Administration Charge.

160. The D&O Charge will allow the Timminco Entities to continue to benefit from the expertise and knowledge of their directors and officers. The Timminco Entities believe the D&O Charge is reasonable in the circumstances.

#### **Stay of All Rights, Remedies and Deemed Events under the QSLP Agreements**

161. As described in greater detail above, the QSLP Agreements provide for certain deemed events, modification of rights and terminations of the QSLP Agreements in the event BSI becomes insolvent or commences proceedings under the CCAA. Due to the highly intertwined businesses of BSI and QSLP and BSI's high dependence on QSLP, it is imperative for the benefit of its creditors that BSI's rights under the QSLP Agreements are not modified as a result of it seeking protection under the CCAA.

162. Accordingly, in addition to the standard stay of proceedings provisions contained in the model Initial CCAA Order, the Timminco Entities are seeking a provision in the Initial Order staying the exercise of any and all rights, remedies, modifications of existing rights and events deemed to occur under the terms of the QSLP Agreements upon an Act of Insolvency (as defined in the Limited Partnership Agreement) occurring with respect to BSI.

#### **Approval of the Proposed Service of the Comeback Motion**

163. The Timminco Entities are also seeking a provision in the Initial Order approving their proposed manner of service of the parties likely to be affected by the relief sought on the Comeback Motion.

164. In particular, the Timminco Entities propose serving all such parties by forwarding a copy of the Initial Order (if granted) and the Motion Record with respect to the relief to be sought on the Comeback Motion by electronic transmission (where available) and by courier at

the parties' respective addresses as last shown on the records of the Timminco Entities as soon as practicable after the granting of the Initial Order.

165. The Timminco Entities propose to serve the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan by serving (in the manner described above) the members of the pension plan committees for the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan. In addition, the Timminco Entities propose to serve the Financial Services Commission of Ontario, and the Régie Des Rentes Du Québec.

#### Access to the Books and Records of QSLP and BSI

166. Pursuant to the Limited Partnership Agreement, QSGP maintains the books and records of QSLP. The Limited Partnership Agreement also provides BSI and DCC Canada access to such books and records.

167. Due to the intertwined nature of BSI's and QSLP's businesses and BSI's high dependency on QSLP's operational efficiency for its profitability, the Timminco Entities require uninterrupted access to the books and records of QSLP and QSGP.

168. Accordingly, and in order to ensure such uninterrupted access, the Timminco Entities are requesting that this Court direct QSLP and QSGP to provide the Timminco Entities continuing access to QSLP's books and records.

169. In addition, the books and records of BSI are maintained on the systems operated by QSLP and QSGP. In order to ensure BSI continues to have uninterrupted access to its records, the Timminco Entities are requesting that this Court direct QSLP and QSGP to provide the Timminco Entities continuing access to BSI's books and records.

#### **V. COMEBACK MOTION**

170. The Timminco Entities intend to return to Court during the week of January 9, 2012 (the "Comeback Motion") and seek certain relief on notice to the parties to be affected. Among other things, the Timminco Entities intend to seek an Order (a) granting super-priority ranking to the Administration Charge and the D&O Charge; (b) suspending the Timminco Entities' obligations to make special payments with respect to their pension plans; (c) approving the

KERPs; and (d) granting super-priority charges to secure the Timminco Entities' obligations under the KERPs ahead of, *inter alia*, any deemed trusts created under provincial pension legislation.

171. Additional information with respect to the relief to be sought on the Comeback Motion will be provided in advance of same.

## VII. MONITOR

172. FTI Consulting Canada Inc. has consented to act as the Court-appointed Monitor (the "**Monitor**") of the Timminco Entities, subject to Court approval.

173. FTI Consulting Canada Inc. is a trustee within the meaning of section 2 of the BIA as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

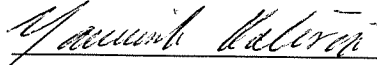
174. I am advised by Nigel Meakin of FTI Consulting Canada Inc. that the proposed monitor is supportive of the relief being sought in favour of the Timminco Entities and the existence and amounts of the Administration Charge and the D&O Charge.



**VIII. PURPOSE OF AFFIDAVIT**

175. This affidavit is sworn in support of the Timminco Entities' application for protection pursuant to the CCAA and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on January 2, 2012.

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

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

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

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

Court File No: »

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 2, 2012)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley John Taylor** LSUC#: 39932E  
Tel: (416) 869-5236

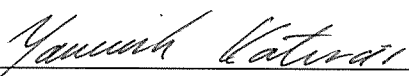
**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230

**Kathryn Esaw** LSUC#: 58264F  
Tel: (416) 869-6820  
Fax: (416) 947-0866

Lawyers for the Applicants

C

This is Exhibit "C"  
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.

Timminco Limited  
CASH & LIQUIDITY FORECAST THROUGH FEBRUARY 3, 2012  
CAN  
in 000s

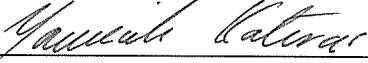
Week Ending on Friday	Week 1	Week 2	Week 3	Week 4	Week 5	Total
	6-Jan	13-Jan	20-Jan	27-Jan	3-Feb	
<b>Beginning Cash Position</b>	<b>2,358</b>	<b>1,173</b>	<b>486</b>	<b>256</b>	<b>522</b>	<b>2,358</b>
Receipts						
Sales and receivables	803	1,016	1,265	1,228	1,143	5,454
Government receivables	-	-	-	-	-	-
<b>Total Receipts</b>	<b>803</b>	<b>1,016</b>	<b>1,265</b>	<b>1,228</b>	<b>1,143</b>	<b>5,454</b>
Disbursements						
Materials	(944)	(1,124)	(1,124)	(482)	(945)	(4,619)
QSLP/DCC obligation	-	-	-	-	-	-
Operating Expenses	(696)	(478)	(320)	(330)	(418)	(2,243)
Restructuring Expenses	(349)	(100)	(50)	(150)	(145)	(794)
<b>Total Disbursements</b>	<b>(1,988)</b>	<b>(1,702)</b>	<b>(1,495)</b>	<b>(962)</b>	<b>(1,508)</b>	<b>(7,655)</b>
<b>Net Cash Flows</b>	<b>(1,185)</b>	<b>(687)</b>	<b>(230)</b>	<b>266</b>	<b>(365)</b>	<b>(2,201)</b>
<b>Ending Cash Position</b>	<b>1,173</b>	<b>486</b>	<b>256</b>	<b>522</b>	<b>157</b>	<b>157</b>

Notes:

- 1) The purpose of this cash flow projection is to determine the liquidity requirements of Timminco during the forecast period.
- 2) Receipts from operations have been forecast based on current payment terms, historical trends in collections, and the sales forecast. The sales forecast for the period has been determined based on scheduled orders from BSI customers, taking into consideration the QSLP production schedules and the anticipated allocation of such production to each of QSLP's customers
- 3) Materials purchases are based on QSLP production schedules and the anticipated allocation of such production to each of QSLP's customers.
- 4) Operating Expenses in respect of BSI have been forecast based on costs to support shipment of materials, solar related expenses, shared service support costs, and overhead and insurance costs.
- 5) Payroll and benefits costs included in Operating Expenses are based on actual payroll funding in the period leading up to the forecast period and include adjustments for increased sourced deductions beginning in 2012.
- 6) Corporate costs included in Operating Expenses have been forecast based on known recurring historical costs and expected future costs.
- 7) The cash flow does not include interest charges for amounts owing under Timminco's and BSI's current debt obligations.
- 8) Restructuring Expenses include legal and professional fees based on estimates provided by the current legal and financial advisors.

D

This is Exhibit "D"  
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.



TIMMINCO LIMITED  
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Toronto, Ontario  
M5H 1J9 Canada

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Fax: (416) 364-3451  
[www.timminco.com](http://www.timminco.com)

STRICTLY PRIVATE AND CONFIDENTIAL

January 4, 2012

Dear \*

**RE: Incentive Payment**

As Timminco Limited and Becancour Silicon Inc. (together, the "**Timminco Entities**") enter this challenging period of their operations, the Timminco Entities would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Timminco Entities as XX, particularly at this time.

In consideration of your ongoing loyalty to the Timminco Entities, the Timminco Entities are offering you the following incentive as part of the Timminco Entities' key employee retention program (the "**KERP**"), which shall be in addition to your regular salary, existing benefits, and an annual bonus in respect of the 2011 year: a single \$XX,XXX cash payment payable in full upon the occurrence of the earliest of one of the following events with respect to each of the Timminco Entities: (a) the implementation of a plan of compromise or arrangement as contemplated by the *Companies' Creditors Arrangement Act* (the "**CCAA**"); (b) the sale of all or substantially all of the assets of the entity; or (c) the termination of the CCAA proceeding in respect of the entity, including without limitation the issuance of an order by a Judge of the Ontario Superior Court of Justice declaring that the CCAA proceeding in respect of the entity is terminated. As security for the obligations of the Timminco Entities to make the payments set out herein, the Timminco Entities intend to create a charge over the property of the Timminco Entities (the "**KERP Charge**"). The KERP Charge is intended to rank below the Administration Charge but senior to D&O Charge and the DIP Charge. The Timminco Entities will apply to the Ontario Superior Court of Justice for approval of the KERP Charge at the Timminco Entities' next court appearance, which is scheduled for January 12, 2012.

The proposal outlined above was approved by Timminco's Board of Directors on January 2, 2012.

In order to receive the incentive bonus described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and



legal advisors (other than any disclosure required by law), and (b) at the time such payments would be payable you cannot have (i) resigned, (ii) been terminated with cause; or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly; provided that any non-payment of the incentive bonus described above on the basis of facts or circumstances described in clauses (ii) and (iii) shall first be approved by Timminco's Board of Directors.

Sincerely,

Douglas Fastuca  
Chief Executive Officer,  
Timminco Limited

cc: Ashley Taylor, *Stikeman Elliott LLP*  
Nigel Meakin, *FTI Consulting Canada Inc.*

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 12<sup>TH</sup>  
 )  
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**

**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 this day 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**") 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, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, the Financial Services Commission of Ontario, 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, and IQ, [NTD: insert any additional parties], no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of ● sworn January 5, 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 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 DECLARES** that as a result of the doctrine of paramountcy of the CCAA, the Charges have super-priority that overrides the provincial statutory-deemed trust or other charges provided for under any pension benefits legislation.

12. **THIS COURT DECLARES** that the purpose of the Timminco Entities’ CCAA proceeding would be frustrated if deemed trusts or charges created under pension benefits legislation had priority to the Charges.

13. **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**

14. **THIS COURT ORDERS** that 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**

15. **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 of 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.

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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 OR ARRANGEMENT  
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

**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)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
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Lawyers for the Applicants

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.

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

Proceeding commenced at Toronto

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**MOTION RECORD  
(RETURNABLE JANUARY 12, 2011)**

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