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2012

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

**AFFIDAVIT OF DR. TOBIAS BRANDIS
(Sworn May 25, 2012)**

I, Dr. Tobias Brandis of the City of München, Bavaria, Germany, MAKE OATH
AND SAY:

1. I am Senior Vice President Corporate Development of Wacker Chemie AG (“**Wacker**”). I am one of the Wacker representatives that attended the auction and was present throughout the entire duration. As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I have also consulted with other employees of Wacker.
2. This Affidavit is sworn in response to certain statements made by FTI Consulting Canada Inc. in its capacity as Monitor of Timminco Limited (“**Timminco**”) and Bécancour Silicon Inc. (“**BSI**”, and together with Timminco, the “**Timminco Entities**”) in the Eight Report of the Monitor dated May 20, 2012 (the “**Eighth Report**”) describing certain written questions put to the Monitor by counsel to Dow Corning Corporation (“**DCC**”) and the Monitor’s

responses to such questions at Appendix A thereto (“**Appendix A**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in Appendix A.

3. On page 3 of Appendix A, the Monitor notes that “the Timminco Entities assigned a negative monetary value of \$500,000 to the aggregate differences in the non-cash elements of the Wacker APA that were considered to be negative as compared to the QSI APA”. Such negative monetary value was ascribed to, *inter alia*, “the specific terms of Section 8.14 of the Wacker APA (Severability)” (the “**Severability Clause**”).

4. The Severability Clause formed part of the Wacker asset purchase agreement (the “**Wacker APA**”) from the form of Wacker’s final Phase II Bid under the Bidding Procedures to and including the final form of Wacker APA submitted in the penultimate round of bidding at the Auction. At all such times, the Severability Clause excepted Section 2.5(a) of the Wacker APA which provides for the exclusion of obligations in respect of Benefit Plans, Collective Agreements, Employees, Pension Plans, Post-Retirement Liabilities or any Excluded Asset (each as defined and more particularly described in the Wacker APA).

5. Following the first round of bidding at the Auction, Wacker explicitly requested that the Monitor and the Timminco Entities describe their approach to valuation of the non-cash aspects of the Wacker APA. Wacker’s final Phase II Bid also contemplated an escrow amount of \$5 million to secure settlement of any potential pension and other post-employment benefit claims against Wacker, DCC, their respective affiliates or QSLP in respect of the BSI Plans (the “**Escrow Amount**”). Wacker wanted to know how the Monitor and the Timminco Entities considered such Escrow Amount and other non-cash items from the Wacker’s and other parties’ bids. The Monitor and the Timminco Entities advised Wacker at this time that no monetary value (negative or positive) was attributed to such items, including the Severability Clause and the

Escrow Amount in the Wacker APA. According to the Monitor and the Timminco Entities, value was only attributed to the cash purchase price. Other items were only taken into consideration regarding the potential closing risk (without impact on the value). As a result, Wacker abandoned the escrow concept in its subsequent bid, and reduced the Escrow Amount to the nominal amount \$1 for sake of drafting purposes.

6. The valuation methodology of the Monitor and the Timminco Entities relating to non-monetary items was applied consistently throughout the auction until the penultimate bid. Therefore, Wacker was quite surprised when the Monitor and the Timminco Entities ascribed a negative value to the Severability Clause at this point of the auction when, for the first time, the Wacker APA provided for the BSI Plans Indemnity, inserted to add significant benefit for BSI and its creditors.

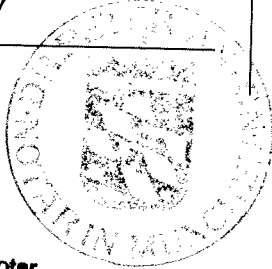
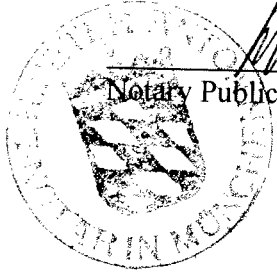
7. In the response to DCC's question 2 the Monitor stated that Wacker "acknowledged the validity of the Timminco Entities' concern". Wacker notes that it explicitly disagreed with (i) the Timminco Entities' negative valuation of the Severability Clause in the Wacker APA compared to the Severability Clause provided for in the QSI APA; and (ii) the method that the Monitor and the Timminco Entities used to value the Wacker APA with the BSI Plans Indemnity and the Section 6.7(f) Indemnity.

8. Wacker also notes that the Monitor stated on page 9 of Appendix A that "Wacker first asked for an adjournment of the Auction in order to have further discussions with DCC on the morning of April 25th" and that the Monitor had "no recollection of such a request being made at other times during the Auction". For clarification, Wacker advised the Monitor at the outset of the Auction that it would most likely request to speak with DCC at some point during the Auction as the Auction unfolded.

SWORN BEFORE ME at the City of
Munich, in the State of Bavaria, on May
25, 2012.



Dr. Tobias Brandis



Notar
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