

**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

FACTUM OF THE APPLICANTS
(Motion returnable January 27, 2012)
(Re Approval of the DIP Facility and Stay Extension)

Dated: January 25, 2012

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(Motion Returnable January 27, 2012 re Approval of DIP Facility and Stay Extension)**

PART I - INTRODUCTION

1. Timminco Limited ("**Timminco**") and Becancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the initial order of the Ontario Superior Court of Justice dated January 3, 2012 (the "**Initial Order**"). FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "**Monitor**") in these CCAA proceedings.

2. This motion is brought by the Timminco Entities seeking an order substantially in the form of the draft Order included with the Motion Record and the draft Order to be provided to the Court on January 27, 2012:

- (a) approving the DIP Facility (as defined below) and granting a charge over the Property (as defined below) in favour of the DIP Lender (as defined below) securing the Timminco Entities' obligations under the DIP Facility; and
- (b) extending the Stay Period (as defined below) until April 30, 2012.

PART II - THE FACTS¹

BACKGROUND

3. Timminco produces silicon metal through its 51%-owned production partnership with Dow Corning Corporation ("**Dow Corning**") 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.

January 20 Affidavit at para. 5, Motion Record, Tab 2

4. The Timminco Entities are facing severe cash constraints. Current cash flow projections forecast that without additional financing the Timminco Entities will be unable to continue operating past the third week of February and will not be able to complete a restructuring of the business, either through a sale or a plan, for the benefit

¹ Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Affidavit of Peter A.M. Kalins sworn January 20, 2012 (the "**January 20 Affidavit**").

of their stakeholders. The DIP Facility will provide Timminco with the requisite liquidity to continue operating and preserve the opportunity to obtain a going concern solution.

January 20 Affidavit at para. 3, Motion Record, Tab 2

5. The Stay Period set forth in the Initial Order expires on February 2, 2012. The Timminco Entities require an extension of the stability provided by the stay of proceedings in order to continue their restructuring efforts.

January 20 Affidavit at para. 49, Motion Record, Tab 2

DIP FACILITY AND DIP LENDER'S CHARGE

6. The Timminco Entities attempted to secure DIP financing prior to commencing the CCAA proceeding, but were unable to do so. The Timminco Entities had approached their existing stakeholders and third party financing lenders in order to identify a suitable DIP facility. Investissement Québec ("**IQ**"), Bank of America, N.A. ("**Bank of America**"), AMG Advanced Metallurgical Group N.V. ("**AMG**") and two third party lenders declined to advance any funds to the Timminco Entities. Negotiations with another third party lender failed to result in a DIP facility with mutually agreeable terms.

January 20 Affidavit at para. 25, Motion Record, Tab 2

7. In light of the Timminco Entities' precarious cash position, it was imperative that the Timminco Entities secure DIP financing as soon as possible after commencement of the CCAA proceeding.

January 20 Affidavit at para. 26, Motion Record, Tab 2

8. Following the issuance of the Initial Order and the grant of the stay of proceedings, the Timminco Entities, with the assistance of the Monitor, expanded their efforts to secure DIP financing by contacting parties who could not be contacted in advance of the filing. In addition, a number of other parties contacted the Monitor and the Timminco Entities to inquire as to the possibility of providing DIP financing.

January 20 Affidavit at para. 27, Motion Record, Tab 2

9. The Timminco Entities pursued the arrangement of a DIP facility with each of these parties. Five parties submitted indicative terms for a DIP facility. Following further discussions and negotiations with these parties, the Timminco Entities have successfully negotiated a DIP Agreement with QSI Partners Ltd. ("**QSI**" or the "**DIP Lender**") dated January 18, 2012 (the "**DIP Agreement**").

January 20 Affidavit at para. 28, Motion Record, Tab 2

10. The terms of the DIP Agreement are described in greater detail in paragraphs 30 to 39 of the January 20 Affidavit and include a number of affirmative covenants, negative covenants, events of default, and conditions customary for this type of financing.

January 20 Affidavit at para. 30-39, Motion Record, Tab 2
Third Report of the Monitor dated January 24 at para. 26.

11. The DIP Agreement is conditional, among other things, upon the issuance of a Court order approving the DIP Facility and granting the DIP Lender a priority charge in favour of the DIP Lender (the "**DIP Lender's Charge**") over all of the assets, property and undertaking of the Timminco Entities (the "**Property**"), including the Collateral (as defined in the DIP Agreement), ranking ahead in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, including without limitation any deemed trust created under the Ontario *Pension Benefits Act*, or the Quebec *Supplemental Pension Plans Act*, other than the Administration Charge and the KERP Charge (as granted by the Order of the Honourable Mr. Justice Morawetz dated January 16, 2012), and any valid purchase money security interests.

January 20 Affidavit at para. 36, Motion Record, Tab 2

12. The DIP Lender was specifically asked whether it would advance under the DIP Facility if the DIP Lender's Charge is not granted priority over the Encumbrances (other

than any valid purchase money security interests), including without limitation any deemed trust created under the Ontario *Pension Benefits Act*, or the Quebec *Supplemental Pension Plans Act*, and the DIP Lender will not. The DIP Lender's Charge will not secure obligations incurred prior to the CCAA proceeding.

January 20 Affidavit at para. 36, Motion Record, Tab 2

13. The DIP Agreement also provides for a period of exclusivity during which the Timminco Entities may not, directly or indirectly through any representative, solicit or entertain offers from, negotiate with or accept any proposal of any person other than the DIP Lender for the acquisition of substantially all of the assets of the Timminco Entities from the date hereof until January 31, 2012 (the "**Exclusivity Period**") in order to provide the DIP Lender with the opportunity to prepare a "stalking horse bid" for consideration by the Timminco Entities. If the DIP Lender submits a "stalking horse bid" on or prior to January 31, 2012, in form and substance that the Timminco Entities are willing to consider, acting reasonably, the Exclusivity Period shall be extended one week to February 7, 2012. The Timminco Entities are not obligated to accept any such bid and failure to execute an agreement in respect of any "stalking horse bid" will have no effect on the availability of the DIP Facility.

January 20 Affidavit at para. 37, Motion Record, Tab 2

14. If the order approving the DIP Facility is not granted in form and substance satisfactory to the DIP Lender and the Timminco Entities or if the DIP Obligations are

declared to be immediately due and payable in accordance with the provisions of this DIP Agreement, the Exclusivity Period shall immediately terminate.

January 20 Affidavit at para. 38, Motion Record, Tab 2

15. The financial terms of the DIP Agreement are better than or not materially worse than those proposed in the competing term sheets. In addition, some of the other term sheets provided to the Timminco Entities were for an inadequate amount of funding, contained other disadvantageous terms or would not be available in a timely manner. Considering each of the term sheets as a whole, in the opinion of management the DIP Agreement was the best available option. The Special Committee of the Timminco Board of Directors has approved execution of the DIP Agreement and the seeking of Court approval, including the grant of the DIP Lender's Charge, with priority over the D&O Charge.

January 20 Affidavit at para. 29, Motion Record, Tab 2

16. Based on its research of the terms of recent DIP financings based on publicly available information, the Monitor believes that the terms of the DIP Agreement are in line with or better than market. The Monitor and the Timminco Entities are of the view that the DIP Agreement represents the best alternative available in the circumstances that would provide the required financing within the necessary timeframe.

Third Report of the Monitor dated January 24 at para. 29(g).

17. The revised cash flow forecast filed with the Court in the Second Report show that the Timminco Entities become cash flow negative during the third week of February. Without additional funding, the Timminco Entities will be forced to cease operating in February. The cash flow projection attached to the DIP Agreement as Schedule "A" projects that the Timminco Entities will have sufficient funding to continue operating until the first week of June 2012.

January 20 Affidavit at para. 39, Motion Record, Tab 2

18. The DIP Facility is expected to provide sufficient liquidity to conduct an orderly marketing process of the Timminco Entities' business following expiry of the Exclusivity Period whether or not a "stalking horse bid" is negotiated.

January 20 Affidavit at para. 43, Motion Record, Tab 2

EXTENSION OF THE STAY PERIOD

19. Since the commencement of the CCAA proceedings, the Timminco Entities have continued operating their business as a going concern.

January 20 Affidavit at para. 45, Motion Record, Tab 2

20. As described in the January 20 Affidavit, with the assistance of the Monitor, the Timminco Entities have been communicating and dealing with their various stakeholders, suppliers, and employees and have negotiated the terms of the DIP Facility that should provide adequate funding of the Timminco Entities operations

while the companies attempt to restructure, and could result in the negotiation of a “stalking horse bid” for all or some of the Timminco Entities’ businesses.

January 20 Affidavit at para. 46, Motion Record, Tab 2

21. The Initial Order granted a stay of proceedings up to and including February 2, 2012, or such later date as this Court may order (the “**Stay Period**”).

January 20 Affidavit at para. 47, Motion Record, Tab 2

22. The Timminco Entities continue to explore opportunities to maximize returns for creditors and to preserve ongoing operations for the benefit of their employees, suppliers, customers and other stakeholders.

January 20 Affidavit at para. 48, Motion Record, Tab 2

23. An extension of the stay of proceedings until April 30, 2012 is necessary in order to give the Timminco Entities the time required to attempt to negotiate a “stalking horse bid” with the DIP Lender and complete a bidding procedure or, if a “stalking horse bid” cannot be negotiated, to complete a standalone sales process, negotiate binding agreements of purchase and sale, and return to Court for approval. The stability provided by the stay of proceedings is critical to the Timminco Entities in order to be able to continue their daily operations and restructuring efforts.

January 20 Affidavit at para. 49, Motion Record, Tab 2

24. The Timminco Entities have acted and continue to act in good faith and with due diligence. The Timminco Entities do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested.

January 20 Affidavit at para. 50, Motion Record, Tab 2

25. IQ and the Monitor support the extension of the Stay Period to April 30, 2012.

January 20 Affidavit at para. 51, Motion Record, Tab 2

NOTICE OF THIS MOTION

26. Motion materials for this motion were served on, among others: (a) IQ, Bank of America, Dow Corning, all registrants shown on searches of the personal property security and real property registers in Ontario and in Quebec; (b) the members of the pension plan committees for the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan, Financial Services Commission of Ontario; the Régie de rentes du Québec, the USW and the Bécancour Union; and (c) various government entities, including Ontario and Quebec environmental agencies and federal and provincial taxing authorities. In addition, all of the directors and officers of the Timminco Entities were served with the Timminco Entities' motion record in connection with the Timminco Entities' request for the DIP Lender's Charge to rank ahead of, among other things, the D&O Charge.

PART III - ISSUES

27. The issues on this motion are as follows:
- (a) Should this Court approve the DIP Facility and grant the DIP Lender's Charge?
 - (b) Should this Court extend the Stay Period until April 30, 2012?

PART IV - LAW AND ARGUMENT

A. THE DIP FACILITY SHOULD BE APPROVED AND THE DIP CHARGE SHOULD BE GRANTED

28. The Timminco Entities are seeking approval of the DIP Facility in the amount of US\$4,250,000. The Timminco Entities are also seeking the granting of the DIP Lender's Charge securing the DIP Facility ranking immediately behind the Administration Charge and the KERP Charge.

January 20 Affidavit at para. 30, Motion Record, Tab 2

29. Section 11.2 of the CCAA provides the Court with the express jurisdiction to grant a DIP financing charge and provides, in part, as follows:

11.2(1) Interim Financing – On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

11.2(2) Priority – Secured Creditors – The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

CCAA, s. 11.2.

30. Sub-section 11.2(4) sets out the factors to be considered by the Court in deciding whether to grant a DIP financing charge:

11.2(4) Factors to be considered – In deciding whether to make an order, the court is to consider, among other things:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report.

CCAA, s. 11.2(4).

31. In *Canwest Global Communications Corp.*, Justice Pepall stressed the importance of meeting the criteria set out in s. 11.2(1), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;

- (b) whether the amount to be granted under the DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the Order was made (which it should not).

Canwest Global Communications Corp. (Re) (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J. [Comm. List]) at paras. 31-34, Applicants' Book of Authorities ["Applicants' BOA"], Tab 1.

32. In the present matter, the following factors support the granting of the DIP Lender's Charge and satisfy the criteria set out in section 11.2(1) of the CCAA (highlighted by Justice Pepall in *Canwest Global Communications Corp.*) and the factors to be considered as outlined in section 11.2(4) of the CCAA:

- (a) the Timminco Entities expect to continue operating during the term of the DIP Facility and attempt to negotiate a "stalking horse bid" with the DIP Lender and complete a bidding procedure or, if a "stalking horse bid" cannot be negotiated, to complete a standalone sales process, negotiate binding agreements of purchase and sale, and return to Court for approval, which the Timminco Entities expect to complete before June 2012;
- (b) the management of the Timminco Entities' business throughout the CCAA process will be overseen by the Monitor who will oversee the

spending under the DIP Facility. Neither IQ nor any other major creditor has expressed any concern to the Monitor in respect of the Timminco Entities' management;

- (c) without the DIP Facility, the Timminco Entities will not have the funding necessary to meet their ongoing obligations and will have to cease operations by the third week of February. The suspension of operations by the Timminco Entities and the resultant failure to buy product from QSLP could have detrimental consequences on QSLP operations (the interest in which is one of the major assets of the Timminco Entities). The Timminco Entities and the Monitor are of the view that a continuation of operations would likely enhance the prospects of the sales process succeeding and would maximize recoveries for stakeholders, whether through a sale or a restructuring plan;
- (d) secured creditors, including IQ, have been given notice of the DIP Lender's Charge and IQ is not opposed to the granting of the DIP Lender's Charge;
- (e) the directors and officers of Timminco, as beneficiaries of the D&O Charge, received notice of the Timminco Entities' request for an Order granting the DIP Lender's Charge ranking in priority to the D&O Charge.

The Timminco Entities are not aware of any directors or officers opposing this relief;

- (f) the Monitor is supportive of the DIP Facility and the DIP Lender's Charge and is of the view that any potential detriment caused to the Timminco Entities' creditors by the DIP Lender's Charge should be outweighed by the benefits that it creates;
- (g) the DIP Lender indicated that it will not provide the DIP Facility if the DIP Lender's Charge is not granted; and
- (h) the DIP Lender's Charge does not secure an obligation that existed before the granting of the Initial Order.

January 20 Affidavit at para. 7, 36, 38, 49 and 52, Motion Record, Tab 2
Third Report of the Monitor dated January 24 at para. 29.

33. To the extent that the Timminco Entities' request for priority for the DIP Lender's Charge is a request for this Court to override the provisions of the QSPPA or the PBA, the Court has the jurisdiction to do so.

34. In *Collins & Aikman Automotive Canada Inc.*, representatives of the employees and retirees, among others, brought a motion objecting to certain paragraphs of the Initial Order including, *inter alia*, the paragraph which provided that Collins & Aikman Automotive Canada was not required to make special payments ordinarily required by

Ontario pension legislation. The Court refused to grant that part of the moving parties' motion, by reason that, *inter alia*, the Court had jurisdiction under the CCAA to approve an order which conflicted with and overrode provincial legislation.

Collins & Aikman Automotive Canada Inc. (Re) (2007), 37 C.B.R. (5th) 282 (Ont. S.C.J.) [*"Collins & Aikman"*] at para. 42, 87 and 108, Applicants' BOA, Tab 2.

35. The general paramountcy of the CCAA over provincial legislation was confirmed in *ATB Financial v. Metcalf & Mansfield Alternative Investment II Corp.*, where the Ontario Court of Appeal stated, among other things:

The CCAA is a valid exercise of federal power. Provided the matter in question falls within the legislation directly or as necessarily incidental to the exercise of that power, the CCAA governs. To the extent that its provisions are inconsistent with provincial legislation, the federal legislation is paramount.

ATB Financial v. Metcalfe & Mansfield Alternative Investment II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 104, Applicants' BOA, Tab 3.

36. In *Nortel Networks Corp.*, the Ontario Court of Appeal held that the doctrine of paramountcy applies either where a provincial and a federal statutory provision are in conflict and cannot both be complied with, or where complying with the provincial law will have the effect of frustrating the purpose of the federal law and therefore the intent of Parliament.

Nortel Networks Corp. (Re) (2009), 59 C.B.R. (5th) 23 (Ont. C.A.) [*"Nortel 2009 (C.A.)"*] at para. 38, Applicants' BOA, Tab 4.

37. Courts have held that the purpose of the CCAA regime cannot be thwarted by the operation of provincial legislation and, as a result, a CCAA court has the jurisdiction

and discretion to make an order that has the effect of overriding a provincial enactment, including the QSPPA and the PBA. In *Collins & Aikman*, Justice Spence stated:

...the Court has the jurisdiction under the CCAA to make an order under the CCAA which conflicts with, and overrides, provincial legislation. There is no apparent reason why this principle would not apply to an order made under the CCAA which conflicts with the PBA.

Collins & Aikman at paras. 42 and 87, Applicants' BOA, Tab 2.

Nortel 2009 (C.A.) at paras. 44 and 47, Applicants' BOA, Tab 4.

38. The purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors, to the end that the business is able to continue. This purpose continues to exist regardless of whether a company is actually restructuring or is continuing operations during a sales process in order to maintain maximum value and achieve the highest price for the benefit of all stakeholders.

Nortel Networks Corp. (Re) (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]) at paras. 33-40, Applicants' BOA, Tab 5.

Lehndorff General Partner Ltd. (Re) (1993), 17 C.B.R. (3d) 24 (Ont. C.J. - Gen. Div.) at para. 6, Applicants' BOA, Tab 6.

39. The recent decision of the Ontario Court of Appeal in *Indalex Ltd.* confirms the CCAA court's ability to override conflicting provisions of provincial statutes where the application of the provincial legislation would frustrate the company's ability to restructure and avoid bankruptcy. The Ontario Court of Appeal stated, *inter alia*, as follows:

The CCAA court has the authority to grant a super-priority charge to DIP lenders in CCAA proceedings. I fully accept that the CCAA judge can make an order granting a super-priority charge that has the effect of overriding provincial legislation, including the PBA. ...

...

What of the contention that recognition of the deemed trust will cause DIP lenders to be unwilling to advance funds in CCAA proceedings? It is important to recognize that the conclusion I have reached does not mean that a finding of paramountcy will never be made. That determination must be made on a case by case basis. There may well be situations in which paramountcy is invoked and the record satisfies the CCAA judge that application of the provincial legislation would frustrate the company's ability to restructure and avoid bankruptcy. ...

[Emphasis added, citations omitted]

Indalex Ltd. (Re) (2011), 75 C.B.R. (5th) 19 (Ont. C.A.) at paras. 176 and 181, Applicants' BOA, Tab 7. Leave to appeal to the Supreme Court of Canada granted, *Sun Indalex Finance, LLC v. United Steelworkers*, [2011] S.C.C.A. No. 274.

40. In the case at bar, on January 16, 2012, over the opposition of the USW and the Bécancour Union, Justice Morawetz granted the Timminco Entities' request for priority for the Administration Charge, the KERP Charge and the D&O Charge over the Encumbrances, including without limitation any deemed trust created under the Ontario *Pension Benefits Act*, or the Quebec *Supplemental Pension Plans Act*.

Re Timminco Limited et al., Toronto CV-12-9539-00CL (Ont. S.C.J. [Comm. List]), Endorsement of Justice Morawetz dated January 16, 2012 (Reasons for Decision to Follow), Applicants' BOA, Tab 8.

41. Where it is necessary to achieve the objective of the CCAA, this Court has the jurisdiction to make an order under the CCAA granting super-priority over the

Encumbrances for the DIP Lender's Charge, even if such order conflicts with, or overrides, the QSPPA or the PBA.

42. The Timminco Entities require the DIP Facility in order to provide Timminco with the requisite liquidity to continue operating and preserve the opportunity to obtain a going concern solution. The financial terms of the DIP Agreement are better than or not materially worse than those proposed in the competing term sheets provided to the Timminco Entities. In addition, some of the other term sheets were for an inadequate amount of funding, contained other disadvantageous terms or would not be available in a timely manner. The Monitor believes that the terms of the DIP Agreement are in line with or better than market. The Monitor and the Timminco Entities are of the view that the DIP Agreement represents the best alternative available in the circumstances that would provide the Timminco Entities the required financing within the necessary timeframe.

43. Absent the DIP Facility and the DIP Lender's Charge ranking ahead of the Encumbrances (other than valid purchase-money security interests), the Timminco Entities will be deprived of the funds necessary to continue operations. Cessation of operations would increase the risk of a liquidation or bankruptcy to the detriment of the Timminco Entities' stakeholders and could have detrimental consequences on QSLP operations (which constitutes one of the major assets of the Timminco Entities).

January 20 Affidavit at para. 3, Motion Record, Tab 2.
Third Report of the Monitor dated January 24 at para. 29.

44. In addition, if the Timminco Entities are forced to cease operations as a result of failure to obtain DIP financing resulting in a bankruptcy, pension claims (other than normal service contributions which are current) will rank as unsecured claims behind the secured claims of IQ. Therefore, the granting of a DIP Lender's Charge does not prejudice the interests of the Timminco Entities' former employees relative to the bankruptcy alternative.

45. Rather, the DIP Facility (which is conditional on obtaining the DIP Lender's Charge) will permit the Timminco Entities to implement a sales process either through a "stalking horse bid" process involving the DIP Lender or a standalone sales process, and therefore, will likely maximize recoveries for stakeholders. The Exclusivity Period provided to the DIP Lender under the DIP Agreement will enhance the prospects of the Timminco Entities receiving a going concern sale offer in respect of their assets and creating an auction for their assets which should maximize the purchase price obtained by the Timminco Entities.

46. The Timminco Entities respectfully submit that the doctrine of paramountcy is properly invoked in this case and that this Court should exercise its discretion and order super-priority over the Encumbrances (other than valid purchase-money security interests) for the DIP Lender's Charge.

B. EXTENSION OF THE STAY PERIOD

47. Pursuant to s. 11.02 of the CCAA, the Court may extend the stay of proceedings with respect to a debtor company where: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted and is acting in good faith and with due diligence.

CCAA, s. 11.02(2), 11.02(3)

48. The Stay Period expires on February 2, 2012. An extension of the Stay Period up to and including April 30, 2012 is necessary in order to give the Timminco Entities the time required to attempt to negotiate a “stalking horse bid” with the DIP Lender and complete a bidding procedure or, if a “stalking horse bid” cannot be negotiated, to complete a standalone sales process, negotiate binding agreements of purchase and sale, and return to Court for approval. The stability provided by the stay of proceedings is critical to the Timminco Entities in order to be able to continue their daily operations and restructuring efforts.

January 20 Affidavit at paras. 4 and 49, Motion Record, Tab 2

49. In *Canwest Global Communications Corp.*, Justice Pepall granted an extension of the stay of proceedings for a group of debtors that were continuing to work with their stakeholders. She found that the extension would provide the necessary stability to allow the debtors to continue working towards a resolution that would result in the continuation of their businesses as a going concern. The factors which supported her decision were (a) the cashflow forecast indicated that the debtors had sufficient cash

resources to operate throughout the extension of the stay period, (b) the monitor supported the extension, (c) there was a lack of opposition to the motion, and (d) the debtors had acted and were continuing to act in good faith and with due diligence.

Re Canwest Global Communications Corp., [2009] O.J. No. 4788 (Ont. S.C.J.) [Comm. List] at para. 43, Applicants' Book of Authorities, Tab 9.

50. The cash flow projection attached to the DIP Agreement as Schedule "A" projects that the Timminco Entities will have sufficient funding to continue operating until the first week of June 2012.

January 20 Affidavit at para. 39, Motion Record, Tab 2.

51. The Monitor supports the motion to extend the Stay Period and the Timminco Entities are unaware of any creditor who opposes this relief being granted. It is not believed that any creditor will suffer any material prejudice if the Stay Period is extended as requested.

January 20 Affidavit at para. 50, Motion Record, Tab 2.
Third Report of the Monitor dated January 24 at para. 38.

52. The Timminco Entities have acted and continue to act in good faith and have been working with due diligence.

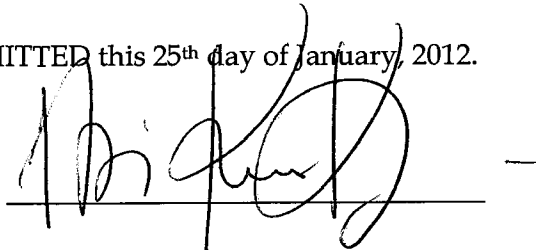
January 20 Affidavit at para. 50, Motion Record, Tab 2.

53. For the foregoing reasons, it is respectfully submitted that the Stay Period should be extended to April 30, 2012.

PART V - ORDER REQUESTED

54. The Timminco Entities therefore request an Order substantially in the form of the draft Order attached at Tab 3 of the Timminco Entities' Motion Record and an Order substantially in the form of the draft Order to be put before this court on January 27, 2012.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2012.

A handwritten signature in black ink, appearing to be "Michael D. Stikeman", written over a horizontal line. The signature is stylized and cursive.

Stikeman Elliott LLP

Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J. [Comm. List]).
2. *Collins & Aikman Automotive Canada Inc. (Re)* (2007), 37 C.B.R. (5th) 282 (Ont. S.C.J.).
3. *ATB Financial v. Metcalf & Mansfield Alternative Investment II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.).
4. *Nortel Networks Corp. (Re)*, (2009), 59 C.B.R. (5th) 23 (Ont. C.A.).
5. *Nortel Networks Corp. (Re)*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]).
6. *Lehndorff General Partner Ltd. (Re)*, (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div.).
7. *Indalex Ltd. (Re)*, (2011), 75 C.B.R. (5th) 19 (Ont. C.A.).
8. *Re Timminco Limited et al.*, Toronto CV-12-9539-00CL (Ont. S.C.J. [Comm. List]), Endorsement of Justice Morawetz dated January 16, 2012
9. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 4788 (Ont. S.C.J.) [Comm. List])

SCHEDULE "B"
RELEVANT STATUTES

1. *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*

...

11. General power of court

Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

Stays, etc. – other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority – secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority – other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

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 BECANCOUR SILICON INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL
LIST**

Proceeding commenced at Toronto

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(RETURNABLE JANUARY 27, 2012)**

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