

**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 OF ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

MOTION RECORD

**(Declaring that the Unresolved D&O Claim is not secured by the D&O Charge and
Authorizing the Monitor to make Distributions)**

June 20 , 2014

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

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

(Applicants)

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(as at June 13, 2014)**

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF
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Applicants

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TAB 1

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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Applicants

NOTICE OF MOTION

**(Declaring that the Unresolved D&O Claim is not secured by the D&O Charge and
Authorizing the Monitor to Make Distributions)**

FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Timminco Limited and its wholly owned subsidiary, Bécancour Silicon Inc. ("**BSI**", and together with Timminco Limited, the "**Timminco Entities**"), will make a motion to the Court on June 24, 2014, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form of the draft Order included in the Motion Record:

- (a) declaring that the Unresolved D&O Claim (as defined in the Twenty-Fifth Report of the Monitor dated June 9, 2014, filed (the "**Twenty-Fifth Report**")) is not a claim secured by the D&O Charge (as defined in the Twenty-Fifth Report);

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- (b) releasing and discharging the D&O Charge;
- (c) authorizing and directing the Monitor, subject to holding such reserves as it deems appropriate in its sole discretion, to make distributions from the estates of the Timminco Entities as set out in the Twenty-Fifth Report;
- (d) approving the Twenty-Fifth Report and the Monitor's activities described therein;
and
- (e) such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (f) On January 3, 2012, 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**");
- (g) Pursuant to the Initial Order, the Honourable Mr. Justice Morawetz granted a stay of proceedings against the Timminco Entities until February 2, 2012 (the "**Stay Period**");
- (h) The Stay Period has been extended a number of times and currently expires on September 30, 2014;

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- (i) The Honourable Mr. Justice Mongeon of the Superior Court of Quebec released his decision on the Quebec Priority Motion (as defined in the Twenty-Fifth Report) on January 24, 2014 (as described in greater detail in the Twenty-Fifth Report, the “**Quebec Priority Decision**”);
- (j) Pursuant to the Priority Adjudication Protocol (as defined in the Twenty-Fifth Report), the determination of the quantum of the BSI Deemed Trust Claim was postponed until after the determination of the Quebec Priority Decision will be determined in accordance with the Order of the Honourable Mr. Justice Morawetz dated June 15, 2012, 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**”);
- (k) The Quantum of the BSI Deemed Trust Claim (as defined in the Twenty-Fifth Report) is yet to be determined;
- (l) Following the Quebec Priority Decision and upon learning that Investissement Quebec (“**IQ**”) would not be seeking leave to appeal the Quebec Priority Decision, the Monitor for and on behalf of the Timminco Entities, filed a motion seeking leave to appeal the Quebec Priority Decision on February 14, 2014 (the “**Leave Motion**”);

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- (m) The Leave Motion was expressly subject to the Monitor seeking advice and directions of the Ontario Superior Court of Justice (the “**Advice and Directions Motion**”);
- (n) On March 3, 2014, the Monitor served the Advice and Directions Motion, including the Twenty-Fourth Report setting out the reasons for the need for advice and directions of the Court;
- (o) Following the filing of the Leave Motion and the Advice and Directions Motion, the Monitor received additional information in respect of the secured claims being asserted against BSI by IQ and Enterprise Arsenault (“EA”);
- (p) Based on a pay-out statement provided by IQ dated January 29, 2013 (the “**January 29 Statement**”), it was the belief and understanding of both the Monitor and the CRO (as defined in the Twenty-Fifth Report) that as a result of the distributions made, IQ was fully paid and had no additional claim against the estate;
- (q) While in attendance at Court on March 6, 2014 for a scheduling hearing in respect of the Advice and Directions Motion, the Monitor was informed of a statement of account dated March 18, 2013 that IQ had filed in the Quebec Priority Motion that showed IQ having an outstanding claim of \$1,197,804.84. The Monitor was unaware of that statement;

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- (r) The Monitor requested and received information from IQ in respect of its alleged claim and the calculation thereof. Following its analysis of the additional information received from IQ, the Monitor concluded that IQ had made an error in the January 29 Statement, but that the IQ Claim should not include interest that had accrued since February 1, 2013;
- (s) The Monitor discussed its position with IQ and IQ confirmed that it accepts the Monitor's position with respect to interest accruing after February 1, 2013 and that IQ's outstanding claim amounts to \$1,197,804.82 (the "**IQ Claim**");
- (t) EA filed a secured claim pursuant to the Claims Procedure in the amount of \$306,956.84 (the "**EA Claim**");
- (u) The Monitor did not dispute the amount of the EA Claim, but disallowed the status of the claim as secured and EA disputed the Monitor's Notice of Disallowance;
- (v) Based on additional information provided by EA and advice received from its legal counsel, the Monitor has agreed with EA that EA has a secured claim for work performed on the HP2 facility in the amount of \$200,000 (the "**EA Secured Claim**") and that the EA Secured Claim ranks in priority to the IQ Claim in respect of the BSI monies held by the Monitor;
- (w) IQ has confirmed that it does not dispute the quantum, validity or priority of the EA Secured Claim;

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- (x) Given the EA Secured Claim and the IQ Claim, there would be no monies available to unsecured creditors of BSI even if the Quebec Priority Decision was overturned on appeal. This result is materially different than what was believed would have been the case at the time of the Monitor's Twenty-Fourth Report when the IQ Claim was unknown;
- (y) As a result and for the reasons set out in the Twenty-Fifth Report, following a chambers attendance before the Honourable Mr. Regional Senior Justice Morawetz on June 10, 2014, the Advice and Directions Motion was withdrawn and the Leave Motion was discontinued;
- (z) the Monitor intends to discuss the process for the quantification of the BSI Deemed Trust Claim with counsel for the BSI Pension Committees and IQ;
- (aa) The Monitor currently holds approximately \$2.42 million in the estate of the Timminco Entities, and the Monitor wishes to distribute such funds in accordance with the manner set out in the Twenty-Fifth Report;
- (bb) The Monitor is of the opinion that the Unresolved D&O Claim (as defined in the Twenty-Fifth Report) is not a claim which is secured by the charge granted in favour of the directors and officers of the Timminco Entities pursuant to paragraph 27 of the Initial Order (the "**D&O Charge**");
- (cc) In the opinion of the Monitor, the Unresolved D&O Claim (as defined in the Twenty-Fifth Report) is not an obligation or liability incurred by virtue of being a

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director or officer of the Timminco Entities after the commencement of the CCAA Proceedings;

- (dd) In order to make distributions to creditors of Timminco and BSI in accordance with their legal priorities, the D&O Charge should be released and discharged;
- (ee) Rules 1.04 and 2.03 of the *Rules of Civil Procedure*; and
- (ff) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) The Twenty-Fifth Report, filed; and
- (ii) Such further and other material as counsel may submit and this Honourable Court may permit.

June 20, 2014

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TO: SERVICE LIST ATTACHED TO THE MOTION RECORD

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 OF ARRANGEMENT OF TIMMINCO LIMITED
AND BÉCANCOUR SILICON INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

NOTICE OF MOTION
(Declaring that the Unresolved D&O Claim is not
secured by the D&O Charge and Authorizing the
Monitor to Make Distributions)

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Inc.

TAB 2

**Monitor's Twenty-Fifth Report
dated June 9, 2014**

Previously Served on June 9, 2014

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. REGIONAL)	TUESDAY, THE 24 TH DAY
)	
SENIOR JUSTICE MORAWETZ)	OF JUNE 2014

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

ORDER

**(Declaring that the Unresolved D&O Claim is not secured by the D&O Charge and
Authorizing the Monitor to make Distributions)**

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Timminco Limited and its wholly owned subsidiary, Bécancour Silicon Inc. ("**BSI**", and together with Timminco Limited, the "**Timminco Entities**") for an order (a) declaring that the Unresolved D&O Claim is not a claim secured by the D&O Charge (as defined in the Initial Order); (b) releasing and discharging the D&O Charge (as defined in the Initial Order); (c) authorizing and directing the Monitor, subject to holding such reserves as it deems appropriate in its sole discretion, to make distributions from the Timminco Estate Funds and the BSI Estate Funds in the manner set out in the Twenty-Fifth Report (as hereinafter defined); and (d) approving the Twenty-Fifth Report of the Monitor and the activities of the Monitor as described therein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, the Twenty-Fifth Report of the Monitor dated June 9, 2014, filed (the “**Twenty-Fifth Report**”), and on hearing the submissions of counsel for the Monitor, Mercer (Canada) Ltd., and the BSI Pension Committees (as defined in the Twenty-Fifth Report), no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that, unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Twenty-Fifth Report.

2. **THIS COURT HEREBY DELCARES** that the Unresolved D&O Claim is not a claim secured by the D&O Charge (as defined in the Initial Order).

3. **THIS COURT ORDERS** that the D&O Charge (as defined in the Initial Order) is hereby released and discharged.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed, without further order of the Court, subject to holding such reserves as the Monitor deems appropriate in its sole discretion, to make distributions from time to time from the Timminco Estate Funds and the BSI Estate Funds in the following manner:

- (a) From the Timminco estate on account of the deemed trust claim in respect of the solvency deficit of the Timminco Limited pension plan (the “**Haley Deemed Trust**”), once the quantum of the Haley Deemed Trust Claim is finally determined by the Monitor or by further order of this Court, or is determined by the Monitor or by further order of this Court to be in excess of the amount available in the Timminco estate; and

(b) From the BSI estate on account of the EA Secured Claim and on account of the BSI Deemed Trust Claim once the quantum of the BSI Deemed Trust Claim is agreed to by the Monitor, the BSI Pension Committees and IQ or otherwise finally determined in a process to be agreed upon by the Monitor, the BSI Pension Committees and IQ or by further order of this Court, and IQ has reimbursed BSI with the necessary amount for BSI to satisfy the BSI Deemed Trust Claim.

5. **THIS COURT ORDERS** that the Twenty-Fifth Report of the Monitor dated June 9, 2014 and the activities of the Monitor as described therein are approved.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

ORDER

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behalf of Timminco Limited and Bécancour
Silicon Inc.

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 OF ARRANGEMENT OF TIMMINCO LIMITED
AND BÉCANCOUR SILICON INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

MOTION RECORD

(Declaring that the Unresolved D&O Claim is not
secured by the D&O Charge and Authorizing the
Monitor to make Distributions)
Returnable June 24, 2014

BLAKE, CASSELS & GRAYDON LLP

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