

Court of Appeal File No. M41085
Court of Appeal File No. M41062
Superior Court File No. CV-12-9539-00CL

COURT OF APPEAL FOR ONTARIO

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

**RESPONDING MOTION RECORD OF THE APPLICANTS
(Responding to Motions for Leave to Appeal the DIP Order)**

April 17, 2012

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Erica Tait LSUC#: 559960
Tel: (416) 869-6805
Fax: (416) 947-0866

Lawyers for the Applicants

TO: The Attached Service List

**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

**SERVICE LIST
(as at April 9, 2012)**

GENERAL	
<p>TIMMINCO LIMITED AND BÉCANCOUR SILICON INC. Sun Life Financial Tower 150 King Street West, Suite 2401 Toronto ON M5H 1J9</p> <p>Applicants</p>	<p>Peter A.M. Kalins Tel: (416) 364-5171 x340 Fax: (416) 364-3451 Email: pkalins@timminco.com</p> <p>Doug Fastuca Tel: (416) 364-5171 Email: dfastuca@timminco.com</p>
<p>STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Lawyers for the Applicants</p>	<p>Ashley J. Taylor Tel: (416) 869-5236 Fax: (416) 947-0866 Email: ataylor@stikeman.com</p> <p>Daphne MacKenzie Tel: (416) 869-5695 Email: dmackenzie@stikeman.com</p> <p>Pat O'Kelly Tel: (416) 869-5633 Email: pokelly@stikeman.com</p> <p>Dan Murdoch Tel: (416) 869-5529 Email: dmurdoch@stikeman.com</p> <p>Maria Konyukhova Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com</p> <p>Kathryn Esaw Tel: (416) 869-6820 Email: kesaw@stikeman.com</p>

<p>FTI CONSULTING CANADA INC. TD Waterhouse Tower 79 Wellington Street, Suite 2010 Toronto, ON M5K 1G8</p> <p>Monitor</p>	<p>Nigel D. Meakin Tel: (416) 649-8065 Fax: (416) 649-8101 Email: nigel.meakin@fticonsulting.com</p> <p>Toni Vanderlaan Tel: (416) 649-8075 Email: toni.vanderlaan@fticonsulting.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto ON M5L 1A9</p> <p>Lawyers for the Monitor</p>	<p>Steven J. Weisz Tel: (416) 863-2616 Email: steven.weisz@blakes.com</p> <p>Linc Rogers Tel: (416) 863-4168 Email: linc.rogers@blakes.com</p>
<p>BANK OF AMERICA, N.A. 20975 Swenson Drive, Suite 200 Waukesha, WI 53186</p> <p>Canada Branch 200 Front Street, Suite 2700 Toronto, ON M5V 3L2</p>	<p>Client Manager Fax: (262) 207-3347</p> <p>Medina Sales De Andrade Fax: (416) 349-4282</p>
<p>INVESTISSEMENT QUÉBEC 393 Rue Saint-Jaques, Suite 500 Montréal, QC H2Y 1N9</p>	<p>Danièle Leroux Tel: (514) 873-0439 Fax: (514) 873-9917 Email: daniele.leroux@invest-quebec.com</p> <p>Iya Toure Email: iya.toure@invest-quebec.com</p> <p>François Lamothe Email: francois.lamothe@invest-quebec.com</p> <p>Christine Fillion Email: christine.fillion@invest-quebec.com</p> <p>Liliane Monier Email: liliane.monier@invest-quebec.com</p>

<p>FASKEN MARTINEAU DUMOULIN LLP 140 Grande Allee Est, Suite 800 Quebec City, QC G1R 5M8</p> <p>333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p>Lawyers for Investissement Quebec</p>	<p>Charles Mercier Tel: (418) 640-2046 Fax: (418) 647-2455 Email: cmercier@fasken.com</p> <p>Claude Girard Tel: (418) 640-2050 Fax: (418) 647-2455 Email: cgirard@fasken.com</p> <p>Aubrey Kauffman Tel: (416) 868-3538 Fax: (416) 364-7813 Email: akauffman@fasken.com</p>
<p>MCCARTHY TÉTRAULT LLP Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6</p> <p>Lawyers for AMG Advanced Metallurgical Group N.V.</p>	<p>James Gage Tel: (416) 601-7539 Fax: (416) 868-0673 Email: jgage@mccarthy.ca</p>
<p>RAYMOND CHABOT GRANT THORNTON 140 Grande Allée Est, Suite 200 Québec City, QC G1R 5P7</p>	<p>Jean Chiasson Tel: (418) 647-3204 Fax: (418) 647-9279 Email: chiasson.jean@rcgt.com</p>
<p>QUÉBEC SILICON LIMITED PARTNERSHIP 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8</p>	<p>Rene Boisvert Fax: (819) 294-9001 Email: rene.boisvert@quebecsilicium.com</p>
<p>QUÉBEC SILICON GENERAL PARTNER INC. 6500 Rue Yvon Trudeau Bécancour, QC G9H 2V8</p>	<p>Rene Boisvert Fax: (819) 294-9001 Email: rene.boisvert@quebecsilicium.com</p>
<p>DOW CORNING CORPORATION 2200 West Salzburg Road Midland, MI 48686-0994</p>	<p>Sue K. McDonnell Fax: (989) 496-8307 Email: sue.mcdonnell@dowcorning.com</p> <p>John Tierney Email: john.tierney@dowcorning.com</p>

<p>MCCARTHY TÉTRAULT 1000 De La Gauchetière Street West, Suite 2500 Montréal QC H3B 0A2</p> <p>Toronto Dominion Bank Tower Suite 5300 Toronto, ON M5K 1E6</p> <p>Counsel to Dow Corning Corporation</p>	<p>Sylvain A. Vauclair Tel: (514) 397-4102 Fax: (514) 875-6246 Email: savaclair@mccarthy.ca</p> <p>Barbara Boake Tel: (416) 601-7557 Fax: (416) 875-6246 Email: bboake@mccarthy.ca</p> <p>Sharon Kour Tel: (416) 601-8305 Email: skour@mccarthy.ca</p>
<p>SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP Four Times Square New York, NY 10036</p> <p>Counsel to Dow Corning Corporation</p>	<p>David J. Friedman Fax: (212) 735-2000 Email: david.friedman@skadden.com</p>
<p>CANADIAN IMPERIAL BANK OF COMMERCE Commerce Court 11th Floor Toronto, ON M5L 1A2</p>	
<p>LAURENTIAN BANK OF CANADA 1981 McGill College Avenue Montréal, QC H3A 3K3</p>	
<p>TORYS LLP TD Centre 79 Wellington Street West, Suite 3000 Toronto, ON M5K 1N2</p> <p>Counsel to QSI Partners Ltd.</p>	<p>David Bish Tel: (416) 865-7353 Fax: (416) 865-7380 Email: dbish@torys.com</p>
<p>KIM ORR BARRISTERS 200 Front Street West, Suite 2300 Toronto, ON M5V 3K2</p>	<p>James C. Orr Tel: (416) 349-6571 Fax: (416) 598-0601 Email: jo@kimorr.ca</p>

<p>BAKER & MCKENZIE LLP Brookfield Place 181 Bay Street, Suite 2100 Toronto, Ontario M5J 2T3</p> <p>Lawyers for Wacker Chemie AG</p>	<p>Chris Besant Tel: (416) 865-2318 Fax: (416) 863-6275 Email: chris.besant@bakermckenzie.com</p> <p>Frank Spizzirri Tel: (416) 865-6940 Email: frank.spizzirri@bakermckenzie.com</p>
<p>OSLER HOSKIN & HARCOURT LLP 1 First Canadian Place Toronto, Ontario M5X 1B8</p> <p>Lawyers for Wacker Chemie AG</p>	<p>Steven Golick Tel: (416) 862-6704 Fax: (416) 862-6666 Email: sgolick@osler.com</p> <p>Andrea Lockhart Tel: (416) 862-6829 Email: alockhart@osler.com</p>
<p>BENNETT JONES LLP One First Canadian Place Suite 3400 Toronto, Ontario M5X 1A4</p> <p>Lawyers for John Walsh</p>	<p>Derek J. Bell Tel: (416) 777-4638 Fax: (416) 863-1716 Email: belld@bennettjones.com</p>
<p>GOWLING LAFLEUR HENDERSON LLP 1 Place Ville Marie, Suite 3700 Montréal, Québec H3B 3P4</p> <p>Lawyers for Wajax Equipment</p>	<p>Geneviève Cloutier Tel: (514) 392-9448 Fax: (514) 876-9048 Email: genevieve.cloutier@gowlings.com</p>
<p>DAVIES WARD PHILLIPS & VINEBERG LLP First Canadian Place, Suite 44 Toronto, Ontario M5X 1B1</p>	<p>Jay Swartz Tel: (416) 863-5520 Fax: (416) 863-0871 Email: jswartz@dwpv.com</p>

PENSION PLANS REPRESENTATIVES

BSI Non-Union Employee Pension Committee

[REDACTED]

Maria Spensieri

[REDACTED]

Email: maria.spensieri@quebecsilicium.com

[REDACTED]

René Boisvert

[REDACTED]

Email: rene.boisvert@quebecsilicium.com

[REDACTED]

Carl Rivard

[REDACTED]

Email: carl.rivard@quebecsilicium.com

[REDACTED]

Clément Albert

[REDACTED]

[REDACTED]

Patrick Gauthier

[REDACTED]

Email: patrick.gauthier@quebecsilicium.com

[REDACTED]

Denis Bourassa

[REDACTED]

<p>BSI Union Employee Pension Committee</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Maria Spensieri [REDACTED] Email: maria.spensieri@quebecsilicium.com</p> <p>René Boisvert [REDACTED] Email: rene.boisvert@quebecsilicium.com</p> <p>Carl Rivard [REDACTED] Email: carl.rivard@quebecsilicium.com</p> <p>Gérald Brodeur [REDACTED]</p> <p>Luc Ducharme [REDACTED]</p> <p>Laurent Milette [REDACTED]</p> <p>Louis-Gilles Baron [REDACTED]</p> <p>Clément Albert [REDACTED]</p>
<p>SUPERINTENDENT OF FINANCIAL SERVICES 5160 Yonge Street PO Box 85 Toronto, ON M2N 6L9</p>	<p>Mark Bailey Tel: (416) 590-7555 Email: mark.bailey@fsco.gov.on.ca</p> <p>Deborah McPhail Tel: (416) 226-7764 Email: dmcphail@fsco.gov.on.ca</p> <p>Stephen Scharbach Tel: (416) 590-7244 Fax: (416) 590-7070 Email: stephen.scharbach@fsco.gov.on.ca</p>

<p>RÉGIE DES RENTES DU QUÉBEC Direction des régimes de retraite Régies de rentes du Québec Case postale 5200 Québec, QC G1K 7S9</p>	<p>Mario Marchand Tel: (418) 657-8715 ext. 3927 Fax: (418) 643-9590 Email: mario.marchand@rrq.gouv.qc.ca</p>
<p>KOSKIE MINKSY LLP 20 Queen Street West, Suite 900 Toronto, ON M5H 3R3</p> <p>Lawyers for Mercer (Canada) Limited, the administration of the Haley Pension Plan</p>	<p>Andrew Hatnay Tel: (416) 595-2083 Fax: (416) 204-2872 Email: ahatnay@kmlaw.ca</p> <p>Demetrios Yiokaris Tel: (416) 595-2130 Email: dyiokaris@kmlaw.ca</p>
<p>UNIONS</p>	
<p>LA SECTION LOCALE 184 DE SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER 6500, rue Yvon-Trudeau Bécancour, QC G9H 2V8</p> <p>7080, boul. Marion Trois-Rivières, QC G9A 6G4</p>	<p>Jean Simoneau Email: scep184@gmail.com</p> <p>René Gauthier Tel: (819) 378-4696 Email: rgauthier@scep.ca</p>
<p>CALEYWRAY 65 Queen Street West, Suite 1600 Toronto, ON M5H 2M5</p> <p>Lawyers for La Section Locale 184 de Syndicat Canadien des communications, de l'Énergie et du Papier</p>	<p>Denis W. Ellickson Tel: (416) 775-4678 Fax: (416) 366-4678 Email: ellicksond@caleywray.com</p> <p>Jesse B. Kugler Tel: (416) 775-4677 Fax: (416) 366-3673 Email: kuglerj@caleywray.com</p>
<p>THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION 2285 Saint-Laurent Boulevard Suite D-11 Ottawa, ON K1G 4Z7</p>	<p>David Lipton Tel: (613) 260-7205 ext. 232 Email: dlipton@usw.ca</p>

<p>SACK GOLDBLATT MITCHELL LLP 20 Dundas Street West, Suite 1100 Toronto, ON M5G 2G8</p> <p>Lawyers for the United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union</p>	<p>Charles Sinclair Tel: (416) 979-4234 Fax: (416) 591-7333 Email: csinclair@sgmlaw.com</p>
PPSA CREDITORS	
<p>PRODAIR CANADA LTEE 7475 Boulevard Newman, Suite 311 La Salle, QC H8N 1X3</p>	
<p>SERVICES FINANCIERS CIT LTÉE 5035 South Service Road Burlington, ON L7R 4C8</p>	
<p>GE VFS CANADA LIMITED PARTNERSHIP 2300 Meadowvale Boulevard, Suite 200 Mississauga, ON L5N 5P9</p>	
<p>SERVICES FINANCIERS CATERPILLAR LTEE 5575 North Service Road Suite 600 Burlington, ON L7C 6M1</p>	<p>Kellie Wellenreiter Tel: (289) 313-1238 Email: kellie.wellenreiter@cat.com</p>
<p>SERVICES FINANCIERS DE LAGE LANDEN CANADA INC. 1235 North Service Road West, Suite 100 Oakville, ON L6M 2W2</p>	
<p>DCFS CANADA CORP 2680 Matheson Boulevard East Suite 500 Mississauga, ON L4W 0A5</p>	
<p>SERVICES FINANCIERS MERCEDES-BENZ 2680 Matheson Boulevard East Suite 500 Mississauga, ON L4W 0A5</p>	
<p>JOHN DEERE LIMITED 1001 Champlain Ave, Suite 401 Burlington, ON L7L 5Z4</p>	

GE CAPITAL VEHICLE AND EQUIPMENT LEASING INC. 2300 Meadowvale Boulevard 2nd Floor Mississauga, ON L5N 5P9	
ENDRAS BMW 100 Achilles Rd. Ajax, On L1Z 0C5	
DOCUMENT DIRECTION 100-1235 North Service Road West Oakville, ON L6M 2W2	
BMW CANADA INC. 50 Ultimate Drive Richmond Hill, ON L4S 0C8	
TOYOTA CREDIT CANADA INC. 80 Micro Court, Suite 200 Markham, ON L3R 9Z5	
GOVERNMENT AGENCIES	
DEPARTMENT OF JUSTICE ONTARIO REGIONAL OFFICE 130 King Street West, Suite 3400 Toronto, ON M5X 1K6 Attorney General of Canada	Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca
CANADA REVENUE AGENCY 130 King Street West, Suite 3400 Toronto, ON M5X 1K6 Solicitor for Canada Revenue Agency	Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca
CANADA REVENUE AGENCY GST Interim Processing Centre (GST/HST) 333 Laurier Avenue West Ottawa, ON K1A 1J8	

<p>AGENCY OF REVENUE DU QUEBEC 1600 Boulevard René Levésque Ouest, 3^e étage Sector R23 CPF Montréal, QC H3H 2V2</p>	
<p>MINISTÈRE DE LA JUSTICE DU QUEBEC 1200, route de l'Église, 6^e étage Québec City, QC G1V 4M1</p>	
<p>MINISTÈRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DES PARCS Édifice Marie-Guyart, 5^e étage 675 boulevard René-Lévesque Est Québec, QC G1R 5V7</p>	<p>Tel: (418) 521-3816 Fax: (418) 646-0908</p>
<p>MINISTRY OF REVENUE (ONTARIO) 33 King Street West Oshawa, ON L1H 8H5</p>	
<p>MINISTRY OF THE ATTORNEY GENERAL (ONTARIO) McMurtry-Scott Building 720 Bay Street, 11th Floor Toronto, ON M7A 2S9</p>	
<p>MINISTRY OF THE ENVIRONMENT Legal Services Branch 135 St Clair Avenue West Toronto, ON M4V 1P5</p>	<p>Mario Faieta Tel: (416) 314-6482 Fax: (416) 314-6579 Email: mario.faieta@ontario.ca</p>
<p>ONTARIO MINISTRY OF NORTHERN DEVELOPMENT, MINES AND FORESTRY Rm. M2-24, Macdonald Block 900 Bay Street Toronto, ON M7A 1C3</p> <p>Ministry of Northern Development, Mines and Forestry 933 Ramsey Lake Road, B4, Sudbury, Ontario P3E 6B5</p>	<p>Ms. C. Blancher-Smith, Director of Mine Rehabilitation TeL: (705) 670-5784</p>

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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(Applicants)

AFFIDAVIT OF PETER A.M. KALINS
(Sworn January 2, 2012 in support of Initial CCAA Application)

I, PETER A.M. KALINS, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President, General Counsel and Corporate Secretary of the Applicant Timminco Limited ("Timminco") and the President, General Counsel and Corporate Secretary, as well as a director, of Bécancour Silicon Inc. ("BSI" and, together with Timminco, the "Timminco Entities") and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Timminco Entities and have spoken with certain of the directors, officers and/or employees of the Timminco Entities, as necessary, and where I have relied upon such information do verily believe such information to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. INTRODUCTION

3. This affidavit is sworn in support of an application by the Timminco Entities for an order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

4. Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation ("DCC") for resale to customers in the chemical (silicones), aluminum, and electronics/solar industries. Timminco also produces solar grade silicon through Timminco Solar, an unincorporated division of Timminco's wholly-owned subsidiary BSI ("Timminco Solar"), for customers in the solar photovoltaic industry.

5. As described in greater detail below, the Timminco Entities are facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume long-term supply contract at below market prices, a severe decrease in the demand and market price for solar grade silicon as a result of a collapse in the polysilicon market and overall solar market, failure to recoup their capital expenditures incurred in connection with development of their solar grade operations, and the inability to secure additional funding. The Timminco Entities are also facing significant pension and environmental remediation legacy costs and financial costs related to large outstanding debts. A significant portion of the legacy costs are as a result of discontinued operations relating to Timminco's former magnesium business. As a result, the Timminco Entities are unable to meet various financial and other covenants with their secured lenders and do not have the liquidity needed to meet their ongoing payment obligations.

6. The Timminco Entities have been unable to successfully restructure their operations and capital structure outside of formal insolvency proceedings and are now insolvent and unable to meet their liabilities as they become due. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers, and customers. CCAA protection will allow the Timminco Entities to maintain operations while giving them the necessary time to consult with their stakeholders regarding the future of their business operations and corporate structure.

7. The board of directors of Timminco has authorized this Application. Pursuant to a unanimous shareholder declaration which removed the directorial powers from the directors of BSI and consolidated the decision making with Timminco through its board of directors (as described below), the board of directors of Timminco has also authorized this filing on behalf of BSI.

II. THE TIMMINCO ENTITIES

Overview

8. Timminco produces silicon metal through Québec Silicon Limited Partnership ("QSLP"), its 51%-owned production partnership with DCC. Timminco Solar, a division of Timminco's wholly owned subsidiary BSI, produces solar grade silicon.

9. Silicon metal is used by the chemical, aluminum, electronics and solar industries and is a key raw material in both consumer and industrial products such as cosmetics, solar panels, sealants and computer components. QSLP is one of the largest producers of silicon metal in North America.

10. Solar grade silicon is derived by purifying silicon metal and may be used by the solar photovoltaic industry as an alternative raw material to polysilicon for the production of solar cells.

11. As of November 30, 2011, the Timminco Entities had approximately 23 employees, approximately 346 retirees in their active and wound-up pension plans, and owned operating and non-operating facilities in Ontario and Québec.

Corporate Structure

12. Timminco is a public company incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (the "CBCA"). Timminco's common shares are listed and publicly traded on the Toronto Stock Exchange ("TSX"). AMG Advanced Metallurgical Group N.V. ("AMG") is Timminco's largest shareholder holding approximately 42% of Timminco's issued and outstanding common shares. Timminco's principal office is located at 150 King Street West, Suite 2401 in Toronto, Ontario.

13. Timminco owns 100% of the shares of BSI, a corporation subject to the *Québec Business Corporations Act*, R.S.Q., c S-31.1, with its principal office located at 6500 Rue Yvon-Trudeau in Bécancour, Québec.

14. As described in greater detail below, BSI owns, directly and indirectly, 51% of the limited partnership units of QSLP and directly owns 51% of the shares of Québec Silicon General Partner Inc. ("QSGP"), the general partner of QSLP. Dow Corning Canada, Inc. ("DCC Canada"), an indirect subsidiary of DCC, owns approximately 49% of the limited partnership units of QSLP, and DC Global Holdings S.a.r.l., a subsidiary of DCC, owns approximately 49% of the shares of QSGP. Protection under the CCAA with respect to QSLP or QSGP (collectively, "Québec Silicon") is not being sought on this application.

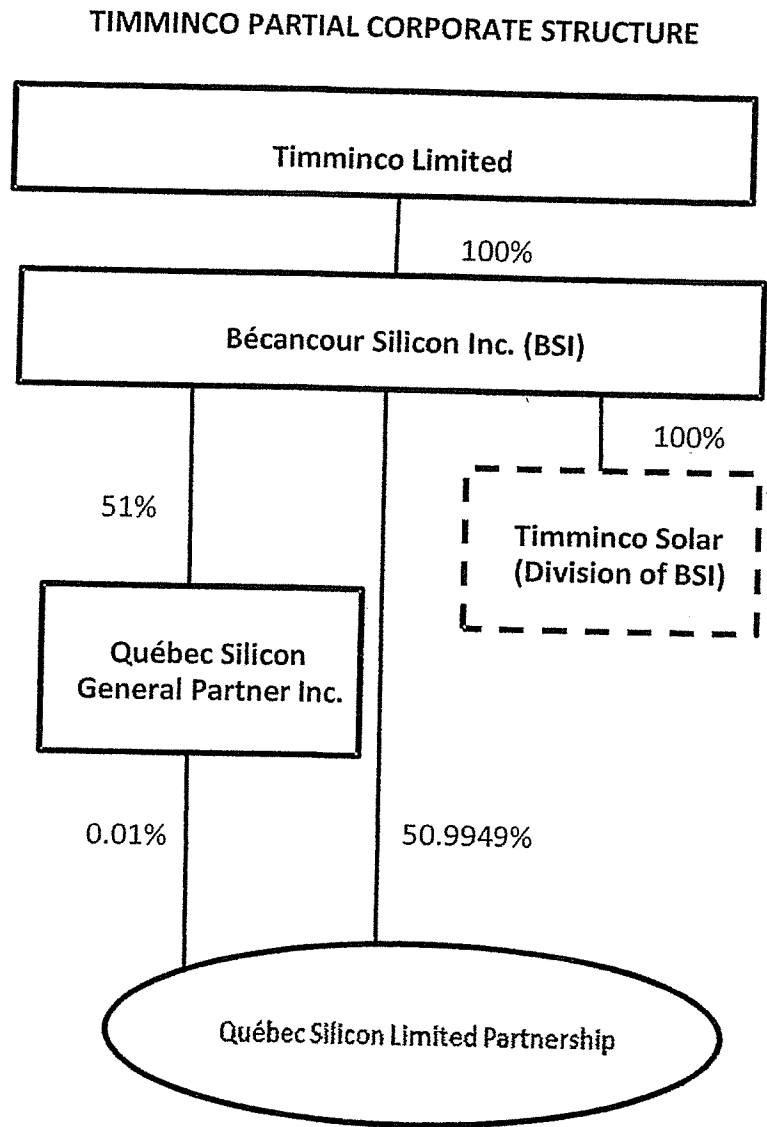
15. Timminco also has the following inactive subsidiaries:

- (a) Timminco Silicon Holdings Limited is a wholly-owned subsidiary of Timminco incorporated under the CBCA and is not carrying on, and has never carried on, any operations;
- (b) Timminco Holdings Corporation, a wholly-owned subsidiary of Timminco, is incorporated under the laws of Delaware and owns 100% of the shares of Timminco Corporation and Timminco Properties Inc., which owns 100% of the shares of Timminco Technologies Inc. and Timminco Adhesives Corporation. These entities operated Timminco's former U.S. specialty metals, chromium smelting, adhesives, magnesium extrusion and other legacy businesses and are no longer carrying on any operations. However, the Timminco Corporation still has some legacy environmental liabilities in the United States, and Timminco Properties still owns certain vacant industrial property in the United States; and
- (c) Timminco S.A., incorporated under the laws of Switzerland, formerly operated as the European sales office for Timminco's former magnesium extrusion and specialty metals business and is no longer carrying on any business. Timminco owns 94% of the shares of Timminco S.A. and the remaining 6% of the shares are held in trust for the benefit of Timminco.

16. Timminco also owns 19.5% of Applied Magnesium International Limited ("AMI"), a corporation incorporated under the laws of the British Virgin Islands. AMI operates Timminco's former magnesium business through various subsidiaries in the United States, Mexico, China and Australia, some of which were formerly subsidiaries of Timminco.

17. No relief is being sought on this application with respect to any of these entities.

18. The following chart demonstrates the corporate structure of the Timminco Entities and Québec Silicon, with the percentages reflecting equity interests. A full corporate chart of the Timminco Entities and all of their subsidiaries is attached hereto as Exhibit "A".



19. In order to consolidate and streamline corporate decision making, Timminco executed a unanimous shareholder declaration on January 2, 2012, which removed the directorial powers from the directors of BSI and consolidated the decision making of the Timminco Entities with Timminco through its board of directors.

The Businesses of the Timminco Entities

Silicon Metal and Production Partnership with DCC

20. BSI formed Québec Silicon for the purpose of acquiring all of BSI's silicon metal assets, excluding the solar grade silicon assets and certain other silicon-related assets. On August 10, 2010, BSI, DCC and Timminco entered into a Framework Agreement (the "Framework Agreement") which set out certain key terms of their joint venture and the relationship between them with respect to same. Due to the commercially sensitive nature of the information contained in the Framework Agreement, a redacted copy of the Framework Agreement is attached hereto as Exhibit "B".
21. Pursuant to the Framework Agreement, DCC acquired a 49% equity interest in Québec Silicon and BSI retained a 51% equity interest in Québec Silicon. In exchange for the transfer, BSI received the majority 51,000 limited partnership units in QSLP, 51% of the shares of QSGP, net cash proceeds of approximately US\$40 million on the closing of the transaction contemplated by the Framework Agreement and is also entitled to receive an "earn out" of up to US\$10 million upon the achievement by Québec Silicon of certain performance objectives tied to cost reduction and capacity increases. Based on the performance of Québec Silicon during the last 12-month period, BSI has determined not to invoke its right to receive any payment on account of the earn out at this time.
22. On September 30, 2010, BSI transferred all of the silicon metal production assets (including property, plant, equipment, and certain net working capital items) and related liabilities to Québec Silicon pursuant to the Business Transfer Agreement dated September 30, 2010 (the "Transfer Agreement"). The Transfer Agreement is attached hereto as Exhibit "C". None of BSI's solar grade silicon assets nor the Silica Fumes Property (as defined below) were transferred to Québec Silicon. In addition, certain liabilities associated with BSI's silicon metal operations, including certain pension liabilities, were not transferred to Québec Silicon.
23. On October 1, 2010, upon the closing of the transaction contemplated by the Framework Agreement, BSI, DCC Canada, QSGP, QSLP and/or Timminco entered into, among

other things, the following agreements governing the production partnership (collectively, the "QSLP Agreements"):

Limited Partnership Agreement

- (a) An amended and restated limited partnership agreement between BSI, DCC Canada and QSGP dated October 1, 2010 (the "**Limited Partnership Agreement**"). Among other things, the Limited Partnership Agreement provides that profits and losses are allocated between DCC Canada and BSI based on their respective equity interests in QSLP. The Limited Partnership Agreement also (i) sets forth the obligations to BSI and DCC Canada to make capital contributions to QSLP in certain circumstances; (ii) prohibits BSI and DCC Canada from effecting any transfer, sale or assignment of QSLP units until October 1, 2015 without the prior written permission of the non-transferring party; and (iii) provides for certain put and call rights in favour of DCC Canada in respect of BSI's equity interest in QSLP upon the occurrence of certain events such as a change in control, an act of insolvency or other defaults by BSI. A copy of the Limited Partnership Agreement is attached hereto as **Exhibit "D"**.

Shareholders Agreement

- (b) Shareholders agreement between QSGP and its two shareholders dated October 1, 2010 (the "**Shareholders Agreement**"). Among other things, the Shareholders Agreement provides for the governance and the composition and decision-making of the board of directors of QSGP (as the general partner of QSLP) and prohibits the shareholders from effecting any transfer, sale or assignment of QSGP shares until October 1, 2015 without the prior written permission of the non-transferring party. A copy of the Shareholders Agreement is attached hereto as **Exhibit "E"**.

Supply Agreement

- (c) An output and supply agreement dated October 1, 2010 among BSI, DCC and QSLP (the "**Supply Agreement**") pursuant to which BSI and DCC are entitled to

a supply allocation of QSLP's silicon metal production that is proportionate to their equity interest in QSLP. In the fourth quarter of 2010 and in 2011, QSLP allocated to BSI more than BSI's 51% allocation entitlement to QSLP's production of silicon metal. As a result, BSI and DCC agreed that DCC would be entitled to receive more than DCC's 49% allocation entitlement in 2012. BSI and DCC purchase silicon metal from QSLP at a price based on the actual full cost of production, plus a fixed margin. Due to the commercially sensitive nature of the information contained in the Supply Agreement, a redacted copy of the Supply Agreement is attached hereto as **Exhibit "F"**.

Other Agreements

- (d) Lease Agreement dated September 30, 2010 between QSLP and BSI (the "**Lease Agreement**") pursuant to which BSI leases from QSLP space located in the administration building located at the Québec Silicon Real Property (as defined below) for use by certain of BSI's management employees.
- (e) Agency Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Agency Agreement**") pursuant to which BSI, as agent, sells silica fumes and other by-products produced from QSLP's silicon metal operations in exchange for commission.
- (f) Shared Expenses Agreement dated October 1, 2010 (as amended) between QSLP and BSI (the "**Shared Expense Agreement**") pursuant to which QSLP allows BSI access to a laboratory located on the Québec Silicon Real Property, which BSI uses for quality control purposes.
- (g) Shared Services Agreement dated September 30, 2010 between BSI and QSLP (the "**Shared Services Agreement**") pursuant to which Québec Silicon must make certain key employees of Québec Silicon available to provide services to BSI including in respect of finance, human resources, maintenance, information technology and logistics.

- (h) Timminco Support Agreement dated September 30, 2010 between Timminco and QSLP (the "Timminco Support Agreement") pursuant to which QSLP is entitled to receive legal, financial and other professional support services of employees of Timminco.
- (i) Bécancour LP Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, and BSI/DCC Intellectual Property License Agreement dated October 1, 2010 between QSLP, DCC and BSI, pursuant to which the parties thereto granted certain rights to other parties thereto regarding the use and ownership of certain intellectual property relating to silicon metal productions and operations.

24. The terms of the above agreements provide that certain events are deemed to occur and purport to entitle DCC Canada, QSLP, and/or QSGP to take certain steps if BSI becomes a Defaulting Special Partner (as defined in the Limited Partnership Agreement) as a result of, among other things, application for an order under the CCAA or becoming insolvent as defined under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), including the following:

- (a) Section 16.4 of the Limited Partnership Agreement provides that a Defaulting Special Partner shall lose the right to vote its Partnership Interest and to attend meetings of the Partners (as these terms are defined in the Limited Partnership Agreement).
- (b) Section 16.5 of the Limited Partnership Agreement provides that the Non-Defaulting Special Partner shall have the right to purchase, at its option, the Partnership Interest of the Defaulting Special Partner for a purchase price equal to the fair market value of such Partnership Interest.
- (c) Under Section 9 of the Shareholders Agreement, upon a Shareholder (as defined in the Shareholders Agreement) becoming a Defaulting Partner under the Limited Partnership Agreement: (i) such Shareholder shall cease to nominate directors to the board of directors of QSGP, (ii) each director designated by such Shareholder then in place shall be deemed to have resigned from office, and (iii)

such Shareholder shall not exercise the voting rights attached to its shares and its shares will be disregarded for the purposes of any vote.

- (d) The Lease Agreement, the Agency Agreement, the Shared Services Agreement, the Shared Expenses Agreement, and the Timminco Support Agreement provide that QSLP has the right to terminate these agreements when BSI no longer has the ability to appoint a majority of the board of directors of QSGP or when BSI becomes insolvent or takes the benefit of any legislation for insolvent debtors.

25. Notwithstanding the transfer of the silicon metal assets to Québec Silicon, after the closing of the transaction contemplated by the Framework Agreement, BSI retained its silicon metal customer relationships with the intention of continuing to honour all existing contracts with such customers through its proportional off-take of Québec Silicon's production. BSI purchases substantially all of its silicon metal for re-sale to its customers from Québec Silicon. In addition, Québec Silicon employs certain production technologies to produce certain grades of silicon metal that BSI is required to supply to its customers, and which cannot be purchased from silicon metal suppliers other than Québec Silicon. Therefore, BSI is highly dependent on Québec Silicon for its supply of silicon metal required to satisfy BSI's commitments to its customers. Moreover, as all of BSI's silicon metal purchases from Québec Silicon are on a "cost-plus" basis, whereas BSI's sales to its customers are generally on a "fixed price" basis, BSI is also highly dependent on Québec Silicon's operational efficiency for its profitability.

26. After QSLP completes production of silicon metal to BSI's specifications, which typically occurs on a continuing basis, QSLP transfers the finished product to a warehousing facility located on the Québec Silicon Real Property (as defined below) and adjacent to QSLP's production facility. QSLP loads BSI's finished goods from storage to rail cars, trucks or shipping containers as required by BSI for its customers. Following the transfer into storage and the issuance of the related invoice by QSLP, title to the finished product passes to BSI and forms part of BSI's inventory. The silicon metal product is then shipped to BSI's customers, located in Canada and internationally, via road, railroad or sea (depending on the customer's requirements).

27. Substantially all of the silicon metal that BSI purchases from Québec Silicon is sold to one long standing customer (the "Key Customer"). The remainder of BSI's allocation is sold to other customers on short-term contracts and into the spot market.

28. In February 2010, prior to the creation of the production partnership with DCC, BSI executed a long-term contract with the Key Customer to supply silicon metal over the next five years. In May 2011, BSI executed a new long-term silicon metal supply contract with the Key Customer which, among other things, replaced the previous contractual relationship, provided for amended pricing and additional silicon metal volumes and extended the supply commitments through to the end of 2015 (as amended, the "Key Customer Agreement"). Pricing for silicon metal under the Key Customer Agreement is fixed, subject to annual negotiations, and denominated in Euros.

29. The base quantity to be delivered under the Key Customer Agreement represents substantially all of BSI's anticipated allocation of up to 51% of the silicon metal output from Québec Silicon for at least the next three years. Moreover, whereas BSI's volume of silicon metal supplied by Québec Silicon is based on a percentage of Québec Silicon's total production, which may fluctuate from year to year, BSI's volume commitments to the Key Customer are fixed according to the Key Customer Agreement.

30. The Key Customer Agreement contains annual call and put options in respect of the supply commitments starting in 2012 based on the upper and lower limits of the defined price range for annual negotiations. In November 2011, following annual pricing negotiations, the Key Customer exercised its call option for the full volume of silicon metal products in 2012 at the upper limit of such range, which according to the Key Customer Agreement is at a price that is lower than the current fixed price for 2011.

31. In September 2011, with a view to improving the Timminco Entities' cash position, BSI and the Key Customer amended the Key Customer Agreement to reduce the base quantity for 2012 by an agreed volume which instead will be supplied by BSI to Sudamin Holding S.P.R.L. ("Sudamin"), a wholly-owned subsidiary of AMG. Sudamin concurrently committed to sell such volume to the Key Customer in the third quarter of 2012. BSI received a net pre-payment

from Sudamin of approximately \$4.8 million in September 2011 for such future deliveries in 2012.

Solar Grade Silicon and the Timminco Solar Division

32. Timminco Solar produces solar grade silicon pursuant to a proprietary and patented metallurgical-based process to purify silicon metal into solar grade silicon. The solar grade silicon is expected to have the chemical composition and other characteristics that would allow it to be used for the manufacture of solar photovoltaic cells. A solar panel, comprised of several solar cells, captures energy from sunlight and converts it into electricity by the photovoltaic effect.

33. Traditionally, solar cells are made using polysilicon, which is a highly purified form of silicon metal that is produced through a capital and energy intensive chemical based process. Certain elements (known as dopants) are added to the polysilicon to achieve the desired chemical composition of silicon for the production of solar cells. Timminco Solar's solar grade silicon may be an economic alternative to polysilicon, on the basis that it can be produced in a process that is less capital intensive with lower operating costs than the process that produces polysilicon. However, its profitability is highly dependent on the demand of the solar photovoltaic industry, the price of polysilicon and the receptivity of its customers to use solar grade silicon as an alternative to polysilicon.

34. BSI owns two solar grade silicon manufacturing facilities and an ingoting facility located in Bécancour, Québec (described in greater detail below).

35. BSI holds certain patents with respect to its metallurgical-based processes used to purify silicon metal into solar grade silicon. In particular, patents have been granted in the U.S., Canada, Georgia, Mexico, Malaysia and South Africa in respect of the Solidification Process (the "Solidification Patent") and in Canada, China, Mexico, Egypt, Georgia, South Africa, and the Eurasian Patent Organization in respect of the Rotary Drum Furnace Process (the "Rotary Drum Patent"). On the Rotary Drum Patent, Timminco has applied for a patent in the U.S., which remains outstanding.

36. Following the drastic decrease in the demand for and price of polysilicon (from approximately US\$400 per kilogram in 2008 to approximately US\$45 per kilogram in 2009) and solar grade silicon in 2009 (as described in greater detail below), and the resulting termination of customer commitments to buy Timminco Solar's solar grade silicon, in January 2010, Timminco Solar ceased active production of its solar grade silicon.

37. Since cessation of active production, Timminco Solar has continued to focus on improving the efficiency of the technology through continued research and testing. The Timminco Entities have invested significant funds in solar grade silicon capital equipment, development and expanding new customer markets for solar grade silicon in 2011.

38. Timminco Solar had planned to re-launch production of its solar grade silicon in early 2012, subject to achieving certain quality and cost benchmarks, market demand and customer commitments. However, an oversupply of polysilicon in the market in the latter half of 2011 has resulted in polysilicon prices that are at historical lows of approximately \$27 per kilogram. The result is that the market for Timminco Solar's solar grade silicon continues to be unfavourable and therefore precludes a re-launch of production.

39. Timminco Solar continues its efforts to sell its remaining inventories of solar grade silicon that were produced prior to the curtailment of production in early 2010, and that have been produced since then in connection with ongoing research and testing. Timminco Solar sells such inventory directly to end customers and also through distributors and sales agents. For example, BSI has entered into a sales agency agreement with AMG Conversion Ltd. ("AMG Conversion"), a wholly-owned subsidiary of AMG, whereby AMG Conversion acts as BSI's non-exclusive agent for the sale of BSI's existing solar grade inventory in consideration for a commission of 5% of the gross invoice price.

Silica Fumes

40. BSI also sells silica fumes, which are a non-hazardous by-product from the silicon metal manufacturing process. Silica fumes are used by the construction industry as an ingredient in cement for marine structures or bridge foundations and also serve as a thermal insulator.

41. Until 1993, when a market for silica fumes developed, BSI disposed of its silica fumes at its Silicon Fumes Property (as defined below). Starting in 1995, BSI began extracting the silica fumes from its disposal site for sale to third parties. The extraction process is carried out during the spring, summer and fall. Extraction of silica fumes from this site is expected to cease in the second half of 2012.

Supply Chain

42. Québec Silicon is BSI's primary supplier of silicon metal, and sole supplier of certain grades of silicon metal, for resale to BSI's customers. The continued supply of silicon metal from Québec Silicon is critical to the Timminco Entities' silicon metal business. A disruption of such supply could severely impact the Timminco Entities' silicon metal business.

43. BSI is also highly dependent on Québec Silicon for many other services including, among other things, in respect of shared employees, IT systems, quality control and leased premises as described earlier. A disruption of such services would severely impact all of the Timminco Entities' silicon metal, solar grade silicon and silica fume businesses.

44. In addition, the Timminco Entities are highly dependent on other suppliers for the continued operation of the solar grade silicon and silica fumes businesses. These include suppliers of raw materials (including silicon metal, oxygen and electricity for solar grade silicon purification operations), providers of logistics/transport and warehousing services, and providers of ingoting services (including AMG Conversion).

Employees

45. As at November 30, 2011, BSI had approximately 13 employees of which 10 were salaried and three were paid on an hourly basis. BSI's hourly employees are subject to a collective bargaining agreement dated February 28, 2011 (the "Collective Bargaining Agreement") and are represented by the Communication, Energy and Paper Union (the "Union"). The Collective Bargaining Agreement applies to both BSI's and Québec Silicon's unionized employees, and expires April 2013.

46. The Timminco Entities formerly employed approximately 24 hourly employees at their magnesium facility (the disposition of which is described in more detail below) who were subject to a collective bargaining agreement effective from June 1, 2007 to May 31, 2010 and were represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "United Steelworkers"). This collective bargaining agreement is no longer in force due to the wind up of the Timminco Entities' magnesium business in 2009.

47. As at November 30, 2011, Timminco had approximately 10 employees, all of which were salaried.

48. BSI also has employee sharing arrangements with QSLP with respect to approximately 15 designated non-union employees of QSLP pursuant to the Shared Services Agreement. Under the Shared Services Agreement, shared employees allocate a specified percentage of their time to perform services for BSI and BSI must reimburse QSLP for the prorated portion of all salary and benefits paid to such shared employees.

Properties and Facilities

The Bécancour Properties - the Solar Grade Silicon Facilities and the Ingotting Facility

49. BSI owns a 36.7 acre parcel of real property located at 5500 Yvon-Trudeau Street, Bécancour, Québec and owns, as beneficial owner, a 4.6 acre parcel of real property located at 6400 Yvon-Trudeau Street, Bécancour, Québec (together, the "Bécancour Properties") where BSI's solar grade silicon production facilities, known as "HP1" and "HP2", respectively, (the "Solar Grade Silicon Production Facilities") and an ingotting facility (the "Ingotting Facility") are located.

50. The Solar Grade Silicon Production Facilities were built between 2007 and 2009 and are currently used for the development of Timminco Solar's solar grade silicon purification process, with the majority of the equipment being idled pending re-commencement of commercial production.

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51. Timminco Solar operates the Ingotting Facility for research and development and quality control purposes. The ingotting equipment located at the Ingotting Facility, which includes crystallization furnaces manufactured by ALD Vacuum Technologies GmbH, a subsidiary of AMG, is owned by AMG Conversion. Timminco Solar uses the ingotting equipment, for a specified fee, pursuant to a memorandum of understanding (as amended and extended) with AMG Conversion. Timminco Solar must continue to have access to and use of the ingotting equipment in order to be able to continue its solar grade silicon research, development and quality control.

52. BSI transferred the property that is adjacent to and surrounding the Bécancour Properties to QSLP (the "Québec Silicon Real Property"). The Québec Silicon Real Property includes several large manufacturing buildings, an administrative building and other ancillary buildings. QSLP operates its silicon metal manufacturing facility (the "Silicon Metal Facility") on this property and leases a part of the administrative building to BSI for use as administrative offices. Pursuant to the Lease Agreement, BSI pays nominal rent for such leased premises and approximately 20% of the taxes and other operating costs incurred with respect to the administrative building.

53. Since the sale of the Québec Silicon Real Property, access to the Bécancour Properties is only available through the Québec Silicon Real Property. As provided for in the Framework Agreement, BSI is to continue to have, among other things, access to the HP2 facility through the Québec Silicon Real Property, parking, ability to install telephone and other lines, pursuant to an agreement between QSLP and BSI that is currently being negotiated and the form of which had already been agreed upon by the parties. BSI must continue to have access to the HP2 facility via the Québec Silicon Real Property in order to be able to continue its solar grade silicon operations.

The Silica Fumes Property

54. BSI also owns real property located at 5355 Chemin-de-Fer, Bécancour, Québec (the "Silica Fumes Property") from which BSI extracts the silica fumes for sale to third parties. There are certain environmental remediation issues with respect to this property (as discussed in greater detail below).

Magnesium Facility - Haley, Ontario

55. Until June 2008, the Timminco Entities operated a dolomite mine and a magnesium manufacturing and extrusion, and special metals manufacturing, facilities located at 962 Magnesium Road in Haley, Ontario (the "Haley Property"). This property is owned by Timminco and is currently vacant and undergoing environmental monitoring and mine closure rehabilitation (as described in greater detail below).

Adhesives Facility - Toronto, Ontario

56. Timminco owns an industrial property located at 90 Tycos Drive in Toronto, Ontario (the "Toronto Property") that is currently leased to a third party under a long-term lease. Timminco has ongoing environmental monitoring and remediation obligations with respect to the Toronto Property as a result of legacy operations at that site relating to Timminco's former adhesives business (as discussed in greater detail below).

Ferrosilicon Facility - Beauharnois, Québec

57. Timminco also formerly operated a ferrosilicon facility located at 54 Hauts-Fourneaux in Beauharnois, Québec (the "Beauharnois Property"). On December 1, 2004, Timminco entered into an agreement of purchase and sale concerning the sale of the Beauharnois Property to a purchaser who agreed to assume all environmental liabilities associated with the Beauharnois Property (described in greater detail below). Timminco received the full purchase price from the purchaser. However, title to the Beauharnois Property is only scheduled to pass to the purchaser in 2013, subject to certain conditions. In the event that the purchaser fails to satisfactorily remediate the Beauharnois Property by October 2013, title will not pass and beneficial ownership of the Beauharnois Property will revert back to Timminco. In such event, Timminco will be entitled to retain the purchase price, but will be responsible for the environmental remediation obligations for the Beauharnois Property.

Cash Management System

58. In the ordinary course of its business Timminco uses a centralized cash management system (the "Cash Management System") to, among other things, collect funds and pay expenses associated with their operations.
59. Timminco maintains four bank accounts, one Canadian dollar disbursement account (the "Canadian Dollar Disbursement Account"), one Canadian dollar master account, one US dollar account (the "US Dollar Account"), and one Euro account with Bank of America.
60. Disbursements are made from the Canadian Dollar Disbursement Account and the US Dollar Account as required to operate the business. The Timminco payroll is funded through the Canadian Dollar Disbursement Account, except for the payroll for the Chief Executive Officer of Timminco and the General Manager of Timminco Solar, which is funded out of the US Dollar Account. Timminco uses ADP Canada Payroll Technologies to disburse payroll directly to employees and to make necessary statutory remittances.
61. Timminco maintains also maintains nine bank accounts, three Canadian dollar accounts, three US dollar accounts and three Euro accounts with Bank of America for BSI consisting of a disbursement account, a receipt account and a master account for each of the three currencies. At the end of each business day, the disbursement accounts and receipt accounts are swept into the master account for each respective currency. Payroll is calculated by BSI and funds are disbursed to individual employees via Caisse Populaires who receives a lump sum transfer from BSI. Statutory remittances are made at the same time directly through the Bank of America Canadian Dollar Disbursement Account.
62. Cash payments from customers are typically received by wire payment and deposited directly into Timminco's primary bank account. Payments that are received in the form of cheques are deposited into a local branch of the Toronto-Dominion Bank and transferred directly to Timminco's accounts at Bank of America.
63. Continued access to the Cash Management System is critical to the ongoing business of the Applicants.

Assets

64. The Timminco Entities' assets, as reflected in the unaudited consolidated financial statements of Timminco Limited¹ for the quarter ended September 30, 2011 ("Q3 2011"), had a net book value of approximately \$126 million and consisted of the following:

Current Assets		
Cash and equivalents	\$ 2,798,000	
Restricted cash	\$ 10,000	
Accounts receivable	\$ 7,315,000	
Due from related companies	\$ 2,244,000	
Inventory	\$ 7,710,000	
Finished goods consigned to related company	\$ -	
Prepaid expenses	\$ 182,000	
Total Current Assets		\$ 20,259,000
Due from related companies		\$ -
Long term receivables		\$ 2,272,000
Long term inventories		\$ 2,199,000
Property, plant and equipment		\$ 57,065,000
Investments		\$ 43,673,000
Intangible assets		\$ 1,507,000
Total Assets		\$125,975,000

65. Property, plant and equipment consist primarily of BSI's interest in the Bécancour Properties and the buildings and equipment located thereon.

66. Investments are comprised of BSI's equity interest in Québec Silicon.

67. The Timminco Entities have also commenced an action in the Southern District of Texas against, among others, Applied Magnesium USA, Inc. and Metrobank N.A., seeking damages in the amount of \$3 million for payment of outstanding receivables.

68. In addition to the foregoing, as at fiscal year ended December 31, 2010, the Timminco Entities had the following tax losses:

¹ The consolidated financial statements include the results of Timminco, BSI and Timminco's US inactive subsidiaries (described above). The assets, liabilities, and financial results of these inactive subsidiaries are negligible and have negligible impact on the results reported in the consolidated financial statements.

- (a) Canadian tax loss carry forwards amounting to \$159.3 million expiring between 2013 and 2029; and
- (b) U.S. federal tax loss carry forwards in the amount of \$22.5 million expiring between 2012 and 2028.

Intercompany Indebtedness

69. Timminco has been extending funds over the years to BSI, on an unsecured basis, to provide capital to BSI to support growth opportunities and fund operating cash flow deficits. These funding activities have resulted in intercompany indebtedness in the approximate amount of \$136 million as at November 30, 2011.

Liabilities

70. As at September 30 2011, the Timminco Entities had liabilities totalling approximately \$89 million. The principal debt obligations of the Timminco Entities are described in more detail below.

Senior Secured Credit Facility

71. BSI has a secured revolving credit facility (the "Senior Secured Credit Facility") with Bank of America, N.A. ("Bank of America") under which BSI could draw up to \$20 million, subject to a borrowing base calculation and \$5 million availability block. The Senior Secured Credit Facility is governed by a loan and security agreement dated December 15, 2010 (the "Senior Credit Agreement") which terminates on December 15, 2013. The Senior Credit Agreement was subsequently amended by five different amendments dated June 13, 2011, July 29, 2011, September 30, 2011, November 4, 2011, and November 30, 2011 (collectively, the "Senior Credit Amendments"). Copies of the Senior Credit Agreement and the Senior Credit Amendments are available upon request.

72. Under the Senior Credit Agreement, the Timminco Entities are required to, among other things, meet minimum levels of earnings before interest, taxes, depreciation and amortization ("EBITDA") and restrict capital expenditures to certain maximum levels. The failure to meet these covenants constitutes an event of default. In an event of default, any credit

issued under the Senior Secured Credit Facility may become immediately due and payable and the Senior Credit Agreement may be terminated at Bank of America's option.

73. Timminco has guaranteed BSI's obligations under the Senior Credit Facility. The Timminco Entities' obligations under the Senior Credit Agreement and related guarantee are secured by substantially all of the assets of the Timminco Entities, including BSI's equity interest in QSLP, pursuant to a general security agreement in Ontario and a deed of hypothec in Québec. Copies of the guarantee and security agreements granted by the Timminco Entities are available upon request.

74. As at the time of swearing this affidavit, the Senior Credit Facility is undrawn. Further, Bank of America has notified the Timminco Entities that it has increased the Availability Reserve (as defined in the Senior Credit Agreement) by \$3 million, the immediate consequence of which is that no further borrowing is permitted under the Senior Credit Facility.

Secured Term Loan

75. Pursuant to a term loan agreement dated July 10, 2009 (the "Term Loan Agreement"), BSI received a secured term loan from Investissement Québec ("IQ") in the principal amount of \$25 million (the "Secured Term Loan"). A copy of the Term Loan Agreement is attached hereto as Exhibit "G".

76. The Secured Term Loan is secured by a guarantee from Timminco and a charge upon all of BSI's assets, including BSI's equity interest in QSLP, and is subordinated to the obligations of the Timminco Entities under the Senior Credit Agreement. Copies of the guarantee granted by Timminco and of the hypothec granted by BSI are attached hereto collectively as Exhibit "H".

77. The Secured Term Loan is interest-bearing at a variable rate of Canada prime plus 9%, which is currently approximately 12% per annum, with interest payable monthly until maturity, which originally was August 31, 2011. In March 2010, IQ agreed to defer interest payments for a six month period in 2010 and in August 2011, IQ agreed to capitalize the deferred interest of \$1.4 million, resulting in the current principal amount of \$26.4 million.

78. In connection with the extension of the Senior Credit Agreement, on December 15, 2010, the Secured Term Loan was amended to, among other things, extend the maturity date by eight years to July 16, 2019. As a result of such amendments, the Secured Term Loan is repayable in 84 fixed, consecutive monthly instalments in the amount of \$175,000 starting on August 12, 2012 and additional annual instalments, due on June 30 of each year starting in June 2013, in amounts based on BSI's defined adjusted cash flow for the preceding year. Copies of these amendments are attached hereto collectively as Exhibit "I".

79. Under the Secured Term Loan, BSI is obligated to maintain certain working capital and debt to equity ratios. Further, a default under either the Senior Credit Agreement or the AMG Note (as defined and discussed below) constitutes a default under the Secured Term Loan upon which the entire amount of the Secured Term Loan is immediately due and payable.

AMG Note

80. In December 2009, BSI issued an unsecured convertible promissory note to AMG, Timminco's largest shareholder, in consideration for a loan of US\$5 million. An amended and restated note (the "AMG Note") was executed on December 15, 2010 that extended the maturity date of the loan from January 3, 2011 to January 3, 2014. Beginning January 1, 2011, interest on the AMG Note was set at 14%, payable monthly in arrears. A copy of the AMG Note is available upon request.

81. AMG has the right to convert any outstanding principal amounts owing under the AMG Note into common shares of Timminco at a rate of \$0.26 per common share. AMG has not exercised this right.

82. A default under either the Senior Credit Agreement or the Secured Term Loan constitutes a default under the AMG Note upon which the entire amount of the AMG Note is immediately due and payable.

Employee-Related Liabilities

83. As of September 30, 2011, the Timminco Entities owed approximately \$21.9 million in employee future benefits, including pension, post-retirement and termination benefits.

Termination Benefits

84. Timminco owes termination benefits in the approximate amount of \$4.3 million to former employees and certain former officers of Timminco described below.

85. In connection with management changes in the second quarter of 2011, three officers (collectively, the "Former Officers") resigned in August 2011. Timminco finalized agreements with each of the Former Officers for termination benefits pursuant to which Timminco agreed to make cash payments in 2011 and to continue to provide certain post-employment benefits to the Former Officers for up to two years. The total cost of such cash payments and post-employment benefits is approximately \$0.3 million.

86. Timminco also issued non-interest bearing convertible promissory notes in September and October 2011 to two of the Former Officers in the principal amounts of approximately US\$0.4 million and \$0.8 million (collectively, the "Former Officer Notes"). The Former Officer Notes are payable in monthly installments in cash or, at the sole option of Timminco, in freely tradable common shares of Timminco, which Timminco can exercise starting in February and March 2012, respectively. Approximately \$0.1 million in monthly cash payments are due under the Former Officer Notes before Timminco is able to exercise its equity settlement options.

87. In connection with Timminco's decision not to continue its active pursuit of a potential new silicon metal production facility in Iceland, Timminco has also agreed to sell all of its equity interest in its Icelandic majority-owned subsidiary, Thorsil ehf. ("Thorsil") to a Former Officer for nominal consideration. In connection with the sale of Thorsil, Timminco has agreed to provide certain technical support for the project and to pay certain payables of Thorsil and to waive its claims for reimbursement of certain project-related expenses, in the aggregate amounts of approximately \$0.1 million.

88. In addition, Timminco has entered into a consulting agreement (the "Consulting Agreement") with one of the Former Officers, whereby he would provide certain advisory services in respect of silicon metal projects, at the request of Timminco. The Consulting Agreement, which expires on September 30, 2012, provides for the payment of total minimum consulting fees of US\$0.1 million.

89. Pursuant to a consulting agreement dated September 19, 1996, the founder and former Chief Executive Officer of Timminco is entitled to monthly payments of approximately US\$23,000.

Pension Liabilities

90. The Timminco Entities sponsor the following three defined benefit pension plans:

- (a) Timminco sponsors the Retirement Pension Plan for The Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648) (the "Haley Pension Plan"). The Haley Pension Plan applies to former hourly employees at Timminco's magnesium facility in Haley, Ontario. Timminco is the administrator of the Haley Pension Plan. The Haley Pension Plan was terminated effective as of August 1, 2008. As required by the Ontario *Pension Benefits Act* (the "PBA"), a wind-up valuation in respect of the Haley Pension Plan was filed with the Financial Services Commission of Ontario ("FSCO") detailing the plan's funded status as of the wind-up date, and each year thereafter. As of August 1, 2008, the Haley Pension Plan was in a deficit position on a wind-up basis of \$5,606,700. The PBA requires that the wind-up deficit be paid down in equal annual installments payable annually in advance over a period of no more than five years. The most recently filed valuation report in respect of the Haley Pension Plan was performed as of August 1, 2010. As of August 1, 2010 the Haley Pension Plan had a wind-up deficit of \$3,922,700. Contributions made in respect of the period from August 1, 2010 to July 31, 2011 totalled \$1,598,500. Contributions in respect of the period from August 1, 2011 to July 31, 2012 were estimated to be \$1,598,500 and have not been remitted to the plan. According to preliminary results calculated by the Haley Pension Plan's actuaries, despite Timminco having made contributions of approximately \$4,712,400 in respect of the period from August 1, 2008 to July 31, 2011, as of August 1, 2011, the deficit remaining the Haley Pension Plan is estimated to be \$3,102,900.

- (b) BSI sponsors the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042) (the "Bécancour Non-Union Pension Plan"). The Bécancour Non-Union Pension Plan is an on-going pension plan with both defined benefit ("DB") and defined contribution ("DC") provisions. The plan has 6 active members and 32 retired and deferred vested members (including surviving spouses). The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Non-Union Pension Plan was \$3,239,600. In 2011, normal cost contributions owing to this plan totaled approximately \$9,525 per month (or 16.8% of payroll) and special payments owing to the plan total approximately \$41,710 per month. All contributions owing to the plan in accordance with the Québec *Supplemental Pension Plans Act* (the "QSPPA") and regulations thereunder have been paid when due.
- (c) BSI also sponsors the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) (the "Bécancour Union Pension Plan"). The Bécancour Union Pension Plan is an on-going DB pension plan with 3 active members and 98 retired and deferred vested members (including surviving spouses). The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Union Pension Plan was \$7,939,500. In 2011, normal cost contributions owing to the plan total approximately \$7,083 per month (or 14.7% of payroll) and special payments owing to the plan total approximately \$95,300 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

91. The assets of the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan have been severely impacted by market volatility and decreasing long-term interest rates in the years preceding this application, which led to increases in the deficiencies in these pension plans. As a result, the special payments payable

with respect to the Haley Plan also increased. As at 2010, total annual special payments for the final three years of the wind-up of the Haley Pension Plan were \$1,598,500 for 2010, \$1,397,000 for 2011 and \$1,162,000 for 2012, payable in advance annually every August 1. By contrast, in 2011 total annual special payments to the Haley Pension Plan for the remaining two years of the wind-up increased to \$1,728,700 for 2011 and \$1,492,000 for 2012.

92. Due to the severe liquidity crisis faced by the Timminco Entities, they are unable to make the special payments required to be made with respect to the Haley Pension Plan, the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan and intend to seek an order from the Court (on notice to the pension plan committees and the Ontario and Québec pension regulators) permitting the Timminco Entities to suspend these special payments.

93. In addition to the above described pension plans, QSLP sponsors the following two defined benefit pension plans (the "Québec Silicon Pension Plans") with respect to which the Timminco Entities have certain ongoing obligations:

- (a) Régime de rentes pour les employés non syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32159) (the "Québec Silicon Non-Union Pension Plan"). The Québec Silicon Non-Union Pension Plan was established as a spinoff plan to the Bécancour Non-Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Non-Union Pension Plan is an on-going pension plan with 35 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Non-Union Pension Plan was \$2,056,300. Normal cost contributions owing to the plan starting January 2012 total approximately \$24,791 per month. Special payments owing to the plan starting January 2012 total approximately \$29,303 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.
- (b) Régime de rentes pour les employés syndiqués de Silicium Québec Société en commandite (Québec Registration Number 32160) (the "Québec Silicon Union Pension Plan"). The Québec Silicon Union Pension Plan was established as a

spinoff plan to the Bécancour Union Pension Plan and coincided with the sale of certain assets to QSLP effective as of October 1, 2010. The Québec Silicon Union Pension Plan is an on-going pension plan with 110 active members as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Québec Silicon Union Pension Plan was \$3,684,100. Normal cost contributions owing to the plan starting January 2012 total approximately \$51,227 per month. Special payments owing to the plan starting January 2012 total approximately \$47,743 per month. All contributions owing to the plan in accordance with the QSPPA and regulations thereunder have been paid when due.

94. The Timminco Entities do not, in the ordinary course, contribute to the Québec Silicon Pension Plans; however, to the extent QSLP is required to make additional payments into these plans that it cannot fund from its cash flows, each of BSI and DCC Canada are obligated to fund its pro rata portion thereof to QSLP pursuant to the Limited Partnership Agreement.

Post-Retirement Benefits

95. Timminco provides medical and dental post-retirement benefits to 13 former hourly and four former salaried employees at Timminco's magnesium facility in Haley, Ontario, who were on disability prior to the closure of that facility. The four salaried employees also receive benefits in the form of RRSP contributions. The monthly cost of such post-retirement benefits to Timminco is approximately \$15,000. BSI also sponsors a non-pension post-retirement plan which provides eligible retirees with life insurance, medical, dental coverage.

96. In addition, as referenced above, pursuant to the Framework Agreement BSI is liable for up to \$5 million in the aggregate in post-retirement benefits of any employees transferred to QSLP who retire on or before September 30, 2016. As at the date of this affidavit, no payments have been made with respect to such benefits.

Mine Rehabilitation Liabilities

97. Timminco has a mine closure plan with respect to the former mining operations at the Haley Property, as set forth in the certified mine closure plan dated September 2003 and acknowledged by the Ministry of Northern Development and Mines (Ontario) ("MNDM") as of

May 1, 2006, as amended by the certified mine closure plan amendment dated May 2011 and acknowledged by the MNDM as of July 27, 2011 (as amended, the "Haley Mine Closure Plan"). The Haley Mine Closure Plan sets forth the undertakings of Timminco to rehabilitate the Haley Property. Although Timminco has made significant progress towards achieving the required outcomes pursuant to the Haley Mine Closure Plan, there are several on-going activities and outstanding items that have yet to be fully addressed, and in some cases require further approval or input from the MNDM.

98. Timminco was originally required to provide to the MNDM approximately \$1.68 million as financial assurance, payable in instalments over a five-year period starting in 2006, which amount was the original estimated active closure costs. As at the end of 2010, Timminco had deposited a total of \$1.46 million with the MNDM as financial assurance. In August 2011, the MNDM returned approximately \$0.48 million to Timminco on account of the rehabilitation work that had been completed and the estimated outstanding closure costs to comply with the Haley Mine Closure Plan at that time. Currently the balance of deposits held by the MNDM as financial assurance is approximately \$0.98 million. In the event that any revised estimate of costs to perform the outstanding closure activities under the Haley Mine Closure Plan exceeds such amount, the MNDM may require that Timminco provide additional financial assurance.

Environmental Liabilities

99. As referenced above, there are environmental monitoring and remediation obligations with the relevant Ontario and Québec government agencies with respect to some of the Timminco Entities' current and former operations.

The Haley Property

100. Timminco performs ongoing monitoring of groundwater and surface water at the Haley Property. Future remediation requirements may be influenced by the results of that monitoring. Similarly, future monitoring requirements may be influenced by the results of ongoing remediation.