

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

**MOTION RECORD
(Returnable December 16, 2013)
(Re Discharge of CRO and Related Relief, Granting Additional Powers to the
Monitor, Stay Extension to June 16, 2014 & Fee Approval)**

December 5, 2013

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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.

Applicants

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(as at September 12, 2013)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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Applicants

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B.	Exhibit "B" - Order, dated August 17, 2012
C.	Exhibit "C" - Order, dated November 5, 2012
D.	Exhibit "D" - CRO Report
3.	Draft Order re: Stay Extension et al.
4.	Draft Order re: Expanded Monitor Powers

TAB 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

**NOTICE OF MOTION
(Returnable December 16, 2013)
(Re Stay Extension to June 16, 2014, Granting Additional Powers to the
Monitor, Fee Approval & Discharge of CRO and Related Relief)**

Timminco Limited ("Timminco") and Bécancour Silicon Inc. ("BSI" and, together with Timminco, the "Timminco Entities") will make a motion to a judge presiding over the Commercial List on December 16, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order:
 - (a) extending the Stay Period¹ until June 16, 2014 (the "Stay Extension");

¹ All capitalized terms herein not otherwise defined have the definition attributed to them in the Affidavit of Sean Dunphy sworn December 5, 2013 contained at Tab 2 of the Motion Record.

- (b) authorizing the Chief Restructuring Officer (the “CRO”) to execute certain documents in order to enable recovery by Timminco of the proceeds of the sale of the Memphis Property on behalf of Timminco, or on behalf of Timminco’s subsidiaries, as appropriate;
 - (c) approving the Proposed Cost Allocation Methodology as between the Timminco and BSI estates;
 - (d) approving the fees and disbursement of FTI Consulting Canada Inc., the Court-appointed monitor of the Timminco Entities (the “Monitor”) and its counsel, incurred in respect of the Timminco Entities’ CCAA proceedings;
 - (e) approving the Twenty-First, Twenty-Second and Twenty-Third Reports of the Monitor; and
 - (f) discharging Russell Hill Advisory Services Inc. as CRO of the Timminco Entities effective December 16, 2013, and approving the activities of Russell Hill undertaken in its capacity as CRO of the Timminco Entities; and
2. An Order expanding the powers of the Monitor, and such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Timminco Entities formerly carried on the business of producing and selling silicon;
2. The Timminco Entities sought and received protection under the *Companies’ Creditors Arrangement Act* on January 3, 2012;

3. Pursuant to sales transactions which closed in June 2012, most of the Timminco Entities' operating assets were sold and the Timminco Entities ceased having any active operations;

CRO Discharge and Approval of Activities to Date

4. The CRO was appointed by Order of the Honourable Mr. Justice Newbould dated August 17, 2012;

5. The Timminco Entities have no ongoing business activities and most of their material assets have been disposed of;

6. The most cost-effective way to deal with the remaining issues in the Timminco Entities' CCAA proceedings is to terminate the CRO's mandate;

7. The CRO has undertaken various activities pursuant to its mandate to assist the Timminco Entities in their CCAA proceedings and these activities should be approved;

Execution of Documents Relating to Memphis Property Transaction

8. Certain documents must be executed in order to enable recovery by Timminco of the proceeds of the sale of the Memphis Property on behalf of Timminco, or on behalf of Timminco's subsidiaries, as appropriate;

9. Such execution is necessary to allow the sale proceeds from the Memphis Property transaction to flow to the Timminco estate;

Expansion of the Monitor's Powers

10. Upon the discharge of the CRO, there will be no one remaining at the Timminco Entities who can perform the necessary functions required for the winding up of the Timminco Entities' estate;

11. A number of matters remain outstanding in the Timminco Entities' CCAA proceedings, including completion of the claims process' receiving and dealing with certain outstanding judicial decisions' and dealing with any remaining assets of the Timminco Entities;

12. It is in the best interest of the Timminco Entities' stakeholders for the Monitor's powers to be expanded so that it can take all necessary steps to complete the CCAA proceedings in an orderly and efficient manner, which powers are set out in the Draft Order of the Timminco Entities contained in Tab 4 of this Motion Record;

Approval of the Proposed Cost Allocation Methodology

13. Despite the fact that the Timminco Entities are separate entities with different stakeholders, many of the Timminco Entities' costs incurred during the CCAA Proceedings have been shared costs for the benefit of both Timminco and BSI which cannot be allocated specifically as between the entities;

14. The Timminco Entities and the Monitor have developed a Proposed Cost Allocation Methodology which will provide a methodology for the Timminco Entities to determine the total amounts available for creditors, if any, in their respective estates;

15. The Proposed Cost Allocation Methodology is appropriate, fair and reasonable in the circumstances.

Approval of the Monitor and its Counsel's Fees and Disbursements

16. The Monitor and its counsel have incurred fees in respect of their roles in the CCAA proceedings;

17. The Monitor and its counsel have greatly assisted the Timminco Entities at all stages of these proceedings;

18. The fees and disbursements of the Monitor and its counsel for the period of September 10, 2013 - October 31, 2013 and September 1, 2013 - December 31, 2013, respectively, should be approved;

Extension of the Stay Period

19. The Initial Order granted a stay of proceedings up to and including February 2, 2012, which has since been extended out to December 16, 2013;

20. The Timminco Entities continue to work diligently to complete the winding down of their businesses within the CCAA proceedings;

21. An extension of the Stay Period to June 16, 2014 is necessary to provide sufficient time to substantially effect the winding up of the Timminco Entities' estates;

22. The Timminco Entities have acted and continue to act in good faith and with due diligence;

23. No creditor will suffer any material prejudice if the Stay Period is extended as requested;

General

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

25. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and

26. Such further grounds as counsel may advise and this Court may see fit.

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

1. The Affidavit of Sean Dunphy sworn December 5, 2013, and the exhibits attached thereto;
2. The Twenty-Third Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

December 5, 2013

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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.

Court File No. CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(RE CRO DISCHARGE ET AL)

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

**AFFIDAVIT OF SEAN DUNPHY
(Sworn December 5, 2013)
(Re Stay Extension to June 16, 2014, Granting Additional Powers to the
Monitor, Fee Approval & Discharge of CRO and Related Relief)**

I, SEAN DUNPHY, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the President of Russell Hill Advisory Services Inc. ("**Russell Hill**"), the Court-appointed Chief Restructuring Officer (the "**CRO**") of Timminco Limited ("**Timminco**") and 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 connection with the Timminco Entities' motion for:
 - (a) an Order, substantially in the form of the draft order included in the Motion Record at Tab 3,
 - (i) extending the Stay Period (as defined below) until June 16, 2014 (the "**Stay Extension**");

- (ii) authorizing the CRO to execute certain documents in order to enable recovery by Timminco of the proceeds of the sale of the Memphis Property (as defined below) on behalf of Timminco, or on behalf of Timminco's subsidiaries, as appropriate;
 - (iii) approving the Proposed Cost Allocation Methodology (as defined below) as between the Timminco and BSI estates; and
 - (iv) approving the fees and disbursement of FTI Consulting Canada Inc., the Court-appointed monitor of the Timminco Entities (the "Monitor") and its counsel, Blake, Cassels & Graydon LLP ("Blakes") incurred in respect of the Timminco Entities' CCAA proceedings;
 - (v) approving the Twenty-First, Twenty-Second and Twenty-Third Reports of the Monitor (as defined in the Order); and
 - (vi) discharging Russell Hill as CRO of the Timminco Entities effective December 16, 2013, and approving the activities of the Russell Hill undertaken in its capacity as CRO of the Timminco Entities; and
- (b) an Order, substantially in the form of the draft order included in the Motion Record at Tab 4, expanding the powers of the Monitor.

BACKGROUND

3. The Timminco Entities' primary business, the production and sale of silicon, was carried on principally through BSI, a Québec-based wholly-owned subsidiary of Timminco. BSI purchased silicon metal produced by a joint venture partnership for

resale to customers in the chemical (silicones), aluminum, and electronics/solar industries.

4. Due to a number of factors, the Timminco Entities were facing severe liquidity issues and were unable to meet their ongoing payment obligations. As such, the Timminco Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order dated January 3, 2012 (the "Initial Order") of Justice Morawetz of the Ontario Superior Court of Justice (the "Court"). A copy of the Initial Order is attached hereto as Exhibit "A" and all other filings in the CCAA proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/timminco>.

Sales Transactions and Distributions

5. Pursuant to sales transactions with QSI Partners Ltd. ("QSI") (the "QSI Transaction") and Grupo FerroAtlantica, S.A. (together with the QSI Transaction, the "Sale Transactions") which were approved by the Court on May 22, 2012 and June 1, 2012, respectively and which closed on June 14, 2012 and June 13, 2012, respectively, substantially all of BSI's operating assets were sold. Following the closings of the Sale Transactions, the Timminco Entities ceased having any active operations and only limited assets remain in the Timminco Entities' estate.

6. The net proceeds of the Sale Transactions totalled approximately \$30 million. In order to stop the continuing accrual of interest on amounts owing to the Timminco Entities' secured term lender, Investissement Québec ("IQ"), a conditional interim

distribution was proposed in which an interim distribution would be made to IQ, subject to an agreement (the “**Reimbursement Agreement**”) that should a creditor of BSI assert a claim ranking in priority to IQ that is finally determined to rank in priority to IQ (a “**Priority Claim**”), IQ would reimburse the Monitor in the amount necessary to satisfy the Priority Claim. The interim distribution and Reimbursement Agreement were approved by order of the Court dated August 28, 2012.

Claims Process

7. On June 15, 2012, the Court granted an Order approving a procedure for the solicitation, determination and resolution of claims against the Timminco Entities and the Timminco Entities’ Directors and Officers (the “**Claims Procedure Order**”).

8. The Claims Bar Date (as defined in the Claims Procedure Order) was July 23, 2012. Total claims filed against Timminco’s Directors and Officers was approximately \$206,000 and total claims filed against BSI’s Directors and Officers was approximately \$550,000. Claims filed against Timminco and BSI totalled \$48.5 million and \$235 million, respectively. I understand the Monitor will be providing an update on the status of the Claims Process in its Twenty-Third Report, to be filed

9. In accordance with the terms of the Reimbursement Agreement, two claims filed pursuant to the Claims Procedure Order were ultimately determined to be potential Priority Claims. The Timminco Entities, the Monitor and IQ developed a procedure for the adjudication of these claims, which was approved by the Court by Order dated

October 18, 2012. One claimant subsequently informed the Monitor that it would not be pursuing its claim. Therefore, there remains only one potential Priority Claim to be resolved.

10. Adjudication of whether the remaining potential Priority Claim is indeed a Priority Claim is to be determined by the Superior Court of Québec (Commercial Division). The matter was heard by Justice Mongeon on May 27 and 28, 2013 and parties submitted supplemental written materials in July 2013. Justice Mongeon's decision remains under reserve.

Appointment of the CRO

11. Shortly prior the resignation of all of their directors and officers, the Timminco Entities sought to appoint the CRO, which appointment was approved by order of the Court dated August 17, 2012. Additional powers were granted to the CRO by order of the Court dated November 5, 2012 allowing the CRO to settle claims of the Timminco Entities with the consent of the Monitor without having to incur the costs of seeking court approval. The August 17, 2012 Order and the November 5, 2012 Order are attached hereto as Exhibits "B" and "C", respectively.

12. The initial term of the CRO's engagement was originally six months and has since been extended on a periodic basis. The CRO's engagement is currently set to expire on December 16, 2013.

STATUS REPORT AND UPDATE

13. The CRO has prepared a report (the “**CRO Report**”), attached hereto as **Exhibit “D”**, describing the CRO’s activities relating to the Timminco Entities’ CCAA proceedings, including:

- Resolution of administrative issues relating to the Timminco Entities’ estate, including closure of the Timminco Entities’ head office in March 2013 and settlement of document retention issues;
- Resolution of issues relating to certain of the Timminco Entities’ real and personal property that was not subject to the Sales Transactions, either through their sale or abandonment;
- Settlement of a working capital dispute between the Timminco Entities and QSI; and
- Settlement of outstanding litigation.

REQUEST FOR THE CRO’S DISCHARGE AND APPROVAL OF ITS ACTIVITIES

14. The Timminco Entities have no ongoing business activities and most of their material assets have been disposed of. The CRO, the Monitor and their respective counsel have determined that the most cost-effective way to deal with the remaining issues in the Timminco Entities’ CCAA proceedings is to terminate the CRO’s mandate and expand the powers of the Monitor so that it may deal with any outstanding issues,

described in greater detail in paragraph 19, below, and bring the CCAA proceedings to a close.

15. As described above and in the CRO Report, the CRO has undertaken various activities pursuant to its mandate to assist the Timminco Entities in their CCAA proceedings. The Timminco Entities are seeking to have the activities undertaken in its role as CRO approved by the Court, *nunc pro tunc*, to the extent not specifically approved in prior motions.

16. No party has raised an objection to any activities undertaken by the CRO as described in any of my previous affidavits sworn in respect of the Timminco Entities' CCAA proceedings and I know of no other objections to the activities of the CRO taken in these CCAA proceedings.

REQUEST FOR THE CRO'S DISCHARGE AND APPROVAL OF ITS ACTIVITIES

17. In addition to the approval of the CRO's activities, the Timminco Entities also seek authorization for the CRO to execute such documents as are necessary for the resolution of the issues associated with real property owned by Timminco Properties Inc. ("TPI"), a wholly-owned indirect subsidiary of the Timminco located on Fite Road in Shelby County, Tennessee, (the "**Memphis Property**"). Specifically, in order to flow the proceeds of the sale of the Memphis Property to Timminco where it can form part of the Timminco Entities' estate, a two-stage process must be undertaken. First, documents must be executed by the CRO which will cause the sale proceeds to be paid by TPI to its

parent company, Timminco Holdings Corporation (“THC”) in the form of a dividend. Second, THC will make a repayment of intercompany debt to its parent company, Timminco. The transaction is more fully described in paragraphs 34-42 of the CRO Report.

18. I am advised by the Monitor that it supports these requests.

EXPANSION OF THE MONITOR’S POWERS

19. Once the CRO is discharged, there will be no one remaining at the Timminco Entities who can instruct counsel, consult with the Monitor with respect to the completion of these CCAA Proceedings, deal with the remaining assets of the Timminco Entities, and complete other activities required for the winding up of the Timminco Entities’ estate. However, there remains a number of matters outstanding in the Timminco Entities’ CCAA proceedings, including:

- (a) completion of the claims process as contemplated in the Claims Procedure Order;
- (b) receiving and dealing with the decision of the Superior Court of Québec (Commercial Division) regarding whether the remaining potential Priority Claim is indeed a Priority Claim, which decision remains under reserve;
- (c) receiving and dealing with the decision of the Ontario Superior Court of Justice (Commercial List) regarding a motion seeking an order to lift the stay of proceedings brought by the plaintiff in the action *Pennyfeather v.*

Timminco Limited, et al., Court File No. CV-09-378701-00CP, which decision remains under reserve;¹

- (d) dealing with any remaining assets of the Timminco Entities; and
- (e) implementation of a costs allocation methodology as between Timminco and BSI, discussed below at paragraphs 28-32.

20. The CRO, the Monitor and their respective counsel have discussed transition options for dealing with the outstanding issues in the CCAA proceedings and have determined that it is in the best interest of the Timminco Entities' stakeholders for the Monitor's powers to be expanded so that it can take all necessary steps to complete the CCAA proceedings in an orderly and efficient manner.

21. Pursuant to various orders issued in the CCAA proceedings to date, the Monitor is authorized to, *inter alia*:

- (a) have full and complete access to the Timminco Entities' Property (as such term is defined in the Initial Order);
- (b) hold and administer funds in connection with arrangements made among the Timminco Entities, any counter-parties, and the Monitor; and
- (c) hold the proceeds from the Sales Transactions.

¹ St. Clair Pennyfeather is the plaintiff in an action commenced in May 2009 naming Timminco and others as defendants. The claims relate to, among other things, potential contraventions of disclosure obligations under the Ontario *Securities Act*, R.S.O. c. S-5. The litigation was stayed by the Initial Order. In June 2013, Pennyfeather brought a motion seeking an order to lift the stay of proceedings granted in favour of Timminco in the Initial Order as against the defendants named in the Class Action, including Timminco, although the Plaintiff did not seek any specific relief against Timminco itself.

22. The Timminco Entities are seeking to expand the Monitor's powers. Specifically, the Timminco Entities are seeking an order that the Monitor shall, in addition to the powers of the Monitor set out in paragraphs 29-37 of the Initial Order:

- (a) continue to be authorized and directed, and is authorized, but not required, in the name of and on behalf of the Timminco Entities, if appropriate, to:
 - (i) complete the claims procedure established by the Claims Procedure Order and resolve any other outstanding items in the Claims Procedure Order in accordance with the Claims Procedure Order, without consulting with the Timminco Entities; and
 - (ii) take such further steps and seek such amendments to the Claims Procedure Order or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims or D&O Claims (as these terms are defined in the Claims Procedure Order);
- (b) be authorized, but not required, in the name of and on behalf of the Applicants, to:
 - (i) seek the directions of the Court in respect of the validity and quantum, if any, of the D&O Claims and whether such claims are secured by the D&O Charge (as defined at paragraph 27 of the Initial Order);
 - (ii) take such steps as may be necessary or appropriate to seek and obtain recovery of the proceeds of sale of the Memphis Property and matters ancillary thereto;

- (iii) file any and all tax returns of the Timminco Entities that the Monitor considers necessary or desirable;
- (iv) claim any and all rebates, refunds or other amounts of tax paid by or payable to the Timminco Entities;
- (v) exercise any rights and remedies available to the Timminco Entities, including all rights of appeal;
- (vi) deal and settle with any and all governmental authorities on behalf of the Timminco Entities;
- (vii) seek the directions of the Court in respect of the distribution of the funds in the Timminco Entities' estate or any Property to creditors or to deal with or abandon any Property and any matters related thereto;
- (viii) seek directions from the Court in respect of the filing of any plan of arrangement or compromise or the termination of these proceedings commenced by the Timminco Entities under the CCAA pursuant to the Initial Order, the discharge of the Monitor and all incidental and ancillary matters thereto; and
- (ix) perform such other functions as this Court may order from time to time.

REQUEST FOR A STAY EXTENSION

23. The Initial Order granted a stay of proceedings up to and including February 2, 2012, which has been extended from time to time. Most recently, the Stay Period was extended to December 16, 2013 by Order dated September 13, 2013 (the "Stay Period").

24. The Timminco Entities have been working diligently to complete the winding down of their businesses within the CCAA proceedings. An extension of the Stay Period to June 16, 2014 is necessary to give the Monitor time to complete the winding up of the Timminco Entities' estate, including addressing the outstanding issues discussed at paragraph 19 herein.

25. It is my belief that the Timminco Entities have acted and continue to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested. The Monitor continues to have sufficient cash on hand to cover the costs of the Timminco Entities' estate.

26. The stability provided by the stay of proceedings is critical to continue assessing claims for the benefit of the Timminco Entities' creditors and to continue winding down the estate.

27. I am informed by the Monitor that it supports the Timminco Entities' request to extend the Stay Period.

PROPOSED THE COST ALLOCATION METHODOLOGY

28. Despite the fact that the Timminco Entities are separate entities with different stakeholders, many of the Timminco Entities' costs incurred during the CCAA Proceedings have been shared costs for the benefit of both Timminco and BSI which cannot be allocated specifically as between the entities.

29. In order to account for the amounts in each of Timminco and BSI's estate, with a view to making a distribution to each entity's creditors, the Timminco Entities and the Monitor have discussed and agreed upon a proposed methodology that is appropriate, fair and reasonable in the circumstances (the "Proposed Cost Allocation Methodology") and which I understand will be described in greater detail in the Monitor's Twenty-Third Report to the Court, to be filed in respect of this motion.

30. I am informed by the Monitor that it has met with counsel for the representatives of the Timminco Entities' three pension plans² and was informed by each that they had no objection to the Proposed Cost Allocation Methodology.

31. I am of the view that the Proposed Cost Allocation Methodology is appropriate, fair and reasonable in the circumstances.

32. I am advised by the Monitor that it is of the view that the Proposed Cost Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the Timminco Entities' request for approval of the Proposed Cost Allocation Methodology.

² The pension plans being The Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648); the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042); and the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063).

APPROVAL OF THE FEES OF THE MONITOR AND THE MONITOR'S COUNSEL

33. The Timminco Entities are also seeking approval of the fees and disbursement of the Monitor for the period from September 10, 2012, to October 31, 2013 and the fees and disbursements of its counsel, Blakes, for the period from September 1, 2012, to October 31, 2013.

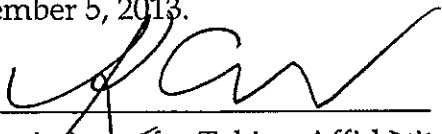
34. The Monitor and its counsel have greatly assisted the Timminco Entities at all stages of the CCAA proceedings, as described in greater detail in the First through Twenty-Third reports of the Monitor.

35. I am advised by the Monitor that details respecting the fees incurred by the Monitor and Blakes sought to be approved herein will be provided in the Twenty-Third Report of the Monitor, to be filed.

PURPOSE OF AFFIDAVIT

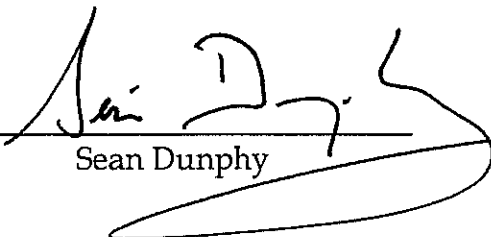
36. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario on December 5, 2013.



Commissioner for Taking Affidavits

Kathryn Esaw



Sean Dunphy

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. CV 12-9539-00CL

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

Proceeding commenced at Toronto

**AFFIDAVIT OF SEAN DUNPHY
(SWORN DECEMBER 5, 2013)**

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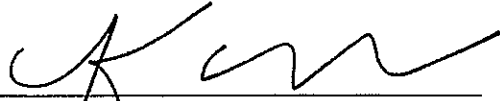
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Lawyers for the Applicants

This is Exhibit "A"
to the affidavit of Sean Dunphy,
sworn before me on the 5th
day of December, 2013



Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 3RD
JUSTICE MORAWETZ) DAY OF JANUARY, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

INITIAL ORDER

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TIMMINCO ENTITIES OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SUPPLY

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

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,~~ ^{RT} 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. ^{SR}

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 "Chargees") 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 Chargees 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 ^{12,} 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 "G. D. ...", written over a horizontal line.

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

JAN 3 2012

P. S. PART:

Handwritten initials "ND" in black ink.

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. 12-22-9539-0001

(Applicants)

ONTARIO
SUPERIOR COURT OF JUSTICE COMMERCIAL
LIST

Proceeding commenced at Toronto

INITIAL ORDER

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199 Bay Street
Toronto, Canada M5L 1B9

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Tel: (416) 869-6820

Fax: (416) 861-0445

Lawyers for the Monitor

This is Exhibit "B"
to the affidavit of Sean Dunphy,
sworn before me on the 5th
day of December, 2013

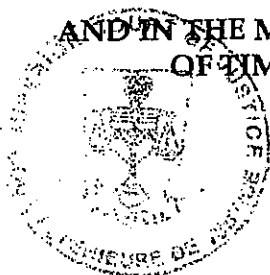


Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
)
JUSTICE NEWBOULD) FRIDAY, THE 17TH DAY
)
) DAY OF AUGUST, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS 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.

(the "Applicants")

ORDER
(CRO Appointment)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (collectively, the "Timminco Entities") for, *inter alia*, (i) an order appointing Russell Hill Advisory Services Inc. ("Russell Hill") as Chief Restructuring Officer ("CRO") over the Timminco Entities and approving of the CRO Agreement (defined below) between the Timminco Entities and Russell Hill Advisory Services Inc., was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Peter A.M. Kalins sworn August 13, 2012 and the Twelfth Report of FTI Consulting Canada Inc. in its capacity as the monitor of the Timminco Entities (the "Monitor"), and on hearing the submissions of counsel to the Timminco Entities, the Monitor, the Ministry of Environment, Investissement

Quebec, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

Service

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

Approval of the Monitor's Activities

2. **THIS COURT ORDERS** that the Tenth Report of the Monitor dated June 1, 2012 and the activities of the Monitor set out therein are hereby approved.

Appointment of CRO

3. **THIS COURT ORDERS** that Russell Hill is hereby appointed CRO over the Timminco Entities, an officer of this Court, and shall have the powers and obligations set out in the engagement letter dated July 24, 2012 in the form attached to the ~~Confidential Supplement to the~~ Twelfth Report of the Monitor (the "CRO Agreement"), including, without limitation:

- (a) the power to take steps for the preservation and protection of the remaining assets of the Timminco Entities (the "Property");

- (b) the power to plan and oversee the orderly wind-down and disposition of the Property;
- (c) the power to negotiate and enter into agreements on behalf of the Timminco Entities with respect to the sale of the Property;
- (d) the power to direct the Timminco Entities to apply to Court for any vesting order or orders which may be necessary or appropriate in order to convey the Property to a purchaser or purchasers thereof;
- (e) the power to take any steps required to be taken by the Timminco Entities under any Order of the Court, including without limitation, the Claims Procedure Order dated June 15, 2012;
- (f) the power to apply to Court for an order authorizing and directing the Timminco Entities to distribute any sales proceeds received by the Timminco Entities with respect to the Property or otherwise;
- (g) the power to engage in such other related activities as may appear necessary or desirable;
- (h) the power to provide information to the Monitor regarding the business and affairs of the Timminco Entities;
- (i) the power to take any steps, enter into any agreements or incur any obligations as the CRO deems necessary or incidental to the exercise of

the aforesaid powers, with such agreements and obligations to be those of the Timminco Entities and not of the CRO personally;

- (j) the power to apply to the Court for an order authorizing and directing the Timminco Entities to make a voluntary assignment in bankruptcy;
- (k) the power to apply to Court for an order and authorizing and directing the Timminco Entities to abandon any of the Property;
- (l) the power to exercise such shareholder rights as may be available to the Timminco Entities, including without limitation to appoint any director or officer of any subsidiary of the Timminco Entities;
- (m) in consultation with Stikeman Elliott LLP, the power to direct the Timminco Entities to commence any proceeding and seek any order, or respond to any motion or application brought by any other person, in these CCAA proceedings or otherwise; and
- (n) the power to apply to Court to seek, advice and direction with respect to any of the CRO's powers or duties as set out in the CRO Agreement.

4. **THIS COURT ORDERS** that the CRO Agreement is approved and the Timminco Entities are authorized to perform all of their obligations pursuant to the CRO Agreement.

5. **THIS COURT ORDERS** that the CRO shall not take possession of the Property (as defined in the CRO Agreement) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the business or the Property, or any part thereof. Without limiting the foregoing, the CRO shall not, as a result of this Order or anything done pursuant to its duties and powers pursuant to this Order, be deemed 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").

6. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the CRO as an officer of this Court, neither the CRO, nor any officer, director, employee, or agent of the CRO, including without limitation, Sean

Dunphy, shall be deemed to be a director or trustee of any of the Timminco Entities.

✓
→, notwithstanding paragraph 5 hereof, ✓
J.J.

7. **THIS COURT ORDERS** that neither the CRO, nor any officer, director, employee, or agent of the CRO, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

8. **THIS COURT ORDERS** that the CCAA Entities shall indemnify and hold harmless the CRO and any officers, directors, employees or agents of the CRO who may assist the CRO with the exercise of its powers and obligations under this Order (collectively with the CRO, the "CRO Indemnified Parties") with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the appointment of the CRO or the fulfilling of the CRO's duties in carrying out the provisions of this Order, including any claims or liabilities subject to indemnification pursuant to the CRO Agreement, except to the extent that the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct. The CRO Indemnified Parties shall be treated as unaffected and the foregoing indemnity shall be treated as unaffected and may not be compromised in any

plan of arrangement or compromise filed by the Timminco Entities under the CCAA, or any proposal filed by the CCAA Entities under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA").

9. **THIS COURT ORDERS** that the fees and expenses payable to Russell Hill pursuant to the CRO Agreement, including by way of indemnification, are entitled to the benefit of the Administration Charge, as defined in this Court's Initial Order dated January 2, 2012 (the "Initial Order").

10. **THIS COURT ORDERS** that ^{✓ →, subject to section 11.1 of the ✓ CCAA,} no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO Indemnified Parties, and all rights and remedies of any Person against or in respect of the CRO Indemnified Parties are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the CRO and the Monitor. Notice of any such motion seeking leave of this Court shall be served upon the CRO and the Monitor at least seven (7) days prior to the return date of any such motion for leave.

11. **THIS COURT ORDERS** that the Timminco Entities' indemnity in favour of the CRO Indemnified Parties shall survive any termination, replacement or discharge of the CRO.

Miscellaneous

12. **THIS COURT ORDERS** that notwithstanding the resignation of the directors and officers of the Timminco Entities (the "D&O") and subject to the restrictions in paragraph 28 of the Initial Order, the Timminco Entities are authorized and directed to pay the reasonable legal fees of counsel for the D&O in respect of claims made against the D&O pursuant to the claims process authorized under the Claims Procedure Order dated June 15, 2012 or otherwise, in accordance with the indemnity obligations of the Timminco Entities contained in paragraph 26 of the Initial Order which are secured by the charge granted in paragraph 27 of the Initial Order, without prejudice to the rights of any D&O to seek further directions from this Honourable Court, on notice to the Monitor and the CRO, regarding the obligation of the Timminco Entities to compensate the D&O for reasonable legal fees relating to any pre-filing claims made against them to the extent that the D&O do not have coverage under any director and officer insurance policy or to the extent that such coverage is insufficient to pay amounts indemnified by the Timminco Entities.

13. **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 Monitor, the CRO 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 Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that, except as specifically provided for herein, nothing in this Order shall vary or amend any order or endorsement previously granted in these proceedings.



ENTERED AT / ENREGISTRÉ À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 17 2012

BY / PAR:



**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

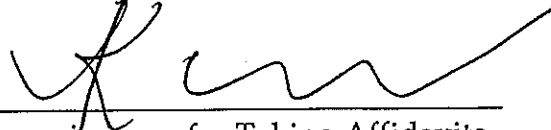
**ORDER
(CRO Appointment)**

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Tel: (416) 869-6805
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "C"
to the affidavit of Sean Dunphy,
sworn before me on the 5th
day of December, 2013



Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE 5TH DAY OF
) NOVEMBER, 2012
JUSTICE MORAWETZ)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS 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.

ORDER
(Re Granting Additional Powers to the CRO)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. ("BSI" and, together with Timminco Limited, the "Timminco Entities") for an order granting to Russell Hill Advisory Services Inc., in its capacity as the Chief Restructuring Officer ("CRO") of the Timminco Entities, the powers necessary to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such settlements, with the prior consent of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Timminco Entities (the "Monitor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Sean Dunphy sworn October 26, 2012, and on hearing the submissions of counsel to the Timminco Entities and the Monitor, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined shall have the meaning contained in the Order of this Court dated August 17, 2012, approving the appointment of the CRO (the "**CRO Appointment Order**").

Service

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

Granting Settlement Powers to the CRO

3. **THIS COURT ORDERS** that, in addition to the powers set out in the CRO Appointment Order but subject to the claims process approved by this Court in the Order dated June 15, 2012 (the "**Claims Procedure Order**"), the CRO is hereby authorized and empowered, but not obligated, to settle claims, actions and suits of the Timminco Entities, including the power to enter into settlement agreements, accept settlement offers, grant releases and execute any other documents in respect of such settlements with the prior written consent of the Monitor.

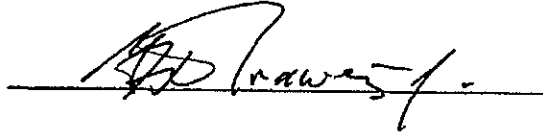
4. **THIS COURT ORDERS** that neither the CRO, nor any officer, director, employee, or agent of the CRO, shall incur any liability or obligation as a result of its carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.


5. **THIS COURT ORDERS** that the indemnity provided to the CRO Indemnified Parties shall extend to the CRO Indemnified Parties with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the fulfilling of the CRO's duties in carrying out the provisions of this Order, except to the extent that the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct.

6. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation in providing any consent to settle claims to the CRO pursuant to this Order, and shall have all the protections given it by the CCAA and the Initial Order or as an officer of this Court, including the stay of proceedings in its favour.

7. **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 Monitor, the CRO 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 Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "A. Praves", is written over a horizontal line.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO. 

NOV 05 2012

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

ORDER
(Additional CRO Powers)

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Lawyers for the Applicants

Nov 5-12

M. Konyukhova for Applicants.

J. Harman for Trustee.

S. Weisz for FTI Parties.

*The note was not opposed. It
is satisfied, having been renewed
the usual way being submitted
that the registered matter
is appropriate in the circumstances.*

[Signature]

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

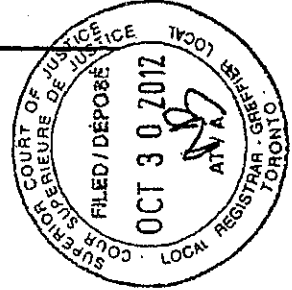
Proceeding commenced at Toronto

MOTION RECORD
(Returnable November 5, 2012)
(Re Granting Additional Powers to the CRO)

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Kathryn Esaw LSUC#: 58264F
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Fax: (416) 947-0866

Lawyers for the Applicants



This is Exhibit "D"
to the affidavit of Sean Dunphy,
sworn before me on the 5th
day of December, 2013



Commissioner for Taking Affidavits

First Report of Russell Hill Advisory Services, Inc. in its capacity as court-appointed Chief Restructuring Officer of Timminco Limited and Bécancour Silicon Inc.

December 5, 2013

1. This Report is provided by Russell Hill Advisory Services Inc. to the Ontario Superior Court of Justice to report upon its activities as Chief Restructuring Officer (the “CRO”) of Timminco Limited (“Timminco”) and Bécancour Silicon Inc./Silicium Bécancour Inc. (“BSI”). Timminco and BSI shall collectively be referred to as the “Timminco Entities”.

Background

2. The CRO was appointed by Order of the Honourable Mr. Justice Newbould on August 17, 2012, which Order approved the CRO engagement agreement entered into by FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Timminco Entities (the “Monitor”), and the CRO dated July 24, 2012 (the “CRO Agreement”). By Order dated November 5, 2012, the authority of the CRO was clarified and extended to include the power to settle claims, actions and suits of the Timminco Entities. The term of the CRO’s appointment has subsequently been extended by Orders of the Court dated January 30, 2013, March 5, 2013 and May 14, 2013 and thereafter by agreement between the Monitor and the CRO as contemplated in a letter agreement between the Monitor and CRO dated April 25, 2013, which agreement was approved by the Court in its May 14, 2013 Order.

3. In March 2013 and again in September 2013, the CRO offered and the Monitor agreed to make substantial reductions in the work fee originally provided in the CRO Agreement as a result of the substantial progress being made in the liquidation of the assets of the Timminco Entities and the consequent reduction in the level of involvement of the CRO expected to be required. The CRO Agreement as so extended expires on December 16, 2013.

4. Given the level of progress made to date and the small number of remaining issues, the CRO has recommended and the Monitor has agreed that the CRO Agreement not be renewed at this time and, instead, that the Timminco Entities apply for an order discharging the CRO and transferring such of its powers and responsibilities as may be appropriate, to the Monitor for the purpose of completing the liquidation of the Timminco Entities and a distribution of proceeds to their creditors in the most cost-efficient manner.

5. The CRO has reported to the Court upon its activities from time to time through affidavits sworn by its President, Mr. Sean Dunphy, in connection with various approval and stay extension motions brought by the Timminco Entities. This Report shall provide an overview and summary of such activities as well as providing further detail on recent activities which have not yet been reported upon in detail to the Court. In connection with discharging the CRO, the Timminco Entities also request that this Court approve the activities of the CRO as described herein and in the affidavits of Mr. Dunphy filed with the Court to the extent not specifically approved in prior orders of the Court.

Interim Distribution/Reimbursement Agreement

6. One of the first priorities of the CRO upon commencing its mandate was to reduce the costs of the Timminco Entities' estate (the "Estate") as far as reasonably possible and as quickly as possible. Following the completion of the sale of the active business assets of BSI in June, 2012, the Estate held substantial proceeds. These proceeds were subject to a potential priority dispute between the first secured creditor of BSI (Investissement Quebec or "IQ") and various parties including the administrator of BSI's pension plan and the purchaser of a portion of BSI's business assets ("QSI").

7. While the proceeds of the sale were earning only a small amount of interest in the Monitor's trust account, the secured creditor was continuing to accrue approximately \$10,000 per day in interest charges. The CRO initiated negotiations which led to an Order issued by the Court on August 28, 2012 permitting BSI to make an interim distribution to IQ which would have the effect of stopping the continued accrual of interest in respect of the amount repaid. The distribution was subject to IQ agreeing to repay any amounts that constituted a claim that ranked in priority to IQ's claim. Parties with alleged priority claims were given a procedure to follow by which they were entitled to assert and prove their alleged priority claims, which procedure was approved by the Court.

8. A single priority claim was ultimately pursued by the administrator of the BSI pension plan¹ and a decision is currently under reserve before the Quebec Superior Court regarding the priority of such claim. The working capital dispute with QSI was ultimately resolved as reported upon below.

Closure of Head Office

9. As of August, 2012, the Timminco Entities' head office was located on approximately half of a floor at 150 King Street West. Rent, IT and telecom costs were in excess of \$40,000 per month. As a result of lay-offs and staff departures following the sale of the business in June 2013, a large number of offices were empty. Summer students were working on cataloguing and storing hundreds of boxes that had been retrieved from other locations. Effective September 1, 2012, the CRO arranged to move the Timminco Entities' offices to 130 King Street West where smaller, furnished premises were leased at low cost for seven months for a reduction in monthly occupancy costs of over 90%. Three employees initially moved to the new office, with one employee terminating her employment at the end of September. Two others remained to assist in transition, shifting to part-time employment shortly after the move. The office at 130 King Street West was closed at the end of March 2013 and the remaining files were either sent to storage or moved to the office of the CRO. The Timminco Entities have incurred no premises costs since that time. Mr. Greg Donaldson (former Vice President, Finance of Timminco) has continued to assist the CRO and the Monitor in relation to cash flow reporting and tax filings on a month-to-month contract basis for approximately 2-3 days per month. It is expected that Mr. Donaldson will continue to provide such assistance to the Monitor for a period of time following the discharge of the CRO for as long as the Monitor determines that such services are required and cost-effective.

¹ The Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042); and the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063)

Document Retention Issues

10. Timminco had in excess of one thousand boxes in storage with Recall Corporation (“Recall”). In addition, until January 2013, Recall was including in its billings charges for boxes which Timminco had retrieved and shredded on its own on the basis that storage charges for “phantom boxes” continue to accrue under its contract until formally removed from the computer system. In consultation with the Monitor, the CRO determined that approximately 400 boxes that appeared to contain materials less than seven years old might potentially be required by the Timminco Entities for purposes of completing the liquidation of the Estate or might contain materials that were required to be retained by the Timminco Entities for a certain period of time under applicable legislation. Having failed to negotiate a reasonable settlement with the storage company for charges related to the “phantom boxes” as well as the older archived boxes not required by the Estate, the CRO arranged to retrieve the 400 potentially relevant boxes and store these with a new service provider, Iron Mountain, at a fixed, significantly lower cost. In consultation with the Monitor, the CRO then caused Timminco to repudiate its prior agreements with Recall. It is presumed that Recall has destroyed or will soon destroy the boxes which have been abandoned in its possession as a consequence of the repudiation of the storage agreements.

11. The CRO expects to have sent the remaining boxes in its possession to storage or to the Monitor in early December and to have arranged for Timminco to prepay Iron Mountain for the costs of storing the remaining boxes until January 1, 2019. Absent other arrangements made before such date, all boxes then in storage will be destroyed (costs of which will have been prepaid). Accordingly, unless a need for retrieval of the boxes in storage arises, Timminco should incur no further storage costs for boxes which will have not been sent to the Monitor. Costs of retrieval are paid on a per box basis as needed.

Resolution of Beauharnois Property Issues

12. As has been previously reported to the Court, Timminco formerly owned a property located at 54 Hauts-Fourneaux in Beauharnois, Québec (the “Beauharnois Property”). The Beauharnois Property had been sold in 2003 and the purchase price was paid in full by the purchaser, although the sale remained subject to a suspensory condition that prevented closing of the agreement for ten years until the purchaser had complied with certain environmental obligations of the vendor as contained in a Certificate of Authorization issued by the Ministère du Développement durable, de l’Environnement et des Parcs in 2003. A settlement agreement was negotiated with the purchaser of the Beauharnois Property to forestall a dispute regarding the right, if any, of the Timminco Entities to repudiate the sale agreement. The settlement was approved by the Court by an Order dated January 30, 2013 and the Beauharnois Property was vested in the purchaser in consequence. The Estate received cash consideration of \$500,000 upon completing the Settlement Agreement while the purchaser assumed Timminco’s obligations under the Certificate of Authorization.

Settlement of Working Capital Dispute

13. Upon the appointment of the CRO in August 2012, there remained a dispute between the Timminco Entities and QSI, purchaser of one of BSI’s active business units regarding a working capital adjustment provided for in the sale agreement. The nature of the dispute and the settlement is described in further detail in the affidavits of Sean Dunphy sworn September 18, 2012, October 26, 2012 and January 25, 2013.² The motion was withdrawn and the withdrawal was acknowledged by the Court in an Endorsement dated January 30, 2013. A settlement was completed shortly thereafter with the net proceeds (approximately \$2 million) being released to the Monitor upon closing.

² All affidavits referenced herein will be provided to the Court on the return date of the Timminco Entities’ motion for an order, *inter alia*, discharging the CRO, returnable December 16, 2013.

Resolution of Haley Site Related Issues

14. Timminco formerly operated a quarry-type Dolomite mine located in Haley, Ontario (the “Haley Property”) comprising approximately 678 acres. Operations at the site had ceased in 2008 and Timminco was in the process of completing mine closure operations pursuant to a mine closure plan filed with the Ministry of Northern Development and Mines (“MNDM”) at the time the Timminco Entities filed for CCAA protection in 2012. The mine closure process had revealed numerous environmental challenges associated with the property including, among other things, radioactive (thorium) contamination in one building, asbestos in at least one other, an oil spill discovered upon demolition of a third and significant issues associated with leaching of groundwater from the tailings pile remaining from the former mining operations.

15. The costs of maintaining the Haley Property in compliance with environmental standards were significant and exceeded any estimates of the likely market value of the property. In consultation with the Monitor, the CRO determined that there was no reasonable prospect of achieving any economic value for the Estate from the Haley Property and the costs of remediation and completion of the mine closure process would almost certainly exceed materially the amount of financial assurances (of approximately \$1 million) that Timminco had previously placed on deposit with the MNDM. The CRO consulted closely with Ministry of the Environment and MNDM officials for several months regarding approaches to resolve the situation. Ultimately, it was determined that no economic solution could be found and the decision was taken to cause the Haley Property to be abandoned. Further background to this matter was disclosed to the Court in Affidavits of Sean Dunphy of February 22 and March 4, 2013 as well as the Monitor’s Nineteenth Report. On March 5, 2013, the Court authorized Timminco to transfer its interest in the Haley Property to a wholly-owned but inactive subsidiary (Timminco Silicon Holdings Inc. or “THSI”) and to cause TSHI to make an assignment in bankruptcy, which was done shortly after the date of the Court order. As expected, the Trustee in Bankruptcy of THSI determined to abandon the property in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada). The CRO has been notified that the

Trustee has since been discharged and filed its final report with the Superintendent in Bankruptcy.

16. Following the abandonment of the Haley Property, the CRO has been liaising with officials with the MNDM to ensure that any required transition assistance or co-operation is made available. As requested by MNDM, the CRO and the Monitor have consented to lifting the stay of proceedings to permit necessary orders to be made by the Director under the *Mining Act (Ontario)* to permit MNDM officials to carry out such conservation and remediation activities as are necessary.

17. While the land formerly owned by Timminco was transferred to TSHI and then abandoned pursuant to the March 5, 2013 Order of the Court, the transfer documents did not include any of the equipment located at the Haley Property. By order dated June 19, 2013, the Court approved a sale of certain remaining equipment on the site to TCL Asset Group Inc. ("TCL") in a transaction which included an agreement to transfer a portion of the proceeds of sale to the financial assurance fund held by the MNDM in respect of mine closure costs. The TCL transaction has been completed and the sold assets removed by TCL (in consultation with the MNDM so as not to interfere with their activities on the site) with the exception of certain equipment in the electrical substation which are being removed at this time following a decision by the MNDM to utilize an alternative source of power supply for its operations on the site.

18. Following the decision of the MNDM to cease utilization of the electrical substation on the Haley Property, there remains the possibility that the remaining equipment located at the substation may have some value. TCL has expressed an interest in bidding on such equipment should it come available for sale. As well, there remains some miscellaneous equipment in various buildings which are still standing on the Haley Property and which have not been sold in the previous equipment sale transactions which have occurred on the site since closure. While there is no expectation that the equipment will have any material value given the previous failed efforts to sell it, the CRO has had discussions with the MDNM as to whether

steps should be taken to attempt to sell this equipment now or in the context of a contract to demolish all of the remaining buildings on site. Given ongoing remediation activities as well as questions regarding whether particular equipment may be considered fixtures or not, the cooperation of the MDNM is required for any potential purchaser to obtain access to inspect, and if sold, remove the equipment. The MNDM has not yet determined its position on the matter.

19. In addition, given the abandonment of the Haley Property by the trustee in bankruptcy of TSHI, the land is still registered in the name of TSHI which remains a subsidiary of Timminco until such time as it is dissolved. Two parties approached the CRO with potential interest in acquiring some discrete portions of the Haley Property. The CRO discussed these approaches with MNDM officials in order to ensure that they were kept advised of developments given the potential interest of the Crown in the land through statutory liens. Parties were advised that a sale would only occur following a marketing process and only if expressions of interest were of a sufficient order of magnitude (a) to cover the likely costs of obtaining necessary planning severances of the desired parcels from municipal authorities; and (b) to cover the costs of obtaining court approval of any such transactions. No further correspondence was initiated by either party after that information was conveyed.

20. While it is possible that Timminco may have some small economic interest in participating in a further sale of the remaining equipment or a severance of some of the land registered in the name of TSHI, the CRO determined that the likely economic interest is minor and would not warrant the expense of the Estate continuing to incur expenses in actively seeking such a sale.

Sale of Tycos Road Property

21. A considerable amount of time of the CRO was devoted to management of the issues relating to a former manufacturing site of Timminco at Tycos Rd. in Toronto. The property had certain significant environmental issues relating to a spill that had occurred many years ago during its use as a manufacturing facility. Remediation of the consequences of the spill was an

on-going matter. In addition, Timminco had leased the property to a lessee under a long term lease. In consultation with environmental authorities, the CRO negotiated a sale of the property to Ehrlich Samuel Properties Inc. who assumed ownership of the property as well as compliance with relevant environmental obligations. The sale transaction was approved by this Court in an order dated May 14, 2013 and is described in greater detail in the Affidavit of Sean Dunphy dated May 7, 2013. The sale transaction closed shortly thereafter and the net proceeds were deposited into the Monitor's trust account.

Settlement of Applied Magnesium/Metrobank Litigation

22. Timminco was formerly a shareholder in, as well as a creditor of, Applied Magnesium USA Inc. ("**Applied Magnesium**"). Prior to the CCAA proceedings, Timminco and another creditor brought fraudulent preference proceedings against another former shareholder of Applied Magnesium as well as certain other parties. The litigation is further described in the Affidavit of Sean Dunphy dated October 26, 2012. From the CRO's review of the file, it appeared that Timminco had spent approximately \$75,000 in pursuing the litigation. The CRO, in consultation with the Monitor, concluded that, while the litigation had potential merit, the costs of litigation, including expert witness costs, discovery costs and other disbursements would be very substantial whereas recovery was uncertain both as to timing and amount. The settlement of the litigation, agreed to by the CRO with the approval of the Monitor, resulted in the Estate being reimbursed for substantially all of the costs it had incurred in pursuing the litigation.

Collection of Receivables – Employee mortgage

23. Among the assets of Timminco remaining at the time the CRO commenced its duties was a mortgage in the amount of approximately \$35,000 on a condominium located in the United States, securing a loan that had been made to a former employee. Timminco had negotiated acceleration in the timing of the repayment of the mortgage in exchange for a small discount. The CRO concurred in the settlement previously arranged and worked with the former employee to obtain repayment of the agreed amount which was received in 2013.

Sale of Maple Leafs Season Tickets

24. Timminco held two seasons' tickets in the Air Canada Centre "Gold" section for Toronto Maple Leafs hockey games. Prior to the CRO's appointment, Timminco had paid in full for the 2012-2013 season. As events transpired, a lock-out situation prevented the 2012-2013 season from beginning until late January, 2013. Timminco received a full refund from Maple Leaf Sports and Entertainment ("MLSE") for the cost of all tickets that were not used by reason of the lock-out. The CRO engaged the services of a ticket broker to attempt to sell the rights to the seasons' tickets as well as the remaining tickets for the 2012-2013 season. With the assistance of the broker, a buyer was found to acquire all of the remaining 2012-2013 season tickets at cost. Given the large number of games to be played in a condensed time period, the CRO was advised that this was a favorable arrangement as many of the tickets might otherwise have proved difficult to sell even if some of the tickets might have been otherwise sold at a premium.

25. Having arranged for ownership of the tickets for the 2012-2013 season to be at no risk to the Estate, the CRO worked with the broker to sell the rights to the seasons tickets for future seasons. As a long time seasons' ticket holder, Timminco had neither paid for nor acquired a "Personal Seat License" from MLSE which would have made such seasons' ticket rights fully transferrable. Accordingly, any sale had to be undertaken on terms that the buyer would fund Timminco's costs of acquiring a Personal Seat License, at a cost of approximately \$30,000, before transferring the license to the purchaser. With the assistance of the broker, a purchaser was ultimately found and the Personal Seat License was acquired and transferred in August, 2013. Net of brokerage costs and the cost of the Personal Seat License, Timminco received proceeds of approximately \$20,000 in September 2013.

Liquidation of Timminco S.A.

26. Timminco S.A. is a Swiss holding company which is a wholly-owned subsidiary of Timminco. A former employee of Timminco held a qualifying share in Timminco S.A. as bare trustee. The CRO was advised by Mr. Donaldson that Timminco S.A. has no third party

creditors and has been inactive for some time. The administrator of Timminco S.A. advised that Timminco S.A. should be dissolved under Swiss law if possible. As Timminco S.A. had few, if any, assets, the CRO advised that dissolution could be done only if it could be accomplished at no cost to the Timminco Entities. In January 2013, all necessary documents were sent to Switzerland for this purpose. Some of the documents appear to have been misplaced by Credit Suisse or lost in transit. The CRO has had no further contact from Credit Suisse on the matter and does not recommend any further action be taken given the lack of any economic interest of the Timminco Entities. The CRO expects that Credit Suisse will either complete the dissolution with the documents that have been provided or the company will be dissolved in due course due to inactivity.

27. Timminco S.A. had filed a Proof of Claim in the CCAA proceedings against BSI. The CRO has caused Timminco, as sole beneficial shareholder of Timminco S.A., to withdraw such claim. The Monitor has advised that the potential distribution receivable by Timminco S.A. in respect of such claim would very likely be less than \$1,000. As the complications of dealing with such a distribution would entail costs that would far outweigh any potential benefit to Timminco as ultimate shareholder of Timminco S.A., the CRO provided the Monitor with a letter withdrawing such claim.

Pensions - BSI

28. At the time of filing for CCAA protection, the Timminco Entities sponsored three pension plans as outlined in the Affidavit of Peter Kalins sworn January 5, 2012. These were:
- 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**”).

29. In light of the closure of the Haley plant in 2008, the Haley Pension Plan had no active employees and was in the process of being wound up pursuant to Ontario legislation. Other than the participation of the Administrator of the Haley Pension Plan in certain motions and responding to information requests as and when made, neither the CRO nor the Timminco Entities have had any material role in relation to the Haley Pension Plan since the appointment of the CRO in August, 2012.

30. Timminco was sponsor of a Group RRSP arrangement for various of its employees in Ontario and, as employees ceased their employment following the appointment of the CRO, the CRO has co-operated with the administrator of the Group RRSP to enable participants to take control of the funds in their name where required.

31. In Quebec the situation was somewhat different. One division of the business was sold as a going concern while another was sold in liquidation. By the time of the appointment of the CRO in August, 2012, there were no active employees remaining at BSI. Under Quebec law, the pension committee and not the employer was the administrator of the Bécancour Union Pension Plan.

32. The CRO worked with counsel to the pension committee of the Bécancour Union Pension Plan to co-ordinate delivery of information relating to the Plan which continued to be received by BSI. As well, issues arose regarding (i) whether normal cost pension contributions were due in respect of a member who was on disability at the time of the filing and did not resume active employment with BSI during the CCAA period and the costs of administration of the plan during such period; and (ii) the impact of the December 3, 2012 administrative decision taken by the Régie des Rentes to cause the Bécancour Union Pension Plan to be wound up effective August 1, 2012. With regard to the latter point, the pension committee wished to request that the Régie des Rentes reverse its decision to terminate the plan as this

would potentially permit the Becancour Union Pension Plan to receive favourable solvency relief measures from the Government of Quebec.

33. Following negotiations conducted between the CRO and counsel for the pension committee, a settlement of disputes was worked out and approved by the Monitor. Under the settlement agreement the CRO agreed to cause BSI to pay the sum of \$24,204 in full and final settlement of all claims to priority for normal cost or other pension contributions, but without prejudice to the deemed trust priority claim referenced in paragraph 8 above.

Possible Sale of Corporate Attributes

34. The CRO conducted a broad canvass of restructuring and tax professional firms inquiring whether they had any clients that might be interested in examining the attributes of either of the Timminco Entities with a view to a possible transaction. While substantial interest was initially demonstrated, most interested parties abandoned the matter following budget announcements made by the Government of Canada earlier this year. One party did proceed to execute a non-disclosure agreement and review the data room assembled for the purpose after the budget announcements, but has failed to make any further indication of interest. Should it appear likely that a competitive process is possible, the possibility of reviving these discussions remains open. However, the CRO has concluded that it is unlikely at this time that any value can be retrieved for the Estate from this asset.

Sale of Mining Claims

35. Timminco was owner of certain patented mining claims in the Obonga and Puddy Lake region near Thunder Bay, Ontario. The claims had been owned by Timminco for more than 70 years but were not being actively exploited. With the approval of the Monitor, the CRO sold the mining claims to Pavey Ark Minerals Inc. under an agreement that provides for Timminco to retain a royalty interest should the claims be successfully exploited in the future. The purchaser applied for and received a vesting order in respect of these claims on December 20, 2012. The CRO has approached Pavey Ark Minerals to ascertain their interest, if any, in

acquiring the residual royalty interest. Pavey Ark has advised that it is in the process of applying for permits to construct roads to permit further exploration next season. Pavey Ark has not made an offer to acquire such rights at this point and will be directed to the Monitor should it indicate an interest in the future.

Silica Fumes Site

36. BSI formerly owned and operated a licensed disposal site located at 5355 Chemin De Fer in Bécancour, Québec (the “**Silica Fumes Property**”) comprising approximately 100 acres near the industrial park where BSI had its manufacturing facilities. The CRO understands that the Silica Fumes Property was primarily used to dispose of the silica fumes scrubbed from the chimneys of the manufacturing facilities. There is a market for silica fumes in the manufacturing of cement and BSI had once profitably sold the silica fumes buried at the Silica Fumes Property to certain processors. The CRO understands that there remained approximately one year of operations worth of un-extracted silica fumes at the site when it was shut down following the sale of BSI’s manufacturing facilities in June 2012.

37. BSI’s own estimations indicated that the cost of bringing the Silica Fumes Property back to the state required by its operating permits with the environmental authorities would be more than \$1 million and would very likely exceed any estimate of the market value of the site even if cleaned up.

38. In the sales process that resulted in the sale of substantially all of the assets of the Timminco Entities in June, 2012, buyers were given the opportunity to acquire the Silica Fumes Property. The purchasers of the Timminco Entities’ assets declined to purchase the site and caused it to be excluded from the sale transaction. Upon examination of the file, the CRO determined that a) the only tangible expressions of interest received in the sales process in relation to the site were from parties who wished BSI to continue to operate the site (or to operate on behalf of BSI, but leaving BSI with the clean-up liability); and b) the realtor who proposed to list the land for sale declined to do so unless paid a substantial fee up front in light of remediation costs compared to the sale value of the Silica Fumes Property.

39. The order of the Court dated March 5, 2013 authorized BSI to transfer the land to a numbered company which could then abandon the land in much the same way as was done by Timminco with the Haley Property. However, certain of the Silica Fumes Property was designated as agricultural land within the meaning of *An Act Respecting the Preservation of Agricultural Land and Agricultural Activities*, R.S.Q., c. P-41.1 and *An Act Respecting the Acquisition of Farm Land by Non-Residents*, R.S.Q., c. A-4.1, which prevented the transfer of such lands to any non-resident of Quebec (as defined in the latter act) without consent of the Commission de protection du territoire agricole du Québec. The Timminco Entities had been in the process of seeking such consent since December 2012 but when no consent was forthcoming after nearly a year, the Timminco Entities sought and the Court authorized the abandonment of the land by BSI to the Crown under provisions of the Civil Code of Quebec by order dated September 13, 2013. The land was abandoned in accordance with such order shortly thereafter.

Sale of Memphis Lands – Timminco Properties Inc.

40. An indirect wholly-owned subsidiary of Timminco (Timminco Properties Inc. or “TPI”, formerly known as Chromasco Inc.) owns real property located on Fite Road in Shelby County, Tennessee, near Memphis (the “**Memphis Property**”). The Memphis Property comprised approximately 100 acres of land and formerly contained a chromium smelting facility which was shut down and demolished many years ago, and is now the subject of significant environmental contamination issues.

41. Efforts by the CRO to achieve value for the site were described in the affidavit of Sean Dunphy dated May 7, 2013 and the activities of the CRO in relation to the sale process were approved by the Court by Order dated May 14, 2013. This report shall focus on subsequent activities in relation to the completion of an agreement (the “**Memphis Agreement**”) dated April 22, 2013 which was approved by the Court in its May 14, 2013 Order.

42. The Memphis Agreement gave the purchaser until August 20, 2013 to complete its due diligence. In late July and early August the parties conducted negotiations regarding the outcome of the due diligence process including the purchaser's determination that environmental compliance costs would be materially higher than expected. Following such negotiations, and in consultation with the Monitor, TPI agreed to accept a purchase price reduction of US\$200,000. The condition of such amendment, dated as of August 20, 2013, was that all other closing conditions would be waived. The purchaser agreed to this condition and the terms of the resulting amending agreement. A copy of such amending agreement is attached hereto as **Appendix "A"**.

43. In order to close the sale agreement, it was also necessary for TPI to obtain certificates of good standing. This necessitated causing franchise and similar tax filings necessary to bring TPI and its immediate parent company Timminco Holdings Corporation ("**THC**", also a Delaware incorporated company) into good standing. Under the authority of the charter amendments previously executed in respect of TPI for the purpose of completing the sale transaction, the CRO has signed or approved the following additional documents prepared by KPMG for TPI:

- a. Tennessee Department of Revenue Franchise, Excise Tax Return (2012) for Timminco Properties Inc.; and
- b. US Corporation Income Tax Return (Form 1120) for Timminco Properties Inc. (2012).

44. The agreement was closed and, after payment of closing expenses, legal fees and the payment due to the holder of the right of first refusal referenced in the affidavit of May 7, 2013, counsel for TPI holds the sum of US\$176,478.13. The CRO has consulted Timminco's tax advisors KPMG regarding the matter and been advised that the most tax efficient means of bringing the proceeds back to Timminco would be to cause TPI to pay a dividend in such amount (net of any further expenses incurred by TPI) to its parent THC and then to cause THC to repay a portion of its existing indebtedness to Timminco.

45. The CRO consulted with TPI's attorneys in Memphis regarding the advisability of repaying such amount in light of the existing law suit described in paragraph 26 of the Affidavit of Sean Dunphy dated May 7, 2013.³ The following information was considered:

- a. The CRO wrote to the lawyers for the plaintiff in January, 2013 and received no reply (copy of letter dated January 21, 2013 attached hereto as **Appendix "B"**);
- b. The Complaint (copy attached hereto as **Appendix "C"**) names numerous other defendants, contains imprecise and general allegations regarding TPI's alleged role in the alleged harm to the plaintiff and concerns matters almost 40 years in the past in respect of which Timminco has no means of obtaining any information;
- c. TPI has no reason to believe, based on the limited information available to it, that it has any actual liability to the defendant or contributed in any way to the harm alleged to have been suffered by him;
- d. No liquidated claim for damages is made nor is there any means on the face of the complaint for establishing the relative liability, if any, of the various defendants; and
- e. TPI will retain two-thirds of the land it formerly had in order to deal with any contingent claim that may arise in the future should the occasion arise.

46. Based upon a review of the foregoing facts TPI was advised by its US counsel that it could reasonably comply with the course of action suggested by KPMG (i.e. payment of a dividend to THC and repayment of intercompany debt owed by THC to Timminco). TPI's counsel are currently drafting the documents necessary to cause these payments to be made and requested the CRO to execute them. These documents, which are expected to be executed on or before December 16, 2013, will provide as follows:

- a. Declaring and paying a dividend from TPI to THC in the amount of US\$175,000 (approximately);

³ The lawsuit, filed in Delaware in about December 2012, alleges asbestos liability against Chromasco as well as many other listed defendants. In the case of the Memphis Property, the exposure was alleged to date from 37 years ago. The CRO has no information suggesting that asbestos was ever employed at the site.

- b. Causing THC to partially repay existing indebtedness to Timminco in the amount of US\$175,000 (approximately); and
- c. Amending the charters of THC or TPI as needed to authorize Sean Dunphy to execute the documents necessary to effect the foregoing.

47. The CRO seeks the Court's approval of the CRO's execution of such documents on behalf of Timminco, or on behalf of Timminco's subsidiaries pursuant to resolutions executed by Timminco as the case may be.

48. Following the transfer of the net sale proceeds to Timminco in the manner described above, TPI will continue to own approximately 60 acres of the Memphis Property. The CRO has been advised that such land would likely be more valuable after the purchaser of the 30 acre parcel just sold has completed its environmental remediation activities and developed the site. This may take 1-2 years although it is possible that the real estate broker engaged by TPI may find other buyers in the meantime. Once again, while it is possible that some incremental value to the Timminco Estate may be realized from this avenue, the CRO does not believe that the amounts involved and the potential time line to realize them would justify the expense of continuing to maintain the CRO in place for such a potentially long period of time. As and when sales opportunities ripen in the future, they can be addressed directly.

Potential Future Sources of Value

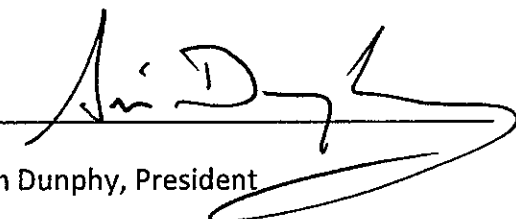
49. Summarizing this report, the following potential assets could potentially have value for the Estate of the Timminco Entities in the future:

- a. Sale of residual royalty rights from Mining Claims;
- b. Sale of remaining equipment on the Haley Property;
- c. Sale of portions of the Haley Property owned by TSHI;
- d. Sale of corporate attributes; and
- e. Sale of remainder of Memphis Property (60 acres) owned by TPI.

50. The CRO has discussed each of these with the Monitor and determined that none of these has a high likelihood of generating material proceeds in the near term and, should such an opportunity arise, it could be pursued by the Monitor to whom most of the authority of the CRO could be transferred. Given even the reduced cost of the CRO relative to the time line and likely recoveries from these sources, it was concluded that the discharge of the CRO would be the most prudent step for the Timminco Entities to take at this point in the liquidation process.

51. In addition, Mr. Donaldson (former Vice-President Finance of Timminco) has continued to work with the CRO (and will continue to work with the Monitor) to process various tax refund applications on behalf of the Timminco Entities for HST, QST and income tax (both Quebec and Canada). The CRO has executed authorizations on behalf of the Timminco Entities to allow the Monitor and Mr. Donaldson to continue to process such claims and the CRO does not believe that the Timminco Entities will need the CRO any further to pursue such matters.

Toronto, December 5, 2013

Per: 

Sean Dunphy, President

Russell Hill Advisory Services Inc.

Chief Restructuring Officer of Timminco Limited and

Becancour Silicon Inc.

APPENDIX A

FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (this "Amendment") is made to be effective as of the 20th day of August, 2013 (the "Effective Date") subject to the ROFR Contingency (defined below), by and between Timminco Properties Inc., a Delaware corporation with offices at c/o Stikeman Elliott LLP, Attention: A. Taylor, Suite 5300, Commerce Court West, Toronto, Ontario, Canada M5L1B9 ("Seller") and Voigt & Schweitzer LLC, a Delaware limited liability company, with offices at 1000 Buckeye Park Road, Columbus, Ohio 43207 ("Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into that certain Purchase Agreement dated as of April 22, 2013 for the purchase and sale of certain property consisting of approximately 30 acres in Millington, Shelby County, Tennessee, all as more particularly set forth therein (the "Agreement"); and

WHEREAS, Seller and Buyer wish to modify certain terms and conditions of the Agreement, all as more particularly hereinafter set forth.

In consideration of the mutual covenants and agreements set forth hereinafter, Buyer and Seller agree, and the Agreement is amended, as follows:

1. **REAFFIRMATION OF AGREEMENT; DEFINED TERMS.** The Agreement remains in full force and effect, subject to the modifications thereto expressly set forth herein. Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.
2. **PURCHASE PRICE.** Subject to the terms and conditions of the Agreement, as amended hereby, the Purchase Price is hereby reduced to \$325,000.00.
3. **WAIVER OF CONTINGENCIES.** Buyer hereby notifies Seller pursuant to Section 4 of the Agreement that Buyer has satisfied and/or waives all of the Buyer's Contingencies set forth in, and subject to the terms and conditions of, the Agreement.
4. **CLOSING:** Seller and Buyer acknowledge that Closing shall occur on or before September 19, 2013 at such time during regular business hours and at such place, or by such method, as may be reasonably acceptable to Buyer and Seller.
5. **NONBINDING PENDING RIGHT OF FIRST REFUSAL.** Buyer acknowledges that the Premises remains subject to a right of first refusal in favor of the ROFR Holder, that is exercisable by the ROFR Holder within ten (10) days following written notice from Seller of a written, bona fide offer that Seller wishes to accept. Buyer previously gave the ROFR Holder written notice of the Agreement, but the right of first refusal was not exercised by the ROFR Holder. Due to the reduction in the Purchase Price set forth in this Amendment, Seller will give the ROFR Holder written notice of this Amendment, along with a copy hereof, following the full execution and delivery hereof. Notwithstanding anything herein to the

contrary, this Amendment shall not be binding upon Seller unless and until the ROFR Holder declines to exercise its rights in connection herewith within ten (10) days following such notice from Seller or the expiration of such period without action by the ROFR Holder (the "ROFR Contingency"). During such period, this Amendment shall constitute a binding offer of Buyer, which may not be withdrawn.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment to be executed by their duly authorized officers to be effective on the date set forth above.

SELLER:

BUYER:

TIMMINCO PROPERTIES INC.,
a Delaware corporation

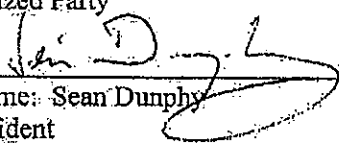
VOIGT & SCHWEITZER LLC,
a Delaware limited liability company

By: Russell Hill Advisory Services Inc.
Its: Authorized Party

By: _____

Printed Name: _____

Title: _____

By: 
Printed Name: Sean Dunphy
Title: President

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment to be executed by their duly authorized officers to be effective on the date set forth above.

SELLER:

TIMMINCO PROPERTIES INC.,
a Delaware corporation

By: Russell Hill Advisory Services Inc.
Its: Authorized Party

By: _____
Printed Name: Sean Dunphy
Title: President

BUYER:

VOIGT & SCHWEITZER LLC,
a Delaware limited liability company

By: _____
Printed Name: BRIAN M. ILEN
Title: PRESIDENT

12281575.1

APPDENDIX B

TIMMINCO

TIMMINCO LIMITED
Sun Life Financial Tower
130 King Street West
Suite 1800
Toronto, Ontario
M5X 1E3 Canada

Telephone: (416) 364-5171
www.timminco.com

January 21, 2013

Napoli Bern Ripka Shkolnik & Associates LLP
100 N. West Street
Suite 1244
Wilmington Delaware 19801

Attention: Ms. Kara A. Hager

Re Jessie Crisp et al vs Arvinmeritor Inc. et al; Chromium Mining and Smelting Corporation defendant

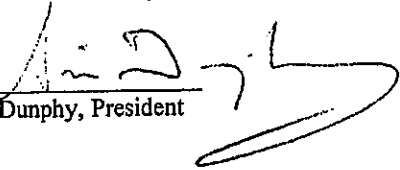
The above noted complaint was forwarded to the former offices of Timminco Ltd. ("Timminco") by C T Corporation System, apparently agent for service of Timminco Properties Inc. ("Properties"). A wholly owned indirect subsidiary of Timminco. I am writing to you as Chief Restructuring Officer of Timminco. Timminco is currently in insolvency proceedings before the Ontario Superior Court of Justice under the Companies Creditor's Arrangement Act (Canada) and such court has appointed Russell Hill Advisory Services Inc. to serve as chief restructuring officer of Timminco.

I can advise you that Properties is inactive and its plant in Memphis was demolished several years ago. All of the directors and officers of Properties have resigned and no replacements have been appointed. The complaint alleges an employment relationship with the plaintiff that ended almost 40 years in the past. We have no means of verifying if that is true or false nor of determining whether any of the facts alleged – including the alleged existence of asbestos on site or the exposure of the plaintiff to it – are remotely true. There is no record of this from what we have been able to see regarding the demolition of the plant many years ago, but our records are far from complete and institutional memory non-existent.

I cannot tell you at this point whether Properties will be placed into bankruptcy or wound up under Delaware law. As and when a decision is made, we have made note of your alleged claim.

Regards,

Timminco Limited by
Its Chief Restructuring Officer
Russell Hill Advisory Services inc.

Per 
Sean Dunphy, President

APPENDIX C



CT Corporation

**Service of Process
Transmittal**

01/02/2013

CT Log Number 521876394

TO: Peter Kalins
TIMMINCO LIMITED
150 King Street W. Suite 2401
Toronto, ON M5H 1J9

RE: Process Served in Tennessee

FOR: CHROMIUM MINING AND SMELTING CORPORATION (Former Name) (Domestic State: DE)
Timminco Properties Inc. (True Name)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Jessie Crisp, as Personal Representative of the Estate of William Crisp, and Sharon L. Crisp, Individually, Pltfs. vs. Arvinmeritor, Inc., etc., et al. including Chromium Mining and Smelting Corporation, Dfts.

DOCUMENT(S) SERVED: Praecipe, Summons, Case Information Sheet, Notice, Complaint

COURT/AGENCY: New Castle County: Superior Court, DE
Case # N12C11154ASB

NATURE OF ACTION: Asbestos Litigation - Fatal Injury/Wrongful Death

ON WHOM PROCESS WAS SERVED: C T Corporation System, Knoxville, TN

DATE AND HOUR OF SERVICE: By Process Server on 01/02/2013 at 15:50

JURISDICTION SERVED : Tennessee

APPEARANCE OR ANSWER DUE: Within 20 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Kara A. Hager
Napoli Bern Ripka Shkolnik & Associates LLP
1000 N. West Street
Suite 1244
Wilmington, DE 19801
302-300-4625

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex International Priority , 794429983997

SIGNED: C T Corporation System
PER: Amy McLaren
ADDRESS: 800 S. Gay Street
Suite 2021
Knoxville, TN 37929-9710
TELEPHONE: 800-592-9023



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE ASBESTOS LITIGATION:)
)
JESSIE CRISP, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF WILLIAM CRISP, AND SHARON) C.A. No.
L. CRISP, INDIVIDUALLY)
) ASBESTOS
Plaintiffs,)
) JURY TRIAL DEMANDED
)
v.)
)
ARVINMERITOR, INC., A/K/A)
ROCKWELL AUTOMATION)
INC.;)
BASF CATALYSTS LLC;)
BORGWARNER MORSE TEC, INC.,)
F/K/A BORG-WARNER)
CORPORATION;)
CBS CORPORATION, A DELAWARE)
CORP. F/K/A VIACOM INC.,)
SUCCESSOR BY MERGER TO)
CBS CORP., A PENNSYLVANIA)
CORP. F/K/A WESTINGHOUSE)
ELECTRIC CORP.;)
CERTAINTEED CORPORATION;)
CHROMIUM MINING AND)
SMELTING CORPORATION;)
CROWN CORK & SEAL COMPANY,)
INC.;)
GENUINE PARTS COMPANY;)
GEORGIA PACIFIC, LLC F/K/A)
GEORGIA-PACIFIC)
CORPORATION;)
HONEYWELL INTERNATIONAL,)
INC., F/K/A ALLIEDSIGNAL,)
INC., F/K/A THE BENDIX)
CORPORATION;)
INGERSOLL-RAND COMPANY;)
KAISER GYPSUM COMPANY, INC.;)
MAREMONT CORPORATION;)
METROPOLITAN LIFE INSURANCE)
COMPANY;)

NATIONAL AUTOMOTIVE PARTS)
ASSOCIATION;)
NMBFIL, INC.;)
PNEUMO ABEX CORPORATION;)
SOCO-WEST, INC., F/K/A)
BRENNTAG WEST, INC., F/K/A)
SOCO-LYNCH CORPORATION,)
SUCCESSOR-IN-INTEREST TO)
WESTERN CHEMICAL &)
MANUFACTURING CO.;)
TRANE US, INC., F/K/A AMERICAN)
STANDARD, INC;)
UNION CARBIDE CORPORATION;)
DOES 1-500 INCLUSIVE)
))
Defendants.)

PRAECIPE PURSUANT TO 10 DEL. C. § 3104

PLEASE ISSUE SUMMONS and a copy of the Complaint to the plaintiff's counsel of record, commanding plaintiff's counsel to summon and direct the below named defendants to answer the Complaint by serving the defendants with the Summons and a copy of the Complaint at the Defendant's address by Certified Mail, Return Receipt requested in accordance with 10 Del. C. § 3104:

ARVINMERITOR, INC.
CT CORPORATION SYSTEM
208 South LaSalle St. 17th Floor
Chicago, IL 60604

CERTAINTEED CORPORATION
750 East Swedesford Road
Valley Forge, PA 19481

CHROMIUM MINING AND SMELTING CORPORATION
CT Corporation System
800 South Gay Street, Suite 2021
Knoxville, TN 37929-9710

CROWN CORK & SEAL COMPANY, INC.
1 Crown Way
Philadelphia, PA 19154-4599

GENUINE PARTS COMPANY

2999 Circle 75 Parkway SE
Atlanta, GA 30339-3050

KAISER GYPSUM COMPANY, INC.

The Corporation Service Company
300 Deschutes Way SW Suite 304
Tumwater, WA 98501

NATIONAL AUTOMOTIVE PARTS ASSOCIATION

The Corporation Company
30600 Telegraph Road
Bingham Farms, MI 48025

NMBFIL, INC.

The Prentice-Hall Corporation System, Inc.
50 West Broad Street, Suite 1800
Columbus, OH 43215

SOCO-WEST, INC.

Murrin & Associates LLC
3675 Mt. Diablo Blvd., Suite 230
Lafayette, CA 94549

NAPOLI BERN RIPKA SHKOLNIK & ASSOCIATES LLP

By: /s/ Kara A. Hager

Kara A. Hager
Delaware Bar ID No. 4098
1000 N. West St., Suite 1244
Wilmington, DE 19801
Telephone: (302) 300-4625
Attorney for Plaintiffs

Dated: November 16, 2012



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE ASBESTOS LITIGATION:)

JESSIE CRISP, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF WILLIAM CRISP, AND SHARON)
L. CRISP, INDIVIDUALLY,)

Plaintiffs,)

v.)

ARVINMERITOR, INC., A/K/A)
ROCKWELL AUTOMATION)
INC.;)
BASF CATALYSTS LLC;)
BORGWARNER MORSE TEC, INC.,)
F/K/A BORG-WARNER)
CORPORATION;)
CBS CORPORATION, A DELAWARE)
CORP. F/K/A VIACOM INC.,)
SUCCESSOR BY MERGER TO)
CBS CORP., A PENNSYLVANIA)
CORP. F/K/A WESTINGHOUSE)
ELECTRIC CORP.;)
CERTAINTEED CORPORATION;)
CHROMIUM MINING AND)
SMELTING CORPORATION;)
CROWN CORK & SEAL COMPANY,)
INC.;)
GENUINE PARTS COMPANY;)
GEORGIA PACIFIC, LLC F/K/A)
GEORGIA-PACIFIC)
CORPORATION;)
HONEYWELL INTERNATIONAL,)
INC., F/K/A ALLIEDSIGNAL,)
INC., F/K/A THE BENDIX)
CORPORATION;)
INGERSOLL-RAND COMPANY;)
KAISER GYPSUM COMPANY, INC.;)
MAREMONT CORPORATION;)
METROPOLITAN LIFE INSURANCE)
COMPANY;)

C.A. No.

ASBESTOS

JURY TRIAL DEMANDED

NATIONAL AUTOMOTIVE PARTS)
 ASSOCIATION;)
 NMBFIL, INC.;)
 PNEUMO ABEX CORPORATION;)
 SOCO-WEST, INC., F/K/A)
 BRENNTAG WEST, INC., F/K/A)
 SOCO-LYNCH CORPORATION,)
 SUCCESSOR-IN-INTEREST TO)
 WESTERN CHEMICAL &)
 MANUFACTURING CO.;)
 TRANE US, INC., F/K/A AMERICAN)
 STANDARD, INC;)
 UNION CARBIDE CORPORATION;)
 DOES 1-500 INCLUSIVE)
)
 Defendants.)

**THE STATE OF DELAWARE,
 TO PLAINTIFF'S COUNSEL:**

YOU ARE COMMANDED:

To summon the above defendant so that, within 20 days after service hereof upon defendants' agent, exclusive of the day of service, defendant shall serve upon Kara A. Hager, Esquire, plaintiff's attorney, whose address is 1000 N. West St., Suite 1244, Wilmington, DE 19801, an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

To serve upon defendants' agent a copy hereof and of the complaint (and of the affidavit of demand if any has been filed by plaintiff) pursuant to 10 Del. C. § 3104.

Dated: 12/14/12

TO THE ABOVE DEFENDANT:

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the complaint (or in the affidavit of demand, if any).



SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: (N) K S

CIVIL ACTION NUMBER: N12C-11-154ASB

<p>Caption:</p> <p>IN RE: ASBESTOS LITIGATION:</p> <p>JESSIE CRISP, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLIAM CRISP, AND SHARON L. CRISP, INDIVIDUALLY,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ARVINMERITOR, INC., et al.,</p> <p style="text-align: center;">Defendants.</p> <p>Attorney Name(s): Kara Hager, Esquire</p> <p>Attorney ID(s): 4098</p> <p>Firm Name(s): Napoli Bern Ripka Shkolnik & Associates, LLP</p> <p>Office Address: 1000 N. West St., Suite 1244 Wilmington, DE 19801</p> <p>Telephone Number: 302-300-4625</p> <p>Fax Number:</p> <p>E-Mail Address: khager@napolibern.com</p>	<p>Civil Case Code: <u>CASB</u></p> <p>Civil Case Type: <u>Asbestos</u></p> <p>Name and Status of Party Filing Lawsuit:</p> <p><u>JESSIE CRISP, Plaintiff</u> <u>SHARON L. CRISP, Plaintiff</u></p> <p>Document Type:</p> <p><u>Complaint</u></p> <p>Jury Demand: Yes <u>X</u> No _____</p> <p>Identify Any Related Cases Now Pending in the Superior Court by Caption and Civil Action Number Including Judge's Initials:</p> <p>Explain the Relationship(s):</p> <p>Other Unusual Issues that Affect Case Management:</p>
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THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND TO HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.

EFiled: Nov 16 2012 03:09PM
Transaction ID 47817712
Case No. N12C-11-154 ASB



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION : DOCKET NO

NOTICE TO DEFENDANTS
PURSUANT TO AMENDED STANDING ORDER NO. 1

TO : Defendant

TAKE NOTICE that you have been served with a Complaint joining you as a party to an asbestos personal injury/product liability law suit filed in this Court. The matter is governed procedurally by this Court's Civil Rules and by the laws, rules, and procedures for civil litigation in this State. Additionally, asbestos litigation matters are governed by a series of Standing Orders, including Standing Order No. 1 which requires the service of this notice upon you. Pursuant to the laws, rules, procedures, and Standing Orders governing the matter in which you have been joined as a Defendant, you must answer or otherwise plead within a specified time period and you are immediately deemed responsible for proceeding as specified by the applicable laws, rules, procedures, and Standing Orders applicable to asbestos litigation matters.

Defense efforts in asbestos litigation matters in this jurisdiction are coordinated by Standing Order directives. If you are not familiar with the laws, rules, procedures, and Standing Orders governing asbestos litigation matters in this jurisdiction, you are directed to contact Defense Coordinating Counsel for copies of existing and applicable Standing Orders, forms, and the like. You may contact Defense Coordinating Counsel as follows:

Loreto P. Rufo
Rufo Associates, PA
Hockessin Village Center
7217 Lancaster Pike, Suite F
Hockessin, Delaware 19707

*
Telephone : 302-234-5900
Facsimile : 302-234-5905
*

/s/ David A. White

David A. White
Commissioner

11/16/2012



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JESSIE CRISP, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WILLIAM CRISP, AND SHARON L. CRISP,
INDIVIDUALLY,

Plaintiffs,

v.

ARVINMERITOR, INC., A/K/A ROCKWELL
AUTOMATION INC.;
BASF CATALYSTS LLC;
BORGWARNER MORSE TEC, INC., F/K/A
BORG-WARNER CORPORATION;
CBS CORPORATION, A DELAWARE CORP.
F/K/A VIACOM INC., SUCCESSOR BY
MERGER TO CBS CORP., A
PENNSYLVANIA CORP. F/K/A
WESTINGHOUSE ELECTRIC CORP.;
CERTAINTEED CORPORATION;
CHROMIUM MINING AND SMELTING
CORPORATION;
CROWN CORK & SEAL COMPANY, INC.;
GENUINE PARTS COMPANY;
GEORGIA PACIFIC, LLC F/K/A GEORGIA-
PACIFIC CORPORATION;
HONEYWELL INTERNATIONAL, INC.,
F/K/A ALLIEDSIGNAL, INC., F/K/A THE
BENDIX CORPORATION;
INGERSOLL-RAND COMPANY;
KAISER GYPSUM COMPANY, INC.;
MAREMONT CORPORATION;
METROPOLITAN LIFE INSURANCE
COMPANY;
NATIONAL AUTOMOTIVE PARTS
ASSOCIATION;
NMBFIL, INC.;
PNEUMO ABEX CORPORATION;
SOCO-WEST, INC. F/K/A BRENNTAG
WEST, INC. F/K/A SOCO-LYNCH
CORPORATION, SUCCESSOR-IN-
INTEREST TO WESTERN CHEMICAL &

C.A. No.

ASBESTOS

JURY TRIAL DEMANDED

MANUFACTURING CO.;
TRANE US, INC., F/K/A AMERICAN
STANDARD, INC;
UNION CARBIDE CORPORATION;
DOES 1-500 INCLUSIVE

Defendants.

COMPLAINT

COMMON ALLEGATIONS

1. Plaintiff WILLIAM H. CRISP is a resident of the State of Tennessee.
2. Plaintiff JESSIE N CRISP is a resident of the State of Tennessee.
3. Plaintiff SHARON L. CRISP is a resident of the State of Tennessee.
4. Defendant ARVINMERITOR, INC., A/K/A ROCKWELL AUTOMATION INC. is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is CT CORPORATION SYSTEM, 208 South LaSalle St. 17th Floor, Chicago, IL 60604-.
5. Defendant BASF CATALYSTS LLC, is a Delaware business entity whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.
6. Defendant BORG WARNER MORSE TEC, INC. f/k/a BORG WARNER CORPORATION, is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.
7. Defendant CBS CORPORATION, f/k/a VIACOM INC., successor by merger to and f/k/a WESTINGHOUSE ELECTRIC CORPORATION, is a Delaware corporation whose registered

agent for service of process is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

8. Defendant CERTAINTEED CORPORATION is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is 750 East Swedesford Road, Valley Forge, PA 19481.

9. Defendant CHROMIUM MINING AND SMELTING CORPORATION is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929-9710.

10. Defendant CROWN CORK & SEAL COMPANY, INC. is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is 1 Crown Way, Philadelphia, PA 19154-4599.

11. Defendant GENUINE PARTS COMPANY is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is located at 2999 Circle 75 Parkway SE, Atlanta, GA 30339-3050.

12. Defendant GEORGIA-PACIFIC LLC, f/k/a GEORGIA-PACIFIC CORPORATION is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

13. Defendant HONEYWELL INTERNATIONAL INC. (f/k/a ALLIED SIGNAL INC., as

successor-in-interest to THE BENDIX CORPORATION), is a Delaware corporation whose registered agent for service of process is Corporation Service Company, 2711 Centerville Road, Suite 400, WILMINGTON, DE 19808.

14. Defendant INGERSOLL-RAND COMPANY is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

15. Defendant KAISER GYPSUM COMPANY, INC. is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is The Corporation Service Company, 300 Deschutes Way SW Suite 304 Tumwater, WA 98501.

16. Defendant MAREMONT CORPORATION is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

17. Defendant METROPOLITAN LIFE INSURANCE COMPANY is an insurance company licensed to do business in the State of Delaware and is subject to pursuant to 18 *Del. C.* §523 by service upon the Insurance Commissioner of Delaware, 841 Silver Lake Boulevard, Dover, DE 19901.

18. Defendant NATIONAL AUTOMOTIVE PARTS ASSOCIATION is a foreign business entity doing business in the State of Delaware and subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104. NATIONAL AUTOMOTIVE PARTS ASSOCIATION's address for receipt of process is: The Corporation Company, 30600 Telegraph Road, Bingham Farms, MI 48025.

19. Defendant NMBFIL, INC. is a foreign business entity doing business in the State of Delaware and subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is The Prentice-Hall Corporation System, Inc., 50 West Broad Street, Suite 1800, Columbus, OH 43215.

20. Defendant PNEUMO ABEX CORPORATION is a Delaware corporation whose registered agent for service of process is The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

21. Defendant SOCO-WEST, INC. F/K/A BRENNTAG WEST, INC. F/K/A SOCO-LYNCH CORPORATION, SUCCESSOR-IN-INTEREST TO WESTERN CHEMICAL & MANUFACTURING CO. is a foreign business entity doing business in the State of Delaware and is subject to service of process at Defendant's address by Certified Mail, Return Receipt Requested in accordance with 10 Del. C. § 3104, whose registered agent for service of process is Murrin & Associates LLC, 3675 Mt. Diablo Blvd., Ste 230, Lafayette, CA 94549.

22. Defendant TRANE U.S., INC., f/k/a AMERICAN STANDARD, INC. is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

23. Defendant UNION CARBIDE CORPORATION, is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

COUNT I

24. Plaintiff(s) reallege Paragraphs 1 through 23 of this Complaint and incorporate them herein by reference.

25. Plaintiff, WILLIAM H. CRISP, was wrongfully exposed to asbestos, an inherently dangerous toxic substance, as described below:

a) Plaintiff WILLIAM H. CRISP experienced occupational and bystander exposure to asbestos while working in Knoxville and Nashville Tennessee as a professional automotive and truck mechanic from 1976 to 2011. Plaintiff WILLIAM H. CRISP experienced personal automotive exposure to asbestos while performing personal automotive work from 1967 to 2011. Plaintiff WILLIAM H. CRISP was exposed to asbestos-containing products and equipment including, but not limited to, asbestos-containing brakes, clutches and gaskets.

b) Plaintiff WILLIAM H. CRISP experienced occupational and bystander exposure to asbestos while he worked at Chromasco in Memphis, Tennessee as a laborer performing mining and smelting from 1971 to 1975. Plaintiff WILLIAM H. CRISP was exposed to asbestos-containing products and equipment including, but not limited to, asbestos-containing pumps, valves, packing, gaskets, insulation, boilers, turbines, cooling towers, pipe, paint, HVAC equipment, and raw asbestos.

26. Plaintiff WILLIAM H. CRISP was exposed to asbestos and/or asbestos-containing products which were mixed, mined, manufactured, distributed, sold, removed, installed and/or used by the Defendants.

27. The substantive state law(s) that should apply to this case is Tennessee to the extent there is no conflict with the public policy of Delaware.

28. As a result of the Defendants' wrongful conduct, Plaintiff WILLIAM H. CRISP developed the following asbestos-related diseases and health problems: Lung Cancer; and other asbestos-related injuries and diseases.

29. As a result of Defendants' wrongful conduct which caused Plaintiff WILLIAM H. CRISP's asbestos-related diseases and health problems, Plaintiff WILLIAM H. CRISP, has suffered and will suffer extensive mental anguish, pain and suffering, medical bills, physical impairment, permanent disability, loss of earning capacity and loss of enjoyment of life, all of which are recoverable under applicable law.

30. The above injuries have or will in the future result in a decrease of past or future earnings and various other past and future expenses Plaintiff(s) would not have otherwise incurred.

COUNT II

31. Plaintiff(s) reallege Paragraphs 1 through 30 of this Complaint and incorporate them herein by reference.

Defendants ARVINMERITOR, INC., A/K/A ROCKWELL AUTOMATION INC.;
BASF CATALYST LLC;
BORGWARNER MORSE TEC, INC., F/K/A BORG-WARNER CORPORATION;
CBS CORPORATION, A DELAWARE CORP. F/K/A VIACOM INC., SUCCESSOR BY
MERGER TO CBS CORP., A PENNSYLVANIA CORP. F/K/A WESTINGHOUSE
ELECTRIC CORP.;
CERTAINTEED CORPORATION;
CHROMIUM MINING AND SMELTING CORPORATION;
CROWN CORK & SEAL COMPANY, INC.;
GENUINE PARTS COMPANY;
GEORGIA PACIFIC, LLC F/K/A GEORGIA-PACIFIC CORPORATION;
HONEYWELL INTERNATIONAL, INC., F/K/A ALLIEDSIGNAL, INC., F/K/A THE
BENDIX CORPORATION;
INGERSOLL-RAND COMPANY;
KAISER GYPSUM COMPANY, INC.;
MAREMONT CORPORATION;

METROPOLITAN LIFE INSURANCE COMPANY;
NATIONAL AUTOMOTIVE PARTS ASSOCIATION;
NMBFIL, INC.;
PNEUMO ABEX CORPORATION;
SOCO-WEST, INC. F/K/A BRENNTAG WEST, INC. F/K/A SOCO-LYNCH
CORPORATION, SUCCESSOR-IN-INTEREST TO WESTERN CHEMICAL &
MANUFACTURING CO.;
TRANE US, INC., F/K/A AMERICAN STANDARD, INC;
UNION CARBIDE CORPORATION;
DOES 1-500 INCLUSIVE,

were at all times pertinent, directly or indirectly engaged in the mining, manufacturing, distribution, sales, licensing, leasing, installation, removal and/or use of asbestos and asbestos-containing products. They were also engaged in the development, manufacture, distribution, sales, licensing or leasing of equipment procedures and/or technology necessary to mine, manufacture, sell, distribute, install, remove and the use of asbestos and asbestos-containing products.

32. As a direct and proximate result of the above wrongful activities of the Defendants, Plaintiff WILLIAM H. CRISP was exposed to asbestos and subsequently developed the asbestos-related disease discussed and sustained the injuries described herein.

COUNT III

33. Plaintiff(s) reallege Paragraphs 1 through 32 of this Complaint and incorporate them herein by reference.

34. The Defendants were negligent in conducting the above activities and/or in the safety conditions at their plants and facilities in that despite the fact that the Defendants knew or should have known that asbestos exposure could result in serious injury, disease and/or death, Defendants,

- a) Failed to substitute, suggest, promote or require the substitution of materials other than asbestos;

- b) Failed to adequately warn all potential victims of asbestos including the Plaintiff WILLIAM H. CRISP as well as other users, bystanders, household members and members of the general public of the risks of asbestos;
- c) Failed to adequately test, research, investigate asbestos and/or its effects prior to sale, use, and/or exposure of the Plaintiff WILLIAM H. CRISP and others similarly situated;
- d) Failed to adequately package, distribute and/or use asbestos in a manner which would minimize the escape of asbestos fibers which resulted in adding to the exposure of the Plaintiff WILLIAM H. CRISP and others similarly situated; and
- e) Failed to take adequate steps to remedy the above failure, including but not limited to recall asbestos and asbestos products, to abate asbestos on their property, to conduct research as to how to cure or minimize asbestos injuries, to distribute asbestos so as to render it safe or safely remove the asbestos now in place.

35. As a direct and proximate result of the above actions and omissions of Defendants, Plaintiff(s) were injured as described herein.

COUNT IV

36. Plaintiff(s) reallege Paragraphs 1 through 35 of this Complaint and incorporate them herein by reference.

37. The Defendants willfully and wantonly for their own economic gain and with reckless indifference to the health and safety of the Plaintiff WILLIAM H. CRISP and others similarly situated:

- a) Failed to substitute, suggest, promote or require the substitution of materials other than asbestos;
- b) Failed to adequately warn all the potential victims of asbestos including Plaintiff WILLIAM H. CRISP as well as other users, bystanders, household members and members of the general public of the risks of asbestos exposure;
- c) Failed to adequately test, research and investigate asbestos and/or its effects prior to sale, use, and/or exposure of the Plaintiff WILLIAM H. CRISP and others similarly situated;
- d) Failed to adequately package, distribute and use asbestos in a manner which would minimize the escape of asbestos fibers therefore adding to the exposure of the Plaintiff WILLIAM H. CRISP and others similarly situated; and
- e) Failed to take adequate steps to remedy the above failure, including but not limited to recall asbestos and asbestos products, to abate asbestos on their property, to conduct research as to how to cure or minimize asbestos injuries, to distribute asbestos so as to render it safe or safely remove the asbestos now in place.

38. As a direct and proximate result of the above actions and omissions of Defendants, Plaintiff(s) were injured as described herein.

COUNT V

39. Plaintiff(s) reallege Paragraphs 1 through 38 of this Complaint and incorporate them herein by reference.

40. Asbestos and asbestos-containing products are inherently dangerous and as such, Defendants who made or sold asbestos or the equipment, processes or other things necessary for

its use, are strictly liable to the Plaintiff WILLIAM H. CRISP for all injuries and damages which were contracted thereby.

41. Defendants who assisted, directly or indirectly, in the leasing or licensing of asbestos and all equipment necessary for its use are strictly liable to the Plaintiff WILLIAM H. CRISP for all the injuries and damages which were contracted thereby.

42. The handling of asbestos packages, installation, removal and use of asbestos is an ultra-hazardous activity and Defendants who assisted directly or indirectly in this are strictly liable for the Plaintiff WILLIAM H. CRISP'S injuries which were caused thereby.

43. The Defendants as manufacturers and suppliers warranted the asbestos products for their intended purpose and use. Defendants violated this warranty as the product was neither packaged nor provided in a method proper for its intended use and are strictly liable to the Plaintiff WILLIAM H. CRISP for all injuries caused thereby.

44. As a direct and proximate result of the above action and omissions of Defendants, Plaintiff WILLIAM H. CRISP was injured as described herein.

COUNT VI

45. Plaintiff(s) reallege Paragraphs 1 through 44 of this Complaint and incorporate them herein by reference.

46. The Defendants, knowing of significant risks of health hazards resulting from exposure to asbestos, did willfully, wantonly, recklessly and/or intentionally:

- a) Conceal the existence, nature and extent of that risk; and,
- b) Failed to disclose the existence, nature and extent of that risk to Plaintiff WILLIAM H. CRISP and those similarly situated.

47. The Defendants had reason to expect that Plaintiff WILLIAM H. CRISP, whose injuries were caused by his exposure, was within the class of persons whose actions or inaction would be materially affected by the aforementioned concealment and nondisclosure.

48. As a direct and proximate result of the above action and omissions of Defendants, Plaintiff(s) were injured as described herein.

COUNT VII

49. Plaintiff(s) reallege Paragraphs 1 through 48 of this Complaint and incorporate them herein by reference.

50. The Defendants directly and indirectly materially misrepresented that asbestos was not hazardous and/or could be used safely when they:

- a) Had no adequate basis for such representations;
- b) Knew that a significant health hazard to human life existed from asbestos.

51. Defendants had reason to expect that as a result of such representation, Plaintiff WILLIAM H. CRISP and others similarly situated would be exposed to asbestos.

52. As a result of this wrongful representation, Plaintiff WILLIAM H. CRISP was exposed to asbestos and suffered the injuries referred to herein.

COUNT VIII

53. Plaintiff(s) reallege Paragraphs 1 through 52 of this Complaint and incorporate them herein by reference.

54. The Defendants knowingly and willfully conspired to perpetuate the actions and omissions referred to herein as well as aided and abetted other manufacturers of asbestos products in keeping the Plaintiff WILLIAM H. CRISP and others similarly situated ignorant of the risks they faced when exposed to asbestos and asbestos containing products.

55. As a result of this conspiracy, Plaintiff WILLIAM H. CRISP was exposed to asbestos and suffered the injuries complained of herein.

COUNT IX

56. Plaintiff(s) reallege Paragraphs 1 through 55 of this Complaint and incorporate them herein by reference.

57. Plaintiff WILLIAM H. CRISP worked at premises owned and/or controlled by CHROMIUM MINING AND SMELTING CORPORATION at which he was exposed to asbestos products and dust from asbestos products.

58. While present at premises owned and/or controlled by Premise Defendants, Plaintiff WILLIAM H. CRISP was continuously exposed to asbestos and asbestos-containing dust without the provision of appropriate safeguards by Premise Defendants who had the responsibility for such, thereby exposing Plaintiff WILLIAM H. CRISP to asbestos.

59. Plaintiff will further show that Plaintiff WILLIAM H. CRISP'S injuries and diseases were the result of intentional acts and/or omissions and/or negligence, gross negligence and malice in the use of asbestos at premises owned and/or controlled by the Premise Defendants. Premise Defendants failed to properly remove and/or abate said asbestos at these facilities during the time Plaintiff WILLIAM H. CRISP was working there, thereby exposing Plaintiff WILLIAM H. CRISP.

60. Plaintiff(s) will show that the Premise Defendants were negligent, grossly negligent and malicious, and committed certain intentional acts, all of which were the proximate cause of Plaintiff WILLIAM H. CRISP'S disease and injuries resulting in lung cancer from exposure to asbestos.

61. In particular, Plaintiff(s) will show that Premise Defendants demonstrated such an entire want of care as to establish that their acts and omissions were the result of actual conscious indifference to the rights, safety, and welfare of Plaintiff WILLIAM H. CRISP, and that such intentional acts and omissions proximately caused Plaintiff WILLIAM H. CRISP'S disease and injuries.

62. Specific intentional acts and acts constituting negligence, gross negligence and malice committed by Premise Defendants that proximately caused Plaintiff WILLIAM H. CRISP'S injuries and disease include:

- a) Failure to provide safe equipment for Plaintiff WILLIAM H. CRISP to use, thereby exposing Plaintiff WILLIAM H. CRISP to asbestos;
- b) Failure to provide adequate safety measures and protection against deadly and life-threatening asbestos dust, all despite Premise Defendants' knowledge of the extreme risk of harm inherent to asbestos exposure;
- c) Failure to adequately warn Plaintiff WILLIAM H. CRISP of the inherent dangers of asbestos contamination;
- d) Failure to maintain the ambient and environmental conditions of the premises in proper and safe condition;
- e) Failure to follow and adhere to various states and U.S. Government statutes, regulations and guidelines pertaining to asbestos and the exposure to asbestos of individuals. Such failure constituted negligence per se at a minimum. Plaintiff(s) are not making claims for damages under federal law.

63. Plaintiff(s) will further show that Premise Defendants intentionally, knowingly, and/or due to negligence, gross negligence and malice, failed to ensure that individuals such as Plaintiff WILLIAM H. CRISP were protected from the inhalation of asbestos and asbestos fibers. Such actions proximately caused Plaintiff WILLIAM H. CRISP'S injuries and illness.

64. Additionally, specific actions or omissions on the part of Premise Defendants that proximately caused Plaintiff WILLIAM H. CRISP'S injuries and illness were:

- a) Attempting to remove asbestos dust in their workplace without taking adequate precautions for the protection of workers in the vicinity and/or in the premises generally;
- b) Failing to provide proper protective gear for individuals exposed to asbestos;
- c) Failing to provide adequate ventilation to ensure that individuals in the vicinity were not exposed to asbestos;
- d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;
- e) Failing to adhere to industry safe standards and other established measures to protect workers from harm;
- f) Failing to adequately warn of the extreme risk of danger inherent to asbestos exposure.
- g) Premise Defendants demonstrated such an entire want of care as to establish that their acts and omissions alleged above were the result of actual conscious indifference to the rights, safety, and welfare of Plaintiff WILLIAM H. CRISP.

COUNT X

65. Plaintiff(s) reallege Paragraphs 1 through 64 of this Complaint and incorporate them herein by reference.

66. Even after the dangers of asbestos finally began to be known to Plaintiff WILLIAM H. CRISP or others similarly situated, Defendants continued to act wrongfully both individually and in a conspiracy to mislead and misrepresent the extent of the past wrongful actions and omissions and to destroy records and hide witnesses and other evidence and to such other wrongful and unnecessary action so as to:

- a) Prevent and delay Plaintiff WILLIAM H. CRISP and others similarly situated from filing legal action to recover for these injuries and/or;
- b) Defeat and/or delay such legal actions and the final collection of any judgment.

67. Similarly, Defendants aided and abetted the manufacturers, miners, suppliers, and users of asbestos and asbestos products in keeping the true dangers of asbestos exposure secret and/or misrepresented.

68. As a result of this wrongful representation, Plaintiff WILLIAM H. CRISP was exposed to asbestos and suffered the injuries referred to herein.

COUNT XI

69. Plaintiffs reallege Paragraphs 1 through 68 of this Complaint and incorporate them herein by reference.

70. Plaintiff SHARON L. CRISP is the wife of Plaintiff WILLIAM H. CRISP.

71. That as a direct and proximate result of one or more of the foregoing acts or omissions of the Defendants, Plaintiff SHARON L. CRISP has been deprived of the companionship, love, consortium, society and services of her husband.

WHEREFORE, Plaintiff(s) demand judgment against each of the Defendants jointly and severally for such sums, including, but not limited to prejudgment and post-judgment interest, as would be necessary to compensate the Plaintiff(s) for the injuries they have and will suffer. Plaintiff(s) further demand judgment against each of the Defendants for punitive damages. Plaintiff(s) further demand payment by each of the Defendants jointly and severally of the costs and attorney fees of this action. Plaintiff(s) further demand payment by each Defendant jointly and severally of interest on the above and such other relief as the Court deems just.

I, Kara A Hager, Esquire, attorney for plaintiff(s), do hereby certify in my opinion that plaintiff(s) is unable to ascertain all possible defendants at this time.

Napoli Bern Ripka Shkolnik & Associates LLP

By: /s/ Kara A. Hager

Kara A. Hager
Delaware Bar ID No. 4098
1000 N. West Street, Suite 1244
Wilmington, DE 19801
Telephone: (302) 300-4625
Attorney for Plaintiff(s)

Dated: November 16, 2012

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ●) MONDAY, THE 16TH DAY
JUSTICE ●) OF DECEMBER, 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.

Applicants

ORDER

**(Re Stay Extension to June 16, 2014, Approval of CRO's Execution of Documents,
Approval of Cost Allocation, Monitor's Fee Approval & Discharge of CRO and
Approval of Activities)**

THIS MOTION, made by Timminco Limited ("Timminco") and Bécancour Silicon Inc. ("BSI" and, together, the "Timminco Entities"), for an order (a) extending the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012) until June 16, 2014; (b) authorizing the CRO (as defined below) to execute certain documents in relation to the Memphis Property (as defined below); (c) approving the Proposed Cost Allocation Methodology (as defined below); (d) approving the fees and disbursements of FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "Monitor") and its counsel; (e) approving the Twenty-First, Twenty-Second and Twenty-Third Reports (as these terms are defined

below) of the Monitor; and (f) discharging Russell Hill Advisory Services Inc. (“**Russell Hill**”) as Chief Restructuring Officer (“**CRO**”) of the Timminco Entities and approving the activities of the Russell Hill undertaken in its capacity as CRO of the Timminco Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sean Dunphy sworn December ●, 2013 (the “**Dunphy Affidavit**”), and the Twenty-Third Report of the Monitor dated December ●, 2013 (the “**Twenty-Third Report**”), and on hearing the submissions of counsel for the Timminco Entities and the Monitor, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn December ●, 2013, 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.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including June 16, 2014.

APPROVAL OF EXECUTION OF DOCUMENTS BY THE CRO

3. **THIS COURT ORDERS AND DECLARES** that the execution of the following documents by the CRO or Mr. Dunphy, as the case may be, relating to the sale of the Memphis Property (as defined and described in the Dunphy Affidavit) is hereby approved, *nunc pro tunc*:

- (a) Tennessee Department of Revenue Franchise, Excise Tax Return (2012) for Timminco Properties Inc.;

- (b) US Corporation Income Tax Return (Form 1120) for Timminco Properties Inc. (2012);
- (c) Resolution that Timminco Properties Inc. ("TPI") pay to Timminco Holdings Corporation ("THC") a dividend in the approximate amount of US\$175,000;
- (d) Resolution that THC repay certain intercompany indebtedness to Timminco in the approximate amount of US\$175,000; and
- (e) Declaration of amendment of the charters of THC or TPI as needed to authorize Sean Dunphy to execute the documents necessary to effect the transfer of the sale proceeds from the Memphis Property Sale.

APPROVAL OF PROPOSED COST ALLOCATION METHODOLOGY

4. **THIS COURT ORDERS** that the Proposed Cost Allocation Methodology (as defined and described in the Twenty-Third Report) is hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from September 10, 2012 to October 31, 2013, inclusive, all as set out or described in the affidavit of Nigel Meakin sworn December 10, 2013 and the Twenty-Third Report, are approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel, Blake, Cassels and Graydon LLP, for the period from September 1, 2012 to October 31, 2013, inclusive, all as set out or described in the affidavit of Linc Rogers sworn December 10, 2013 and the Twenty-Third Report, are approved.

APPROVAL OF THE MONITOR'S REPORTS

7. **THIS COURT ORDERS** that the Twenty-First Report of the Monitor dated June 17, 2013 (the "**Twenty-First Report**"), the Twenty-Second Report of the Monitor dated September 9, 2013 (the "**Twenty-Second Report**"), and the Twenty-Third Report of the Monitor dated December 1, 2013 (the "**Twenty-Third Report**"), and the activities of the Monitor described therein are hereby approved.

DISCHARGE OF CRO AND APPROVAL OF ACTIVITIES OF THE CRO

8. **THIS COURT ORDERS AND DECLARES** that the activities undertaken by Russell Hill in its capacity as CRO of the Timminco Entities are hereby approved.

9. **THIS COURT ORDERS** that Russell Hill and its affiliates and legal counsel, and their respective officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against them, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of these CCAA proceedings or Russell Hill acting in its capacity as CRO in these CCAA proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof; provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

10. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against Russell Hill in any way arising from or related to its capacity or conduct as CRO, except with prior leave of this Court on at least seven days' prior written notice to Russell Hill, and upon further order securing, as security for costs,

the solicitor and client costs of the CRO in connection with any proposed action or proceeding.

11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the CRO as set out in the Order of the Honourable Mr. Justice Newbould dated August 17, 2012, the Order of the Honourable Mr. Justice Morawetz dated November 5, 2012 and any other Order of this Court in the Timminco Entities' CCAA proceedings.

12. **THIS COURT ORDERS** that Russell Hill shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as CRO pursuant to the CRO Appointment Order and any other Orders of this Court in these CCAA proceedings effective as of the signing of this Order.

GENERAL

13. **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 Monitor, the CRO, 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 Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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 Stay Extension to December 16, 2013)

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Lawyers for the Applicants

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ●)	MONDAY, THE 16 TH DAY
JUSTICE ●)	OF DECEMBER, 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.

Applicants

**ORDER
(Re Expansion of Monitor Powers)**

THIS MOTION, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together, the "**Timminco Entities**"), for an order authorizing and directing the Timminco Entities to pay the Funds (as defined below) to FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "**Monitor**") and expanding the powers of the Monitor was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sean Dunphy sworn December 5, 2013 (the "**Dunphy Affidavit**"), and the Twenty-Third Report of the Monitor dated December ●, 2013 (the "**Twenty-Third Report**"), and on hearing the submissions of counsel for the Timminco Entities and the Monitor, no one appearing for any other person on the

service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn December 10, 2013, filed:

PAYMENTS TO MONITOR

1. **THIS COURT ORDERS** that the Timminco Entities are authorized and directed to (a) transfer, direct and pay over to the Monitor forthwith and in any event by no later than 4:00 pm EST on December 16, 2013, all monies currently held in accounts in the name of and/or controlled by the Timminco Entities; and (b) transfer, direct and pay over to the Monitor forthwith all monies received by the Timminco Entities after the date hereof (all such monies, together with any monies received on behalf of the Timminco Entities, the “Funds”), which Funds shall continue to be Property (as defined at paragraph 4 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012, the “Initial Order”) of the Timminco Entities.

2. **THIS COURT ORDERS** that all Persons (as defined at paragraph 19 the Initial Order) in possession or control of Property, including for greater certainty any monies, belonging to or owed to the Timminco Entities shall forthwith advise the Monitor of such and shall grant immediate and continued access to the Property to the Monitor, and shall forthwith deliver all such Property to the Monitor upon the Monitor’s request, other than documents or information which cannot be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

3. **THIS COURT ORDERS** that the Administration Charge, the Directors’ Charge and the DIP Lenders Charge (as defined in the Initial Order) shall continue to apply to the Property of the Timminco Entities, including the Funds in accordance with their priority as established by the Initial Order.

ADDITIONAL POWERS OF THE MONITOR

4. **THIS COURT ORDERS** the Monitor of the Timminco Entities shall continue to be authorized and directed, and is authorized, but not required, in the name of and on behalf of the Timminco Entities, if appropriate, to :

- (a) complete the Claims Procedure established by the Claims Procedure Order of Mr. Justice Morawetz dated June 15, 2013 (the "Claims Procedure Order") and settle, resolve and/or adjudicate the remaining disputed Claims and any other outstanding items in the Claims Procedure in accordance with the Claims Procedure Order, without consulting with the Timminco Entities; and
- (b) take such further steps and seek such amendments to the Claims Procedure Order or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims or D&O claims (as both are defined in the Claims Procedure Order).

5. **THIS COURT ORDERS** that the Monitor is authorized, but not required, in the name of and on behalf of the Timminco Entities, to

- (a) seek the directions of this Honourable Court in respect of the validity and quantum, if any, of the D&O Claims and whether such claims are secured by the D&O Charge (as defined at paragraph 27 of the Initial Order);
- (b) take such steps as may be necessary or appropriate to seek and obtain recovery of the proceeds of sale of the Memphis Property (as described in the Dunphy Affidavit) and matters ancillary thereto;
- (c) file any and all tax returns of the Timminco Entities with any governmental tax authority that the Monitor considers necessary or desirable;

- (d) claim any and all rebates, refunds or other amounts of tax (including sales taxes, capital taxes and income taxes) paid by or payable to the Timminco Entities;
- (e) exercise any rights and remedies available to the Timminco Entities, including all rights of appeal;
- (f) engage, deal, communicate, negotiate, agree and settle with any and all governmental authorities on behalf of the Timminco Entities and all such government authorities shall treat the Monitor as the authorized representative of the Timminco Entities. Any rebates, refunds or other amounts received by the Monitor on account of taxes paid by or payable to the Timminco Entities shall form part of the Funds;
- (g) to seek the directions of this Honourable Court in respect of the distribution of the Funds and/or any Property to creditors or to deal with and/or abandon any Property and any matters related thereto;
- (h) to seek directions from this Honourable Court in respect of the filing of any plan of arrangement or compromise or the termination of these proceedings commenced by the Timminco Entities under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to the Initial Order (the "CCAA Proceedings"), the discharge of the Monitor and all incidental and ancillary matters thereto; and
- (i) to perform such other functions as this Court may order from time to time (collectively, with paragraph 4 of this Order, the "Monitor's Increased Powers").

6. **THIS COURT ORDERS** that the Monitor's Increased Powers shall be in addition to the powers of the Monitor set out in any previous order of the Court (the "Monitor's Existing Powers")

7. **THIS COURT ORDERS** that, in addition to its prescribed rights in the CCAA, the Monitor's Existing Powers, the Monitor's Increased Powers and all other authority granted to the Monitor in all Orders granted in these CCAA Proceedings, the Monitor is empowered and authorized to take such additional actions and execute such documents, in the name of and on behalf of the Timminco Entities, as the Monitor considers necessary or desirable in order to facilitate the orderly completion of the Monitor's Increased Powers and any matters resulting from (a) the pending decision of Justice Mongeon in the Superior Court of Quebec (Commercial Division) pursuant to the Priority Claim Adjudication Protocol approved by the Order of the Honourable Mr. Justice Morawetz dated October 18, 2012 and any motions for leave to appeal or appeals relating thereto; and (b) the pending decision of Justice Morawetz in the Ontario Superior Court of Justice (Commercial Division) relating to a motion to lift the stay of proceedings brought by the plaintiff St. Clair Pennyfeather in the action with the Court File No. CV-09-378701-00CP and any motions for leave to appeal or appeals relating thereto.

8. **THIS COURT ORDERS** that in exercising the Monitor's Increased Powers, the Monitor shall not take possession of any real property belonging to the Timminco Entities.

9. **THIS COURT ORDERS** that, except as required by the CCAA or as provided for in any Orders issued by the Court in respect of the CCAA Proceedings, the Monitor shall not be authorized or directed to act in any other manner, and shall have no responsibility for any other duties or functions whatsoever other than by further Order of this Court.

10. **THIS COURT ORDERS** that the Monitor shall be at liberty to engage such persons as the Monitor deems necessary or advisable respecting the exercise of the Monitor's Existing Powers and the Monitor's Increased Powers.

11. **THIS COURT ORDERS** that, in addition to its prescribed rights under the CCAA, the powers granted by the Initial Order, this Order and all other orders granted in these proceedings, the Monitor is empowered and authorized to take such additional actions and execute such additional documents, in the name of and on behalf of the Timminco Entities, as the Monitor considers necessary or desirable in order to facilitate the orderly completion of these proceedings and the winding up of the Timminco Entities' estates.

12. **THIS COURT ORDERS** that the Monitor shall continue to hold the Funds, and the Monitor is authorized and directed:

- (a) to pay the reasonable fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Timminco Entities, in the name of and on behalf of the Timminco Entities;
- (b) to pay all post-filing liabilities properly incurred by the Timminco Entities in the ordinary course of business which have not been previously paid, in the name of and on behalf of the Timminco Entities;
- (c) to pay all costs associated with any actions taken by the Monitor pursuant to paragraph 11 of this Order; and
- (d) to return to Court in order to seek such further authority or directions as the Monitor considers appropriate with respect to the use or distribution of the Funds.

13. **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 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, any other applicable legislation or any other Order granted in the CCAA Proceedings.

14. **THIS COURT ORDERS** that, except as specifically provided for herein, nothing in this Order shall vary or amend any order or endorsement previously granted in the CCAA Proceedings.

GENERAL

15. **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 Monitor, the CRO, 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 Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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 Expanded Monitor Powers)**

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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.

Court File No. CV-12-9539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE DEEMBER 16, 2013)
(RE DISCHARGE OF CRO AND RELATED
RELIEF, GRANTING ADDITIONAL POWERS
TO THE MONITOR, STAY EXTENSION TO
JUNE 16, 2014 & FEE APPROVAL)

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