

**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

**SUPPLEMENTARY MOTION RECORD
(Motion returnable May 29, 2012)
(Re Sale of Silicon Metal Assets and Assignment of Agreements)**

May 23, 2012

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TAB 1

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

ONTARIO

SUPERIOR COURT OF JUSTICE

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ARRANGEMENT ACT, R.S.C. 1985 C. C-36, AS AMENDED

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COMPROMISE OR ARRANGEMENT OF TIMMINCO LIMITED AND

BECANCOUR SILICON INC.

Applicants

--- This is the Cross-examination of Peter A.M. Kalins on affidavit dated May 9, 2012, held at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street Toronto, ON M5L 1B9 on the 17th day of May, 2012, commencing at 10:00 a.m. ---

REPORTED BY: Lisa M. Barrett, RPR, CRR, CSR

1 A P P E A R A N C E S:

2

3 Kelvin McElcheran, Esq.,

4 Elder C. Marques, Esq., for the Applicants

5

6 Adrian Lang, Esq., for Timminco Limited and

7 Ashley J. Taylor, Esq. Becancour Silicon Inc.

8

9 Steven J. Weisz, Esq., for the Monitor

10

11 David Bish, Esq., for QSI Partners Ltd.

12

13

14 Also present: John Tierny - Dow Corning

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[Reporter's note: The following lists of undertakings, under advisements and refusals are provided for the assistance of counsel and do not purport to be complete or binding on the parties herein.]

LIST OF UNDERTAKINGS

The questions/requests taken under advisement are noted by U/T and appear on the following pages: None

LIST OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages: 14, 28, 56, 58, 108, 114

LIST OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 51, 56, 57, 94, 111

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	No exhibits entered	
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1 --- Upon commencing at 10:05 a.m.

2 PETER A.M. KALINS: Affirmed

3 CROSS-EXAMINATION BY MR. McELCHERAN

4 1 Q. Can you identify yourself for
5 the record, sir?

6 A. Peter Kalins.

7 2 Q. Go ahead.

8 A. President, general counsel and
9 corporate secretary of Timminco Limited.

10 3 Q. Your background is that you are
11 a lawyer; am I right about that?

12 A. Yes, I have training -- called
13 to the bar and practiced law in private practice,
14 and then have been in-house for the last ten years,
15 five of which approximately have been with
16 Timminco.

17 4 Q. In that role there, you had the
18 title of general counsel, which is essentially
19 a legal function?

20 A. When I commenced with Timminco
21 in September 2007, my title was general counsel and
22 corporate secretary.

23 As I progressed through Timminco, my
24 responsibilities were increasing, and in some cases
25 going beyond the role of a typical general counsel

1 of a corporation.

2 Specifically in August of 2011, in
3 connection with a reorganization of executive
4 management, certain executives were -- their
5 employment was terminated and I was given
6 additional duties and responsibilities.

7 In that regard, I was also given
8 a position of president in addition to my duties as
9 general counsel and corporate secretary.

10 5 Q. Who else is involved in the
11 management group at Timminco?

12 A. Doug Fastuca is the chief
13 executive officer. He joined Timminco in that
14 capacity in August of 2011, although he's had
15 familiarity with Timminco and its related companies
16 for at least the last three or four years.

17 I believe he originally was with the
18 significant shareholder of Timminco, AMG, Advanced
19 Metallurgical Group, since 2008, approximately, so
20 he is fairly familiar with Timminco.

21 6 Q. Is he on loan from AMG?

22 A. No, he's -- yes.

23 7 Q. He took the job with Timminco?

24 A. Exactly.

25 8 Q. And gave up his job with AMG?

1 A. Yes.

2 9 Q. No promises to allow him to
3 come back?

4 MS. LANG: Sorry, I'm having
5 difficulty with the relevance of this.

6 MR. McELCHERAN: I'm asking about
7 who was involved in the decision-making about
8 this auction and what their motivations are.
9 Simple enough.

10 MS. LANG: I think you can ask
11 those questions. Asking him what arrangements
12 have been made with Mr. Fastuca are not relevant,
13 as far as I can tell.

14 BY MR. McELCHERAN:

15 10 Q. So he's from AMG?

16 A. Originally, yes.

17 11 Q. And he's now the CEO?

18 A. Yes.

19 12 Q. Of Timminco. Now --

20 MS. LANG: Sorry, CEO or CFO?

21 THE WITNESS: He is CEO, chief
22 executive officer of Timminco.

23 BY MR. McELCHERAN:

24 13 Q. Right.

25 A. Timminco has not had a person

1 in the position of chief financial officer since
2 the departure of the person that had that position
3 in August of 2011.

4 You were asking in respect to other
5 members of the executive management.

6 14 Q. Yes.

7 A. We do have two other officers
8 of Timminco. One is Greg Donaldson.

9 I believe he's been with the company
10 since September of 2008, generally in the finance
11 organization.

12 I can't recall exactly what his
13 title was originally.

14 Currently he is vice-president of
15 finance, I believe, and corporate controller, and
16 he carries out principally a finance function in
17 the organization.

18 We also have Mr. Rob Assal, who
19 currently has a title of assistant general counsel
20 and assistant corporate secretary.

21 He has been with Timminco since also
22 approximately September of 2008, and assists me on
23 legal matters and other matters.

24 The four of us work very closely
25 together, and we consider our management style to

1 be very consultative and consensual in terms of
2 making sure everyone is aware of issues,
3 transactions and seeking advice from each other.

4 15 Q. There was an auction on April
5 24th. You were present for that auction?

6 A. Yes.

7 16 Q. Who else from Timminco was
8 present?

9 A. Mr. Fastuca was present during
10 the entire time.

11 Messrs. Donaldson and Assal
12 participated, I believe, for the majority, if not
13 all of the time.

14 I believe they may have missed the
15 first few hours because of other duties at the head
16 office.

17 We also had our counsel, Ash Taylor,
18 and Daphne MacKenzie. So we had assistance with
19 respect to insolvency matters and corporate matters
20 from a legal perspective.

21 And I can't recall if there were
22 other -- if there was other legal counsel from
23 Stikeman there. Perhaps there were. But
24 essentially we were well represented in terms of
25 legal support.

1 17 Q. In addition to your team, who
2 else was present at the auction?

3 A. The monitor was present. His
4 name, Nigel Meakin, and he was there the entire
5 time.

6 The monitor had counsel,
7 representatives of Blake. And I think Rogers was
8 there the entire time.

9 And the bidders who were entitled to
10 participate in the auction were there themselves
11 with their counsel.

12 18 Q. Who were the bidders?

13 A. The bidders were Wacker,
14 FerroAtlántica, QSI Partners and Brookfield.

15 19 Q. Now, under the bid procedures,
16 each of the organizations that were present had to
17 be qualified; is that correct?

18 A. They needed to be considered as
19 qualified Phase II bidders, yes.

20 20 Q. What were the qualifications to
21 be that?

22 MS. LANG: Why don't we turn it up
23 from the --

24 MR. McELCHERAN: Refer to the
25 procedures?

1 MS. LANG: Yes.

2 BY MR. McELCHERAN:

3 21 Q. Sure, please do.

4 A. Yes, so paragraph 8 of the
5 bidding procedure sets out the criteria that we
6 assessed in determining which of the bidders who
7 submitted Phase II bids would be considered as
8 qualified Phase II bidders. And we looked at all
9 of the factors laid out in sections A through G.

10 22 Q. Well, let me ask you about --
11 let's go back to section 3 on page, I think it's on
12 page 2, and I want now to turn over to page 3,
13 where there is qualification E.

14 MS. LANG: If you just want to
15 take your time and get the context in section 3
16 before you look at E.

17 THE WITNESS: Uh-hmm. Okay.

18 BY MR. McELCHERAN:

19 23 Q. That continued to apply in
20 Phase II; am I right?

21 MS. LANG: Well, the document
22 speaks for itself, Mr. McElcheran. So, to the
23 extent that the qualifications for Phase II
24 bidders differ from Phase I bidders, I'm not sure
25 if Mr. Kalins can, sitting here right now.

1 Otherwise we'll have to read through the entire
2 document.

3 MR. McELCHERAN: Well, I assume he
4 had prepared by reading it.

5 MS. LANG: Well, we've all seen it
6 before but the document speaks for itself.

7 THE WITNESS: I mean, there are
8 elements in paragraph 8 that do speak to
9 financial ability, so specifically paragraph 8D
10 deals with financing sources.

11 BY MR. McELCHERAN:

12 24 Q. Right.

13 A. So, for the transaction, we
14 would have factored into our consideration the
15 financial ability of the bidder.

16 25 Q. But let's look at the first
17 sentence. That's not too long.

18 MS. LANG: Sorry, are you back at
19 three --

20 MR. McELCHERAN: The one that you
21 referred to.

22 MS. LANG: Section 8.

23 BY MR. McELCHERAN:

24 26 Q. It says, "Only qualified Phase
25 I bidders shall be entitled ..."?

1 A. Uh-hmm.

2 27 Q. Right?

3 A. Uh-hmm.

4 28 Q. If we were going to define
5 a qualified, a definition of that person, we're
6 going to find one that includes a reference to
7 proof of financial ability to perform.

8 Looking back on page 3 in Section 3
9 (e). It says that they had to have submitted:

10 "Written evidence upon which
11 the debtors may reasonably
12 conclude the Phase I bidder has
13 the necessary financial ability
14 to close the contemplated
15 transaction and provide
16 adequate assurance of future
17 performance of all obligations
18 to be assumed in such
19 contemplated transaction."

20 [As read.]

21 Do you have that written evidence
22 from each of these bidders?

23 A. I believe we do.

24 29 Q. Can you produce it?

25 U/A MS. LANG: Take that under advisement.

1 BY MR. McELCHERAN:

2 30 Q. Do all those bidders qualify on
3 those terms?

4 A. Yes. Yes.

5 31 Q. So, the four of them were
6 there. They're all qualified bidders according to
7 that criteria.

8 You are taking under advisement
9 where you're going to give me the written evidence
10 that you required.

11 Do I understand, though, just
12 looking at the question, it is a statement that's
13 in the bid procedures. It relates not just to
14 performance of the contemplated transaction, but it
15 goes on to say:

16 "Provide adequate assurance of
17 future performance of all the
18 obligations to be assumed in
19 such contemplated transaction."

20 [As read.]

21 Now, what were you thinking about
22 when you were preparing this?

23 A. We were certainly thinking
24 about the closing risk and the risk that the bidder
25 that we were dealing with would have adequate

1 financial resources to complete the transaction
2 from the time that they entered into the commitment
3 for the transaction to the closing.

4 We were certainly concerned about
5 making sure, minimizing any risks that a bidder did
6 not have the financial ability to close
7 a transaction in circumstances where they were
8 obligated to do so.

9 32 Q. It is interesting that you
10 answered that way because that's not what I asked
11 you about.

12 I asked you about assuming
13 obligations, the obligation to be assumed in the
14 contemplated transaction.

15 A. Uh-hmm.

16 33 Q. What are the obligations to be
17 assumed?

18 A. I imagine those would be the
19 obligations that are set out in the purchase
20 agreement, the obligations of that counterparty to
21 complete that particular transaction.

22 34 Q. Isn't, though, the obligation
23 of the party that you've identified -- aren't they
24 obliged to take on obligations to DCC?

25 A. Yes. Yes, to the --

1 35 Q. Isn't this directly --

2 MS. LANG: Sorry, were you
3 finished your answer, Mr. Kalins, because it
4 didn't sound like it.

5 THE WITNESS: No, that's fine.

6 BY MR. McELCHERAN:

7 36 Q. You agree that that reference
8 includes assuming obligations to DCC?

9 A. No. I would not agree that
10 that's what it means. I view that as meaning that
11 we look at the obligations of the bidder towards
12 BSI or Timminco, the Timminco entities to complete
13 the transaction, so those are the obligations as
14 set out between those two parties.

15 37 Q. So, in your view, it was
16 irrelevant to you whether the person that you're
17 going to sell the business to could meet the
18 obligations it was assuming under the contracts?

19 A. I wouldn't say that it was
20 irrelevant.

21 I would say that we did consider, in
22 connection with the auction, the ability of all
23 bidders to perform their obligations going forward.

24 38 Q. Your thinking there, though,
25 was about closing risk?

1 A. No.

2 39 Q. The first thing you mentioned?

3 A. No, I would say there are two
4 different aspects to this: One was the financial
5 ability of the bidder to complete the closing of
6 the transaction; therefore, closing risk. But we
7 also did contemplate the ability of the bidders to
8 be able to satisfy their obligations going forward.

9 And in that regard, we were mindful
10 of the fact that any purchaser who would be buying
11 this business would be buying significant assets
12 and have, in our view, what was a very valuable
13 business and have significant presence and assets,
14 certainly in Québec, where the operations were
15 located.

16 We also felt that any such purchaser
17 would have much better financial ability than
18 Bécancour Silicon, given that Bécancour Silicon had
19 other legacy liabilities and other debts that
20 ultimately caused it to make CC double A filing
21 proceedings.

22 40 Q. Your concern -- well, I'm not
23 going to ask you that question. What I am going to
24 ask you, though, is to look at the agreement that
25 you entered into with Lowe.

1 It was actually not with Lowe, but
2 it's important. It's a contract that you entered
3 into between ...

4 MR. TAYLOR: Is that QSI that you
5 are talking about, or are you talking about the
6 finance?

7 MR. McELCHERAN: No, I'm talking
8 about the one that's in the affidavit.

9 MS. LANG: At Tab C in the
10 affidavit?

11 MR. McELCHERAN: Tab C in the
12 affidavit.

13 BY MR. McELCHERAN:

14 41 Q. There is a concept of
15 guarantee.

16 I'm struggling to find it myself.

17 Give me a second. Just bear with me
18 while I find it.

19 Here it is, Performance Guarantee,
20 8.1.

21 And the record is on page 153.

22 Now, you've not produced in the
23 written evidence QSI's ability to meet its
24 obligations assumed or anything that's given under
25 the -- that's demonstrated its financial ability to

1 qualify as a bidder.

2 So, you've taken that under
3 advisement at the moment.

4 I'm assuming that it's going to
5 come. We'll come back to that.

6 I look at 8.1, and you say that you
7 were mindful of the obligations that are going to
8 be assumed, but I see in 8.1 that the performance
9 guarantee of QSI is limited.

10 Take a look at it and review 8.1
11 sub (a).

12 Now, let's take a minute for you
13 to --

14 A. Shall I go through all of
15 them -- I mean, I've read 8.1 (a), yes.

16 I haven't read all the provisions
17 that it refers to.

18 42 Q. Yes, we can go through that.
19 Then maybe you have a sense of what they are
20 guaranteeing and what they're not guaranteeing.

21 But let me ask you about that. In
22 this first list, let's just focus on who the
23 guarantor is.

24 Can you tell me who the guarantor
25 is?

1 A. Globe Specialty Metals, Inc.

2 43 Q. It signed this agreement as
3 a guarantor, when you looked at the actual
4 agreement, but it's liable as a guarantor only.

5 A. I see that they signed the
6 agreement, yeah.

7 44 Q. So, the guarantor, which is
8 Globe Specialty Metals, "irrevocably and
9 unconditionally guarantees a timely and complete
10 performance of," blah, blah, blah, "purchaser's
11 obligations."

12 Under 3.1, 3.2 -- go back and look
13 at them.

14 Okay. 3.1 is ... purchase price.

15 Or "purchase price and satisfaction
16 of purchase price."

17 But excluding 3.2 (d).

18 That's in relation to a DIP.

19 A. Yes.

20 45 Q. 3.4, allocation of purchase
21 price. 3.5, transfer of taxes. 3.6, preparation
22 of BSI statement. 3.7, working capital price
23 adjustment.

24 In other words, a price issue.

25 9.1, which is access to books and

1 records.

2 And 9.10, which is the commission.

3 Do you agree with me it doesn't
4 include assumption of obligations under the
5 contract this?

6 A. I see that it excludes 3.2 (d).

7 46 Q. Well, more to the point, to
8 start with it's a list, right. It is a list of
9 individual sections?

10 A. Yes.

11 47 Q. And we went through which ones
12 they are, all related to price?

13 A. Yes.

14 48 Q. And adjustment price?

15 A. Yes.

16 49 Q. And books and records?

17 A. Yes.

18 50 Q. They weren't about assumptions
19 of obligations under the contracts assumed; do you
20 agree with me on that?

21 A. Yes.

22 51 Q. So, then, just to be clear on
23 this, on QSI, it's only QSI who is contractually
24 liable to the company to assume the obligations
25 under the assigned contracts, including those

1 assigned contracts with DCC?

2 A. Yeah, that's a contractual --
3 we have privity of contracts with QSI on those
4 obligations, yes.

5 52 Q. Okay. QSI has agreed that it
6 will assume obligations in the agreement with --

7 A. Yes.

8 53 Q. -- with your company?

9 A. Yes.

10 54 Q. So, it's agreed that it will
11 assume certain obligations?

12 A. Yes.

13 55 Q. All of the obligations under
14 those contracts?

15 A. Yes.

16 56 Q. But its obligation is not to
17 assume obligations as not guaranteed by --

18 A. Not guaranteed by the
19 guarantor.

20 57 Q. By the guarantor?

21 A. That's right.

22 58 Q. Let's look at Globe -- sorry,
23 the other one, which is Wackers.

24 MS. LANG: Tab B of the affidavit?

25 MR. McELCHERAN: Yes.

1 BY MR. McELCHERAN:

2 59 Q. I just want to look at the
3 difference between the two.

4 Now, the performance guarantee is
5 in 7.1.

6 I notice that it's only in -- you
7 will see it in A -- in the event that Wacker Cheme
8 AG makes the election, and an assignment referred
9 to in 8.11, which is an assignment to an affiliate;
10 right?

11 You nodded?

12 MS. LANG: You have to give
13 an audible response.

14 Yes?

15 THE WITNESS: Yes, 11 deals with
16 assignment by purchaser.

17 BY MR. McELCHERAN:

18 60 Q. Yes. So, in the event that the
19 purchaser -- in this case, Wacker -- assigns, then:

20 "The guarantor irrevocably and
21 unconditionally guarantees the
22 timely and complete performance
23 of in compliance with the
24 purchaser's obligations
25 hereunder." [As read.]

1 In other words, it is different from
2 the other one. The guarantee in this case is
3 a guarantee of all obligations under the agreement;
4 is that correct?

5 A. Appears so, yes.

6 61 Q. This is the first time you're
7 noticing that?

8 A. No.

9 62 Q. So you are aware of that during
10 the auction?

11 A. Generally I was aware of the
12 differences between the two different bids, yes.

13 63 Q. So, this is a difference
14 between the two of them in two ways.

15 The first one, you agree with me,
16 that Wacker Cheme actually qualified as -- you were
17 prepared to accept its covenant without
18 a guarantee; correct?

19 A. That's right -- sorry, I don't
20 understand that question.

21 64 Q. Well, the guarantee only
22 applies if there is an assignment to an affiliate;
23 correct?

24 A. Yes.

25 65 Q. Therefore the covenant that you

1 are relying on in the Wacker agreement is
2 a covenant of Wacker itself?

3 A. Yes.

4 66 Q. And so you were satisfied with
5 Wacker's covenant without a guarantee; correct?

6 A. Yes.

7 67 Q. Because it's a company of
8 substance?

9 A. Yes.

10 68 Q. Whereas QSI is not a company of
11 substance; correct?

12 A. No, I wouldn't say that QSI has
13 no substance.

14 69 Q. Well, why did you insist on
15 a guarantee from Globe for your part of the deal?

16 A. We needed to have a level of
17 comfort that there would be a purchaser that had
18 the necessary funds in order to complete the
19 closing, and at the time of -- at least the
20 stocking horse bid, that purchase price was
21 20 million, and we knew that QSI partner had the
22 facility and funds here in Ontario of approximately
23 4 billion or so in the terms of the DIP facility.

24 70 Q. In other words, money owed by
25 your company?

1 A. Well, no. It was actually
2 money that was held with the monitor at that time,
3 in terms of what assets it had that we were aware
4 of that were in this jurisdiction. So we knew that
5 it did not have \$20 million.

6 And so when we were negotiating the
7 stocking horse bid, we wanted to make sure that the
8 purchaser would be able to complete the closing and
9 have the full purchase price available at closing.

10 71 Q. So, you were concerned that
11 they wouldn't be able to pay the purchase price?

12 A. We were concerned that we would
13 have a counterparty that we could turn to at
14 closing if the particular purchaser we were dealing
15 with, for whatever reason, chose not to perform its
16 obligations notwithstanding its obligation to do
17 so.

18 72 Q. So you have selected out of the
19 agreement obligations owing to the vendor in
20 relation to the purchase price and required
21 a guarantee for that, and you haven't, and so
22 far -- and I will revisit the question about
23 production of the documents that must have been
24 provided under the bid procedures under 3 (e).

25 Go back to it again.

1 MR. McELCHERAN: I'm going
2 to renew my request. You took it under
3 advisement. Are you prepared to produce the
4 proof of financial ability of the bidders to
5 perform their obligations as required under the
6 bid procedures?

7 U/A MS. LANG: Still taken under
8 advisement.

9 BY MR. McELCHERAN:

10 73 Q. But you knew about that
11 information when you were making this decision
12 about getting a guarantee, didn't you?

13 A. We were certainly aware of the
14 requirements of the bid procedures. Yes.

15 74 Q. Therefore, you knew information
16 that is not available today which allowed you to
17 make a judgment about creditworthiness to pay the
18 purchase price?

19 You knew about the financial ability
20 of your purchaser to pay and to conclude you needed
21 a guarantee?

22 A. Yeah, based on the fact that we
23 knew that at the time of executing the original
24 transaction QSI Partners only had the DIP facility
25 here in Canada.

1 And that's right, we required
2 a guarantee from Globe to ensure we didn't have
3 a closing risk.

4 75 Q. Just to be clear on all this,
5 though, when you complete this transaction that
6 your bidder can complete with, there wouldn't be
7 any remaining assets in BSI; is that correct?

8 A. No.

9 76 Q. That's correct?

10 A. No.

11 77 Q. Between the two transactions?

12 A. No, of course there's the
13 assets of BSI that relate to the solar business
14 that will be sold pursuant to the other
15 transaction.

16 78 Q. Yes.

17 A. There are some other assets
18 that were not covered by the successful bid, the
19 two portion bids comprising the successful bid?

20 And we will be in the process of
21 trying to sell those assets separately.

22 79 Q. But you'd have no remaining
23 business; correct?

24 A. The remaining asset, hard to
25 say whether or not there is actually a business

1 associated with it, but I could say that
2 substantially all of the businesses -- a business
3 of BSI will have been sold pursuant to the
4 successful bid.

5 80 Q. Let's go back to the auction
6 then. The auction, it started when?

7 A. Ten a.m. on April 24th.

8 81 Q. At that time on April 24th, had
9 you made arrangements or were you aware of
10 arrangements with DCC that they would be available
11 if called upon to talk to the bidders?

12 A. I do recall that there were
13 some arrangements that the monitor had made with
14 respect to the availability of Dow Corning during
15 the auction.

16 82 Q. Why was that?

17 A. I believe it would have been
18 for consultation purposes.

19 83 Q. Consultation about what?

20 A. I don't know.

21 84 Q. You don't know?

22 A. I think we wanted to make --
23 there wasn't any specific consultations or any
24 specific issues that we believe were necessary at
25 that point in time, but we just wanted to have them

1 available for particular issues if, as when they
2 arose.

3 85 Q. What issues could arise then?

4 MS. LANG: Well, are you asking
5 for his --

6 MR. McELCHERAN: I'm just asking
7 in a followup question to his statement.

8 MS. LANG: But you are sort of
9 asking for speculation. If you contemplated
10 issues at the time that might arise that you
11 would address with DCC, can you answer that
12 question.

13 If it's just speculation, then it's
14 not relevant.

15 THE WITNESS: It is not
16 speculation. I did not contemplate any
17 particular issues.

18 BY MR. McELCHERAN:

19 86 Q. Let's understand, then, just
20 between us to figure out how DCC was affected by
21 this transaction. Your company had a number of
22 agreements with DCC; is that correct?

23 A. Yes.

24 87 Q. Why don't you tell us what they
25 were?

1 A. Certainly.

2 We had a limited partnership
3 agreement which was set out the rights and
4 obligations of the parties in respect of the
5 ownership interests in Québec Silicon relating to
6 the limited partnership units.

7 We had a shareholders' agreement
8 that set out the rights and obligations of the
9 parties in respect to ownership in the general
10 partner of the limited partnership.

11 We had an output supply agreement
12 that set out the terms by which Québec Silicon
13 would supply silicon metal to the customers,
14 essentially affiliates of DCC and BSI.

15 We had intellectual property
16 licensing agreements providing for licensing from
17 one party to the other.

18 We had a shared services agreement
19 providing for employees of QSLP, the limited
20 partnership, to provide assistance to BSI,
21 a support agreement by which Timminco employees
22 provided support to Quebec Silicon.

23 Agreements relating to the sharing
24 of laboratory expenses, an agreement relating to
25 a lease of a portion of the administration building

1 at the facilities in Québec, and there was
2 a framework agreement that was entered into prior
3 to those agreements.

4 88 Q. Those are all agreements to
5 which BSI is party; correct?

6 A. With the exception -- not.

7 89 Q. Not all, maybe some of them --

8 A. Not all, but generally speaking
9 BSI and Timminco were parties at the ...

10 90 Q. So we came down to, we had
11 shares and we had limited partnership units?

12 A. Yes.

13 91 Q. And we have a bunch of
14 agreements?

15 A. Yes.

16 92 Q. What physical assets did BSI
17 own that were included in this transaction?

18 A. Well, after the creation of the
19 joint venture entity and the transfer of assets
20 relating to the Silicon metal business from BSI to
21 Québec Silicon, all of which happened on September
22 30th, 2011, the assets that stayed behind in the
23 BSI were all of the productive assets associated
24 with Timminco's solar rate silicon business.

25 That included two production

1 facilities, known as HP1 and HP2.

2 There was a silica fume disposal
3 site where silica fume had been extracted and would
4 be re-sold by BSI.

5 There were significant intellectual
6 property assets of BSI in terms of the solar
7 operations.

8 93 Q. What you're saying is that the
9 solar business remained with BSI, the physical
10 assets?

11 A. Yes.

12 94 Q. And all the physical assets
13 that are involved in this transaction, the one
14 we're dealing with know, who owned them?

15 A. Well, substantially all of the
16 assets associated with the operation of the silicon
17 metal business were transferred from BSI to Québec
18 Silicon in connection with the creation of this
19 joint venture.

20 95 Q. All of the assets related to
21 the silicon business were transferred to
22 a partnership; right?

23 A. Substantially all of them, yes.

24 96 Q. The assets that BSI had to
25 sell, then, were their partnership units, correct,

1 and shares in the companies?

2 A. In terms of the current
3 transaction with BSI?

4 97 Q. Yes.

5 A. Yes, the shares of the general
6 partner that BSI owns and the limited partnership
7 units in the limited partnership that BSI owns,
8 those were part of the package of assets comprising
9 the silicon metal business that BSI was selling.

10 98 Q. What other -- what physical
11 assets are there being transferred?

12 A. I believe there's some
13 inventory that BSI owns.

14 99 Q. This BSI's inventory?

15 A. Yes.

16 100 Q. Produced by a limited
17 partnership?

18 A. Yes.

19 101 Q. Sold by BSI?

20 A. BSI owns that inventory and
21 those are some of the physical assets.

22 102 Q. Besides that, of the business,
23 it's reflected in limited partner units, shares in
24 companies and contracts with DCC; isn't that right?

25 A. Well, there are other contracts

1 as well.

2 There are contracts with the
3 customers of BSI.

4 103 Q. Right.

5 A. That's part of the business as
6 well.

7 104 Q. Right, but they're not
8 customers of BSI. They're customers of the joint
9 venture, aren't they?

10 A. Well, no, in fact the --

11 105 Q. Yes, fair enough, you're right.
12 I'm sorry, I apologize.

13 You're right because there is Wacker
14 agreement with BSI?

15 A. That's the principal customer,
16 yes.

17 106 Q. The reason for that being --
18 just so I understand how this it's working here --
19 is the business is in the limited partnership, but
20 both partners have agreements under which they
21 acquire silicon metal from the partnership; isn't
22 that right?

23 A. I would say that the limited
24 partnership business is the business of producing
25 silicon metal.

1 107 Q. Correct.

2 A. For its two customers, captive
3 customers, being BSI and Dow Corning.

4 108 Q. So when you say that there is
5 an agreement that is a BSI agreement with Wacker to
6 supply, or others?

7 A. Yes.

8 109 Q. That's because BSI is acquiring
9 silicon metal from the limited partnership, the
10 joint venture?

11 A. Yes.

12 110 Q. And then on-selling it?

13 A. Yes.

14 111 Q. So, when it comes right down to
15 it, the business, the production part of the
16 business isn't owned by BSI; right?

17 MS. LANG: I'm not sure I follow
18 that.

19 BY MR. McELCHERAN:

20 112 Q. Well, it owns limited
21 partnership units, owns shares in companies. It is
22 subject to agreements related to it?

23 A. It has entitlement to receive
24 production from Quebec Silicon.

25 113 Q. As a contract?

1 A. Yes.

2 114 Q. That's a contract. That's not
3 a physical asset; that's a contract?

4 A. Yes, yes, yes. I may add,
5 though, that it was open to BSI, and BSI has, in
6 the past, procured Silicon metal from alternate
7 sources and resold them, as well as part of its
8 business.

9 115 Q. Fair enough. And that's not
10 the point of the question.

11 The question is directed to how
12 important the relationship with DCC is to this
13 transaction. You are nodding. You recognize that
14 that's important?

15 MS. LANG: Well, he is recognizing
16 that was your question.

17 THE WITNESS: I was recognizing
18 that was your question.

19 BY MR. McELCHERAN:

20 116 Q. Well, let me ask you the
21 question.

22 Did you recognize when you were
23 dealing with this transaction, when you were
24 conducting this auction, that what you were
25 ultimately selling were contract rights with DCC?

1 A. No, I wouldn't say that.

2 I would say --

3 117 Q. Explain. Explain?

4 A. I would say -- I would
5 certainly say that Dow Corning was an important
6 stakeholder in this process and they certainly
7 considered the perspective of Dow Corning and how
8 this transaction impacted on Dow Corning.

9 118 Q. Explain. How?

10 MS. LANG: I'm not sure he's
11 finished, Mr. McElcheran.

12 THE WITNESS: We are aware of the
13 rights that Dow Corning had under the many
14 different agreements relating to the joint
15 venture, and we were aware of the fact as to what
16 the implications of CC double A filing had on Dow
17 Corning.

18 When we were going through the
19 auction, for example, we did take into
20 consideration one of the offers that was received
21 at the time relating to -- specifically the Wacker
22 bid at one point in the auction where they
23 introduced the concept of agreeing to assume
24 certain liabilities with respect to BSI union
25 pension and benefits plans, to the extent that

1 those liabilities ultimately became liabilities of
2 Québec Silicon.

3 We knew that Dow Corning would have
4 an interest in that, that that would be of interest
5 to Dow Corning, but this concept of a potential
6 assumption of liabilities, and we considered that
7 in the context of our overall view of the offers
8 that had been received.

9 BY MR. McELCHERAN:

10 119 Q. Well, let's just explore that
11 a little bit. It's an obligation of BSI that we're
12 talking about, isn't it, that Wacker was agreeing
13 it was part of the bid it was offering to assume an
14 obligation to BSI under the framework agreement?

15 A. I don't believe so.

16 I believe that was characterized --
17 I think there are a number of different elements
18 there.

19 There is an obligation with respect
20 to reimbursement of postretirement benefits of QSLP
21 for future retirees of QSLP.

22 This was an obligation set out in
23 6.7 of the framework agreement.

24 120 Q. Right.

25 A. And a maximum liability of

1 5 million.

2 121 Q. Right.

3 A. I understand that Wacker's
4 proposal, when it was presented as such, that it
5 contemplated an -- that it would agree to take on
6 that liability on the condition that DCC granted
7 its consent, and on the condition that the other
8 indemnities in the framework agreement were
9 eliminated.

10 I also -- in terms of other
11 obligations, I understand that Wacker's proposal
12 was to indemnify QSLP or DOW Corning for -- to
13 75 per cent of the liabilities that those entities
14 assumed, to the extent that they had to assume,
15 that required that they assume the BSI union,
16 pension and postretirement benefit liabilities.

17 So I wanted to clarify, it, in our
18 view, was not a certainty that the BSI, union
19 and -- the union benefit and pension liabilities
20 were necessarily going to be assumed by ...

21 122 Q. Let me be clear what we're
22 talking about here.

23 A. Sure.

24 123 Q. The first thing is that there
25 are certain obligations that were up to a limit of

1 \$5 million -- sorry, which DCC was entitled to
2 an only indemnity under a framework agreement, the
3 first one you mentioned?

4 A. I would clarify that to say
5 that that is an obligation of BSI to reimburse
6 QSLP, if, as and when QSLP incurs certain
7 postretirement benefits costs for retirees during a
8 specified period.

9 I believe it was from October 1,
10 2010, until a subsequent date.

11 124 Q. Let's understand what that
12 means.

13 I wanted to make sure we are clear
14 on distinctions here.

15 Firstly I want to establish we are
16 in agreement that that was an existing obligation,
17 currently is an existing obligation. It may not be
18 payable right now, but it's an obligation that
19 exists on the framework agreement under which BSI
20 is now liable; correct?

21 A. Yes.

22 125 Q. So what you are saying is that
23 part of the offer was to assume that framework
24 agreement obligation by Wacker, subject to
25 concessions with -- Wacker required DCC to agree

1 to --

2 A. Yes.

3 126 Q. Correct? Right, but it starts
4 off with it's a liability of BSI to -- this
5 indemnity is an obligation of BSI?

6 A. Yes. Shall I --

7 127 Q. Yes, why don't you refer to it?

8 A. The framework agreement. It's
9 at tab --

10 MS. LANG: D.

11 THE WITNESS: D. Yep, I agree, it
12 is a BSI obligation.

13 BY MR. McELCHERAN:

14 128 Q. And it's in the framework
15 agreement?

16 A. Yes.

17 129 Q. The other obligation you are
18 referring to, as well, is one that relates to
19 a grievance -- does it relate to a grievance that
20 the union has made against the partnership?

21 A. The union grievance is relevant
22 to the extent that if that grievance is successful,
23 the result could be that QSI becomes liable for
24 certain pension and benefits obligations of BSI.

25 130 Q. And then BSI would be liable to

1 indemnify the partnership for those.

2 MR. TAYLOR: You said QSI. Did
3 you mean QSLP?

4 THE WITNESS: QSLP.

5 I would imagine that QSLP or Dow
6 Corning could seek indemnification under section 9
7 of the framework agreement to the extent that QSLP
8 has suffered losses as a result of the
9 assumption -- the acquired assumption of those
10 liabilities.

11 BY MR. McELCHERAN:

12 131 Q. So, therefore, the
13 differentiating feature between the Globe bid, or
14 the QSI bid and the Wacker bid is that Wacker would
15 have agreed that, if it was accepted, it was
16 prepared to assume those obligations BSI?

17 MS. LANG: With all the
18 qualifications that both the agreements make and
19 Mr. Kalins made, including the contingent nature
20 of the agreement and the 75 per cent limit on the
21 assumption of obligations and the flow back of
22 25 per cent.

23 BY MR. McELCHERAN:

24 132 Q. Yes. Just as the document
25 says. But it was a differentiation because that

1 was not in the QSI bid; correct?

2 A. Yes, the Wacker bid contained
3 the proposed cross-indemnities that are set out in
4 that agreement that were not -- are not in the QSI
5 bid.

6 133 Q. Actually, as well, the Wacker
7 bid included an assumption of the framework
8 agreement, subject to those --

9 A. It included the assumption of
10 the framework agreement, with the caveat that all
11 of the indemnifications in section 9 of that
12 agreement would be waived.

13 134 Q. But replaced by this --

14 A. Replaced by the indemnities --
15 the two indemnities, really, the indemnity from
16 Wacker for the benefit of DCC and QSLP for
17 75 per cent of the potential postretirement --
18 sorry, pension and benefit liabilities of BSI and
19 an indemnity from DCC to Wacker and QSLP for
20 25 per cent of any pension or benefits liabilities
21 of BSI that would be assumed by Wacker or QSLP.

22 135 Q. Let's put some numbers on some
23 of these things, just to get a sense of them.

24 One potential liability for
25 postretirement benefits was -- it was capped at

1 5 million?

2 A. Yes.

3 136 Q. The indemnity was capped at
4 5 million?

5 A. Yes.

6 137 Q. What was the anticipated
7 expense that was going to be incurred in there?

8 Did you do an analysis, a financial
9 analysis of the present value of that?

10 A. With respect to the 5 million?

11 138 Q. Yes.

12 A. We did have a valuation of that
13 for accounting purposes.

14 It was something less than
15 5 million. I can't recall exactly the number, but
16 it was factored into our external reporting the
17 last time we made an external financial report.

18 139 Q. Can you help me by finding that
19 number? It's in your reporting so I just --

20 MS. LANG: When you say external
21 reporting, you mean external reporting --

22 THE WITNESS: To shareholders.

23 MS. LANG: We'll use best efforts
24 to the locate that.

25 THE WITNESS: Yeah, I guess

1 that's -- to the extent that we did a valuation
2 of that, essentially it's not a -- it's
3 an obligation that is incurred as and when it's
4 incurred over a number of, several years, so
5 there is some present valuing that would be
6 required to assess what is the current true
7 accounting value of that liability.

8 As for the other liabilities --

9 BY MR. McELCHERAN:

10 140 Q. Yes.

11 A. Specifically the BSI union
12 pension plan and the BSI union postretirement
13 benefits, those two combined, we were roughly
14 looking at that as being a \$20 million liability.

15 There are different ways in which
16 those numbers can be derived.

17 You can look at the actuarial
18 valuation, actuarial determination of what those
19 liabilities are in accordance with actuarial
20 principles, and there is a separate way to value it
21 in accordance with accounting principles.

22 And I'm not the expert to speak to
23 about the differences between those two, but
24 roughly speaking the number that we had in our mind
25 for those two plans was roughly 20 million.

1 141 Q. Let's just go back to the
2 auction, then.

3 To sum up that whole group of
4 questions, then, you recognize that these are
5 obligations which were effectively owed to DCC, to
6 Dow Corning. These obligations of indemnity are
7 under the framework agreement, were BSI's
8 obligations to Dow Corning?

9 A. No, I would say that the
10 \$5 million obligation under 6.7 (f) was
11 an obligation to QSLP.

12 142 Q. Yes. Yes, I agree.

13 A. Directly.

14 143 Q. I agree.

15 A. The other obligations were --
16 the indemnification obligations under section 9
17 were obligations, yes, to DCC.

18 144 Q. Right. And DCC as well is
19 a 49 per cent partner and, therefore, benefits from
20 indemnities in favour of QSL?

21 A. Yes.

22 145 Q. QSLP.

23 Now, going back to the auction, so
24 it started at 10 o'clock in the morning, and you
25 had four bidders at that point?

1 A. Yes.

2 146 Q. How many bidders were left
3 after the first round?

4 A. I believe that Brookfield did
5 submit an overbid.

6 147 Q. Yes?

7 A. However, after submitting that
8 overbid they did not submit any further overbids,
9 and so therefore they were out of the auction from
10 that point forward.

11 148 Q. How did Brookfield's bid -- how
12 was it structured? What was different between it
13 and the two bids that we have records of?

14 A. The key element of the
15 Brookfield as bid was an assumption of --

16 MR. TAYLOR: Is this --

17 THE WITNESS: Is an assumption of
18 BSI's pension benefits liabilities. However it
19 did have a significant closing condition, which
20 was that it would have to reach an agreement with
21 the union on acceptable terms for a new
22 collective agreement to apply to the facility, to
23 the operations of Québec Silica, in Québec ...

24 BY MR. McELCHERAN:

25 149 Q. Did Brookfield tell you --

1 you're going to have to hold off.

2 Did Brookfield tell you how to
3 value, or give you any information to help you
4 evaluate that condition?

5 MS. LANG: Mr. McElcheran, I let
6 the first question go.

7 I'm not sure what the relevance of
8 the Brookfield bid in the early rounds of the
9 auction is for the purposes of the motion.

10 BY MR. McELCHERAN:

11 150 Q. Well, there are three or four
12 important points about the motion.

13 One of them is how bids were
14 evaluated in the auction process.

15 What I want to understand is how the
16 bids were evaluated, because apparently, according
17 to Justice Morawetz' report, the company used its
18 business judgment in evaluating the bids.

19 I want to know how they were done.

20 MS. LANG: My difficulty,
21 Mr. McElcheran, is that there is no issue as to
22 the evaluation to the Brookfield bid, and in
23 fact, Brookfield chose not to submit a further
24 bid, so there is no relevance to your client or,
25 indeed, either to the primary successful bidder

1 or to the backup bidder as to what happened in
2 round 2 of the auction process.

3 I don't see the relevance of it on
4 the record before us.

5 MR. McELCHERAN: My question
6 relates to the methodology used by the company,
7 which is directly an issue.

8 MS. LANG: Right. Methodology
9 used by the company in respect of the two bids at
10 question, fair game.

11 Methodology used with respect to the
12 company on a bid by a bidder that chose to withdraw
13 voluntarily from the process, not relevant.

14 MR. McELCHERAN: I think it's
15 completely relevant because it relates to how its
16 bid was valued. It had different considerations
17 in cash in it. I want to know how it was valued
18 and how you determined the value of it relative
19 to the other bids.

20 R/F MS. LANG: Well, you have my refusal.

21 MR. McELCHERAN: She's refusing.

22 BY MR. McELCHERAN:

23 151 Q. Let's go to the Wacker bids.

24 Let's just talk about the process
25 for valuation, now that we're into it.

1 Have you ever done an auction before
2 like this?

3 MS. LANG: I assume you are asking
4 has he participated in one as opposed to --

5 THE WITNESS: I have not
6 participated before in the context of a CCAA
7 agreement.

8 BY MR. McELCHERAN

9 152 Q. Have you ever participated in
10 the auction of a business before?

11 A. No, I haven't.

12 153 Q. I mean, we've all been to an
13 auction for antiques, but I'm talking about
14 a business. It's complex; right?

15 MS. LANG: Some us haven't been to
16 auctions for antiques, actually.

17 THE WITNESS: I acknowledge that
18 it is complex and a lot of factors need to be
19 brought into consideration.

20 BY MR. McELCHERAN:

21 154 Q. It took a long time for this
22 one, didn't it?

23 A. I believe it was 30 hours.

24 155 Q. I was in one that was three
25 days in New York.

1 It takes a long time.

2 Those are tough decisions that have
3 that have to made, right?

4 A. Absolutely. Every step along
5 the way there are difficult decisions to be made by
6 the ...

7 156 Q. But when you come down to it,
8 you've got two bids that look a lot alike, except
9 for a couple of important points.

10 Can you tell me the differences
11 between the two bids?

12 A. Certainly.

13 MS. LANG: I preface this response
14 with there is a memory game you're putting to
15 him.

16
17

18 The two bids are in the documents;
19 they speak for themselves.

20 To the extent that you want Mr.
21 Kalins' extemporaneous memory of the differences in
22 the bids that's fine, but we will govern ourselves
23 by the terms of the two bids in the documents.

24 BY MR. McELCHERAN:

25 157 Q. Well, you know, I am sure we

1 are going to be looking at the documents. We are
2 going to be asking -- but the issue we're talking
3 about now is how the differences were valued.

4 So, what he thinks about the
5 differences is what the point of clarification.

6 MS. LANG: I want to be clear, Mr.
7 McElcheran, that when you ask a broad question
8 "Tell me about the differences," he's doing it
9 off the top of his head, and that's the quality
10 of the answer you are getting.

11 We will be governed by the
12 differences in the agreement, so I am not sure
13 that -- I am not sure that anything turns on this,
14 other than to the extent you later try to say, "Mr.
15 Kalins only identified three differences and there
16 is a fourth he missed."

17 The agreements speak for themselves.
18 If you want to take him to a specific difference
19 with which you have questions, then you should draw
20 his attention to that.

21 BY MR. McELCHERAN:

22 158 Q. I want him to tell me what he
23 thinks is important and so, therefore, it is
24 important what he lists and what he doesn't list.

25 But in any event, he added

1 specifically value, so, let's go back to the --
 2 maybe a little bit more organized about how we're
 3 asking this, rather than putting the question,
 4 free-form.

5 So, were any documents created
 6 during the auction?

7 MS. LANG: Can you be more
 8 specific about that? Documents by whom?

9 BY MR. McELCHERAN:

10 159 Q. I meant that's a simple
 11 question: Were there any?

12 MS. LANG: Well, I mean, we just
 13 identified that there were multiple participants
 14 in the auction.

15 I assume you are not asking him
 16 whether he was aware of what documents would be
 17 prepared by specific bidders in their rooms.

18 So are you talking about what
 19 documents were being prepared by the Timminco
 20 entities or the monitor, bid documents?

21 BY MR. McELCHERAN:

22 160 Q. Well, and that's all, to his
 23 knowledge -- to his knowledge, what documents did
 24 he know about being created?

25 A. There were multiple

1 reiterations from each of the bidders, about their
2 proposed bids in the form of asset purchase
3 agreements.

4 I know that our counsel took notes
5 of the process of the auction.

6 I took some notes of the auction,
7 during which -- they weren't complete notes, but
8 nonetheless as we were going through, I jotted
9 a few points down.

10 I'm not sure what other key
11 documents were produced.

12 161 Q. Well, let me -- okay, let's
13 start with off with -- the first thing I'm going to
14 ask you to do is produce the notes that you have?

15 U/A MS. LANG: Take that under
16 advisement.

17 BY MR. McELCHERAN:

18 162 Q. And also the notes of --
19 without advice, but I also wanted Stikeman's notes.

20 R/F MS. LANG: That's refused.

21 BY MR. McELCHERAN:

22 163 Q. What was the point of taking
23 notes?

24 MS. LANG: Sorry, what was the
25 point for Mr. Kalins to take notes?

1 BY MR. McELCHERAN:

2 164 Q. What was the point of Stikeman
3 taking notes?

4 R/F MS. LANG: I'm actually not going to
5 allow you to ask that question, and I'm not a witness
6 in this proceeding.

7 So, it has been refused.

8 If you want to bring a motion for
9 production of the notes, that might have been taken
10 by Mr. Taylor or Ms. MacKenzie, feel free.

11 BY MR. McELCHERAN:

12 165 Q. Okay. I just looked at the --
13 and you've taken under advisement whether his notes
14 are going to be produced.

15 Are any notes prepared by anybody
16 else, who was not a lawyer for Timminco?

17 A. I don't recall Mr. Fastuca
18 preparing any notes, in terms of notes. But
19 I can't -- I cannot recall what notes everyone
20 produced during the session. I can't.

21 166 Q. All right. So, did any notes
22 in -- I'm looking for, and my request is that you
23 produce any notes in possession of Timminco.

24 MS. LANG: That are relevant and
25 not non-privileged?

1 BY MR. McELCHERAN:
2 167 Q. Yes.
3 U/A MS. LANG: I assume. We'll take
4 that under advisement.
5 BY MR. McELCHERAN:
6 168 Q. Anything produced during the
7 auction is relevant.
8 U/A MS. LANG: I'll take under
9 advisement.
10 BY MR. McELCHERAN:
11 169 Q. I'm looking now at Exhibit C to
12 your affidavit, specifically at page 133 of the
13 motion record, page 16 of the document.
14 A. Yes.
15 170 Q. So, if you look at the 3.1 and
16 you will see there is handwritten numbers above it.
17 A. Yes.
18 171 Q. Am I right in concluding that
19 Globe did not produce any -- submit any other
20 offer, other than the same offer with a mark up of
21 the price during the process?
22 MS. LANG: During the entire bid
23 process, you mean?
24 BY MR. McELCHERAN:
25 172 Q. I'm talking about the bidding.

1 When Globe submitted, or QSI -- we have to be
 2 careful, it's not Globe; it's QSI -- when QSI
 3 submitted its bids, overbids, did it do anything,
 4 other than mark up the price?

5 A. I think that what this shows
 6 then is from the time that -- sorry, QSI produced
 7 an overbid for 26,875, from that point forward, all
 8 subsequent overbids were only increases in the
 9 dollar amount of the purchase price.

10 173 Q. Right. So, if I'm looking at
 11 Exhibit C, then there's nothing else -- there is no
 12 other document from QSI that I would need to look
 13 at in terms of other bids by QSI; is that correct?

14 MS. LANG: I think Mr. Kalins'
 15 answer is that from the time the price proposed
 16 by QSI was 26,875, that's correct.

17 But there were other -- there were
 18 37 rounds of bids, so I'm counting eight rounds
 19 here with these numbers, so presumably there are
 20 other --

21 BY MR. McELCHERAN:

22 174 Q. So, in what round was that
 23 overbid of 26 million made?

24 MS. LANG: Do you know, sitting
 25 here today?

1 THE WITNESS: No, I don't know.

2 I mean I could -- I could speculate
3 based on just looking at the document --

4 (Simultaneous speakers - unclear)

5 BY MR. McELCHERAN:

6 175 Q. Well, in the report, it says --
7 there was the initial overbid --

8 (Simultaneous speakers - unclear)

9 MS. LANG: Sorry, you are
10 referring to the monitor's report?

11 (Simultaneous speakers - unclear)

12 BY MR. McELCHERAN:

13 176 Q. Yes, the monitor's report.
14 Maybe that's handy.

15 MS. LANG: Do you want to refer me
16 to what section you ...

17 BY MR. McELCHERAN:

18 177 Q. Well, I'm just looking myself.
19 I think it's in here.

20 (Simultaneous speakers - unclear)

21 MR. TAYLOR: ... paragraph 30.

22 BY MR. McELCHERAN:

23 178 Q. All right. So, it's not
24 a free-form inquiry. I just want to get an idea of
25 the universe of documents.

1 So, Exhibits C, from that point, the
2 \$26 million point on, this is the only document and
3 they only upped the price from there. That's what
4 your answer was?

5 A. Yes.

6 MS. LANG: We will advise you if
7 that's not correct.

8 BY MR. McELCHERAN:

9 179 Q. Okay. So, in the Wacker case,
10 did it submit new documents each time?

11 A. May I refer to the Wacker bid
12 and see --

13 180 Q. Yeah, it's in the --

14 MS. LANG: Tab B.

15 THE WITNESS: I'm looking at
16 page 71 of the record.

17 Item 3.1. I see C\$32,125 million.
18 I don't see any markings, indicating that that was
19 increased, so from that I take it that this -- if
20 this was the document that was produced in --
21 I guess, the final round in which Wacker produced
22 or submitted their final overbid.

23 BY MR. McELCHERAN:

24 181 Q. All right. So, we were talking
25 earlier about the framework agreement and the

1 indemnity obligations that were being assumed by
2 Wacker was a differentiating feature.

3 Do you recall at what point of the
4 bidding that was introduced as a feature of the
5 Wacker bid?

6 A. I believe it was round 36.
7 It was in connection with this --

8 182 Q. That was the first time it came
9 in?

10 A. I can't recall if -- it may
11 have been in the early version of round 35. But
12 I do recall it was at the very -- near the end of
13 the auction, one of the final rounds.

14 183 Q. Okay, so, at any time -- let's
15 just go back then to the earlier in the process,
16 starting on the 24th.

17 Did any of the bidders ask to speak
18 to anybody who was not at the auction?

19 A. Umm...

20 MS. LANG: Sorry, just to be
21 clear, because it's a pretty open-ended
22 question --

23 BY MR. McELCHERAN:

24 184 Q. Yes.

25 MS. LANG: I assume you mean: Is

1 Mr. Kalins personally aware of any requests by
2 bidders to speak to people not present?

3 BY MR. McELCHERAN:

4 185 Q. Yes, I'm talking about bidders,
5 yes.

6 A. The requests from bidders to
7 speak with other parties?

8 186 Q. Yes.

9 A. I recall that Brookfield was
10 talking about the desire to continue to talk with
11 the union. However, they -- that was not
12 a precondition for them to continue in a bidding
13 process.

14 They nonetheless did express
15 an interest in furthering discussions with the
16 union, but they weren't going to. That wasn't
17 going to impact their bid.

18 187 Q. Did anybody object to that?

19 A. They weren't asking for any
20 adjournment, so, no, we didn't -- we didn't -- it
21 had no impact on the auction process.

22 188 Q. That didn't answer my question.
23 Did anybody object to it?

24 A. Did anyone object to --

25 189 Q. To them talking to the union,

1 during the auction?

2 A. I don't recall.

3 190 Q. Okay.

4 MS. LANG: Sorry, just to qualify
5 though, I'm not sure that what Mr. Kalins said --
6 I'm not sure anything turns on it -- I'm not sure
7 what Mr. Kalins said was that Brookfield was
8 asking to speak to the union during the auction.
9 Only that they expressed a desire -- do I have
10 that wrong?

11 THE WITNESS: Yes.

12 MS. LANG: They expressed a desire
13 to continue to speak with the union, as opposed
14 to during the auction.

15 THE WITNESS: Yes.

16 BY MR. McELCHERAN:

17 191 Q. Okay, well it's hard to
18 understand what that could mean, other than during
19 the auction.

20 It's a free country, as they say,
21 you can talk to whoever you want, but in any event
22 let me ask you this question then: Did Wacker ask
23 to speak to DCC?

24 A. I'm advised by the monitor
25 that, yes, they did ask to speak with the DCC on

1 the second day of the auction.

2 192 Q. Not on the first day?

3 A. I'm not aware of any request to
4 speak with DCC, on the first day of the auction.

5 193 Q. Let's understand -- I'm
6 struggling to understand how this process worked.
7 I mean who was running the auction?

8 A. The company.

9 194 Q. So when somebody asks to --
10 asks for something that happened, like speak to
11 somebody who's not there, it would have to be to
12 you, wouldn't it?

13 A. Well, the monitor was assisting
14 us in the process, and we'd already established
15 that whenever there were discussions with external
16 stakeholders, for example, with Dow Corning, that
17 we said that the monitor should be present, for
18 those discussions, just to ensure the integrity of
19 the process.

20 195 Q. But surely you would know if
21 there was a request made because a request would be
22 made to you, wouldn't it?

23 A. Yes.

24 196 Q. So from your point of view
25 there was never any request on the first day, when

1 DCC was available?

2 A. That's right. I do not recall
3 a request from any of the bidders to speak with DCC
4 on the first day.

5 197 Q. Were the bidders made aware
6 that DCC was available to speak to them?

7 A. I cannot recall.

8 198 Q. Okay, so you did recall that
9 they asked to speak to DCC on the second day?

10 A. Yes.

11 199 Q. And tell me about that.

12 A. So, we had completed a series
13 of overbids, all cash overbids, in fairly rapid
14 succession. And I recall that the representative
15 of Wacker had asked to pause the bidding process,
16 so that they could go consider what their next
17 overbid might be.

18 And following a period of time after
19 they had had their own discussions, was when the
20 request came to have a discussion -- that request
21 from Wacker to have a discussion with Dow Corning.

22 200 Q. What happened then?

23 A. The company then considered the
24 request. I believe the request was in the context
25 of an adjournment of the auction, so that Wacker

1 could seek or try to obtain the consent of Dow
2 Corning, in connection with Wacker's proposed new
3 terms, with respect to the -- these -- the cross
4 indemnities.

5 201 Q. Right.

6 A. The company -- we consulted
7 with a monitor on the appropriateness of that
8 request.

9 We, amongst ourselves, also
10 considered the likelihood of a resolution of the
11 Dow Corning consent, resulting from any discussions
12 between Wacker and Dow Corning.

13 We had known that Wacker and Dow
14 Corning had discussions, prior to the auction. We
15 were unable to reach a mutual agreement on what
16 the form of a Dow Corning consent.

17 And we were not convinced that
18 a decision or resolution of the issue of the Dow
19 Corning consent could be achieved in a timely
20 manner, through those discussions.

21 We also asked Quebec -- QSI whether
22 they wished to have the same discussions with Dow
23 Corning and they declined.

24 We also considered the impact on the
25 overall process of the auction, and the time

1 it would take to deal with the adjournment request,
2 taking into consideration objections that had been
3 raised.

4 202 Q. Who raise the objection? You
5 didn't mention --

6 A. QSI. Objections raised by QSI,
7 that these discussions were essentially in the
8 nature of a continuation of due diligence
9 investigations that should have been conducted
10 prior to the auction.

11 We considered all of those factors.

12 Sorry, and, as well, we considered
13 the factor that we were informed by the monitor who
14 had spoken with DCC or its counsel, as to the
15 availability of certain decision-makers at Dow
16 Corning, to participate in those discussions with
17 Wacker.

18 And we were told that the earliest
19 that certain decision-makers would be available
20 would not be until approximately 1:30. And this
21 was, at that point, early in the morning of that
22 day.

23 So we considered that there would be
24 a several hour delay until those discussions could
25 really -- at the earliest, yield any results.

1 We communicated that to Wacker,
 2 essential, that the request for adjournment was
 3 denied.

4 We subsequently heard from the
 5 monitor, that counsel for Dow Corning had indicated
 6 a willingness or the possibility that some
 7 representatives of Dow Corning would be available
 8 prior to 1:30 to facilitate discussions, but,
 9 however, certain key decision-makers, nonetheless
 10 would not be available until 1:30, in any event.

11 We thought again about the request,
 12 but for all the reasons and factors that
 13 I explained, we decided that our decision to deny
 14 the request for adjournment, still stood.

15 203 Q. Just looking at both
 16 agreements, they are all subject to conditions,
 17 aren't they?

18 A. Yes.

19 204 Q. So, I'm looking -- just
 20 an example, I'm looking at the Wacker one which is
 21 on page 82 of the record.

22 And you will see that at 5.1 (e)
 23 "... Consent and Approval,
 24 including DCC Consent ..."

25 A. Yes.

1 205 Q. And if you look at the same
2 thing in Exhibit C under condition 5.1 (sic) on the
3 page reference, is page 145 of the record.

4 A. Uh-hmm.

5 206 Q. (reading)
6 "... Consent and Approval
7 including the DCC consent ..."

8 A. Uh-hmm.

9 207 Q. Is a condition of the QSI.

10 A. Yes.

11 208 Q. All right. So, at the time you
12 weren't prepared to agree to a few hours'
13 adjournment, or to have a consultation to obtain
14 that consent at that time?

15 A. We denied the adjournment --
16 sorry, the request for an adjournment, not just on
17 the basis of a few hours, but on the basis that we
18 did not believe that an adjournment at that time
19 would result in a resolution of the DCC consent
20 issue, which was an important factor for the Dow --
21 sorry, the Wacker bid.

22 209 Q. How did you know?

23 A. We took into consideration
24 a number of factors, including the fact that we
25 were advised by the monitor, that in discussions

1 that DCC had with bidders, prior to the auction,
 2 that DCC had indicated it would not accept any bid
 3 that did not purport to assume all of the
 4 liability -- sorry, indemnification and other
 5 liabilities of the framework agreement.

6 And we knew that the Wacker
 7 proposal, while it purported to offer up some level
 8 of coverage for those indemnifications, was not for
 9 all of the indemnity obligations, just 75 per cent
 10 and there were other indemnification obligations,
 11 also, that would not be covered by the Wacker bid,
 12 including, for example, environmental.

13 So, on that basis we thought, with
 14 the best information available to us at that time,
 15 that Dow Corning would not necessarily agree to
 16 accepting anything less than all of the
 17 indemnification obligations.

18 The other factor that we considered
 19 was that the Wacker proposal, contemplated
 20 indemnity by Dow Corning, in favour of Wacker for
 21 25 per cent of the BSI pension benefits
 22 liabilities, to the extent that those attached to
 23 Wacker or QSLP.

24 And we thought that that would be
 25 viewed by Dow Corning as a potential significant

1 negative factor in that it could potentially expose
2 Dow Corning to a liability, that otherwise it would
3 not have.

4 210 Q. Well, I'm -- the point is --

5 A. I'm just saying --

6 211 Q. Keep going.

7 A. I'm just saying that these
8 are -- those are two of the factors, and the third
9 factor is we were aware that Dow Corning and Wacker
10 had -- generally had several -- had had discussions
11 prior to the auction, that had not yielded any
12 results or any -- from what we could understand --
13 an agreeable arrangement that would procure the DCC
14 consent.

15 212 Q. So, now we're in -- so now
16 you've finished your answer.

17 A. Yes.

18 213 Q. So, you drew these conclusions
19 without talking to DCC?

20 A. Without talking to DCC, during
21 the auction?

22 214 Q. Yeah, during the auction, yes.

23 A. Yes.

24 215 Q. And you knew that DCC was
25 available all day, the first day --

1 A. Yes.

2 216 Q. -- and had arranged to be
3 available to discuss its consent.

4 A. Yes.

5 217 Q. All right. But you drew
6 a conclusion that it was pointless to wait a few
7 hours to have that discussion, and ask DCC?

8 A. In our view, it wasn't just
9 a matter of a few hour delay.

10 It was potentially a lot longer than
11 that.

12 Given that these are complex
13 transactions, complex arrangements, we did not
14 believe that it could be resolved in a timely
15 manner on that day.

16 And we also were mindful of the
17 objections that had been raised by QSI, that this
18 was an improper attempt to further up due diligence
19 type activities that should have been achieved or
20 should have been pursued by Wacker, prior to the
21 commencement of the auction.

22 218 Q. But consent is a condition of
23 your agreement, so this applies to both, and why is
24 due diligence to get a consent, as a condition?

25 A. I say due diligence in the

1 context of assessing the extent to which the other
2 party, DCC in this case, would be willing to grant
3 its consent.

4 219 Q. Well, that's the exercises you
5 were going through, right, is to guess what DCC
6 would agree to, in order to give its consent; you
7 concluded it wouldn't accept this without asking
8 you; right?

9 A. Well, I concluded that it was
10 a low likelihood, that there would be a resolution
11 of the DCC consent issue in a timely manner during
12 the course of the auction.

13 220 Q. So, let's go through the --
14 let's go through the differences.

15 I'm not going to be comprehensive,
16 and I'm not asking you to give me a comprehensive
17 evaluation, but I will ask you to do this: Did you
18 have any papers that were prepared, which set out
19 the methodologies for evaluating the bids?

20 Were there any notes created?

21 Were there any analysis --

22 A. Other than what --

23 221 Q. -- written down?

24 A. Other than what I mentioned
25 previously, nothing else.

1 222 Q. So, there is no written
2 analysis, no calculation of the differences between
3 the deals and the economic value?

4 A. We did perform a calculation
5 which was -- which we had performed, together with
6 the monitor, and our legal advisors, of course.

7 This is a calculation that we
8 actually put it on the whiteboard in the
9 boardroom -- and I'll explain that calculation in
10 a moment -- but I want to just make it known that
11 after we had completed those calculations, we
12 allowed the other bidders to see our calculations,
13 and the information that we had on the whiteboard.

14 I didn't take down information that
15 was on the whiteboard, but that was something that
16 was produced during the course of the auction.

17 In terms of the valuation, we looked
18 at -- in terms of the most significant factors that
19 we looked at, we looked at what would be the value
20 to the estate of BSI, of Wacker's proposal to agree
21 to -- potentially assume roughly \$18 million worth
22 of unsecured liabilities.

23 The 18 million number was what we
24 had calculated as essentially being 75 per cent of
25 the three unsecured obligations of BSI, that Wacker

1 was proposing to cover.

2 Five million for post-trans benefits
3 and then 20 million on the BSI pension plan and the
4 benefits plans. So, and these are -- these are
5 rough numbers, based on information available to us
6 at that time.

7 We determined that that was
8 a potential assumption of liability of 18 million.

9 We then tried to determine what
10 would be the value of that to the estate.

11 And in consultation with a monitor,
12 we developed a formula that would -- that
13 essentially yielded a result of only about \$250,000
14 of cash equivalent value, of that to the estate of
15 BSI.

16 223 Q. I'm astounded at that. I would
17 be interested in hearing the explanation.

18 A. And we, too, were surprised
19 that an assumption of -- a potential assumption of
20 \$18 million of liability could only have a cash
21 value of approximately 250.

22 224 Q. You know, I don't believe it.
23 I'm so astounded, I don't believe it.

24 MS. LANG: I'm sure you're not
25 calling Mr. Kalins a liar, Mr. McElcheran.

1 BY MR. McELCHERAN:

2 225 Q. No, no, I don't believe -- I'm
3 saying I don't believe that's the right
4 calculation. Why don't you show it to me.

5 A. And the key inputs for that
6 calculation were -- we started with what what was
7 the expected cash recovery, of cash available to
8 unsecured creditors of BSI, at the completion of
9 the sale of the assets, and after the senior lender
10 and all super priority charges had been satisfied.

11 226 Q. Ahh, now, I get it.

12 A. But based on the information at
13 that time as to -- at that point in the bidding, we
14 came up with -- we estimated that that cash value,
15 plus, based on forecasted cash flows, what cash
16 would be remaining in BSI at the end of the
17 process, it was roughly 35 million.

18 We deducted from that the senior
19 claims that would be paid out first, in advance of
20 unsecured claims. Roughly 33 million.

21 So, there was only about 2 million
22 of cash that could be distributable to all
23 unsecured creditors of BSI.

24 We then looked at the pool of
25 potential unsecured creditors of BSI and, again --

1 using the best information available, and not
2 having gone through a claims process, the
3 information that we had at that time was that those
4 liabilities were roughly 168 million.

5 And so the calculation we performed
6 was, we deducted from 168 million, the \$18 million
7 of potential liability that could be taken away by
8 the Wacker bid, which is 150 million.

9 We took 2 million of cash, and
10 divided that by 150 million that was -- that gave
11 us a percentage recovery for unsecured creditors.

12 We were surprised, but nonetheless,
13 going throughout math, realised that the percentage
14 recovery to unsecured creditors was very small,
15 essentially 1.3 per cent or a little over 1 cent on
16 the dollar.

17 We took that ratio and applied it to
18 the 18 million, and came up with \$240,000.

19 227 Q. Now I understand how you got to
20 that number.

21 So, to capsulize it, you were
22 looking at the dilution effect --

23 A. Yes.

24 228 Q. -- of the claim that would be
25 asserted against a cash recoveries for distribution

1 to unsecured creditors?

2 A. And that is how we -- we looked
3 at it in consultation with the monitor, as to what
4 the appropriate methodology would be.

5 229 Q. And if you are doing that
6 calculation, that sounds like you probably did it
7 correctly, if that was the calculation that
8 mattered.

9 So, did you give any value to the
10 fact that Dow Corning would receive a substantially
11 higher return?

12 In other words, from their
13 perspective, if Wacker did assume \$18 million of
14 obligations, it would be a substantial benefit to
15 Dow Corning.

16 It would be \$18 million of potential
17 recovery for Dow Corning.

18 A. I think we -- from Dow
19 Corning's perspective, the way we factored that
20 into this analysis was, the likelihood that this
21 Wacker proposal would achieve Dow Corning consent
22 and, again, as I mentioned previously, we were not
23 convinced this proposal was necessarily favourable
24 to Dow Corning because of the discussions prior to
25 the auction, that Dow Corning would not accept

1 anything less than all of the indemnification
2 liabilities being assumed, the fact that there was
3 a 25 per cent indemnification from Dow, claiming in
4 favour of Wacker.

5 For all those reasons, we did not
6 think that necessarily this proposal would get
7 a Dow Corning consent.

8 However, we did acknowledge that, on
9 balance, it would be more favourable -- or Dow
10 Corning would view that proposal as being more
11 favourable than the QSI bid.

12 And so we considered what would be
13 the value of not having to go through what could be
14 litigious proceedings, with a QSI bid on the basis
15 that Dow Corning would continue to -- would pursue
16 its rights and challenge the QSI bid.

17 We didn't have any specific math on
18 that. I mean, it's -- in our view -- it's
19 impossible to come out with a very detailed
20 calculation of that. But we did, in the end, take
21 the \$240,000 number that I had explained
22 previously, and we rounded it up to half a million
23 dollars, to give it additional benefit to the
24 Wacker bid.

25 And so in the end, looking at those

1 factors in the Wacker bid, we essentially ascribed
2 roughly half a million dollars in value.

3 At the same time, however, we did
4 also look at other differences between the
5 agreements, the two key differences being what I'm
6 going to refer to as the severability provision,
7 and the other is -- what I'm going to refer to as
8 the antitrust clearance.

9 With respect to the severability
10 provision, this is -- the difference here being
11 that under the Wacker proposal -- sorry, under both
12 QSI and Wacker, they purport to exclude
13 employment-related liabilities.

14 Under the -- under both agreements
15 there is a severability clause, however, the Wacker
16 agreement did not allow for severability of
17 exclusion of these employment-related liabilities,
18 which we considered to be a closing risk on the
19 Wacker deal, on the basis that if there was
20 a pending challenge to the enforceability of that
21 exclusion of liabilities, that Wacker might be able
22 to refuse to close.

23 And what made this of a particular
24 concern to us, was that the union had previously
25 indicated in court proceedings in connection with

1 approval of the stalking horse bid, that it
2 objected to the exclusion of liabilities clause,
3 with respect to employment-related liabilities.

4 And so we were, essentially, on
5 notice that that would be a difficult clause or
6 that the union would potentially take some action.

7 And, in fact, the union, from what
8 we understand now, are continuing -- are asserting
9 a reservation of rights or we understand that they
10 intend to pursue reservation of their rights, in
11 respect of a proposed approval of the agreements.

12 And that, in fact, this risk is now
13 bearing out in our dealings with Ferro Atlantica,
14 which have the exact same clause, in terms of the
15 severability, as the Wacker agreement. And in face
16 of the union indicating that it's going to reserve
17 its rights, regarding this exclusion of
18 liabilities, we understand that Ferro Atlantica
19 may, in fact, or is taking the position that it may
20 have a right to not close its transaction with us,
21 on the basis of that.

22 So, all that just goes to say is
23 that we -- at the time of the auction we --

24 MS. LANG: Sorry, you had
25 mentioned antitrust clearance --

1 THE WITNESS: I will get there.

2 MS. LANG: Okay.

3 THE WITNESS: -- that we did,
4 seek -- we were significantly concerned about
5 that difference between the two bids, and it's
6 now bearing out that, in fact, our concerns are
7 potentially holding true.

8 With respect to the antitrust, we
9 looked at the fact that there was no specific
10 requirement in the QSI bid, that any antitrust
11 consent be obtained in advance of the closing.

12 We had understood that no such
13 antitrust competition consents were necessary.

14 And we looked at the requirement in
15 the Wacker bid, that there were antitrust consents
16 that we retained as a condition to closing.

17 We were concerned about the breadth
18 and scope of the antitrust consent requirement in
19 the Wacker bid; it covered a number of
20 jurisdictions or it was fairly broad in its scope.

21 Although we did receive some
22 assurances from Wacker that they believed those
23 consents would be readily forthcoming and should
24 not be an issue, when we asked them to -- whether
25 they would be willing to limit the consent --

1 sorry, the condition, they were not willing to do
2 so.

3 We asked Wacker whether they would
4 be willing to have a deadline date, by which that
5 condition would have to be satisfied or waived, and
6 they were not willing to do so.

7 And so we were concerned about the
8 timing and whether or not those conditions could,
9 in fact, be satisfied. Those similar conditions
10 did not exist in the QSI.

11 BY MR. McELCHERAN:

12 230 Q. What value do you put on that,
13 the combination of all that?

14 A. And then -- yes, to finish it
15 all off, we ascribed a positive value of roughly
16 half a million.

17 231 Q. Yes.

18 A. And when we considered the
19 negative aspects of the Wacker bid, with respect to
20 severability and antitrust, we knocked that half
21 million back down to zero.

22 So, in the end, those differences in
23 the Wacker agreement versus the QSI agreement were
24 flat. All a wash.

25 232 Q. Okay, so --

1 MS. LANG: Sorry, it's 11:35.

2 Maybe this might be a good time for a quick
3 break. Five or ten minute break.

4 --- Recess taken at 11:35 p.m.

5 --- Upon resuming at 11:43 a.m.

6 BY MR. McELCHERAN:

7 233 Q. Let's break this down. Can you
8 break me down the value that you put on each of
9 those two negatives?

10 A. We did not have a breakdown as
11 between those two.

12 We simply -- we looked at our 500
13 amount, and we then determined that on the totality
14 of those differences, bring it back down to zero.

15 234 Q. On the one side of it, on the
16 positive side, you had a mathematical calculation
17 which was related to the dilution effect of the
18 claim --

19 A. Yes.

20 235 Q. -- ignoring the fact the DCC
21 would be much worse off.

22 Then, on the other side of it, on
23 the other part of it, you kind of guesstimated the
24 other 250 that related to the conditionality of
25 what arg (?) DCC is likely to accept or not accept.

1 A. I would say that, yes, we had
2 a mathematical calculation on the positive side for
3 the \$240,000 amount, which we then rounded up to
4 500,000 in contemplation of the positive fact that
5 it was, generally, seen as being potentially more
6 favourable to Dow Corning and, therefore, more
7 likely to obtain the DCC consent, although not
8 necessarily likely to obtain DCC consent, but more
9 likely than the QSI transaction.

10 That achieved us a rounded number of
11 half a million, and we then, you know, not using
12 any particular calculations or scientific
13 methodology, but nonetheless, in consultation with
14 legal counsel on the legal risks and with the
15 monitor, we knocked it back down to zero.

16 236 Q. Let me just understand the
17 differences between the Wacker and the QSL bid on
18 the issue of antitrust.

19 Let's look at the definitions in
20 both agreements of consents and approvals.

21 That's the difference you're talking
22 about; right?

23 A. Yes.

24 237 Q. The easiest way to flip
25 back-and-forth between the two of them is to look

1 at -- page 121 is the QSL one and page 58 is the
2 Wacker one.

3 It's (gg) on page 5 of the Wacker
4 one.

5 A. And it's pages --

6 238 Q. I'm sorry, it's (dd) at
7 page 121.

8 MS. LANG: Under the
9 "Definitions."

10 BY MR. McELCHERAN:

11 239 Q. In the "Definitions," both
12 cases.

13 A. Yes.

14 240 Q. We can go back to the
15 conditions. The conditions are, in one case --
16 they're both in Section 5.

17 A. And they --

18 (Simultaneous speakers - unclear)

19 241 Q. I'm sorry. We're talking
20 together, I'm sorry.

21 I'll ask the question and it will
22 make it easier.

23 In 5.1 of each agreement, there's
24 a condition that the consents and approvals, each
25 consent and approval, including DCC consent, will

1 be approved.

2 There is also -- in the Wacker one,
3 it goes on to say "and the antitrust clearances."

4 A. Yes.

5 242 Q. Yes. So, looking at the QSL
6 one, in terms of the conditions --

7 A. You mean QSI?

8 243 Q. Sorry, QSI, I'm sorry. Too
9 similar.

10 A. I know.

11 244 Q. So, you're looking at page 121.

12 You will see that:

13 "'Consents and Approvals' means
14 consent, approvals,
15 notifications or waivers from,
16 and filings with, third parties
17 (including any Governmental
18 Authority) ... "

19 A. Uh-hmm. Yes.

20 245 Q. (Reading)

21 "... as may be required to
22 complete the Transaction."

23 [As read.]

24 A. Yes. And I'm sure you are go

25 on to say:

1 "... in form and substance ...
2 satisfactory to the Purchaser
3 ... as set forth in Schedule
4 'K'." [As read.]

5 246 Q. So in Schedule K -- there is
6 only one in Schedule K you say that are the ones
7 that are relevant. Your point is that in
8 Schedule K, which is page 176 of the record --

9 MS. LANG: Yes.

10 BY MR. McELCHERAN:

11 247 Q. You are saying that there is no
12 antitrust risk there; right? No antitrust or
13 competition or anything else related to --

14 A. That's correct.

15 248 Q. Your point is that that your
16 bidder here, in this case the QSI, was prepared to
17 take the risk of not closing if they didn't get
18 antitrust approvals?

19 A. I can't speak for what risks
20 they're willing to take, but I can say that they
21 would not have entitlement to not close on the
22 basis that an antitrust approval or a consent had
23 not been obtained.

24 249 Q. Did you have a discussion about
25 antitrust obligations of either of the parties?

1 A. Yes, I did speak with Wacker.

2 250 Q. Did you speak with Globe and
3 with QSI about what their antitrust obligations
4 would be?

5 A. We did speak with QSI at the
6 time of negotiating the stalking horse bid because
7 the stalking horse bid did not have a requirement
8 for antitrust consents or approvals, and they
9 advised us that they -- they took the position that
10 they did not need that as a consent -- sorry, as
11 a condition to closing.

12 251 Q. You're saying that they say
13 they didn't need to make any filings?

14 A. I can't recall.

15 252 Q. Or need any approvals. Do you
16 remember if they said that they didn't have to get
17 any approvals?

18 A. I can't recall what they told
19 us.

20 253 Q. You did no analysis of whether
21 they did or they did not have an obligations under
22 antitrust?

23 A. I can't recall what analysis we
24 did at that time.

25 254 Q. Now, of course one of the parts

1 of the report is that QSI is affiliated with Globe.

2 A. Yes.

3 255 Q. And that Globe is a player in
4 the North American market for this product.

5 MS. LANG: I'm sorry, when you say
6 "the report," again, you are referring to the
7 monitor's report?

8 MR. McELCHERAN: Yes. Whenever
9 I say "report," there's only one; it's the
10 monitor's report.

11 MS. LANG: And, in particular, you
12 mean the 7th report?

13 MR. McELCHERAN: The 7th report,
14 when it's relevant.

15 And, otherwise, I will say which
16 one.

17 BY MR. McELCHERAN

18 256 Q. In the report, which is the
19 report we were talking about just a moment ago, it
20 talks about the importance and, actually, also the
21 affidavit that was filed as part of this record as
22 an affidavit of Mr. Lebowitz.

23 I'm not going to ask you this.
24 I think you recall that there was
25 a three-page affidavit of his in the material.

1 Have you read that before?

2 A. I recall, that, yes.

3 257 Q. In that, he talks about Globe,

4 which is an affiliate of QSI.

5 A. Actually, which tab is that?

6 258 Q. It's at Tab 3.

7 MS. LANG: Volume 2.

8 THE WITNESS: I have it now, yes.

9 BY MR. McELCHERAN:

10 259 Q. You will see paragraph 5, which

11 is on page 519 of the record.

12 A. Yes.

13 260 Q. He says:

14 "QSI is a corporation

15 incorporating laws of The

16 Cayman Islands."

17 A. Yes.

18 261 Q. (Reading)

19 "As noted, QSI is

20 a wholly-owned subsidiary of

21 Globe."

22 In the context of Globe, what do you

23 know about Globe's business?

24 A. I understand that Globe is

25 a producer of silicon metals and other alloys, that

1 they have operations in North America and globally.

2 I understand that they do have at
3 least one joint venture with Dow Corning with
4 respect to silicon metal production in North
5 America.

6 I know that they are a public
7 company, traded, I believe, on the New York Stock
8 Exchange and so, at times, I've referred to
9 materials that they've publicly disclosed through
10 the appropriate web sites.

11 262 Q. If they were to acquire this
12 business -- well, let me ask you this question.

13 Did they ask for any information
14 from BSI which they were going to use for a filing
15 under the US antitrust laws?

16 A. I can't recall.

17 If they would have asked for it, it
18 would have been at the time of us negotiating the
19 stalking horse bid and I just -- a lot of
20 information requests came and I can't recall.

21 263 Q. Are you aware if they did make
22 such a filing under the --

23 A. I'm not aware of any filing
24 that Globe has made or intends to make.

25 264 Q. In the event that there was

1 an anti-trust requirement on Globe, and they were
2 unable to obtain the necessary approval, what would
3 be the legal effect of that?

4 R/F MS. LANG: I'm not sure that that's on
5 an appropriate question for Mr. Kalins.

6 MR. McELCHERAN: He's a lawyer.

7 MS. LANG: He is not presented
8 here today as a lawyer, and is not giving his
9 legal opinion on competition matters. And even
10 if he is a lawyer, he's not a competition lawyer.

11 MR. McELCHERAN: He made a risk
12 assessment about the closing.

13 MS. LANG: Well, you can ask
14 him -- the relevant question that I think I hear
15 is: "What risk assessment did you make, if any,
16 in respect to whether filings were required and
17 weren't made?"

18 BY MR. McELCHERAN:

19 265 Q. There's the question. What's
20 the answer?

21 A. And how this factored into our
22 analysis was the possibility of governmental action
23 by way of threatened order that could affect the
24 validity of this transaction.

25 That, specifically, is

1 a representation contained in the agreement, and as
2 a condition to closing, representations need to be
3 true at closing.

4 And so if there was some kind of
5 governmental action, positive action that affected
6 this transaction, we saw that as a potential risk
7 for closing, although I will add that it is
8 characterized -- that risk is a different risk than
9 the Wacker risk, given that Wacker, the Wacker
10 closing condition specifically required a number of
11 consents to be obtained in a number of
12 jurisdictions, whereas the closing risk associated
13 with the QSI transaction was more in the nature of
14 if there was some action by a governmental
15 authority against this transaction.

16 266 Q. What assessments did you make
17 of the risk of Globe being interfered with -- or
18 sorry, of Wacker not satisfying the condition, if
19 it was a condition -- you were putting a value on
20 it, and I'm wondering about how you went about
21 going to -- what information did you get in order
22 to make that assessment?

23 A. We didn't put a specific value
24 on it, but we did consider, as I've indicated
25 previously, the potential timing to get those

1 consents.

2 We didn't ourselves perform
3 an analysis of whether or not in every jurisdiction
4 they would be able to obtain the necessary
5 consents. We didn't have the necessary information
6 to make that assessment.

7 267 Q. Let me just ask you -- but you
8 did make the assessment; you put a dollar value on
9 it?

10 A. No, we didn't put a dollar
11 value on it.

12 268 Q. Well, you put a dollar value
13 between zero and 500; right?

14 You are not allocating between
15 the -- it's more like two things added together
16 were minus 500?

17 A. I wouldn't say those -- those
18 are the principal two factors to cause the 500 to
19 go back down to zero.

20 269 Q. Okay.

21 A. There are many, many others,
22 but, yes, those are the principal two ones, and so
23 yes, there we did weigh that into consideration.

24 270 Q. Right. In order to make
25 an assessment, I'm just asking what information you

1 had available to you about the probability that
2 that would be a problem.

3 A. We spoke with our counsel and
4 received legal advice on potential --

5 MS. LANG: I want to be careful
6 here that we're not speaking about the content of
7 the advice because there is no waiver of
8 solicitor/client privilege in this context.

9 BY MR. McELCHERAN:

10 271 Q. I'm asking for the factors that
11 are considered in the valuation.

12 Forgetting about that for the
13 moment, let's just talk about what jurisdictions
14 were those filings going to be. Did you find that
15 out?

16 A. Sorry, with respect to the
17 Wacker bid?

18 272 Q. I understood at the very least
19 it would have been Germany and elsewhere in Europe.

20 I recall other jurisdictions in
21 South America, but I do understand that Wacker
22 operates globally, and I believe in five different
23 continents, so my recollection was that it could be
24 fairly extensive anti-trust consent requirements.

25 MS. LANG: I note, counsel, that

1 antitrust clearance is a defined term that might
2 assist you in the scope of the requirements.

3 MR. McELCHERAN: The number of
4 countries.

5 MS. LANG: Right.

6 BY MR. McELCHERAN:

7 273 Q. Did you make any inquiries into
8 Wacker's business in North America, in the silicon
9 business?

10 A. We didn't make inquiries. We
11 just already knew, through our existing
12 relationship with Wacker, that they had business in
13 North America, yes.

14 274 Q. What kind of -- as
15 a manufacturer?

16 A. I understood that they were
17 building a polysilicon plant in Tennessee.

18 275 Q. They're building one?

19 A. That's my recollection.

20 276 Q. You are aware that Globe is
21 active in North America?

22 A. I'm aware of that, yes.

23 277 Q. Let's look at the other point,
24 about the severability one. When did that
25 severability provision enter into the agreement?

1 This is 18.14 of page 98, which is
2 in the Wacker bid.

3 What stage of the auction did that
4 come into play?

5 A. Sorry, page again?

6 MS. LANG: Page 98. It's
7 section 8.14.

8 THE WITNESS: Yeah, the focus on
9 this severability clause, and specifically the
10 fact that some of the other earlier clauses in
11 the agreement were excluded from the severability
12 became relevant in, I believe it was around 36.

13 BY MR. McELCHERAN:

14 278 Q. This came in at 36; it was
15 never there before?

16 A. No, no, this -- I believe this
17 clause had been here previously.

18 279 Q. Yes.

19 A. But it became relevant to our
20 analysis, more relevant to our analysis, and we
21 focused in on the issue when QSI indicated that if
22 we were not going to ascribe any value to the QSI
23 bid, on the basis of the difference between the
24 two, that QSI would change its severability clause
25 in its next overbid to be consistent with the

1 Wacker clause, and once that was put to us, we
2 focused on assessing what kind of value would we
3 ascribe to that change in the QSI bid if they
4 proceeded with it.

5 280 Q. So, you accepted the
6 severability clause as having no impact on value
7 until it was raised by QSI?

8 A. We focused on this clause when
9 QSI indicated it was going to change it.

10 281 Q. Well, you accepted bids,
11 overbids by Wacker with that in it, right, in
12 earlier bids?

13 A. Yes.

14 282 Q. Earlier stage?

15 A. Yeah, so earlier stages, there
16 was this difference. That's right.

17 283 Q. And you didn't discount that
18 Wacker bid in those earlier rounds?

19 A. No, no.

20 284 Q. Were there any negatives about
21 the QSI bid?

22 A. Well, as I've indicated
23 previously, when comparing the two, we believed
24 that the QSI bid is, I would say, less favourable
25 to Dow Corning and, therefore, being less

1 favourable to Dow Corning would make it more
2 challenging to receive the DCC consent, and
3 therefore create potentially more closing risk.

4 285 Q. But don't you have to a duty to
5 try and get a good deal for Dow Corning?

6 A. I believe we've looked at Dow
7 Corning in the context of its position as
8 a stakeholder in the estate of BSI.

9 286 Q. Isn't it different from
10 everybody else?

11 A. Our focus was on what was for
12 the most benefit of the estate of BSI, and looking
13 at the claims that companies may have against the
14 estate of BSI, and so we were focusing on that.

15 287 Q. But relative to DCC, or to Dow
16 Corning, you're assigning a contract without their
17 consent. That's what their motion is; right?

18 A. Yes.

19 (Simultaneous speakers - unclear)

20 MS. LANG: ... happy to have DCC's
21 consent.

22 BY MR. McELCHERAN:

23 288 Q. Why would you expect to have
24 DCC's consent?

25 MS. LANG: Is that a question or

1 is it hypothetical?

2 THE WITNESS: Why would we expect
3 to get it?

4 BY MR. McELCHERAN:

5 289 Q. Yes.

6 A. We left open the possibility
7 that successful bidder could have negotiations
8 directly with DCC to procure that consent.

9 In fact, I understood that those
10 discussions had occurred to try to see if there
11 could be a potential transaction or arrangement as
12 between QSI and DCC to procure that consent.

13 And, in fact, in the stalking horse
14 bid, when we set out the time frames for achieving
15 court approval, we factored in a significant amount
16 of time at the request of QSI so that QSI could
17 have an opportunity to talk with DCC to reach
18 a mutually consensual arrangement regarding the
19 consent.

20 290 Q. But your motion is to impose
21 QSI as a partner on all of those agreements by
22 assignment; correct?

23 A. Yes.

24 291 Q. Why is it that you are
25 expecting DCC to be accept QSI's covenant when you

1 wouldn't?

2 QSI does not guarantee receipt of
3 the benefit of a guarantee from Globe for the
4 obligations being assumed; is that right?

5 The guarantee only applies to
6 purchase price.

7 A. We acknowledged that, yes, the
8 Globe guarantee is in respect of -- is a guarantee
9 of the obligations of QSI towards BSI in respect of
10 payment of purchase price and other closing related
11 matters.

12 292 Q. But there is an agreement for
13 QSI to assume obligations under the agreements that
14 are being assigned; correct?

15 A. Yes.

16 293 Q. You are expecting that the
17 court will order that DCC accept the covenant QSI
18 to perform without a guarantee from Globe?

19 A. That's the order that we're
20 seeking, yes.

21 294 Q. Why would you expect that would
22 happen, when you would not accept that?

23 A. Sorry, are you asking me what
24 the court will or will not do or ...

25 295 Q. No, I'm asking why you expected

1 that.

2 A. Why we would expect DCC to
3 grants its consent?

4 296 Q. To consent to QSI?

5 A. It's hard for me to say what
6 would motivate DCC to grant a consent or not.

7 297 Q. Yes.

8 A. I could speculate on whether
9 there could be, to the extent to which DCC perhaps
10 may get some benefit from knowing that at least
11 there was some purchaser of the 51 per cent of QSI.

12 298 Q. Well, there's another purchaser
13 right at the table.

14 A. Yes, but at the point in time
15 when we were making the decision between those two
16 bids, we had been advised that Dow Corning was not
17 willing to consent to either of the -- to the
18 Wacker open bid or willing to consent to any
19 transaction that would contemplate an assumption
20 less than all liabilities in the framework
21 agreement.

22 299 Q. But they were standing by.

23 Why were they standing by if there
24 was no point talking to them?

25 A. I'm not sure I understand where

1 you're coming from.

2 300 Q. You are assuming that there was
3 no flexibility on DCC's part, and that was clear to
4 you, and underlined all your thinking about this,
5 is there is no point talking to DCC because they
6 won't agree to any change; that's what you're
7 telling me?

8 A. No, that's not --

9 MS. LANG: Mr. McElcheran,
10 Mr. Kalins has given two or three very long
11 answers on what underlay the thinking. So, to
12 provide that short, glib summary I don't think is
13 fair to Mr. Kalins.

14 BY MR. McELCHERAN:

15 301 Q. You can comment on it. If you
16 think it's not accurate, then tell me why it's
17 different.

18 A. I do think I've given a fulsome
19 answer to the reasons why we denied that request.

20 302 Q. No, the question I'm asking you
21 is on what basis you concluded that DCC would never
22 agree to an amendment.

23 MS. LANG: That's my difficulty,
24 Mr. McElcheran. He hasn't ever said that once
25 here today, that anyone had concluded that they

1 would never give their consent.

2 There were a number of factors. He
3 spoke at length about them earlier, what went into
4 the assessment of the risk of the taking the time
5 to have the discussions, et cetera.

6 I don't know if you want him to go
7 back over that, but it's an unfair --

8 MR. McELCHERAN: No.

9 MS. LANG: It's an unfair
10 proposition to put to him that all of that
11 culminates in his saying they concluded DCC would
12 never consent.

13 In fact, there continues to be hope
14 that DCC would consent.

15 THE WITNESS: Yes.

16 BY MR. McELCHERAN:

17 303 Q. I just asked the question: Why
18 would they consent to QSI when you would not accept
19 QSI's covenant?

20 A. I can't speculate as to what
21 DCC would --

22 304 Q. Why did you not accept it?

23 A. Sorry, I don't --

24 305 Q. Why did you not accept QSI's
25 covenant without a guarantee?

1 A. Because I think they are two
2 very different transactions.

3 One is the completion of this
4 purchase and sale and ensuring that we achieve
5 a closing, and the other is an ongoing relationship
6 going forward.

7 306 Q. Which has financial
8 obligations; correct?

9 A. Yes. But that's not to say
10 that QSI, at that point, assuming it closes the
11 transaction, would not be a worthy counterparty.

12 We did consider that, and that upon
13 completion of the closing QSI would have
14 substantial presence in the jurisdiction that
15 would -- and other relationships within the Globe
16 entity, within the Globe group of companies that
17 would allow it to continue to operate and to fill
18 the obligations under those contracts. We did
19 consider that.

20 307 Q. Then I'll go back to be my
21 question which you took under advisement. I want
22 to see the answer to this: What proof of
23 financial ability that you had of QSI to provide
24 adequate assurance of future performance of all
25 obligations to be assumed in the contemplated

1 transaction.

2 U/A MS. LANG: I'll take it under
3 advisement. Continue to be taken under advisement,
4 Mr. McElcheran.

5 MR. McELCHERAN: It is clearly
6 obvious. It is obvious that it's relevant.

7 It is not privileged. There's no
8 reason why it's not producible.

9 MS. LANG: Luckily,
10 Mr. McElcheran, a judge makes that decision, not
11 you or me.

12 I note, however, for the record, in
13 the agreement, that qualified status of QSI
14 occurred before the stalking horse agreement was
15 entered into, not as part of this bidding process.

16 It remains under advisement.
17 I haven't yet refused it.

18 You can take that as it is, and you
19 have your remedy should this turn into a refusal.

20 MR. McELCHERAN: So, 11.3, which
21 is the basis of your CCAA, which is the basis of
22 your application, requires -- the financial
23 qualification is a requirement of the section of
24 the relief that you're asking for.

25 It's clearly relevant to the test

1 under 11.3. So, if you don't produce it, I think
2 we're going to have to bring a motion and end up
3 with a further delay.

4 I don't know why you want that.

5 MS. LANG: You and I are both
6 aware of the remedies available.

7 MR. McELCHERAN: Yep. It's not --
8 from our perspective, you are running to the
9 timetable. We're expecting due process.

10 MS. LANG: I'm not sure why
11 continued discussion on this is helpful.

12 MR. McELCHERAN: Break for
13 a second, okay?

14 Just break for a second.

15 --- Recess taken at 12:14 p.m.

16 --- Upon resuming at 12:15 p.m.

17 BY MR. McELCHERAN:

18 308 Q. I wanted to get a couple more
19 things about what your awareness might have been
20 about DCC's, at that point, availability.

21 You recall that Dow Corning was
22 a bidder in Phase I?

23 A. Yes.

24 309 Q. At what point did they tell you
25 that they were going to drop out?

1 A. I can't recall the exact date,
2 but it was obviously prior to the bidding deadline
3 for Phase II bids.

4 It was -- well, I can't remember the
5 exact date.

6 It was shortly before.

7 310 Q. Were you involved in any
8 conversations about how they proposed to
9 participate in the auction before they dropped out?

10 A. No.

11 311 Q. Let me just ask you some
12 questions here about whether you have an idea about
13 this.

14 Did they ask to come to the auction?
15 Did they ask you or someone at --

16 A. I do recall a request being put
17 in for their participation in the auction,
18 I believe.

19 312 Q. Without bidding or with
20 bidding?

21 A. Yes, I believe it would have
22 been to participate, not as a bidder, but I --
23 I can't recall exactly how or when that request or
24 suggestion came through.

25 313 Q. Would that suggestion have been

1 to you; were you party to it?

2 A. No, not to me directly, no.

3 314 Q. To whom would it have been
4 made?

5 A. I can't recall if it was to the
6 monitor or to our counsel.

7 315 Q. Do you recall anything more
8 about it other than there was a request?

9 Do you remember if it was a monitor,
10 for example, what they said to you about it?

11 A. I can't recall.

12 316 Q. But you are aware that they
13 offered to be a participant in the auction and be
14 available at the auction?

15 A. I believe so, yes.

16 317 Q. Was this something you would
17 have been supportive of?

18 R/F MS. LANG: Sorry, don't that answer that
19 that. I'm not sure why that's relevant.

20 BY MR. McELCHERAN:

21 318 Q. Did you refuse it?

22 A. Did I refuse the request?

23 319 Q. The offer. Yes.

24 A. Well, I guess we ultimately did
25 because they did not participate, although

1 I can't -- I can't recall -- yes.

2 320 Q. You can't recall?

3 A. I can't recall.

4 321 Q. What we have is a request that
5 you are aware of and a conclusion that they didn't
6 participate; therefore it must have been refused.

7 Do you agree with me that BSI was in
8 charge of the --

9 A. The company was in charge, yes.

10 322 Q. So, the decision must have been
11 made by the company?

12 A. Yes.

13 323 Q. Who would have been --

14 A. In consultation with a monitor,
15 et cetera, yes.

16 324 Q. Who would have been -- if it
17 wasn't you, then who made that decision?

18 A. Doug Fastuca.

19 325 Q. Could you undertake to ask him
20 about that decision?

21 MS. LANG: I'm not sure why it's
22 relevant, counsel.

23 MR. McELCHERAN: I want to know
24 the conclusions that the witness has made that
25 an evaluation of the probability of getting DCC

1 consent by a further discussion or involvement
2 during the auction is directly in issue.

3 MS. LANG: I'm not sure what is
4 relevant about DCC's request to be physically
5 present and a denial to be physically present but
6 have them available, if necessary. I'm not sure
7 what turns on that decision.

8 I appreciate you believe it's
9 relevant as to the assessment of whether DCC would
10 give consent, but whether they are available or
11 present, I'm not seeing the relevance.

12 MR. McELCHERAN: Well, I asked him
13 questions about on what basis he drew this
14 conclusion that it wouldn't be relevant or
15 helpful to have a discussion with DCC.

16 MS. LANG: Well, again, we've been
17 over that ground.

18 MR. McELCHERAN: No, we haven't
19 been over it with this -- this is a specific,
20 different line of inquiry.

21 MS. LANG: The actual record
22 reflects that no one wanted to speak to DCC, in
23 any case, until some time on the second day, and
24 then DCC wasn't available.

25 I'm not sure what's relevant about

1 the fact that DCC at some point said that they
2 would --

3 MR. McELCHERAN: Well, that's
4 actually not true, what you have just said. It
5 wasn't available at that moment, yes, that was
6 true.

7 MS. LANG: I come back to I'm not
8 sure what is relevant about the decision for DCC
9 not to be physically present.

10 MR. McELCHERAN: What I'm asking
11 is whether it was offered, and it was refused,
12 and I want to know why.

13 U/A MS. LANG: I'll take it under
14 advisement. You wanted to know whether DCC asked, and
15 if they were refused, and if they were refused, why it
16 was refused.

17 MR. McELCHERAN: Right.

18 MS. LANG: I'll take it under
19 advisement.

20 MR. McELCHERAN: Okay. Any more?
21 Those are all my questions.

22 MS. LANG: I have no
23 re-examination.

24

25

1 --- Whereupon examination adjourned at 12:20 p.m.
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REPORTER'S CERTIFICATE

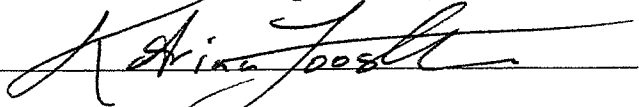
I, LISA M. BARRETT, RPR, CRR
CSR, Certified Shorthand Reporter certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 18th day of May, 2012



NEESON & ASSOCIATES

COURT REPORTING AND CAPTIONING

INC.

PER: LISA BARRETT, RPR, CRR, CSR,

CERTIFIED REAL-TIME REPORTER

TAB 2

Timminco Limited and Becancour Silicon Inc.
 Cross Examination for Discovery of Peter A.M. Kalins on May 17, 2012

UNDERTAKINGS

No.	Page No.	Question No.	Question / Under Advisement	Answer
1.	46	135	To identify in Timminco's public filing the reference to the post-retirement benefits cap referred to in the Framework Agreement.	See Tab "A"

Timminco Limited and Becancour Silicon Inc.
 Cross Examination for Discovery of Peter A.M. Kalins on May 17, 2012

UNDER ADVISEMENTS

No.	Page No.	Question No.	Question / Under Advise ment	Answer
2.	14 28 108	29 72 307	To Produce the documents delivered as "proof of financial ability of the bidders to perform their obligations" as required under the bid procedures.	As you are aware, after their CCAA filing the Timminco Entities continued their efforts to secure DIP financing. As a result of these efforts, the Timminco Entities successfully negotiated a DIP Agreement with QSI Partners Ltd. dated January 18, 2012. It was a condition of the DIP Agreement that the Timminco Entities grant QSI a period of exclusivity during which the parties would attempt to negotiate a Stalking Horse Agreement. During the negotiation of the Stalking Horse Agreement, the Timminco Entities were aware of the fact that QSI was an off-shore entity created for the purposes of providing the DIP Loan and potentially entering in the Stalking Horse Agreement. However, the Timminco Entities were cognizant of the direct relationship between QSI and Globe Specialty Metals, Inc. Globe is a public company listed on the NASDAQ with a market capitalization of approximately \$875 million and, according to Globe's Quarterly Report filed on February 8, 2012,

				<p>cash on hand of over \$130,000,000. The Timminco Entities negotiated a deposit of 15% of the Closing Cash Purchase Price pursuant to certain credit and set off arrangements contemplated by an amendment to the DIP Agreement, which was approved by the Court, and a guarantee from Globe. The Stalking Horse Agreement, including the break fee provided for therein, and related bidding procedures were approved by the Court on March 9, 2012. Pursuant to the Bidding Procedures, QSI is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of the Bidding Procedures and therefore was not required to separately comply with the qualification requirements set forth in the Bidding Procedures.</p>
3.	56	161	To Produce any notes taken by Mr. Kalins during the auction.	Mr. Kalins' notes are attached as Tab "B".
4.	58	168	To Produce any notes by Timminco employees taken during the auction.	Attached as Tab "C" are the notes of Mr. Fastuca.
5.	114	325	To ask Mr. Fastuca about the decision not to have DCC present at the auction.	Mr. Fastuca recalls that the question of whether DCC ought to be permitted to be physically present at the auction was raised by DCC through the Monitor. Mr. Fastuca discussed the request with the Monitor, and concluded that there was no need for DCC to be physically present at the auction.

TAB A

TAB "A"

TIMMINCO LIMITED**Notes to Condensed Consolidated Interim Financial Statements****Three and nine months ended September 30, 2011 and 2010***(in thousands of Canadian dollars, except where indicated and per share amounts)*

The following table provides the total amounts receivable from and payable to related parties:

Due from related companies - current	September 30, 2011		December 31, 2010	
Due from AMG Conversion Ltd. ("AMGC")	\$	68	\$	1
Trade receivable from Québec Silicon Limited Partnership ("Québec Silicon")		901		896
Note receivable from Québec Silicon		1,275		1,275
	\$	2,244	\$	2,172
Due from related companies- long term	September 30, 2011		December 31, 2010	
Note receivable from Québec Silicon				1,275
	\$	-	\$	1,275
Due to related companies- current	September 30, 2011		December 31, 2010	
Due to AMGC	\$	102	\$	346
Due to AMG		8		8
Due to Québec Silicon		9,739		18,841
Due to Sudamin Holding SPRL ("Sudamin")		4,855		-
Indemnification liability to Québec Silicon		37		37
Due to ALD Vacuum Technologies GmbH ("ALD")		55		20
	\$	14,796	\$	19,252
Due to related companies - long term	September 30, 2011		December 31, 2010	
AMG Convertible Note	\$	3,961	\$	3,539
Indemnification liability to Québec Silicon		3,127		2,879
	\$	7,088	\$	6,418
Other financial liability - long term	September 30, 2011		December 31, 2010	
AMG Convertible Note embedded derivative fair value	\$	-	\$	1,343

The following tables provide the total sales to and purchases from related parties:

Sales to related companies	Three months ended		Nine months ended	
	September 30		September 30	
	2011	2010	2011	2010
AMGC (see Note 17)	\$ 5,658	\$ 73	\$ 6,622	\$ 677
Sudamin	-	-	-	3,741
GfE Fremat GmbH ("GfE")	-	-	465	-
ALD	-	-	11	64
Dow Corning Corporation ("Dow Corning")	-	4,168	3,345	14,153
	\$ 5,658	\$ 4,241	\$ 10,443	\$ 18,635

TAB B

TAB "B"

pkelins - Notes from
Anchin April 24-25 2012

Wachsm

Apr 24 12

10:05 a

- 1) framework Agreement . - ascribe ^{any} value to \$5M PPB,
if so, what range of values?
- 2) ~~Appro~~ Assignment order / DCP Current / Approved + Verby
- removed pre-existing breach of contract ^{order}
- add rep & warranty res. ^{Es. if} not aware of
any breach [SM Agent + LP Agent]
- 3) NP 2
Access Agreement
- 4) Anti-Trst

BF MT

Board Ans

Apr 24 12

10:18 a

- union

- off re: - wages

multi-emp. p.p. to replace with

appropriate
2 groups } retire cost

retire benefits - need certainty
to extinguish
the liability
(i.e. benefits)

- see summary;

MM to share

- extend term to 2017

[SE is getting a
copy]

- multi-employer pension plan

originally
- tried to convert all to a DC plan

- union wanted to convert all

to a CEP multi-employer plan, DC

in other employers, but a higher
cost than what

(11% of base pay)

- issue re potential consent to
employer if plan is in deficit

- retirees

→ need a representative of retirees,
to agree to draw BSI
BSI
[DF]

- ADA AS : none, so far

- no 8 to condition re: CEP / CBA

- don't know if union will bring

- need ^{up} ~~for~~ "complete" new issues, but should be just these 3
more days to achieve on issue

Plan in union + retire rep

- benefits of this deal
 - no labor disruption (vs. foreign bidders)
- system assets
 - nominal value, but want to keep all assets for now v. hard to value, don't know if it can be commercialized
- internal financing / DIP
 - if DCC is SH bidder: - step in as DIP
 - on Sat, DCC said they ~~they~~ would, i.e. same terms as ASI SHB [→ confirm to DCC if true]

- minimum bid increment
 - need to get to 24.0

22.025
 2,000
 OB: 24.025
 ER = 500
 23.525
 BI = 250
 500
 BR = 24.275 cash

- their bid cash bid = 22,500
 assumed oblig = 14,000

they will share

per Adv report: they will share

DB salaried } ESI
 unbr

as @ Sep Dec had

(- the TSPB)
 associated with

(17)

QSI Partners

Round One

Apr 24 10:45

- will be s.t. of "work above current"
- union - QSI letter re. promised consideration to employees, in exchange for dropping grievance
- Escrow - value?
- solar assets = portion bid on non-solar
 - 2 separate portions bids - solar
 - ~~they~~ ^{QSI} will not be excluded for future bidding if leave out a portion to QSI
- ^{sent then} put in Brookfield's condition / form re. p.p. ^{trans assumption} + CEP / CBA amendments?
 - A: not necessary

1Q

[Round one]

Apr 24 Fri
11:30a

- Brookfield's bid
 - assumption 7 BS' p. plan :
valued @ \$140m
 - cost = 22.5m
 - other offers have higher cash, and
cloning rates (antitrust), CEF condition
 - Brookfield cloning rate, but no DCC cloning rate
- 1Q not willing to consider any value for any thing for the union
 - Q: does 1Q value cash higher than cost p. values?
 - \$22,500 vs \$24,025
 - + p. plan cost
 - + union cloning rate
 - + DCC cloning rate (incl. antitrust)
- 1Q criteria for decision-making (not in importance):
 - i) able to work with DCC cloning
 - ii) cloning rate
 - iii) full recovery in 20m? (full cost, in context (no loss))
 - iv) position towards union

22,025
2,000
24,025

[update to] bidder

Round Two

Apr 24 12
1:45p

- AT - • 2 overbids ~~Round~~ } - 23,775,000 cash
- QSI ← - } + 1.2 million w.c. adj
- target return time : TBD } = leading overbid for round 2

Apr 24 0
2:30pm

1Q

Round Two

- BSI \$23,775 cont; no exp. units
- +1.2 in BSI WC adj ↓
- Brookfield - ~~to~~ \$24,275 < 29.5M, or 1.7M; or
- don't expect any further outside from
- ^{exp} Walker: \$5 m MUM

m

Clubs - (Round Two)

Apr 24/16
Zorp

Probs / so

- 1) clarify re: WC adjustment
 - as adj. re: sales assets, but they can get the other way
- 2) probs / concerns in Clubs' subord
 - "DLE consent" - no-charge breaches
 - maybe just "non-monetary" breaches?
 - TBD
 - cure cost = 4/10 in exp (X) → ok?
 - 1P the sep + warranty

Wacker - Round Two

Apr 24
3:30p

Q's

- (1) Cure costs
 - Wacker = 2 * 10m
- (2) B's WC Adjustment
 - $\text{shd } \approx 7.8m$
- (3) Closing Date
 - QSI: IP its BU bid, 75 BD before ID
 - but: Wacker needs diff timeline, str of anti-trust filings
 - Anti-trust: why ^{are} DCC's lawyers ~~are~~ not providing reg'd info?
 - DCC consent / framework Agmt
 - July 1 - 5 June 18 term date on anti-trust
 - inter financing / DIP facility
 - need more than \$2m?
 - need more before end of June, but total need = \$3m for July (Aug) (assuming ~~we~~ still have Wacker as customer)
 - Escrow Agreement
 - not intended to cover other than existing liab, or settlements
 - our concern: no visibility on dealing & unwind ...

Wacker - [Round Three]

Apr 24/12
7:30p

Key issues = Wacker invited
APA

(1) Assignment Order + "DCC Consent"
= "no-deny breach of contract"
SG - don't know how legal concept
order may go, re s. 11.3 assignment
- don't want to take any no-deny
breach of contract

SG to consider

DCC: - maybe "cease" re: assign equity

(2) Anti-Draft Clause

- (i) June 10 term's date
- (ii) proceed by ^{in filing} notice to assign DCC (s. 5 (b))
- (iii) S. 5 (e) : on repeated wording
re: no extension of term's
date : f.g.c.

(3) Access Agent

- they will review ; shd add to 6 ?
list of conditions

QSI (Round Three)

Apr 24 20
2:20pm

key issues in workers' revised ADP

(1) "prolonged breach of contract" (in DCC consent's
Assignment Order - defins)
what is "value" of QSI fixing out this clause

(A) [Firmwork Agreement
- pre-ding tax hold - 5.10
- 6-7 (H)] → how does it work?
(insurance premium vs. pay-as-you-go)

(2) Anti-trust
- True 10 firm in right
- DCC consent in workers' fly
[- dis: re: ~~whether~~ whether QSI contains
anti-trust issue
is bigger than workers']

(3) HP2 Accn Agreement

(4) CoA Approval : Sched "K"

Round four

Apr 24 12
10:00 am

- QSI overbid @ \$25,025,000 - break fee excluded
 - "highest and best bid" now
- bid amount @ \$250,000 + and
 have right to reduce
- next turn by 10:30 pm

Round five

Apr. 25
12:10 am

- Wacker + FA overlaid (aggregated bid)
(now highest + best bid)

23,600,000 2,175,000 25,775,000

- \$250,000 bid amount

+ (500,000)
25,275,000

12:30 am

Round six

Apr 25
12:45 am

- ASI increasing \$250,000 to \$25,525,000
- added rep re: engineer's knowledge re. on board
- next: no Δ to schedules
- 30 min :: 1:30 over-ish

Round seven

Apr 25
(1:15 am)
1:35 -

Wacker : [+ 325k]
FA [- 175k]

23,925,000

2,350,000

26,275,000

- 500,000 BF

25,775,000

Highest = Best

next 26,045,000

Apr 25 '12
1:40a-

Round 8

- QSI: bid of \$26,000,000
- initial as
- W + FA & return by = 1.50 a

Round 9

- W bid: 4 bid to \$24,425,000
 - FA bid: existing bid \$2,350,000
- | | |
|------------------|---------------------|
| \$24,425,000 | (initialled
w/Δ) |
| <u>2,350,000</u> | |
| 26,775,000 | |
| <u>- 500,000</u> | |
| \$26,275,000 | |

Round 10

2:10 am

- QSI bid: 1 bid to \$26,525,000
- ∴ H + B B won

Round 11

2:11 am

- W bid 9 bid to \$24,925,000
 - FA existing bid \$2,350,000
- | | |
|------------------|-----------------|
| \$24,925,000 | (→ 250k higher) |
| <u>2,350,000</u> | |
| 27,275,000 | |
| <u>- 500,000</u> | |
| net \$26,775,000 | |

Apr. 25,

2:12 am

Round 12

QSI's bid to H-ka B.B. + 27,025,000 installed

Round 13

Apr 25 '12

~~2:12 am~~

2:58 am

Wacker: new bid 25,250,000
 FA: new bid + 2,525,000
 27,775,000
 - 500,000
 net = 27,275,000

next: 2:40 am

Round 14

Apr. 25 '12

4:15 am

QSI: new bid @ 27,775,000
 (∴ A by 500k, net 270k)
 .. next month + 20,525,000

Round 15

Apr 25 '12
 5:40 am

Wacker: new bid (A700k) 25,950,000 installed
 FA: new bid (A50k) 2,575,000 BL, w/ 0's
 28,525,000
 - 500,000
 28,025,000

Round 16

5:41 am

QSI: new bid @ 28,525,000

Round 17

Apr 25 '12
6:00 am

W	next bid	\$ 26,625,000
FA	next bid	<u>2,650,000</u>
		29,275,000
		<u>-500,000</u>
		+ 28,775,000

Round 18

6:09 am

QSI	portion bid, non-sola	↳ 26,275,000
FA's last bid		<u>2,650,000</u>
		29,525,000

- to review the revised doc

Round 19

7:40 am

QSI's new portion bid	@ 26,275,000
+ FA bid	<u>2,650,000</u>
	29,525,000

Round 19

7:41 am

W's new bid	27,625,000
FA existing bid	<u>2,650,000</u>
	30,275,000
	<u>(500,000)</u>
net	29,775,000

← work fund on this to

Round 20

Apr 25 /
7:49 am

QSI & new bid : + 27,375,000
FA + 2,650,000

21	W	[↑ by \$750]	28,125,000	7:47
22	QSI	[↑ by \$250]	27,875,000	7:50
23	W	[↑ by \$750]	28,625,000	7:54
24	QSI	[↑ by \$250]	28,375,000	7:55
25	W	[↑ by \$750]	29,125,000	7:56
26	QSI	[↑ by \$250]	28,875,000	7:57
27	W	[↑ by \$750]	29,625,000	7:59
28	QSI	[↑ by \$250]	29,375,000	8:00
29	W	[↑ by \$750]	30,125,000	8:02
	QSI	+ 250	29,875,000	8:03
	W	+ 750	30,625,000	8:04
	QSI	+ 250	30,375,000	8:05
	W	+ 750	31,125,000	8:06
	QSI	+ 250	30,875,000	8:07
	W	+ 750	31,625,000	8:08
	QSI	+ 250	31,375,000	8:09
			+ 2,650,000	
			34,025,000	

[35 rounds] → [pause]

*361

Apr 4 '08
11:30 a

W : 7 by 70 + 32,125,000
- H. + for Q.R.
co to fact w QSI 1st, for next bid

Wacker:

- difficult to value the amendments - esp PPS's
a) f.a. - only 75% of b. Mit) ~~and~~ and 75%
BSI plans for ^{union} or assumed oblig of purchases
- attributes value as follows, i.e.:
- BSI pension + PPS's
- should get DCC "over the hump" on what
DCC wanted as settlement of CCR.
preman risk

4) ~~the~~ q: 1) will it get DCC amount?
(likelihood?)
2) is it a QSLP had that
BSI has to indemnify?
(likelihood?)
- ~~1000~~ ~~200~~ ~~400~~ ~~600~~ ~~800~~ ~~1000~~ ~~1200~~ ~~1400~~ ~~1600~~ ~~1800~~ ~~2000~~
(= (20 + 9) x 75%)

4) DIP facility
- anal is ok

will be waived
for subrogation
against BSI?
this is real value

Jan 25 '12
2:30 p

QSI's [7 25'00] \$ 31,875,000

- no other changes to agent

3:00 p decision: QSI's bid = to floor but bid -

$$\begin{array}{r} 2,650,000 \\ + \\ 34,575,000 \\ \hline \end{array}$$

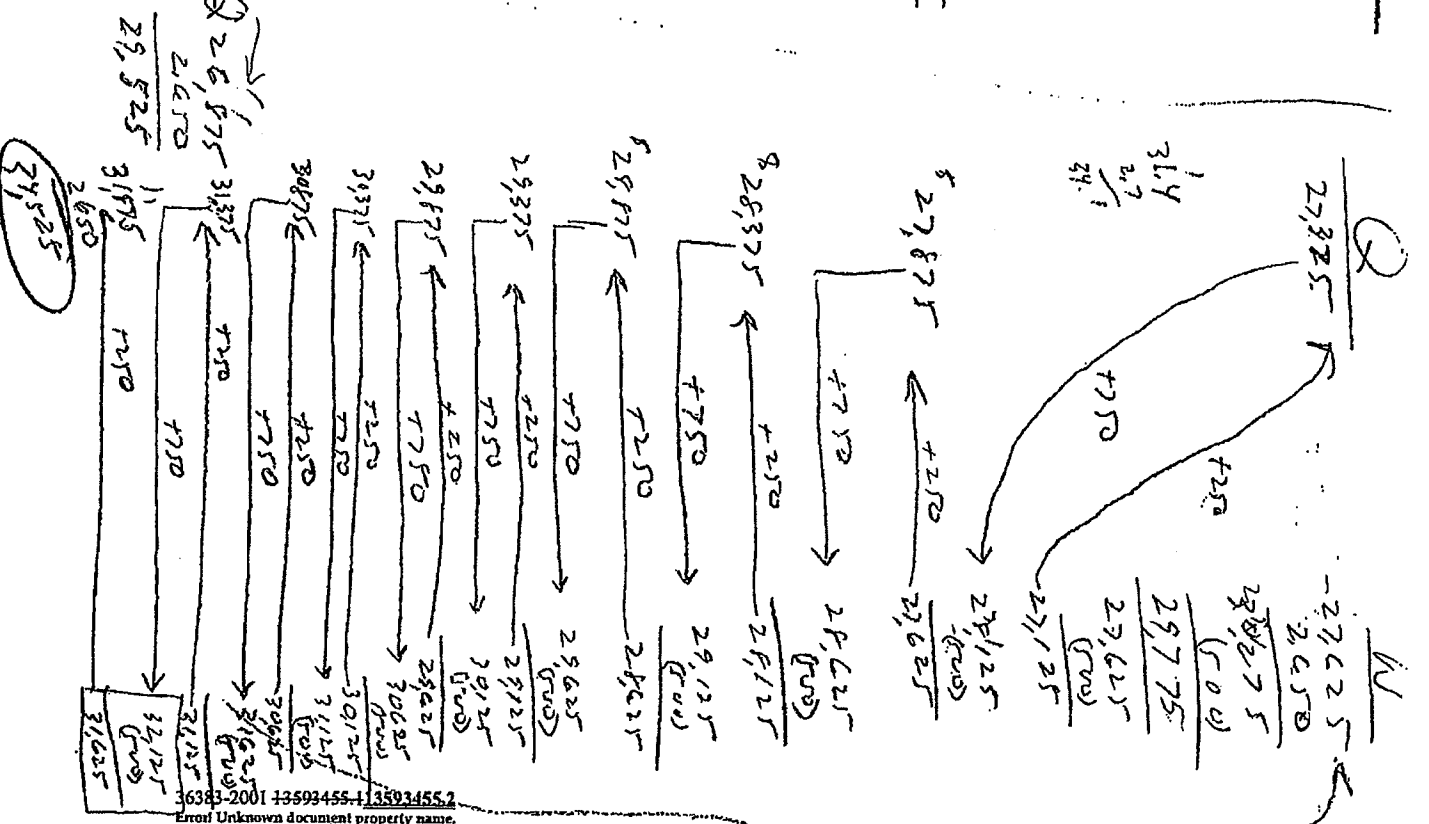
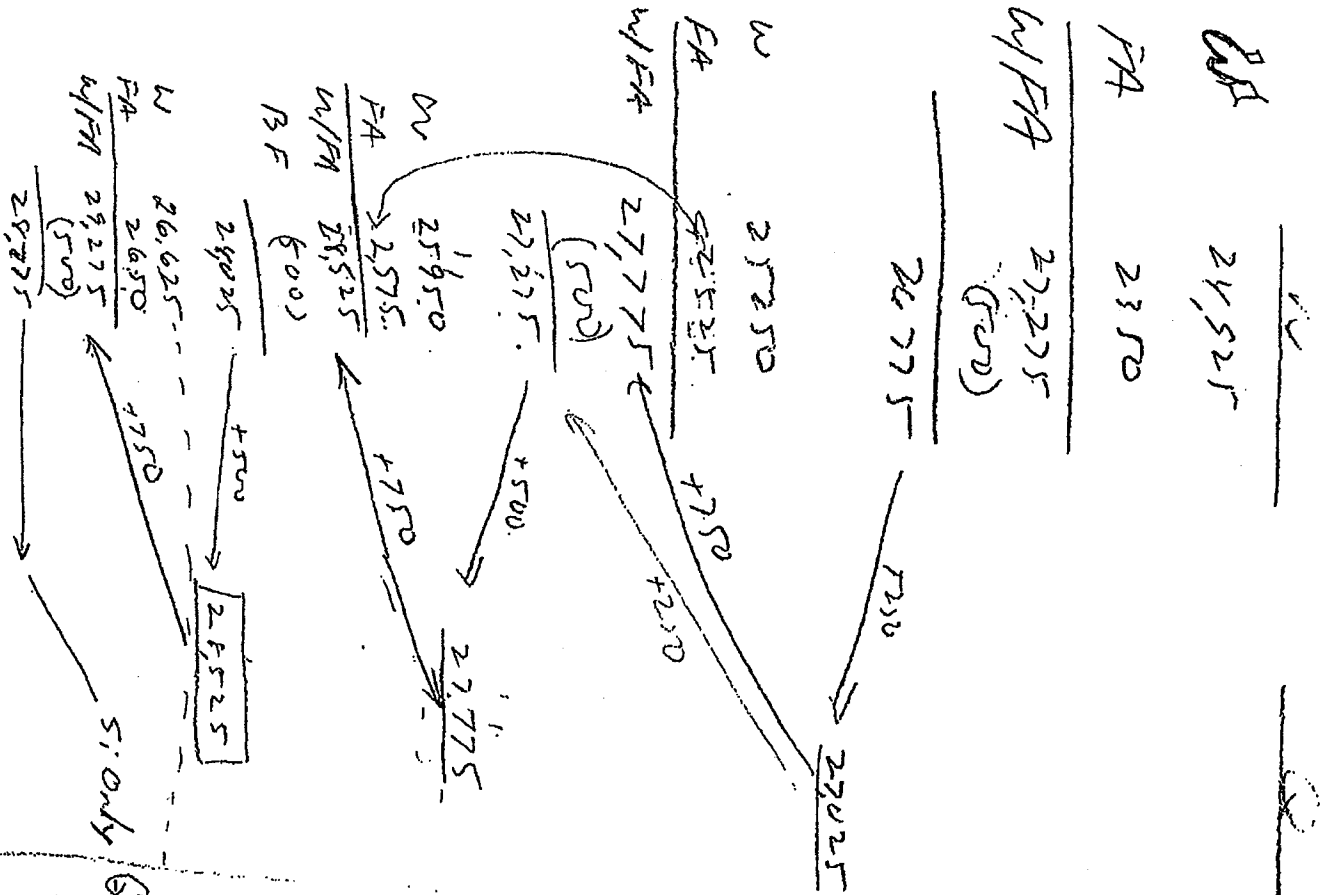
no more w bids

Successful bid	:	QSI	+	FA
Back-up bid	:	W	+	FA

3:00 p

TAB C

TAB "C"



RB - Available to assess Unit negotiations.

W -	22,025		
FA -	2,000		
OB.	24,025		

(500) - Archipel

23,525			
+ 250 - Bid. r.			
+ 500			
24,275 - Next Bid - B.F. or W.			

500			
23,775 - ASD Bid - Full			

(2000)
21,775 - ASF Partin.

WtFA.		Q	B
23,425		23,775	22,500
(500)			1,775
23,525			24,275

cash.			
		1,200	
		24,975	

5,100

TAB 3

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

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 ARRANGMENT OF TIMMINCO LIMITED AND
BÉCANCOUR SILICON INC.

Applicants

--- This is the Cross-examination of Stephen
Lebowitz on Affidavit dated May 8, 2012, held at
the offices of Torys LLP, TD Centre, 79 Wellington
Street West, Suite 3000 Toronto, ON, M5K 1N2 on
the 18th day of May, 2012, commencing at 11:00 a.m.

REPORTED BY: Lisa M. Barrett, RPR, CRR, CSR

1 A P P E A R A N C E S:
2
3 Kelvin McElcheran, Esq.,
4 Elder C. Marques, Esq., for the Applicants
5
6 Adrian Lang, Esq., for Timminco Limited and
7 Becancour Silicon Inc.
8
9 Kristina Desimini, Esq., for the Monitor
10
11 Andrew Gray
12 David Bish, Esq., for QSI Partners Ltd.
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I N D E X

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Cross-examination by Mr. McElcheran 6

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INDEX

[Reporter's note: The following lists of undertakings, under advisements and refusals are provided for the assistance of counsel and do not purport to be complete or binding on the parties herein.]

LIST OF UNDERTAKINGS

The questions/requests taken under advisement are noted by U/T and appear on the following pages: None

LIST OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages: None

LIST OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: None

1
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E X H I B I T I N D E X

No.	Description	Page
1	Email from Andrew Gray to Elder Marques dated May 17, 2012	11

1 --- Upon commencing at 10:59

2 STEPHEN LEBOWITZ: AFFIRMED

3 Cross-examination by Mr. McElcheran

4 BY MR. McELCHERAN:

5 1 Q. Could you identify yourself for
6 the record, please?

7 A. Stephen Lebowitz.

8 2 Q. And you hold an office with
9 QSI?

10 A. Yes, I'm an authorised
11 representative and a director.

12 3 Q. Are there any other employees
13 of QSI Partners Limited?

14 A. There are no direct employees.

15 4 Q. So, we asked some questions of
16 your counsel, or asked for some production of
17 documents. I received a response back from your
18 counsel.

19 I'm just going to go through them.
20 It will only take a minute, to confirm the answers
21 and get them on the record.

22 The first one is that we asked for
23 financial statements of QSI Partners Limited. And
24 we were advised that there are none. And to read
25 the whole quote it says:

1 "THERE ARE NONE. THIS IS
2 A NEWCO AND FINANCIAL
3 STATEMENTS HAVE NOT BEEN
4 PREPARED."

5 Do you confirm that that's true for
6 QSI Partners Limited?

7 A. I confirm.

8 5 Q. Okay. The second question
9 related to the process that the company has gone
10 through, which is the court approved sale process.
11 And we asked under that, in reference to that, that
12 there was a requirement that qualified bidders
13 provide certain information to the monitor -- or
14 sorry, monitor and the company, in order to qualify
15 for the bidding process.

16 So, the question we asked was:

17 "Whatever material was provided
18 by QSI Partners to the Monitor
19 or vendor as evidence of QSI's
20 ability to qualify as a bidder
21 under Section 3 of the Bidding
22 Procedures or otherwise."

23 So, the question was, did you
24 provide for production of any such material.

25 The answer that was given -- and

1 I will just ask you to confirm this, as well --
2 I don't know if you've seen the text of these, have
3 you, these answers?

4 A. I have.

5 6 Q. Okay, so, it's:

6 "AS PER SECTION 4 OF THE
7 BIDDING PROCEDURES AND HAVING
8 ALREADY SIGNED THE STALKING
9 HORSE APA AND PROVIDED THE DIP,
10 (BOTH OF WHICH WERE COURT
11 APPROVED) IT WAS UNNECESSARY TO
12 PROVIDE ANYTHING FURTHER TO
13 QUALIFY. DCC HAS KNOWN FOR
14 MONTHS THAT QSI WAS A STALKING
15 HORSE AND NOT TAKEN ANY ISSUE
16 WITH ANY OF THIS."

17 So, do you confirm that that's your
18 answer to the question we asked; correct?

19 A. I confirm.

20 7 Q. Now, let me just ask a few
21 other questions, a little bit about that.

22 Whether we knew -- regardless of
23 what's necessary or not necessary -- the question
24 we are really trying to get to is: Has any
25 financial information been provided to the company

1 or to the monitor as to QSI Partners Limited's
2 assets?

3 A. Not that I'm aware of.

4 MR. GRAY: Other than the
5 information that's in the affidavit.

6 BY MR. McELCHERAN:

7 8 Q. I'll come to that in a moment.
8 What I'm going to do, actually -- it
9 may be easier, rather than going through the last
10 couple of points -- is just make this an exhibit,
11 if you don't mind.

12 MR. GRAY: Sure.

13 MR. McELCHERAN: My copy of it.

14 MR. GRAY: Sure.

15 MR. McELCHERAN: This is a copy of
16 the text.

17 The exhibit will be just a front
18 page of it. It happens to be two-sided. And the
19 back side of it, is just a history of it.

20 MR. GRAY: I have it.

21 MR. McELCHERAN: Perfect.

22 So, I'm going to mark -- you can't
23 see, I guess, by the camera there -- but I have
24 a copy -- your counsel has given me a copy of his
25 email to Elder in relation to the questions and

1 answers of production.

2 So, rather than going through them
3 further, I'm just going to make that an exhibit; is
4 that okay with you?

5 (No response)

6 You've seen it and maybe your
7 counsel can confirm that's the right document.

8 MR. GRAY: That's the document,
9 yes.

10 MR. McELCHERAN: All right.

11 MR. GRAY: Obviously the
12 information on it, as to the position as to
13 relevance, is our position and not the evidence
14 of the witness. But other than that, it's all
15 been reviewed.

16 MR. McELCHERAN: Yes. And it is
17 only evidence to the extent -- not the position,
18 but the information that's provided.

19 MR. GRAY: Correct.

20 BY MR. McELCHERAN:

21 9 Q. And so we'll mark that as
22 Exhibit 1.

23 (Reporter appealed)

24 EXHIBIT NO. 1: Email from Andrew
25 Gray to Elder Marques dated May 17,

1 2012

2 BY MR. McELCHERAN:

3 10 Q. Did you have a comment on that?

4 A. No, I think I only said that's

5 okay.

6 11 Q. It is important that the

7 reporter hear us. So, now dealing with the

8 affidavit then -- I'll only be a couple of minutes.

9 Do you have your affidavit there in

10 front of you?

11 A. Yes.

12 12 Q. Now, can I refer you to

13 paragraph 5 of the affidavit?

14 A. Yes.

15 13 Q. It says in paragraph 578 that:

16 "QSI is a wholly-owned

17 subsidiary of Globe ..." [As

18 read.]

19 And you confirm that's the case.

20 Now, have you provided financial

21 information about Globe to the monitor or to the

22 company?

23 A. Indirectly, yes.

24 What I mean by that is Globe is the

25 alternate parent, as a publicly-traded company.

1 14 Q. Right.

2 A. And so all of the financial
3 information of the company has been available to
4 the monitor and the company from the beginning.

5 15 Q. All right. So the Globe that's
6 referred there is the public company that's
7 associated, with which QSI is a subsidiary?

8 A. Let me clarify. It may have
9 been more correct to say a wholly-owned indirect
10 subsidiary of Globe.

11 I want to just see how Globe has
12 been defined.

13 Yeah, Globe Specialty Metals Inc. is
14 how Globe is defined. That's the ultimate parent
15 company. That's a publicly-traded company.

16 The direct owner in the U.S. is GSM
17 Enterprises, LLC. But it is a wholly-owned
18 subsidiary, indirectly.

19 16 Q. Now, in 6 and 7 you talk about
20 the access to human capital and other resources.

21 And what I would just like to ask
22 you is: Are there any agreements between QSI and
23 any other entity to provide support from any of the
24 Globe companies?

25 A. Not at the moment.

1 17 Q. Okay. In paragraph 8 it says:
2 "Globe subsidiaries, including
3 QSI borrow funds in order to
4 finance working capital and
5 requirements in capital
6 expansion programs." [As read.]

7 So, in context of QSI, what funds
8 has it borrowed, and under what agreements with
9 whom, has it borrowed funds?

10 A. QSI borrowed funds from GSM
11 Netherlands BV, which is another -- that is
12 a direct, wholly-owned subsidiary of Globe, as it's
13 used in this affidavit.

14 That's pursuant to an intercompany
15 note and -- at least to the best of my knowledge --
16 it is. That's my understanding of our typical
17 practice. So, I should say I haven't seen a note
18 expressly for this transaction, but typically the
19 intercompany funding is documented, through some
20 form of intercompany transfer note.

21 18 Q. Is there any agreement under
22 which QSI is entitled to borrow money, like
23 a commitment letter, for example, with a third
24 party or with anybody else?

25 A. No, there is no third party

1 financing at the moment --

2 19 Q. And ...

3 A. -- that's available directly to
4 QSI.

5 There is third party financing
6 that's -- there's third party financing that's
7 available to the parent company, as well as cash on
8 the balance sheet and the GSM Netherlands loan that
9 I referred to earlier was a loan off of its balance
10 sheet on third party debt.

11 20 Q. Are there any commitments --
12 one part of my question was whether there were any
13 commitments from any other entity.

14 You answered there are no third
15 party ones.

16 Are there any commitments, legally
17 binding commitments among any of the other
18 entities?

19 A. Not at this time.

20 21 Q. You mentioned that there is
21 cash on QSI's balance sheet.

22 MR. GRAY: No, he said there is
23 cash on Globe's balance sheet, and on the Globe
24 Netherlands entities balance sheet.

25 BY MR. McELCHERAN:

1 22 Q. What assets does QSI now have?

2 A. It has a contract which
3 I believe is titled "Asset purchase agreement" to
4 which it has gained contract rights to purchase
5 certain assets of the Bécancour Silicon Inc.

6 23 Q. And does it have any other
7 assets?

8 A. None to speak of.

9 MR. McELCHERAN: I don't have any
10 further questions.

11 MR. GRAY: All right. I don't
12 have any re-examination, so that's it Stephen.

13 THE WITNESS: Thank you very much.

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--- Whereupon the cross-examination

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terminated at 11:10 a.m.

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CERTIFICATE OF COURT REPORTER

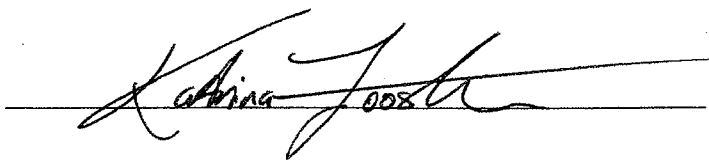
I, LISA M. BARRETT, RPR, CRR
CSR, Certified Shorthand Reporter certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 18th day of May, 2012.



NEESON & ASSOCIATES
COURT REPORTING AND CAPTIONING
INC.
PER: LISA BARRETT, RPR, CRR, CSR,
CERTIFIED REAL-TIME REPORTER.

TAB 4

Ex. 1 on Corp. Examination of Stephen Lebowitz

Gray, Andrew

From: Gray, Andrew
Sent: May-17-12 8:06 PM
To: 'emarques@mccarthy.ca'
Cc: 'BBOAKE@MCCARTHY.CA'; 'kmcclcheran@mccarthy.ca'; Bish, David
Subject: Re: Timminco Cross

May 17, 2012

Elder,

Your questions and the answers to them in CAPS are below.

1. Financial statements of QSI Partners Limited

THERE ARE NONE. THIS IS A NEWCO, AND FINANCIAL STATEMENTS HAVE NOT YET BEEN PREPARED..

2. Whatever material was provided by QSI Partners to the Monitor or vendor as evidence of QSI's ability to qualify as a bidder under Section 3 of the Bidding Procedures or otherwise

AS PER SECTION 4 OF THE BIDDING PROCEDURES, AND HAVING ALREADY SIGNED THE STALKING HORSE APA AND PROVIDED THE DIP (BOTH OF WHICH WERE COURT APPROVED), IT WAS UNNECESSARY TO PROVIDE ANYTHING FURTHER TO QUALIFY. DCC HAS KNOWN FOR MONTHS THAT QSI WAS THE STALKING HORSE AND NOT TAKEN ANY ISSUE WITH ANY OF THIS.

3. Any written materials (print or electronic) provided to the Monitor or vendor during the auction.

WE DO NOT SEE THE RELEVANCE OF THIS REQUEST. IN ANY EVENT BASED ON RECOLLECTION, THERE WERE NO WRITTEN MATERIALS OTHER THAN (i) MODIFIED BIDS/APAs (COPIES OF WHICH WERE NOT RETAINED), (ii) AN EMAIL TO COUNSEL TO THE MONITOR AND TO THE COMPANY REGARDING DELAY IN THE CONDUCT OF THE AUCTION, AND (iii) OTHER INCIDENTAL EMAILS REGARDING FOOD AND OTHER LOGISTICAL MATTERS.

4. Any notes (print or electronic) by QSI reflecting any informational or other requests by the Monitor or vendor during the auction

SAME RESPONSE AS #3 IN TERMS OF RELEVANCE, BUT IN ANY EVENT OUR RECOLLECTION IS THAT THERE ARE NO NON-PRIVILEGED NOTES REGARDING INFORMATIONAL OR OTHER REQUESTS BY THE COMPANY OR MONITOR.

5. Any notes (print or electronic) reflecting what was on the "white board" that the Monitor or vendor revealed to the bidders at the auction

SAME RESPONSE AS #3 IN TERMS OF RELEVANCE, BUT IN ANY EVENT OUR RECOLLECTION IS THAT THERE ARE NO NON-PRIVILEGED NOTES ON THIS ISSUE.

Regards,

Andrew

Andrew Gray
Torys LLP
416.865.7630

EXHIBIT No. 1
ON THE EXAMINATION OF
Stephen S. Lebowitz IN
Timminco
HELD ON May 17, 2012
NEESON & ASSOCIATES COURT REPORTING
& CAPTIONING INC. TORONTO, ONT.

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-12-95339-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTARY MOTION RECORD
(Motion returnable May 29, 2012)
(Re Sale of Silicon Metal Assets and
Assignment of Agreements)

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Lawyers for the Applicants