



Timminco amends libel suit, removes Q-Cells references

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by Lee M. Webb

Timminco Ltd., a Toronto Stock Exchange (TSX) solar play headed by Heinz Schimmelbusch, has amended its \$6-million libel suit against Ravi Sood and Lawrence Asset Management Inc., removing all references to solar cell giant Q-Cells AG from its statement of claim. Timminco filed the amended statement of claim in the Ontario Superior Court of Justice on Aug. 7.

Timminco filed its original statement of claim against Mr. Sood and Lawrence on May 2, but apart from the solar player's recent editing job there has been little activity in the case. Indeed, Mr. Sood and Lawrence had not even filed a statement of defence as of last week.

The allegations

Timminco's amended statement of claim does not contain any revisions at all to the allegations against Mr. Sood and Lawrence that were made in the original May 2 filing.

As previously reported by Stockwatch, the dispute traces back to Mr. Sood's April 21 appearance on Market Call, a Canadian television program broadcast on the Business News Network (BNN).

In contrast to the parade of bullish analysts beating the drum for Timminco on BNN and elsewhere, Mr. Sood trashed the company after declaring that his firm, Lawrence, had taken a major short position in the stock.

Among other things, Mr. Sood scoffed at the notion that Timminco had managed to develop a proprietary technology for the low-cost production of upgraded metallurgical silicon pure enough to qualify as solar-grade silicon for use in the manufacture of solar cells.

"In fact, as far as I can tell in the work that we've done, there is no evidence that they have any sort of proprietary technology," Mr. Sood said after suggesting that there was every probability that the company was virtually worthless.

Mr. Sood was also dismissive about Timminco's patent application.

"It's based on claims which stand virtually no chance of being accepted," Mr. Sood said. "It's not that this patent will not be accepted, it will not be granted.

"It's very easy to file a patent that says a lot of things, but it's much more difficult to get one granted."

Mr. Sood went on to opine that Timminco's entire story was "very suspicious."

"And, it's our belief that as the next year plays out, we'll see these guys fail to actually deliver on what they've claimed they can deliver and the market will start to catch up with these claims and this stock will be revalued significantly lower," Lawrence's president said.

Market Call host Michael Hainsworth broke in to ask Mr. Sood whether he was accusing Timminco of being the 21st century Bre-X.

"I think there's a lot -- you have to make a parallel to Bre-X," Mr. Sood replied. "Obviously it's not mining and salting of assays but like I said, it's not a question is this thing 20-per-cent overvalued and just a little bit expensive here. I have some serious questions as to whether they can deliver on this at all."

Mr. Sood went to say that Timminco's claims were "really fantastical."

Two days after Mr. Sood was interviewed on BNN, a Financial Post article carried some more of his unflattering comments about the controversial TSX solar player. Timminco took umbrage at those remarks, too.

According to Timminco, Mr. Sood's offending words "meant and were understood to mean" that the company conducts its business in the same way as Bre-X, the notorious company that was at the centre of one of the largest frauds in Canadian history.

Among other things, Timminco also alleges that Mr. Sood's words mean that the company defrauded the public; has made misrepresentations regarding its proprietary technology; does not in fact have a proprietary technology to produce solar-grade silicon; its patent applications amount to a sham; and its operations are shrouded in criminality or impropriety.

The aggrieved solar player claims that Mr. Sood and Lawrence "acted maliciously in their campaign of defamation against Timminco."

"Their actions were undertaken for the improper collateral purpose of advancing their short selling strategy," the company claims. "They have cynically pursued their own financial gain, with reckless disregard for the injury they have caused Timminco."

Exactly as in the original statement of claim, Timminco wants \$3-million in general damages and another \$3-million in punitive damages for the defendants' allegedly "high-handed and malicious conduct."

The editing

As it turns out, the only changes to the lawsuit are found in the introductory portion; specifically, in the section describing Timminco's business.

As Stockwatch noted in an earlier report, stripped of the context of a libel suit, that 10-paragraph description of Timminco might easily be mistaken for the type of promotional material served up at dog-and-pony shows.

In the amended statement of claim, the only changes to the original suit comprise the complete removal of three consecutive paragraphs of the fluffy description of Timminco.

"In 2007, Timminco entered into four long-term commercial contracts for the sale of solar grade silicon," the plaintiff claimed in a one-sentence paragraph in the original statement of claim.

That paragraph has been excised in the amended statement of claim.

Perhaps more intriguingly, all of the references to Timminco's highly touted customer Q-Cells have been edited out with the removal of the subsequent two paragraphs of the original lawsuit.

"In March of 2008, Timminco entered into a major contract ('the Q-Cells contract') with Q-Cells AG ('Q-Cells') of Germany, the world's largest manufacturer of solar cells," the original lawsuit noted. "Under the terms of the Q-Cells contract, Timminco will supply Q-Cells with contractually fixed supplies of 410 metric tons ('mt') of solar grade silicon in 2008 and 3,000mt of solar grade silicon in 2009, at fixed prices."

While Timminco did enter into that contract with Q-Cells, the entire paragraph has been relegated to the dustbin.

The final reference to Q-Cells disappears from the lawsuit with the snipping of the next paragraph.

"In April of 2008, Q-Cells publicly stated that Timminco's solar grade silicon is 'very good and we are happy with the (Q-Cells contract),' " the May 2 statement of claim said.

In fact, Q-Cells chief executive officer Anton Milner did talk about upgraded metallurgical silicon and Timminco in an April 22 Reuters interview, though much of the context is lost in the obscure snippet reproduced in the original statement of claim.

With the editing job, of course, the obscure snippet, which might require some explanation, has been removed.

The anchor

Q-Cells is indeed a significant Timminco customer and bullish analysts touting the TSX solar play regularly invoke the upgraded metallurgical silicon supply contract with the German solar cell giant.

In fact, Q-Cells is by far Timminco's largest customer. In July, Timminco's solar-grade silicon supply agreement with Q-Cells was formally extended for delivery of 6,000 metric tons per year from 2010 through 2013.

In an Aug. 11 conference call to discuss Timminco's second-quarter results, chief executive officer Mr. Schimmelbusch characterized the association with Q-Cells as "an anchor relationship."

Given the importance of the relationship, it is possible that Timminco decided to amend its statement of claim by removing the references to its largest customer in order to mitigate the risk of becoming a millstone around the anchor's neck by dragging Q-Cells into a Canadian libel suit.

In any event, the anchor has been dropped.

Slow sailing

Meanwhile, the lawsuit filed against Mr. Sood and Lawrence on May 2, which was followed by a warning from Mr. Schimmelbusch that other critics might face the same fate, has not exactly been sailing swiftly through the court system.

According to a search conducted on Aug. 13, the defendants had still not filed a statement of defence to the original suit and there is nothing in the court file to indicate that Timminco has been doing anything to prod them along.

As it happens, another lawsuit filed by Timminco has been languishing in the Ontario court for even longer.

On Nov. 9, 2006, Timminco filed a \$5.7-million lawsuit against ABB Inc., a company in the business of designing and manufacturing furnaces and related devices for metal producers.

In 1998, Timminco bought two 8.5-metric-ton furnaces from ABB for use in the company's magnesium operation in Haley, Ont., which was recently shuttered.

On Nov. 27, 2000, there was an extensive fire at the casthouse facility at Timminco's Haley plant.

"The fire was caused when ethylene glycol (the coolant used in the system designed by ABB) ignited after a small amount of molten magnesium came into contact with a furnace's coolant hoses," Timminco claimed.

"The fire and the extent of the damage suffered as a result were caused by the negligence, breach of contract or other breach of duty of ABB in relation to the design, manufacture and supply of the material furnaces and systems," Timminco alleged.

Timminco put the fire damage and business interruption loss at approximately \$5.7-million.

ABB did not get around to filing a statement of defence until July 5 of last year, denying the allegations of negligence and any responsibility at all for the damage caused by the fire.

The defendant noted that Timminco did not file the lawsuit until six years after the Haley plant fire.

"The fire was caused by operator error on the part of Timminco," ABB said. "The fire was unrelated to the design or manufacture of the furnaces."

ABB wanted the action dismissed with costs.

There has been no activity in that file since July 5, 2007, but perhaps the dispute has been quietly resolved.

In any event, ABB is the supplier of an electromagnetic stirrer that Timminco uses as part of its black-box process to produce solar-grade silicon.

It remains to be seen whether Timminco will let the libel suit against Mr. Sood and Lawrence gather as much dust as the lawsuit against ABB.

Meanwhile, Timminco's share price has regained some ground after being hammered in the wake of the company's disappointing second-quarter results.

With more than 2.8 million shares changing hands in TSX trading, Timminco added \$2 to close at \$15.24 on Aug. 21.

Comments regarding this article may be sent to lwebb@stockwatch.com.