

**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

**SUPPLEMENTAL MOTION RECORD
(Returnable January 30, 2013)
(Re Approval of the Settlement Agreement and
Vesting of the Beauharnois Property)**

January 25, 2013

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**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

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Applicants

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Applicants

**AMENDED NOTICE OF MOTION
(Returnable January 30, 2013)
(Re Approval of the Settlement Agreement and
Vesting of the Beauharnois Property)**

Timminco Limited ("Timminco") and Bécancour Silicon Inc. (together with Timminco, the "Timminco Entities") will make a motion to a judge presiding over the Commercial List on Wednesday, January 30, 2013 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 Supplemental Motion Record at Tab 3, (a) approving the Settlement Agreement (as defined below) between Quonta Holdings Ltd. ("**Quonta**") and Timminco; and (b) vesting the real property located at 54 Chemin des Hauts-Fourneaux in Beauharnois, Québec (the "**Beauharnois Property**") in Quonta and granting such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Order of the Honourable Mr. Justice Morawetz dated January 3, 2012;
2. Timminco is the registered owner of the Beauharnois Property;
3. In December 2004, Timminco entered into an Agreement of Purchase and Sale (the "**Beauharnois Sale Agreement**") with Quonta Holdings Ltd. ("**Quonta**") which provides for the conditional sale to Quonta of the Beauharnois Property in consideration of the payment of \$660,000 and the assumption by Quonta of the obligation to perform certain environmental remediation work as described in the Beauharnois Sale Agreement;
4. Pursuant to the Beauharnois Sale Agreement, title passing to Quonta is conditional upon Quonta's completion of the remediation work by October 31, 2013. This remediation work has not been completed to date and title to the Beauharnois Property therefore remains with Timminco;
5. In November 2012, the Timminco Entities brought a motion (the "**Disclaimer Motion**") to disclaim the Beauharnois Sale Agreement in respect of the Beauharnois Property pursuant to s. 32 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "**CCAA**");
6. Subsequent to the bringing of the Disclaimer Motion, the Timminco Entities and Quonta engaged in good faith negotiations regarding the Beauharnois Property and have since reached a mutually agreeable settlement agreement (the "**Settlement Agreement**"), a copy of which is contained in the Supplemental Motion Record at Tab 2(B);

7. The Monitor has indicated that it supports the granting of the Settlement Agreement;
8. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
9. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and
10. 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 November 19, 2012, and the exhibits attached thereto;
- 2) the Supplemental Affidavit of Sean Dunphy sworn January 25, 2013, and the exhibits attached thereto; and
- 3) such further and other materials as counsel may advise and this Court may permit.

January 25, 2013

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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 BÉCANOUR SILICON INC.

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

Proceeding commenced at Toronto

**AMENDED NOTICE OF MOTION
(RETURNABLE JANUARY 30, 2013)**

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TAB 2

**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

**SUPPLEMENTAL AFFIDAVIT OF SEAN DUNPHY
(Sworn January 25, 2013 re Approval of the Settlement Agreement
and Vesting of the Beauharnois Property)**

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., the Court-appointed
Chief Restructuring Officer of Timminco Limited ("**Timminco**") and Bécancour Silicon
Inc. (together with Timminco, the "**Timminco Entities**"), and as such have knowledge
of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is supplementary to my affidavit sworn November 19, 2012 (the
"**November 19 Affidavit**")¹ and is made in support of a motion for an Order, *inter alia*,
approving the Settlement Agreement (as defined below) and granting a Vesting Order
in respect of the Beauharnois Property.

¹ Capitalized terms used herein but not otherwise defined have the meaning ascribed to them in the
November 19 Affidavit. A copy of the November 19 Affidavit, without exhibits, is attached hereto as
Exhibit "A")

SETTLEMENT AGREEMENT WITH QUONTA

3. Since the swearing of the November 19 Affidavit, which was sworn in support of a motion seeking an Order disclaiming the Beauharnois Sale Agreement pursuant to s. 32 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended, the Timminco Entities have engaged in good faith settlement negotiations with the counterparty to the Beauharnois Sale Agreement, Quonta Holdings Ltd. ("**Quonta**"). On December 6, 2012, the parties reached a settlement in principle.

4. On January 25, 2013, the parties entered into a mutually agreeable settlement agreement, a copy of which is attached hereto as **Exhibit "B"** (the "**Settlement Agreement**"). The Settlement Agreement includes the following terms:

- (a) Quonta will pay to the Monitor, in escrow, the sum of \$500,000 in settlement of the Timminco Entities' motion to disclaim the Beauharnois Sale Agreement;
- (b) Quonta will accept an assignment of the Certificate of Authorization issued in respect of the Beauharnois Property;
- (c) Timminco shall apply for a vesting order (the "**Vesting Order**") in respect of Timminco's interest in the Beauharnois Property vesting title free and clear of all CCAA charges or other encumbrances granted by or in respect of Timminco or its interest in the Beauharnois Property;
- (d) Quonta and Timminco shall exchange mutual releases of all claims of any kind in any way arising from the Beauharnois Sale Agreement or the Beauharnois Property; and