

Tab 1

**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

**NOTICE OF MOTION
(Returnable August 28, 2012)
(Re Interim Distribution to IQ)**

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 Tuesday, August 28, 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:
 - a) Authorizing and directing the Monitor to distribute cash (the "Interim Distribution") from the proceeds of the sale of all of BSI's operating assets to Grupo FerroAtlantica, S.A. and QSI Partners Ltd. (the "Sale Transactions") in an amount to be determined prior to the hearing of the motion to Investment Québec ("IQ"); and
2. Such other and further relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. IQ is a secured creditor of BSI pursuant to a term loan agreement dated July 10, 2009 (“**Secured Term Loan**”) secured by a charge upon all of BSI’s assets. The amount outstanding under the Secured Term Loan is approximately \$29 million. BSI incurs interest charges in the amount of approximately \$10,000 per day in respect of the Secured Term Loan;
2. Substantially all of BSI’s operating assets have been sold pursuant to the Sale Transactions. The net proceeds of the Sale Transactions total approximately \$30 million;
3. IQ, BSI and FTI Consulting Canada Inc. (as Court-appointed monitor of the Timminco Entities, the “**Monitor**”) have established a process to permit an interim distribution to IQ while preserving the ability for other creditors of BSI to assert a claim ranking in priority to IQ and allowing for the maintenance of certain reserves;
4. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
5. Rules 1.04, 1.05, 2.0t3, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended;
6. 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 Sean Dunphy sworn August 23, 2012, and the exhibits attached thereto;
2. The report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

August 23, 2012

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Lawyers for the Applicants

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

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

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

**NOTICE OF MOTION
(RETURNABLE AUGUST 28, 2012)**

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Tab 2

**ONTARIO
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COMMERCIAL LIST**

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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 SEAN DUNPHY
(Sworn August 23, 2012 re Interim Distribution to IQ)**

I, SEAN DUNPHY, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the President of Russell Hill Advisory Services Inc. ("**Russell Hill**"), the Court-appointed Chief Restructuring Officer ("**CRO**") of Timminco Limited ("**Timminco**") and 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 (the "**Interim Distribution Order**") substantially in the form of the draft Order included in the Motion Record at Tab 3 authorizing and directing the Monitor to distribute cash (the "**Interim Distribution**") from the proceeds of the Sale Transactions (defined and described below) to Investissement Québec ("**IQ**"), a secured creditor of BSI, subject to certain reserves to be established

by the Monitor and provisions of provisions of the Reimbursement Agreement (as such terms are defined below).

BACKGROUND

3. The Applicants' primary business, the production and sale of silicon, was carried on principally through BSI, a Québec-based wholly-owned subsidiary of Timminco. BSI purchased silicon metal produced by Québec Silicon Limited Partnership ("**Québec Silicon**") for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. Québec Silicon was a production partnership between BSI and Dow Corning Corporation, for resale to BSI's customers, of which BSI owned 51%. BSI also produced 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 Peter A.M. Kalins 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 and were unable to meet their ongoing payment obligations as they came due.

5. The Timminco Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012, as amended (the “**Initial Order**”). FTI Consulting Canada Inc. was appointed monitor of the Timminco Entities (the “**Monitor**”) pursuant to the Initial Order. 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>.

STATUS OF PROCEEDINGS

Sale Transactions

6. Substantially all of BSI’s operating assets have been sold pursuant to sales transactions with Grupo FerroAtlantica, S.A. (the “**Ferro Transaction**”) and with QSI Partners Ltd. (the “**QSI Transaction**” and together with the Ferro Transaction, the “**Sale Transactions**”). The Ferro Transaction was approved by the Court on May 22, 2012 and closed on June 14, 2012 and the QSI Transaction was approved by the Court on June 1, 2012 and closed on June 13, 2012. The net proceeds of the Sale Transactions total approximately \$30 million and are currently being held by the Monitor. No assets of Timminco were included in the Sale Transactions.

Claims Procedure

7. On June 15, 2012, the Court granted an Order (the “**Claims Procedure Order**”) approving a procedure for the solicitation, determination and resolution of

claims against the Timminco Entities and the Timminco Entities' Directors and Officers (the "**Claims Procedure**"). A copy of the Claims Procedure Order is attached hereto as **Exhibit "A"**.

8. The Claims Bar Date was July 23, 2012. Total claims filed against Timminco's Directors and Officers was approximately \$190,000 and total claims filed against BSI's Directors and Officers was approximately \$500,000. Claims filed against Timminco and BSI totalled \$48.5 million and \$235 million, respectively. The Monitor has advised that it is in the process of reviewing the claims filed.

Appointment of CRO

9. By Order of the Honourable Mr. Justice Newbould dated August 17, 2012, Russell Hill was appointed as CRO of the Timminco Entities.

INTERIM DISTRIBUTION TO IQ

The Secured Term Loan

10. Pursuant to a term loan agreement dated July 10, 2009 (the "**Term Loan Agreement**"), BSI received a secured term loan from IQ (the "**Secured Term Loan**"). A copy of the Term Loan Agreement is attached hereto as **Exhibit "B"**.

11. The Secured Term Loan is guaranteed by Timminco and secured by a charge upon all of BSI's assets (the "**Collateral**"). A copy of the hypothec granted by BSI is attached hereto as **Exhibit "C"**.

12. As described in the Fourth Report of the Monitor, dated March 7, 2012 (the “**Fourth Report**”), the Monitor’s counsel conducted a review of the security granted to IQ and found that, subject to certain standard qualifications and assumptions, IQ’s security is valid, legal and enforceable. A copy of Fourth Report (without appendices) is attached hereto as **Exhibit “D”**.

13. As at August 17, 2012, the amount outstanding under the Secured Term Loan totalled approximately \$29 million. The Secured Term Loan earns interest at a variable rate of Canada prime plus 9%, which is currently approximately 12% per annum. As such, BSI is incurring interest in the amount of approximately \$10,000 per day while the sale proceeds are earning very little in the current interest rate environment. In my view, the best interests of BSI would be served by halting that expense as soon as possible.

Reserve Fund

14. Payment of the amounts owing under the Secured Term Loan will be subject to maintaining appropriate reserves for the Super-Priority Charges (defined below) and other potential post-filing payables, in an amount to be determined prior to the hearing of this motion and disclosed in the Monitor’s Report to be prepared and filed in connection with this motion.

15. By Order of the Honourable Mr. Justice Morawetz dated January 16, 2012, the Court granted the following charges ranking ahead in priority to all other security

interests, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person, notwithstanding the order of perfection or attachment:

- (a) a super-priority charge to secure the fees and disbursements incurred in connection with services rendered to the Timminco Entities both before and after the commencement of the CCAA proceedings by counsel to the Timminco Entities, the Monitor and the Monitor's counsel (the "**Administration Charge**");
- (b) a charge in favour of the recipients (the "**KERP Recipients**") of a key employee retention program (the "**KERP Charge**"); and
- (c) a charge in favour of the directors and officers of the Timminco Entities (the "**D&O Charge**").

16. By Order of the Honourable Mr. Justice Morawetz dated February 8, 2012 the Court granted an Order approving a DIP financing agreement (the "**DIP Agreement**"), and granting a super-priority charge in favour of QSI Partners Ltd., as lender (the "**DIP Lender**") under the DIP Agreement (the "**DIP Charge**" and, together with the Administration Charge, the KERP Charge and the D&O Charge, the "**Super-Priority Charges**"). The current ranking of the Super-Priority Charges is as follows:

- (a) First - the Administration Charge (in the maximum amount of \$1,000,000);
- (b) Second - the KERP Charge (in the maximum amount of \$269,000);

(c) Third - the DIP Charge; and

(d) Fourth - the D&O Charge (in the maximum amount of \$400,000).

17. The KERP Recipients have been paid under the KERP and no amounts remain owing to the beneficiaries of the KERP Charge. The DIP Lender has also been paid under the DIP Agreement and no amounts remain owing to the DIP Lender.

18. The beneficiaries of the Administration Charge and the D&O Charge may still be owed certain amounts pending the completion of the CCAA proceedings. Additionally, there may be certain post-filing payables coming due prior to the winding up of the CCAA proceedings. As such, the Timminco Entities are seeking to have certain amounts, to be determined prior to the hearing of the motion, set aside as a reserve to satisfy the Super-Priority Charges and any post-filing payables.

Claw Back Procedure¹

19. In order to stop the accrual of interest on the Secured Term Loan, the CRO approached IQ in order to negotiate a mechanism to permit an interim distribution to IQ as soon as possible while preserving the ability for other creditors of BSI to assert a claim ranking in priority to IQ and, if such claim and priority is Finally Determined (any such claim being a "Priority Claim"), provide for the reimbursement of the necessary proceeds.

¹ Capitalized terms used in this section but not otherwise defined shall have the meaning attributed to them in the Reimbursement Agreement (defined and described below).

20. Prior to the hearing of this motion BSI, IQ and the Monitor expect to enter into an agreement (the "**Reimbursement Agreement**"), substantially in the form attached hereto as **Exhibit "E"**, which sets out a procedure whereby IQ will repay to BSI by payment to the Monitor such portion of the Interim Distribution as may be necessary to satisfy a Priority Claim (the "**Claw Back Procedure**").

21. The Claw Back Procedure provides that any party wishing to assert priority over the Collateral must, within seven days of the issuance of the Interim Distribution Order, file a preliminary form setting out the amount and nature of its claim for priority over IQ. IQ, the CRO and the Monitor will review any such claims and determine whether these claims should be placed on Schedule A to the Reimbursement Agreement (a "**Reimbursement Claim**"). Should the parties not be able to agree whether a particular claim is a Reimbursement Claim, IQ, the CRO or the Monitor shall seek directions from the Court.

22. Once a Reimbursement Claim has been established, the claimant (a "**Priority Claimant**") will have two months from the date of the Interim Distribution Order to submit materials asserting its priority over the Collateral.

23. Once the Priority Claimant's materials have been submitted, IQ, the CRO and the Monitor will, in accordance with the provisions of the Reimbursement Agreement, determine whether such claim has priority over the Collateral (a "**Priority Claim**"). The Reimbursement Agreement contemplates generally following the process laid out at paragraphs 20-27 of the Claims Procedure Order.

IQ, acting reasonably, will participate in any process taking place under the Claims Procedure Order which could affect IQ's priority status in respect of the Collateral.

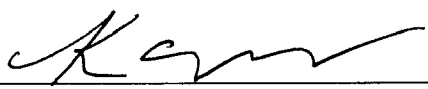
24. Upon determination that a Reimbursement Claim is a Priority Claim, IQ will reimburse to BSI through the Monitor such portion of the Interim Distribution as may be necessary to satisfy the Priority Claim within seven business days of the determination that such claim is a Priority Claim.

25. I am informed by counsel to the Monitor and IQ that this motion for the Interim Distribution is supported by the Monitor and IQ.

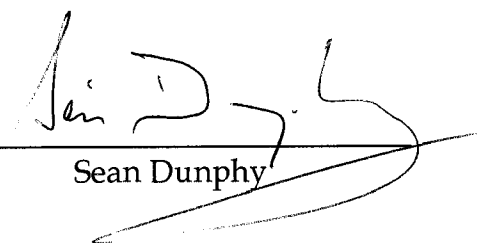
PURPOSE OF AFFIDAVIT

26. This Affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 above and for no improper purpose.

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



Commissioner for Taking Affidavits
Kathryn Esaw



Sean Dunphy

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