

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

**Timminco Limited  
Bécancour Silicon Inc.**

**SIXTEENTH REPORT OF THE MONITOR**

**November 28, 2012**

**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.

**SIXTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 3, 2012, Timminco Limited (“**Timminco**”) and its wholly owned subsidiary, Bécancour Silicon Inc. (“**BSI**”, together with Timminco, the “**Timminco Entities**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Applicants until February 2, 2012, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Timminco Entities (the “**Monitor**”). The proceedings commenced by the Timminco Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The Stay Period has been extended a number of times. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated September 27, 2012, the Stay Period currently expires on December 7, 2012.

3. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated March 9, 2012 (the “**Bidding Procedures Order**”), the Timminco Entities were authorized to enter into the Stalking Horse Agreement and the Bidding Procedures were approved, each as defined in the Monitor’s Fourth Report.
4. As described in the Monitor’s Seventh Report, the marketing process was completed and the Auction was conducted by the Timminco Entities, in consultation with the Monitor, on April 24 and 25, 2012 pursuant to the Bidding Procedures Order. At the conclusion of the Auction, the asset purchase agreement entered into between the Timminco Entities and QSI Partners Ltd. (the “**QSI APA**”) and the asset purchase agreement between the Timminco Entities and Ferroatlantica, S.A. (the “**Ferro APA**”) were collectively designated as the Successful Bid.
5. The Ferro APA was approved pursuant to an Order granted by the Court on May 22, 2012. The QSI APA was approved pursuant to an Order granted by the Court on June 1, 2012. Closing under the Ferro APA occurred on June 14, 2012. Closing under the QSI APA occurred on June 13, 2012.
6. On June 15, 2012, the Honourable Mr. Justice Morawetz granted an order approving a procedure for the submission, review and adjudication of claims against the Timminco Entities and of claims against the directors and officers of the Timminco Entities (the “**Claims Procedure Order**”). The Claims Bar Date was set at 5:00 PM Toronto time on July 23, 2012.
7. By Order of the Honourable Mr. Justice Newbould dated August 17, 2012 (the “**CRO Appointment Order**”), Russell Hill Advisory Services Inc. was appointed as Chief Restructuring Officer (the “**CRO**”) of the Timminco Entities.

8. On August 28, 2012, the Honourable Mr. Justice Newbould granted an Order authorizing and directing an interim distribution to be made by the Monitor to Investissement Quebec (“**IQ**”), a secured creditor of BSI (the “**Interim Distribution Order**”). The Interim Distribution Order authorized an initial distribution of \$25,393,057.43. In accordance with the endorsement of the Honourable Justice Newbould dated August 31, 2012, the Monitor made a subsequent distribution to IQ of \$1,213,000.
9. The Interim Distribution Order also provided for a process for other parties that had filed a secured claim against BSI in accordance with the Claims Procedure Order to assert priority over IQ and approved a reimbursement agreement dated August 28, 2012 between BSI, the Monitor and IQ (the “**Reimbursement Agreement**”) pursuant to which IQ is obliged to reimburse any portion of the Interim Distribution necessary to satisfy any Reimbursement Claim (as defined in the Reimbursement Agreement) that is proven to have priority over IQ’s security.
10. Pursuant to an Order of the Honourable Mr. Justice Morawetz granted October 18, 2012, the Priority Claim Adjudication Protocol was approved and two claims were designated as Reimbursement Claims, being:
  - (a) a claim on behalf of Mercer Canada (“**Mercer**”), as administrator of the Haley Pension Plan, and on behalf of the beneficiaries of that plan (the “**Mercer Reimbursement Claim**”), which claim was supported by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“**USW**”); and
  - (b) a claim by Le Comité de retraite du Régime de rentes pour les employés nonsyndiqués de Silicium Bécancour Inc. and a claim by Le Comité de retraite du Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (collectively the “**BSI Pension Committees**”) (the “**BSI Pension Reimbursement Claims**”).

11. On October 24, 2012, both Mercer and the USW informed the Monitor and IQ that they would not be pursuing the Mercer Reimbursement Claim.
12. The Monitor has filed reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor's Sixteenth Report, is to inform the Court on:
  - (a) The progress of the Claims Procedure;
  - (b) The status of the outstanding matters to be completed in the CCAA Proceedings;
  - (c) The Timminco Entities' request for an Order disclaiming the Beauharnois Sale Agreement, as defined below, pursuant to section 32 of the CCAA;
  - (d) The Timminco Entities' request for an Order extending the Stay Period to January 31, 2013, and the Monitor's recommendation thereon.
13. In preparing this report, the Monitor has relied upon unaudited financial information of the Timminco Entities, the Timminco Entities' books and records, certain financial information prepared by the Timminco Entities and discussions with the Timminco Entities' management and others. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor, the Initial Order, the Claims Procedure Order or the Interim Distribution Order.

## PROGRESS OF THE CLAIMS PROCEDURE

15. The current status of claims filed in respect of Timminco pursuant to the Claims Procedure Order is summarized as follows:

	Filed		Allowed		Unresolved	
	No.	\$	No.	\$	No.	\$
Claims filed as Secured	4	6,806,767	0	0	4	6,806,767
Claims filed as Unsecured <sup>1</sup>	43	42,153,294	24	492,688	17	41,733,092
<b>Total Claims</b>	<b>47</b>	<b>48,960,061</b>	<b>24</b>	<b>492,688</b>	<b>21</b>	<b>48,539,859</b>
D&O Claims filed as Secured	1	131,426	0	0	1	131,426
D&O Claims filed as Unsecured <sup>1</sup>	6	75,502	0	0	1	1,505
<b>Total D&amp;O Claims</b>	<b>7</b>	<b>206,928</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>132,931</b>

<sup>1</sup>Includes claims filed as D&O Claims reclassified as Unsecured following discussions with Claimants

16. Claims filed in respect of BSI pursuant to the Claims Procedure Order are summarized as follows:

	Filed		Allowed		Unresolved	
	No.	\$	No.	\$	No.	\$
Claims filed as Secured	10	21,535,757	0	0	10	21,535,757
Claims filed as Unsecured	38	198,121,502	38	1,717,114	16	196,465,701
<b>Total Claims</b>	<b>48</b>	<b>219,657,259</b>	<b>38</b>	<b>1,717,114</b>	<b>26</b>	<b>218,001,458</b>
D&O Claims filed as Secured	1	306,957	0	0	1	306,957
D&O Claims filed as Unsecured	20	246,758	0	0	2	15,287
<b>Total D&amp;O Claims</b>	<b>21</b>	<b>553,715</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>322,244</b>

<sup>1</sup>Includes claims filed as D&O Claims reclassified as Unsecured following discussions with Claimants

17. The Monitor is in the process of reviewing and adjudicating, in consultation with the Timminco Entities and D&O Counsel as appropriate, the claims filed and has requested additional details as necessary from the claimants in order to complete this review.
18. As shown in the table above, 6 unsecured D&O Claims were filed in respect of Timminco. Following further investigation and discussions with the claimants, 5 of these claims have been reclassified as pre-filing unsecured claims.

19. As shown in the table above, 20 unsecured D&O claims were filed in respect of BSI. Following further investigation and discussions with the claimants, 18 of these claims have been reclassified as pre-filing unsecured claims.

#### **STATUS OF OUTSTANDING MATTERS TO BE COMPLETED**

20. Although the sale of the majority of the Timminco Entities' assets has been completed, a number of matters are yet to be completed. In summary, those matters include the following:

- (a) Completing the working capital adjustment process provided for in the QSI APA;
- (b) Sale or transfer of the Haley Property (a dormant mine site in Ontario) and associated residual assets;
- (c) Sale of the Tycos Property (an office building located in the Greater Toronto Area);
- (d) Finalize settlement of the legal claim known as the “**Applied Magnesium Litigation**” or “**Metrobank Claim**” (a US based litigation matter);
- (e) Sale of Toronto Maple Leaf season ticket rights;
- (f) Sale or transfer of the Silica Fumes Site (located near Montreal, Quebec);
- (g) Realization of rights, if any, to the Beauharnois Property (real property located in Beauharnois, Quebec);
- (h) Realization of value, if any, from Memphis property owned by US subsidiary (the “**Memphis Property**”); and

- (i) Potential transactions to generate additional realizations in connection with the corporate attributes of Timminco and/or BSI.
21. The CRO has provided the Monitor with details in respect of the status of each of the open matters, as summarized below.

#### **WORKING CAPITAL ADJUSTMENT**

22. A motion record dated October 5, 2012, returnable December 4, 2012, was filed by the Timminco Entities in respect of a motion for a determination of the BSI Working Capital, as defined in the QSI APA, in accordance with the provisions of the QSI APA. On October 19, 2012, QSI filed a motion record in response and a reply motion record was filed by the Timminco Entities on October 26, 2012.
23. While some negotiations have taken place between the parties, as at the date of this report, no agreement on the amount of the BSI Working Capital has been reached between the Timminco Entities and QSI.

#### **HALEY PROPERTY**

24. As previously reported, the Haley property consists of approximately 230 acres of land near Renfrew, Ontario upon which two open pit dolomite quarries were operated as well as the processing of the resulting ore. The site has been closed since 2008 and the majority of the industrial mining related buildings have been demolished and the equipment has been sold. The site has a number of known environmental issues.
25. In addition to the cost of various testing and reporting requirements, the main environmental remediation activity being undertaken by the Timminco Entities is the twice yearly pumping of water from the quarry which is treated with acid to bring it to a safe ph balance before being released. Pumping activity is required to prevent a potential hazard of overflow and an alkaline discharge into a nearby creek.



26. The cost of maintaining the site in accordance with the various regulatory obligations is estimated at approximately \$250,000 per year at the present time, of which hydro costs are a significant portion due to fixed infrastructure-related expenses in respect of a hydro sub-station on the site. The CRO is investigating the possibility of implementing alternative more cost-efficient arrangements given the limited supply of power actually required.
27. The Timminco Entities provided financial assurance in respect of mine closure costs to the Ontario Ministry of Northern Development and Mines (“**MNDM**”) by way of annual cash deposits totalling \$1.46 million in the aggregate made between 2006 and 2010, of which a balance of \$997,291.81 as at October 31, 2012 remains.
28. In the two years prior to the CCAA filing, the Timminco Entities had attempted to find a purchaser for the property including considering a variety of potential options such as “green energy” producers who might be able to utilize the hydro substation tie-in as well as potential users of aggregate who might have an interest in re-starting the quarry. Such sales efforts foundered due in significant part to the relatively high carrying cost of the land associated with its on-going environmental remediation/monitoring.

29. The CRO's view has been that it will not be possible to find a purchaser for the site unless the "carrying cost" of the land can be brought to a level that a potential purchaser will find to be acceptable and, failing such a solution, an abandonment of the site will become the only solution. The CRO has arranged twice-monthly meetings with the Ontario Ministry of Northern Development and Mines and the Ontario Ministry of the Environment (the "**Ontario Ministries**") in order to ensure clear lines of communication and co-operation between the parties. The CRO has arranged for a high-level feasibility study to consider what possible means exist to reduce the carrying costs of holding the land without compromising health and safety concerns. The CRO advises that there may be solutions available to accomplish the desired goal if appropriate capital expenditures can be authorized using the financial assurances funds already held by the Ontario Ministries. While discussions have been on-going since the Monitor's previous report, as yet no definitive plan for moving forward has been agreed by the affected regulatory officials.
30. As previously reported, if an agreed regulatory plan of action can be negotiated, the CRO intends to list the property for sale with a view to completing a sale prior to the end of January, 2013. If no sale proves possible, the CRO has advised the Monitor that the site will likely have to be abandoned.

#### **TYCOS PROPERTY**

31. The Timminco Entities have requested listing proposals for the property and are in discussions with the tenant in respect of marketing the property in a manner that would be the most beneficial to both the Timminco Entities and the tenant. If an agreeable sale of the property free and clear of the existing long-term tenancy cannot be negotiated with the tenant, then an "as is" sale of the property will be conducted instead. While the Tycos property also has certain environmental remediation costs associated with it, the lease currently provides income in excess of such costs to the Timminco Entities.

32. A number of listing proposals have been received from real estate brokers and the CRO has informed the Monitor that it is in discussions with the various agents with a view to agreeing a listing arrangement to try and achieve a sale by the end of January 2013.

#### **METROBANK CLAIM/APPLIED MAGNESIUM LITIGATION**

33. The settlement of the Metrobank Claim described in the affidavit of Sean Dunphy sworn October 26, 2012 is pending finalization.

#### **TORONTO MAPLE LEAF TICKETS**

34. The Timminco Entities have retained a broker to solicit bids. Despite the current NHL lock-out situation, the CRO advises that there is considerable interest in acquiring the rights in the seats held by the Timminco Entities and that a positive outcome in the next few weeks appears likely.

#### **SILICA FUMES SITE**

35. The Becancour facility operated by the Timminco Entities was sold in June, 2012. However, a site formerly used for the disposal of silica waste (“fumes”) behind the facility was not sold. While the CRO continues to seek a purchaser for the site, there has been little substantive progress in that regard since the Monitor’s previous report.

#### **BEAUHARNOIS PROPERTY**

36. The Beauharnois Property is the subject of the Timminco Entities’ motion returnable December 4, 2012, which is discussed later in this report.

## **MEMPHIS PROPERTY**

37. A US subsidiary of Timminco owns a “brownfield” site near Memphis, Tennessee. A non-exclusive purchase option has been signed with a potential purchaser and local brokers have been contacted to seek interest in listing the property for sale, though there has been little interest in such a listing since the Monitor’s previous report. As previously reported, the CRO has advised the Monitor that if no sale is achieved, the property will be left orphaned in the US subsidiary.

## **CORPORATE ATTRIBUTES**

38. A non-disclosure agreement has been executed with a party interested in exploring a potential transaction to utilize the tax loss attributes of the Timminco Entities that could realize additional value for the estate. Discussions with such potential purchaser are on-going. In addition, the CRO sent a “teaser” to tax and insolvency professionals and has received a number of preliminary indications of interest. Further information has been provided to two parties who indicated a willingness to commence due diligence.

## **DISCLAIMER OF BEAUHARNOIS SALE AGREEMENT**

39. Paragraph 57 of the affidavit of Mr. Peter Kalins sworn January 2, 2012 and filed in support of the initial application under the CCAA stated:

“Timminco also formerly operated a ferrosilicon facility located at 54 Hauts-Fourneaux in Beauharnois, Quebec (the "Beauharnois Property"). On December 1, 2004, Timminco entered into an agreement of purchase and sale concerning the sale of the Beauharnois Property to a purchaser who agreed to assume all environmental liabilities associated with the Beauharnois Property (described in greater detail below). Timminco received the full purchase price from the purchaser. However, title to the Beauharnois Property is

only scheduled to pass to the purchaser in 2013, subject to certain conditions. In the event that the purchaser fails to satisfactorily remediate the Beauharnois Property by October 2013, title will not pass and beneficial ownership of the Beauharnois Property will revert back to Timminco. In such event, Timminco will be entitled to retain the purchase price, but will be responsible for the environmental remediation obligations for the Beauharnois Property.”

40. As previously reported in the Monitor’s Fifteenth Report, the Timminco Entities informed the Monitor that they intended to seek the approval of the Monitor to disclaim the agreement of purchase and sale for the Beauharnois Property (the “**Beauharnois Sale Agreement**”). The Monitor discussed the matter with its independent legal counsel and informed the Timminco Entities that, in the Monitor’s view, given the unique factual circumstances, it would be more appropriate for the Timminco Entities to proceed by way of motion to the Court if they wish to proceed with such disclaimer and declined to sign the “Form 4” approving the disclaimer on that basis.

41. Section 32(4) of the CCAA states:

“**32(4) Factors to be considered** - In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.”

42. The Monitor notes that its decision to not sign a “Form 4” was not as a result of the Monitor forming an opinion that the proposed disclaimer should not be allowed. In reviewing the matter, the Monitor noted that, in its experience, the nature of the contract that the Timminco Entities seek to disclaim is somewhat atypical compared to the types of contracts usually subject to disclaimer in a CCAA proceeding. The Beauharnois Sale Agreement deals with the rights and obligations in respect of the acquisition of an asset, rather than lease rights between lessee and lessor or the ongoing provision of goods or services as is more typically the case for contracts subject to disclaimer. The Monitor was unable to identify any analogous precedents to guide its assessment. Accordingly, the Monitor was of the view that it would be more appropriate for the Timminco Entities to proceed by way of motion to the Court.
43. As the Court is aware from various materials filed in the CCAA Proceedings, it is not expected that the Timminco Entities would file a plan of compromise or arrangement, though that may change if it becomes beneficial to file such a plan in order to realize additional value for stakeholders. Accordingly, the disclaimer of the Beauharnois Sale Agreement would not enhance the prospects of a viable compromise or arrangement. However, the disclaimer, if approved, would presumably enable the Timminco Entities to sell the Beauharnois Property free and clear of any interest that the purchaser under the Beauharnois Sale Agreement would otherwise have, which should increase recoveries for the creditors as a whole.
44. The Monitor does not have sufficient information to independently assess whether the disclaimer would likely cause significant financial hardship to the purchaser under the Beauharnois Sale Agreement. The Monitor notes that the disclaimer, if approved, would deprive the purchaser of the asset but may also relieve the purchaser of the financial obligations in respect of environmental remediation work under the Beauharnois Sale Agreement.

45. At paragraph 35 of his affidavit sworn November 19, 2012 and filed in support of the Timminco Entities' motion for disclaimer, Mr. Dunphy states:

"In consultation with counsel, it is my understanding that title to the Beauharnois Property would likely vest in a Trustee in Bankruptcy free and clear of obligations under the Beauharnois Sale Agreement to convey title to the Purchaser at a later date upon satisfaction (should such occur) of the suspensive condition. As such, Timminco should be permitted to seek to repudiate in these liquidating CCAA proceedings which are intended to achieve significantly the same outcome in order to avoid the unsecured creditors being prejudiced by the liquidation process being undertaken in the context of CCAA proceedings instead of BIA proceedings. However, the issue appears to be a novel one."

46. The Monitor provides no comment on Mr. Dunphy's understanding of the effect of a bankruptcy on the Beauharnois Sale Agreement and the rights to the Beauharnois Property as this is a legal question that the Court is best positioned to address.

#### **REQUEST FOR EXTENSION OF STAY PERIOD**

47. The Stay Period currently expires on December 7, 2012. Additional time is required for the Timminco Entities to complete the matters described above. Accordingly, the Timminco Entities now seek an extension of the Stay Period to January 31, 2012.

48. As noted earlier in this report, the Interim Distribution in the aggregate amount of \$26,606,057.43 has been made to IQ. As at the date of this report, the Timminco Entities have cash on hand, including amounts held by the Monitor, of approximately \$4.4 million, giving an excess of approximately \$2.2 million after reserving for \$787,000 in respect of the QSI Reserve, \$1 million in respect of the Administration Charge and \$400,000 in respect of the D&O Charge. The Timminco Entities have informed the Monitor that accrued post-filing liabilities are approximately \$0.1 million and on-going expenses are estimated to be approximately \$250,000 per month. Accordingly, the Timminco Entities appear to have sufficient funding for the extension of the Stay Period.
49. Given the continued cash “burn” from on-going expenses, the Monitor believes it to be in the interests of stakeholders for the outstanding matters to be brought to a satisfactory conclusion as quickly as possible. However, some additional time is required to achieve that and, based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to January 31, 2012.
50. The Monitor also believes that the Timminco Entities have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

The Monitor respectfully submits to the Court this, its Sixteenth Report.

Dated this 28<sup>th</sup> day of November, 2012.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Timminco Limited and Bécancour Silicon Inc.



Nigel D. Meakin  
Senior Managing Director



Toni Vanderlaan  
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