

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 |
| Total Liabilities | 20.1 |

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")². Sales levels increased slightly in the fiscal year ended December 31, 2010 ("FY2010")³, 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.

² 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.

³ 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.

Yusuf Yannick Kafirai

Commissioner for Taking Affidavits

Peter A.M. Kalins

Peter A.M. Kalins

Yusuf Yannick Kafirai, 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

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

Court File No: »

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

45

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(Applicants)

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

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

1. I am the President, General Counsel and Corporate Secretary of the Applicant Timminco Limited ("**Timminco**") and the President, General Counsel and Corporate Secretary, as well as a director of the Applicant Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of a motion brought by the Timminco Entities seeking an order substantially in the form of the draft Order included with the Motion Record:

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

BACKGROUND

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

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

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

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

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

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

TIMMINCO ENTITIES' CASH POSITION AND CASH FLOWS

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

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

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

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

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

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

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

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

REQUEST TO SUSPEND THE PAYMENT OF CERTAIN PENSION CONTRIBUTIONS

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

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

Haley Pension Plan

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

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

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

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

Bécancour Non-Union Pension Plan

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

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

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

Bécancour Union Pension Plan

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

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

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

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

Pension Plan Deficiencies and the Timminco Entities' CCAA Proceedings

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

Suspension of Certain Pension Contributions

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

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

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

SUPER-PRIORITY FOR ADMINISTRATION CHARGE AND D&O CHARGE

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

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

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

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

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

KERPS AND KERP CHARGE

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

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

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

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

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

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

SEALING THE CONFIDENTIAL SUPPLEMENT

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

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

SUMMARY OF THE PROPOSED RANKINGS OF THE COURT-ORDERED CHARGES

39. The effect of the proposed Court-ordered charges in relation to each other:

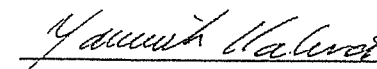
- (a) First - the Administration Charge (to the maximum amount of \$1 million);
- (b) Second - the KERP Charge (in the maximum amount of \$269,000); and
- (c) Third - the D&O Charge (in the maximum amount of \$400,000).

40. It is proposed that all of these Court-ordered charges will rank ahead of all of the Encumbrances, including any deemed trusts created under provincial pension legislation. The Timminco Entities require the services of the beneficiaries of the Court-ordered charges in order to pursue a successful restructuring of their business and/or finances. The Timminco Entities' management believes that absent charges in priority to the Encumbrances, the Timminco Entities will be deprived of services being provided by the beneficiaries of these charges to the detriment of the Timminco Entities' stakeholders and the Timminco Entities' ability to accomplish a successful restructuring will be frustrated.

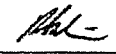
PURPOSE OF AFFIDAVIT

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

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



Commissioner for Taking Affidavits



Peter A.M. Kalins

Yusuf Yannick Katirai, 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. CV-12-9539-00CL

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
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) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE 16TH
)
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 Thursday, January 12, 2012 at 330 University Avenue, Toronto, Ontario.

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

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

SERVICE

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

SUSPENSION OF SPECIAL PAYMENTS UNDER PENSION PLANS

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

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

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

KEY EMPLOYEE RETENTION PLANS

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

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

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

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

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

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

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

PRIORITY OF CHARGES

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

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

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

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

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

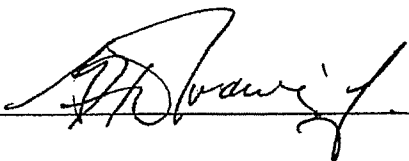
11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Timminco Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Timminco Entities also obtain the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

SEALING THE CONFIDENTIAL SUPPLEMENT

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

GENERAL

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



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

FEB - 7 2012

NB

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
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) 869-5230
Fax: (416) 947-0866

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.

Court of Appeal File No. M41085
Court of Appeal File No. M41062
Superior Court File No. CV-12-9539-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF THE APPLICANTS
(Responding to Motions for Leave to Appeal the DIP 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

Erica Tait LSUC#: 559960
Tel: (416) 869-6805
Fax: (416) 947-0866

Lawyers for the Applicants