

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

(the "Applicants")



**ORDER
(CRO Appointment)**

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

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

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

Service

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

Approval of the Monitor's Activities

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

Appointment of CRO

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

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

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

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

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

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

5. **THIS COURT ORDERS** that the CRO shall not take possession of the Property (as defined in the CRO Agreement) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the business or the Property, or any part thereof. Without limiting the foregoing, the CRO shall not, as a result of this Order or anything done pursuant to its duties and powers pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Civil Code of Québec, the *Québec Environment Quality Act*, the *Ontario Mining Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**").

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

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

7. **THIS COURT ORDERS** that [✓]neither the CRO, nor any officer, director, employee, or agent of the CRO, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO. ^{→, notwithstanding paragraph 5 hereof, ✓ J.J.}
8. **THIS COURT ORDERS** that the CCAA Entities shall indemnify and hold harmless the CRO and any officers, directors, employees or agents of the CRO who may assist the CRO with the exercise of its powers and obligations under this Order (collectively with the CRO, the “**CRO Indemnified Parties**”) with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the appointment of the CRO or the fulfilling of the CRO’s duties in carrying out the provisions of this Order, including any claims or liabilities subject to indemnification pursuant to the CRO Agreement, except to the extent that the obligation or liability was incurred as a result of the CRO Indemnified Parties’ gross negligence or wilful misconduct. The CRO Indemnified Parties shall be treated as unaffected and the foregoing indemnity shall be treated as unaffected and may not be compromised in any

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

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

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

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

Miscellaneous

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

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor, the CRO and their respective agents in carrying out the terms of this Order. All

courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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



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

AUG 17 2012

RECEIVED:



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1985, c. C-36, AS AMENDED**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(CRO Appointment)**

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