

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicants

**MOTION RECORD
(re Stay Extension)
(Returnable April 27, 2012)**

April 23, 2012

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

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

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

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

Lawyers for the Applicants

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

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

Applicants

**SERVICE LIST
(as at April 20, 2012)**

GENERAL	
<p>TIMMINCO LIMITED AND BÉCANCOUR SILICON INC. Sun Life Financial Tower 150 King Street West, Suite 2401 Toronto ON M5H 1J9</p> <p>Applicants</p>	<p>Peter A.M. Kalins Tel: (416) 364-5171 x340 Fax: (416) 364-3451 Email: pkalins@timminco.com</p> <p>Doug Fastuca Tel: (416) 364-5171 Email: dfastuca@timminco.com</p>
<p>STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Lawyers for the Applicants</p>	<p>Ashley J. Taylor Tel: (416) 869-5236 Fax: (416) 947-0866 Email: ataylor@stikeman.com</p> <p>Daphne MacKenzie Tel: (416) 869-5695 Email: dmackenzie@stikeman.com</p> <p>Pat O'Kelly Tel: (416) 869-5633 Email: pokelly@stikeman.com</p> <p>Dan Murdoch Tel: (416) 869-5529 Email: dmurdoch@stikeman.com</p> <p>Maria Konyukhova Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com</p> <p>Kathryn Esaw Tel: (416) 869-6820 Email: kesaw@stikeman.com</p>

<p>FTI CONSULTING CANADA INC. TD Waterhouse Tower 79 Wellington Street, Suite 2010 Toronto, ON M5K 1G8</p> <p>Monitor</p>	<p>Nigel D. Meakin Tel: (416) 649-8065 Fax: (416) 649-8101 Email: nigel.meakin@fticonsulting.com</p> <p>Toni Vanderlaan Tel: (416) 649-8075 Email: toni.vanderlaan@fticonsulting.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto ON M5L 1A9</p> <p>Lawyers for the Monitor</p>	<p>Steven J. Weisz Tel: (416) 863-2616 Email: steven.weisz@blakes.com</p> <p>Linc Rogers Tel: (416) 863-4168 Email: linc.rogers@blakes.com</p>
<p>BANK OF AMERICA, N.A. 20975 Swenson Drive, Suite 200 Waukesha, WI 53186</p> <p>Canada Branch 200 Front Street, Suite 2700 Toronto, ON M5V 3L2</p>	<p>Client Manager Fax: (262) 207-3347</p> <p>Medina Sales De Andrade Fax: (416) 349-4282</p>
<p>INVESTISSEMENT QUÉBEC 393 Rue Saint-Jaques, Suite 500 Montréal, QC H2Y 1N9</p>	<p>Danièle Leroux Tel: (514) 873-0439 Fax: (514) 873-9917 Email: daniele.leroux@invest-quebec.com</p> <p>Iya Toure Email: iya.toure@invest-quebec.com</p> <p>François Lamothe Email: francois.lamothe@invest-quebec.com</p> <p>Christine Fillion Email: christine.fillion@invest-quebec.com</p> <p>Liliane Monier Email: liliane.monier@invest-quebec.com</p>

<p>FASKEN MARTINEAU DUMOULIN LLP 140 Grande Allee Est, Suite 800 Quebec City, QC G1R 5M8</p> <p>333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p>Lawyers for Investissement Quebec</p>	<p>Charles Mercier Tel: (418) 640-2046 Fax: (418) 647-2455 Email: cmercier@fasken.com</p> <p>Claude Girard Tel: (418) 640-2050 Fax: (418) 647-2455 Email: cgirard@fasken.com</p> <p>Aubrey Kauffman Tel: (416) 868-3538 Fax: (416) 364-7813 Email: akauffman@fasken.com</p>
<p>MCCARTHY TÉTRAULT LLP Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6</p> <p>Lawyers for AMG Advanced Metallurgical Group N.V.</p>	<p>James Gage Tel: (416) 601-7539 Fax: (416) 868-0673 Email: jgage@mccarthy.ca</p>
<p>RAYMOND CHABOT GRANT THORNTON 140 Grande Allée Est, Suite 200 Québec City, QC G1R 5P7</p>	<p>Jean Chiasson Tel: (418) 647-3204 Fax: (418) 647-9279 Email: chiasson.jean@rcgt.com</p>
<p>QUÉBEC SILICON LIMITED PARTNERSHIP 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8</p>	<p>Rene Boisvert Fax: (819) 294-9001 Email: rene.boisvert@quebecsilicium.com</p>
<p>QUÉBEC SILICON GENERAL PARTNER INC. 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8</p>	<p>Rene Boisvert Fax: (819) 294-9001 Email: rene.boisvert@quebecsilicium.com</p>
<p>DOW CORNING CORPORATION 2200 West Salzburg Road Midland, MI 48686-0994</p>	<p>Sue K. McDonnell Fax: (989) 496-8307 Email: sue.mcdonnell@dowcorning.com</p> <p>John Tierney Email: john.tierney@dowcorning.com</p>

<p>MCCARTHY TÉTRAULT 1000 De La Gauchetière Street West, Suite 2500 Montréal QC H3B 0A2</p> <p>Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6</p> <p>Counsel to Dow Corning Corporation</p>	<p>Sylvain A. Vauclair Tel: (514) 397-4102 Fax: (514) 875-6246 Email: savaclair@mccarthy.ca</p> <p>Barbara Boake Tel: (416) 601-7557 Fax: (416) 875-6246 Email: bboake@mccarthy.ca</p> <p>Sharon Kour Tel: (416) 601-8305 Email: skour@mccarthy.ca</p>
<p>SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP Four Times Square New York, NY 10036</p> <p>Counsel to Dow Corning Corporation</p>	<p>David J. Friedman Fax: (212) 735-2000 Email: david.friedman@skadden.com</p>
<p>CANADIAN IMPERIAL BANK OF COMMERCE Commerce Court 11th Floor Toronto, ON M5L 1A2</p>	
<p>LAURENTIAN BANK OF CANADA 1981 McGill College Avenue Montréal, QC H3A 3K3</p>	
<p>TORYS LLP TD Centre 79 Wellington Street West, Suite 3000 Toronto, ON M5K 1N2</p> <p>Counsel to QSI Partners Ltd.</p>	<p>David Bish Tel: (416) 865-7353 Fax: (416) 865-7380 Email: dbish@torys.com</p>
<p>KIM ORR BARRISTERS 200 Front Street West, Suite 2300 Toronto, ON M5V 3K2</p>	<p>James C. Orr Tel: (416) 349-6571 Fax: (416) 598-0601 Email: jo@kimorr.ca</p>

<p>BAKER & MCKENZIE LLP Brookfield Place 181 Bay Street, Suite 2100 Toronto, Ontario M5J 2T3</p>	<p>Chris Besant Tel: (416) 865-2318 Fax: (416) 863-6275 Email: chris.besant@bakermckenzie.com</p> <p>Frank Spizzirri Tel: (416) 865-6940 Email: frank.spizzirri@bakermckenzie.com</p>
<p>OSLER HOSKIN & HARCOURT LLP 1 First Canadian Place Toronto, Ontario M5X 1B8</p> <p>Lawyers for Wacker Chemie AG</p>	<p>Steven Golick Tel: (416) 862-6704 Fax: (416) 862-6666 Email: sgolick@osler.com</p> <p>Andrea Lockhart Tel: (416) 862-6829 Email: alockhart@osler.com</p>
<p>BENNETT JONES LLP One First Canadian Place Suite 3400 Toronto, Ontario M5X 1A4</p> <p>Lawyers for John Walsh</p>	<p>Derek J. Bell Tel: (416) 777-4638 Fax: (416) 863-1716 Email: belld@bennettjones.com</p>
<p>GOWLING LAFLEUR HENDERSON LLP 1 Place Ville Marie, Suite 3700 Montréal, Québec H3B 3P4</p> <p>Lawyers for Wajax Equipment</p>	<p>Geneviève Cloutier Tel: (514) 392-9448 Fax: (514) 876-9048 Email: genevieve.cloutier@gowlings.com</p>
<p>DAVIES WARD PHILLIPS & VINEBERG LLP First Canadian Place, Suite 44 Toronto, Ontario M5X 1B1</p>	<p>Jay Swartz Tel: (416) 863-5520 Fax: (416) 863-0871 Email: jswartz@dwpv.com</p>
<p>DAVIES WARD PHILLIPS & VINEBERG LLP First Canadian Place, Suite 44 Toronto, Ontario M5X 1B1</p> <p>Lawyers for J. Thomas Timmins</p>	<p>Robin Schwill Tel: (416) 863-5502 Fax: (416) 863-0871 Email: rschwill@dwpv.com</p>

PENSION PLANS REPRESENTATIVES

BSI Non-Union Employee Pension Committee

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Maria Spensieri

[REDACTED]

Email: maria.spensieri@quebecsilicium.com

René Boisvert

[REDACTED]

Email: rene.boisvert@quebecsilicium.com

Carl Rivard

[REDACTED]

Email: carl.rivard@quebecsilicium.com

Clément Albert

[REDACTED]

Patrick Gauthier

[REDACTED]

Email: patrick.gauthier@quebecsilicium.com

Denis Bourassa

[REDACTED]

<p>BSI Union Employee Pension Committee</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Maria Spensieri [Redacted] Email: maria.spensieri@quebecsilicium.com</p> <p>René Boisvert [Redacted] Email: rene.boisvert@quebecsilicium.com</p> <p>Carl Rivard [Redacted] Email: carl.rivard@quebecsilicium.com</p> <p>Gérald Brodeur [Redacted]</p> <p>Luc Ducharme [Redacted]</p> <p>Laurent Milette [Redacted]</p> <p>Louis-Gilles Baron [Redacted]</p> <p>Clément Albert [Redacted]</p>
<p>SUPERINTENDENT OF FINANCIAL SERVICES 5160 Yonge Street PO Box 85 Toronto, ON M2N 6L9</p>	<p>Mark Bailey Tel: (416) 590-7555 Email: mark.bailey@fscso.gov.on.ca</p> <p>Deborah McPhail Tel: (416) 226-7764 Email: dmcphail@fscso.gov.on.ca</p> <p>Stephen Scharbach Tel: (416) 590-7244 Fax: (416) 590-7070 Email: stephen.scharbach@fscso.gov.on.ca</p>

<p>RÉGIE DES RENTES DU QUÉBEC Direction des régimes de retraite Régies de rentes du Québec Case postale 5200 Québec, QC G1K 7S9</p>	<p>Mario Marchand Tel: (418) 657-8715 ext. 3927 Fax: (418) 643-9590 Email: mario.marchand@rrq.gouv.qc.ca</p>
<p>KOSKIE MINKSY LLP 20 Queen Street West, Suite 900 Toronto, ON M5H 3R3</p> <p>Lawyers for Mercer (Canada) Limited, the administration of the Haley Pension Plan</p>	<p>Andrew Hatnay Tel: (416) 595-2083 Fax: (416) 204-2872 Email: ahatnay@kmlaw.ca</p> <p>Demetrios Yiokaris Tel: (416) 595-2130 Email: dyiokaris@kmlaw.ca</p>
UNIONS	
<p>LA SECTION LOCALE 184 DE SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER 6500, rue Yvon-Trudeau Bécancour, QC G9H 2V8</p> <p>7080, boul. Marion Trois-Rivières, QC G9A 6G4</p>	<p>Jean Simoneau Email: scep184@gmail.com</p> <p>René Gauthier Tel: (819) 378-4696 Email: rgauthier@scep.ca</p>
<p>CALEYWRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5</p> <p>Lawyers for La Section Locale 184 de Syndicat Canadien des communications, de l'Énergie et du Papier</p>	<p>Denis W. Ellickson Tel: (416) 775-4678 Fax: (416) 366-4678 Email: ellicksond@caleywray.com</p> <p>Jesse B. Kugler Tel: (416) 775-4677 Fax: (416) 366-3673 Email: kuglerj@caleywray.com</p>
<p>THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION 2285 Saint-Laurent Boulevard Suite D-11 Ottawa, ON K1G 4Z7</p>	<p>David Lipton Tel: (613) 260-7205 ext. 232 Email: dlipton@usw.ca</p>

<p>SACK GOLDBLATT MITCHELL LLP 20 Dundas Street West, Suite 1100 Toronto, ON M5G 2G8</p> <p>Lawyers for the United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union</p>	<p>Charles Sinclair Tel: (416) 979-4234 Fax: (416) 591-7333 Email: csinclair@sgmlaw.com</p>
<p>PPSA CREDITORS</p>	
<p>PRODAIR CANADA LTEE 7475 Boulevard Newman, Suite 311 La Salle, QC H8N 1X3</p>	
<p>SERVICES FINANCIERS CIT LTÉE 5035 South Service Road Burlington, ON L7R 4C8</p>	
<p>GE VFS CANADA LIMITED PARTNERSHIP 2300 Meadowvale Boulevard, Suite 200 Mississauga, ON L5N 5P9</p>	
<p>SERVICES FINANCIERS CATERPILLAR LTEE 5575 North Service Road Suite 600 Burlington, ON L7C 6M1</p>	<p>Kellie Wellenreiter Tel: (289) 313-1238 Email: kellie.wellenreiter@cat.com</p>
<p>SERVICES FINANCIERS DE LAGE LANDEN CANADA INC. 1235 North Service Road West, Suite 100 Oakville, ON L6M 2W2</p>	
<p>DCFS CANADA CORP 2680 Matheson Boulevard East Suite 500 Mississauga, ON L4W 0A5</p>	
<p>SERVICES FINANCIERS MERCEDES-BENZ 2680 Matheson Boulevard East Suite 500 Mississauga, ON L4W 0A5</p>	
<p>JOHN DEERE LIMITED 1001 Champlain Ave, Suite 401 Burlington, ON L7L 5Z4</p>	

GE CAPITAL VEHICLE AND EQUIPMENT LEASING INC. 2300 Meadowvale Boulevard 2nd Floor Mississauga, ON L5N 5P9	
ENDRAS BMW 100 Achilles Rd. Ajax, On L1Z 0C5	
DOCUMENT DIRECTION 100-1235 North Service Road West Oakville, ON L6M 2W2	
BMW CANADA INC. 50 Ultimate Drive Richmond Hill, ON L4S 0C8	
TOYOTA CREDIT CANADA INC. 80 Micro Court, Suite 200 Markham, ON L3R 9Z5	
GOVERNMENT AGENCIES	
DEPARTMENT OF JUSTICE ONTARIO REGIONAL OFFICE 130 King Street West, Suite 3400 Toronto, ON M5X 1K6 Attorney General of Canada	Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca
CANADA REVENUE AGENCY 130 King Street West, Suite 3400 Toronto, ON M5X 1K6 Solicitor for Canada Revenue Agency	Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca
CANADA REVENUE AGENCY GST Interim Processing Centre (GST/HST) 333 Laurier Avenue West Ottawa, ON K1A 1J8	

<p>AGENCY OF REVENUE DU QUEBEC 1600 Boulevard René Levesque Ouest, 3^e étage Sector R23 CPF Montréal, QC H3H 2V2</p>	
<p>MINISTÈRE DE LA JUSTICE DU QUEBEC 1200, route de l'Église, 6^e étage Québec City, QC G1V 4M1</p>	
<p>MINISTÈRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DES PARCS Édifice Marie-Guyart, 5^e étage 675 boulevard René-Lévesque Est Québec, QC G1R 5V7</p>	<p>Tel: (418) 521-3816 Fax: (418) 646-0908</p>
<p>MINISTRY OF REVENUE (ONTARIO) 33 King Street West Oshawa, ON L1H 8H5</p>	
<p>MINISTRY OF THE ATTORNEY GENERAL (ONTARIO) McMurtry-Scott Building 720 Bay Street, 11th Floor Toronto, ON M7A 2S9</p>	
<p>MINISTRY OF THE ENVIRONMENT Legal Services Branch 135 St Clair Avenue West Toronto, ON M4V 1P5</p>	<p>Mario Faieta Tel: (416) 314-6482 Fax: (416) 314-6579 Email: mario.faieta@ontario.ca</p>
<p>ONTARIO MINISTRY OF NORTHERN DEVELOPMENT, MINES AND FORESTRY Rm. M2-24, Macdonald Block 900 Bay Street Toronto, ON M7A 1C3</p> <p>Ministry of Northern Development, Mines and Forestry 933 Ramsey Lake Road, B4, Sudbury, Ontario P3E 6B5</p>	<p>Ms. C. Blancher-Smith, Director of Mine Rehabilitation TeL: (705) 670-5784</p>

INDEX

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Applicants

INDEX

TAB	DOCUMENT
1.	Notice of Motion
2.	Affidavit of Peter A.M. Kalins sworn April 23, 2012
A.	Exhibit "A" - Consolidation Order, April 13, 2012
3.	Draft Order

TAB 1

**ONTARIO
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**NOTICE OF MOTION
(Returnable April 27, 2012)
(Re Stay Extension)**

Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Friday, April 27, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached to the Motion Record at Tab 3, extending the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012) until June 20, 2012, approving the reports of FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the "**Monitor**") dated March 7, 2012 and April 9, 2012 and granting such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Timminco Entities' principal operating entity is BSI, a silicon producer and reseller and a wholly-owned subsidiary of Timminco. Timminco also formerly operated a magnesium business through Timminco Metals, an unincorporated division of Timminco.
2. As a result of severe liquidity issues the Timminco Entities were unable to meet various financial covenants set out in their senior secured credit facility, do not have the liquidity needed to meet their ongoing payment obligations and are thus insolvent;
3. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "CCAA") pursuant to an Order of this Court dated January 3, 2012;
4. On March 9, 2012, the Court granted an Order (the "**Bidding Procedures Order**") authorizing and directing the Timminco Entities to enter into a stalking horse agreement and approving the bidding procedures as attached to the Bidding Procedures Order;
5. The Timminco Entities have been working diligently towards a going concern sale of their business and expect to seek Court approval of the Successful Bid (as defined in the Bidding Procedures attached to the Bidding Procedures Order) and, at the Timminco Entities' discretion, the Back-Up Bid (as defined in the Bidding Procedures attached to the Bidding Procedures Order) and, if approved, close the Successful Bid by June 20, 2012 or, if necessary, the Back-Up Bid by July 20, 2012;
6. An extension of the Stay Period to June 20, 2012 is necessary to give the Timminco Entities sufficient time to finalize their sales process while providing stability to continue their daily operations and restructuring efforts;

7. The Timminco Entities have acted and continue to act in good faith and with due diligence;
8. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
9. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and
10. Such further grounds as counsel may advise and this Court may see fit.

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

- 1) the Affidavit of Peter A.M. Kalins sworn April 23, 2012, and the exhibits attached thereto;
- 2) the Sixth report of the Monitor, to be filed; and
- 3) such further and other materials as counsel may advise and this Court may permit.

April 23, 2012

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

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

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

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

Lawyers for the Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(RETURNABLE APRIL 27, 2012)

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

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

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

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

TAB 2

**ONTARIO
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(Applicants)

**AFFIDAVIT OF PETER A.M. KALINS
(Sworn April 23, 2012 re Stay Extension)**

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

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

2. This affidavit is sworn in support of a motion brought by the Timminco Entities seeking an order, substantially in the form of the draft order included with the Motion Record extending the Stay Period (as defined below) until June 20, 2012.

BACKGROUND

3. The Applicants' primary business, the production and sale of silicon, is carried on principally through BSI, a Québec-based wholly-owned subsidiary of Timminco. BSI purchases silicon metal produced by Québec Silicon Limited Partnership ("**Québec Silicon**") for resale to customers in the in the chemical (silicones), aluminum, and electronics/solar industries. Québec Silicon is a production partnership between BSI and Dow Corning Corporation, for resale to BSI's customers, of which BSI owns 51%. BSI also produces solar grade silicon for customers in the solar photovoltaic industry through its unincorporated division, Timminco Solar. Timminco Solar ceased active production of its solar grade silicon in January 2010. Timminco also formerly operated a magnesium business. The Ontario-based manufacturing operations of Timminco Metals were discontinued in June 2008.

4. As described in greater detail in the affidavit sworn by me on January 2, 2012, in support of the Timminco Entities' application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Timminco Entities were facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume long-term supply contract at below market prices, a decrease in the demand and market price for solar grade silicon, failure to recoup their capital expenditures incurred in connection with development of their solar grade operations, and inability to secure additional funding. The Timminco Entities are also facing significant pension and environmental legacy costs and financial costs related to large outstanding debts.

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

6. The Timminco Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Ontario Superior Court of Justice dated January 3, 2012 (the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "**Monitor**") in the CCAA proceedings. A copy of the Initial Order is available, together with all other filings in the CCAA proceedings, on the Monitor's website at: <http://cfcanada.fticonsulting.com/timminco>.

7. Further details regarding the background to this CCAA proceeding are set out in the Initial Order Affidavit and, unless relevant to the present motion, are not repeated herein.

STATUS OF CCAA PROCEEDINGS

Communications with Stakeholders

8. The Timminco Entities, the Monitor, and their respective counsel continue to have regular discussions with their suppliers and other creditors and major customers. In addition, counsel to the Timminco Entities has dealt directly with counsel to the Communications, Energy and Paperworkers Union of Canada ("**CEP**") and the United

Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International (the “USW”) on a number of matters described herein, including the appeals of the DIP Order (defined below) and the sales process, described in greater detail below.

USW/CEP Appeals

9. On January 12, 2012, the Timminco Entities brought a motion for an order (the “**Priorities Order**”), *inter alia*, granting super-priority to the Administration Charge and the D&O Charge, as these terms are defined in the Initial Order. The Priorities Order and an accompanying endorsement were issued by this Court on January 16 and February 2, 2012, respectively.

10. On January 27, 2012 (and continued on February 6, 2012), the Timminco Entities brought a motion for an order (the “**DIP Order**”), *inter alia*, approving a debtor-in-possession facility (the “**DIP Facility**”) pursuant to an agreement with QSI Partners Ltd. (in such role, the “**DIP Lender**”) dated January 18, 2010 (the “**DIP Agreement**”), and a Court-ordered charge over the Timminco Entities’ property in favour of the DIP Lender. The DIP Order and an accompanying endorsement were issued by this Court on February 8 and February 9, 2012, respectively.

11. On February 23, 2012 and February 24, 2012, respectively, CEP the USW served notices of motion seeking leave to appeal the Priorities Order (the “**Priorities Leave Motions**”). The USW and CEP subsequently abandoned the Priorities Leave Motions.

12. On February 23, 2012 and February 24, 2012, respectively, the CEP and the USW served notices of motion seeking leave to appeal the DIP Order (the “**DIP Leave Motions**”).

13. On Friday, April 13, 2012, the Honourable Associate Chief Justice O’Connor granted an order (the “**Consolidation Order**”), on consent of CEP and the USW, directing that the DIP Leave Motions will be heard orally and, if leave to appeal is granted in one or both DIP Leave Motions, the applicable appeal or appeals shall be heard immediately thereafter. A copy of the Consolidation Order is attached hereto as **Exhibit “A”**.

Lift Stay Motion of St. Clair Pennyfeather

14. On March 26, 2012, St. Clair Pennyfeather, plaintiff in the proposed class action *Pennyfeather v. Timminco Limited et al.*, Court File No. CO-09-378701-00CP (the “**Class Action**”), brought a motion to this Court seeking an order, *inter alia*, lifting the stay of proceedings as provided in the Initial Order permitting Mr. Pennyfeather to continue the Class Action against the defendants and for certain ancillary relief. This Court has released a partial endorsement granting leave for the SCC leave to appeal application by Mr. Pennyfeather. A decision with respect to the balance of the relief sought on the Class Action motion remains under reserve as at the date of this affidavit.

Timmins Motion, Disclaimer of Contracts

15. By letter dated March 30, 2012, the Timminco Entities delivered a notice (the “**Disclaimer Notice**”) pursuant to Section 32 of the CCAA disclaiming and resiliating a consulting agreement between Timminco and J. Thomas Timmins dated September 19, 1996, as amended (the “**Consulting Agreement**”) effective April 30, 2012 (the Disclaimer Notice was delivered without prejudice to the position of Timminco that the Consulting Agreement is a pre-filing obligation and therefore subject to the stay of proceedings granted in the Initial Order). By Notice of Motion dated April 12, 2012, Mr. Timmins brought a motion seeking an order that the Consulting Agreement is not to be disclaimed or resiliated. I am advised by counsel to the Timminco Entities that counsel to the Timminco Entities and Mr. Timmins are in discussions with respect to scheduling the delivery of materials for and hearing of the motion.

Sales Process

16. On March 9, 2012, this Court granted an order (the “**Bidding Procedures Order**”), *inter alia*, authorizing and directing the Timminco Entities to enter into the Agreement of Purchase and Sale with QSI Partners Ltd. (in such role, the “**Stalking Horse Bidder**”) and approving the bidding procedures as attached to the Bidding Procedures Order (the “**Bidding Procedures**”).¹

17. The Bidding Procedures contain a timeline for the sales process and provide for a two-stage bidding process and an auction (if necessary).

¹ Capitalized terms used in this section of the affidavit but not otherwise defined are as defined in the Bidding Procedures Order.

18. The deadline for the submission of Phase I Bids under the Bidding Procedures was March 26, 2012. A number of Qualified Phase I Bids were submitted by March 26, 2012.

19. The Phase II Bid Deadline was originally 10 a.m. (Eastern Standard Time) on April 16, 2012 but, in order to facilitate stakeholder discussions as part of the bid process, was subsequently extended by three days to 5 p.m. (Eastern Standard Time) on April 19, 2012 with the consent of the Stalking Horse Bidder.

20. A number of Qualified Phase II Bids were received by the Phase II Bid Deadline. Consequently, the Auction is scheduled to be held on April 24, 2012.

21. The Timminco Entities expect to seek Court approval of the Successful Bid (and, at the Timminco Entities' discretion, the Back-Up Bid) and attempt to close the Successful Bid by June 20, 2012.

22. Should the Successful Bidder fail to consummate the sale as per the terms of the purchase agreement between the Successful Bidder and the Timminco Entities, the Timminco Entities may deem the Back-Up Bid to be the Successful Bid, pending Court approval if not already received, and consummate the sale with the Back-Up Bidder by July 20, 2012.

The Timminco Entities' Cash Flows

23. In its fourth report to the court dated March 7, 2012, the Monitor provided a cash flow forecast which indicated that the Timminco Entities had sufficient funds to operate through June 29, 2012.

24. All amounts owed by the Timminco Entities in connection with the DIP Facility must be repaid in full by June 20, 2012, provided that no prior Event of Default (as defined in the DIP Agreement) has occurred.

25. I am informed by the Monitor that it will be filing a report which will contain a revised cash flow prepared by the Timminco Entities. The Timminco Entities' cash flow to be attached to the Monitor's report will confirm that the Timminco Entities are such that the Timminco Entities will have sufficient funds to continue operating through to June 20, 2012.

EXTENSION OF THE STAY PERIOD

26. The Initial Order granted a stay of proceedings up to and including February 2, 2012, which was extended to April 30, 2012 (the "Stay Period") by order of this Court on January 27, 2012.

27. Since the commencement of the CCAA proceedings, the Timminco Entities have continued operating their business as a going concern.

28. As described above, the Timminco Entities have been working diligently towards a sale of their business for the benefit of their stakeholders. An extension of the Stay Period to June 20, 2012 is necessary to give the Timminco Entities sufficient time to

finalize the transactions associated with the Successful Bid, return to this Court for approval of same and close the transaction(s). Further, the extension of the Stay Period allows the Timminco Entities to continue to benefit from a stay of proceedings through to the expiry of the DIP Facility on June 20, 2012.

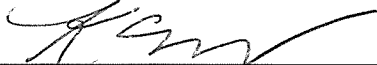
29. The Timminco Entities have acted and continue to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested.

30. The stability provided by the stay of proceedings is critical to the Timminco Entities in order to be able to continue their daily operations and restructuring efforts.

31. It is my understanding that the Monitor supports the extension of the Stay Period to June 20, 2012.

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

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on April 23, 2012.



Commissioner for Taking Affidavits

Kathryn Esaw



Peter A.M. Kalins

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

Court File No. CV12-9539-00CI

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF PETER A.M. KALINS
(SWORN APRIL 23, 2012)

STIKEMAN ELLIOTT LLP

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

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

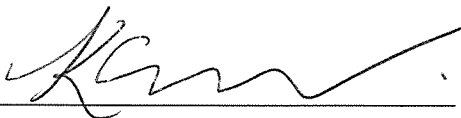
Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230

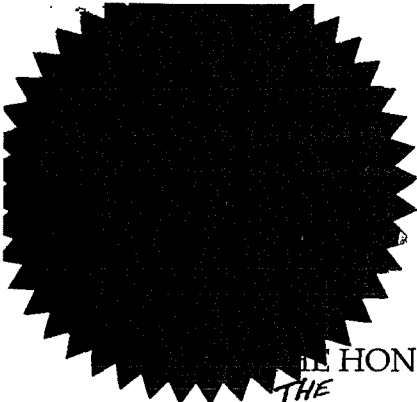
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "A"
to the affidavit of Peter Kalins,
sworn before me on the 23rd day
of April, 2012



Commissioner for Taking Affidavits



Court File No. M41085

Court File No. M41062

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE Associate)
THE)
Chief JUSTICE O'CONNOR)

FRI DAY, THE 13
DAY OF APRIL, 2012

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

ORDER

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (together, the "Timminco Entities"), for an order directing that the motions for leave to appeal (the "Leave Motions") brought by the Communications, Energy and Paperworkers Union of Canada ("CEP") and The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International (the "USW") shall be heard orally, and directing that if leave to appeal is granted in one or both of the Leave Motions the applicable appeal or appeals shall be heard immediately thereafter, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Notice of Motion of the Timminco Entities, the affidavit of Peter A.M. Kalins sworn April 9, 2012, and the Consent of each of the Timminco Entities, CEP and the USW,

THIS COURT ORDERS that:

1. The Timminco Entities, CEP, and the USW shall deliver their leave to appeal motion materials and their appeal materials in accordance with the following schedule:

	Materials	Due Date
(a)	Motion materials of CEP re leave to appeal	Delivered
(b)	Motion materials of the USW re leave to appeal	Delivered
(c)	Responding motion materials of the Timminco Entities re leave to appeal motions	April 17, 2012
(d)	Reply of CEP and/or the USW re leave to appeal motions, if any	May 1, 2012
(e)	Appeal materials of CEP	May 29, 2012
(f)	Appeal materials of the USW	May 29, 2012
(g)	Responding appeal materials of the Timminco Entities	June 26, 2012

2. The Leave Motions shall be heard orally.

3. If leave to appeal is granted in respect of one or both of the Leave Motions the applicable appeal or appeals shall be heard immediately after the Leave Motions are heard.

4. The Leave Motions and the applicable appeal or appeals, if any, shall be heard before a panel of this Court on a date to be fixed by the Registrar.

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

APR 13 2012

PER / PAR:



Registrar

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

Court File No. M41085
Court File No. M41062

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

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

ORDER

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

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236
Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
Fax: (416) 947-0866

Lawyers for the Moving Parties

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

Court File No. CV12-9539-00C1

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER A.M. KALINS
(SWORN APRIL 23, 2012)**

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

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

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

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230

Fax: (416) 947-0866

Lawyers for the Applicants

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 27 TH
)	
JUSTICE MORAWETZ)	DAY OF APRIL, 2012

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

Applicants

**ORDER
(Re Stay Extension)**

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (together, the "**Timminco Entities**"), for an order (a) extending the Stay Period (as defined below) until June 20, 2012 and (b) approving the Fourth Report and the Fifth Report (as these terms are defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Peter A.M. Kalins sworn April 23, 2012 and the Exhibits attached thereto, the Fourth Report and the Fifth Report and on hearing the submissions of counsel for the Timminco Entities, the FTI Consulting Canada Inc. in its capacity as court-appointed monitor of the Timminco Entities (the "**Monitor**"), Investissement Quebec, QSI Partners Inc., Dow Corning Canada, La Section Locale 184 De Syndicat Canadien des Communciations, de l'Énergie et du Papier, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AMG Advanced Metallurgical Group

N.V., the Financial Services Commission of Ontario and Mercer (Canada) Limited, in its capacity as the administrator of the Retirement Pension Plan for the Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn April ●, 2012, filed,

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012) is hereby extended until and including June 20, 2012.

APPROVAL OF THE MONITOR'S REPORTS

3. **THIS COURT ORDERS** that the Fourth Report of the Monitor dated March 7, 2012 (the "**Fourth Report**") and the Fifth Report of the Monitor dated April 9, 2012 (the "**Fifth Report**") and the activities of the Monitor described therein are hereby approved.

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

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

Proceeding commenced at Toronto

**ORDER
(Re Stay Extension)**

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

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

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

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE APRIL 27, 2012)**

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West

199 Bay Street

Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E

Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V

Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F

Tel: (416) 869-6820

Fax: (416) 947-0866

Lawyers for the Applicants