

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

**Timminco Limited  
Bécancour Silicon Inc.**

**TWELFTH REPORT OF THE MONITOR**

**AUGUST 13, 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.

**TWELFTH 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 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 April 27, 2012, the Stay Period currently expires on September 30, 2012.

3. Pursuant to the Order of the Honourable Mr. Justice Morawetz granted 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 Bidding Procedures Order. At the conclusion of the Auction, the QSI APA and Ferro APA were together 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**”).
7. The Monitor has filed reports on various matters relating to the CCAA Proceedings. The purpose of this, the Monitor’s Twelfth Report, is to inform the Court on the following:
  - (a) A summary of the Claims filed pursuant to the Claims Procedure Order; and

- (b) The Timminco Entities' request an order appointing Russell Hill Advisory Services Inc. ("**Russell Hill**") as chief restructuring officer ("**CRO**") of the Timminco Entities and approving the engagement letter dated July 24, 2012, between Russell Hill and the Timminco Entities (the "CRO Agreement"), together with the Monitor's recommendation thereon.
8. 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. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. 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.
9. 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 Bidding Procedures Order or in the Initial Order.

#### **SUMMARY OF CLAIMS FILED**

10. Capitalized terms used in this section of this report not otherwise defined are as defined in the Claims Procedure Order.
11. Pursuant to the Claims Procedure Order, the Monitor undertook the following notice procedures:
- (a) Sent a notice by mail to all Known Creditors identified by the Timminco Entities;

- (b) Sent an email notification of the Claims Procedure to the all members of the Service List;
- (c) Posted a copy of the Claims Procedure Order and claims submission forms on the Monitor's website;
- (d) Published a French language notice of the Claims Procedure Order in La Presse on June 19, 2012; and
- (e) Published an English language notice of the Claims Procedure Order in the National editions of the Globe and Mail and the National Post on June 20, 2012.

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

|                               | Number    | \$                   |
|-------------------------------|-----------|----------------------|
| Claims filed as Secured       | 3         | 10,355,378.00        |
| Claims filed as Unsecured     | 42        | 38,161,871.85        |
| <b>Total Claims</b>           | <b>45</b> | <b>48,517,249.85</b> |
| D&O Claims filed as Secured   | 1         | 131,426.01           |
| D&O Claims filed as Unsecured | 3         | 57,676.33            |
| <b>Total D&amp;O Claims</b>   | <b>4</b>  | <b>189,102.34</b>    |

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

|                               | Number    | \$                    |
|-------------------------------|-----------|-----------------------|
| Claims filed as Secured       | 11        | 18,150,445.92         |
| Claims filed as Unsecured     | 38        | 216,850,504.70        |
| <b>Total Claims</b>           | <b>49</b> | <b>235,000,950.62</b> |
| D&O Claims filed as Secured   | 1         | 306,956.84            |
| D&O Claims filed as Unsecured | 21        | 197,575.98            |
| <b>Total D&amp;O Claims</b>   | <b>22</b> | <b>504,532.82</b>     |

14. The Monitor is in the process of reviewing, in consultation with the Timminco Entities and D&O Counsel as appropriate, the claims filed.

#### **APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

15. The directors and officers of the Timminco Entities intend to resign their positions and seek the appointment of Russell Hill as CRO and approval of the CRO Agreement in order to provide suitable corporate governance to complete the CCAA Proceedings.
16. The Timminco Entities engaged Russell Hill to act as CRO pursuant to the CRO Agreement. The CRO Agreement sets out the term and conditions of the CRO's appointment, including the CRO's duties, responsibilities and compensation, and is subject to Court approval. The principal of Russell Hill is Mr. Sean Dunphy who has more than 25 years' experience in the insolvency and restructuring field. Mr. Dunphy is a former partner of Stikeman Elliott LLP, which is counsel to the Timminco Entities in these CCAA Proceedings. A copy of the CRO Agreement is attached hereto as Appendix A.
17. The Monitor supports the appointment of Russell Hill in order to provide for suitable corporate governance for the Timminco Entities for the remainder of the CCAA Proceedings following the resignation of the existing directors and officers.

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

Dated this 13<sup>th</sup> day of August, 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  
Managing Director

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# Appendix A

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## The CRO Agreement



July 24, 2012

VIA EMAIL: [pkalins@timminco.com](mailto:pkalins@timminco.com)

Timminco Limited  
2401-150 King Street West  
Toronto, ON  
M5H 1J9

**Attention: Mr. Peter A.M. Kalins,  
President, General Counsel and Corporate Secretary**

And

**Douglas A. Fastuca  
Chief Executive Officer**

Dear sirs,

**Re: Engagement of Russell Hill Advisory Services Inc.**

As you are aware, Timminco Limited and Bécancour Silicon Inc. (the "Timminco Entities") are in proceedings (the "Proceedings") pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") before the Ontario Superior Court of Justice (the "Court"). FTI Consulting Canada Inc. was appointed as monitor (the "Monitor") of the Timminco Entities. I am writing this letter to confirm the engagement of Russell Hill Advisory Services Inc. (hereafter, the "Consultant") by the Timminco Entities. It is understood that the Consultant shall have access to the services of its principal, Sean Dunphy for the purpose of providing its services under this Agreement and Sean Dunphy shall be primarily responsible for the discharge of the Consultant's duties and powers as set out herein.

**1. Services to be Provided**

In connection with the anticipated resignation of the directors and officers of the Timminco Entities, the Consultant is to be engaged to act as Chief Restructuring Officer ("CRO") of the Timminco Entities to exercise the following powers, all of which will be carried out for, on behalf of and in the name of the Timminco Entities:

- (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 or the Consultant 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 the Proceedings or otherwise; and
- (n) the power to apply to Court to seek, advise and direction with respect to any of the CRO's powers or duties as set out herein.

In all cases, the authority and duties of the CRO shall be subject to approval of the appointment of the CRO by the Court and to such limitations as the Court may approve.

Prior to the resignation of the directors and officers of the Timminco Entities, the CRO shall liaise with the senior management of the Timminco Entities regarding transition and consult with the Monitor and the legal advisors of the Timminco Entities as needed. The Consultant shall generally employ its skill, experience and expertise with a view to assisting in the successful planning and implementation of a wind-down strategy for the Timminco Entities in the shortest possible time for the purpose of maximizing value for stakeholders to the greatest extent reasonably possible.

## 2. Fees

The Consultant's fees shall consist of the following elements: (i) a work fee in the amount of \$[REDACTED] per month or part thereof payable monthly in advance commencing with the month of August 2012; (ii) a success fee (the "Success Fee") which shall only apply in the event of an extension of the term of this engagement beyond its original six month term (as described in part (3) below); and (iii) the reasonable disbursements of the Consultant for travel and other similar out-of-pocket expenditures incurred. It is

agreed that the Timminco Entities shall seek a Court Order to have the CRO's work fee secured by the Administration Charge (as defined in the Initial Order dated January 3, 2012).

A Success Fee, should one be implemented upon an extension of the initial term of this engagement, shall be premised upon improvements to the economic outcome of stakeholders. The parties recognize that it is too early in the wind-down process to negotiate the parameters of such a Success Fee and there is no guarantee that a Success Fee will be appropriate or desirable and that any such Success Fee must be approved by the Monitor. Any discussion between the Consultant and the Monitor regarding the Success Fee is to be deferred to the end of the initial six month term as described in the paragraph next following.

### 3. Term

This retainer shall extend for an initial term of six months. Prior to the expiry of the initial six month term, to the extent considered desirable or necessary the CRO shall make a proposal to the Monitor to extend the engagement for such further period of time as may appear reasonable. It is understood that any such extension proposal may include a modification of the monthly fee based on expected future time requirements as well as the Success Fee based upon realizations from remaining assets or other measurable improvements to the economic outcomes of stakeholders. Any extension agreement shall be subject to further Court approval.

Pending approval of any extension engagement, this engagement shall continue on a month-to-month basis until terminated in accordance with its terms.

The Monitor may apply to the Court to terminate this engagement at any time providing that (i) the work fee for the month in which such termination occurs and the next following month shall be considered earned upon notice of termination, provided that the Consultant shall continue to provide services hereunder during such following month upon request of the Monitor. The Consultant may terminate this engagement upon thirty days' written notice to the Monitor and shall provide assistance with transition to the extent reasonably possible.

### 4. Release and Indemnity

The Timminco Entities agree that the Consultant, including its directors, officers and employees, shall be released and discharged from any and all liability arising from the provision of services in respect of this engagement, except in the event that the obligation or liability was incurred as a direct result of the CRO's or the Consultant's negligence or wilful misconduct. The Timminco Entities further agree to indemnify and save harmless the Consultant, its directors, officers and employees from any and all claims arising out of or connected to the performance of its services hereunder, except in the event that the obligation or liability was incurred as a direct result of the CRO's or the Consultant's negligence or wilful misconduct, and the Timminco Entities shall, to the extent permissible and practicable under the terms of the applicable insurance policies, extend their directors and officers liability coverage to include the Consultant or its principal, Sean Dunphy.

Russell Hill Advisory Services Inc.  
290 Russell Hill Rd., Toronto, ON M4V 2T6  
Tel: (647) 988-4029; Cell: (647) 988-4029; Email: [dunphy@russellhilladvisory.com](mailto:dunphy@russellhilladvisory.com)

If you are in agreement with the terms proposed for this engagement, kindly so indicate by signing in the place provided at the end of this letter.

It is understood and agreed that the appointment of the Consultant as CRO and this engagement letter shall only be effective upon the issuance of an order of the Court in form and substance satisfactory to the Consultant, the Monitor and the Timminco Entities confirming the appointment and authority of the CRO, security for payment of fees and usual and customary releases and indemnities.

Yours very truly,

Russell Hill Advisory Services Inc.

Per 

Sean Dunphy, President

We confirm our agreement to retain Russell Hill Advisory Services Inc. as CRO on the terms described in this letter.

Timminco Limited

Per 

Douglas A. Fastuca  
Chief Executive Officer

Becancour Silicon Inc.

Per 

Peter A.M. Kalins  
President, General Counsel and Corporate Secretary

*"Subject to Court Approval"*