

**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 SINO-FOREST CORPORATION**

**AMENDED NOTICE OF MOTION AND RETURN OF MOTION
(returnable October 9 and 10, 2012)**

TAKE NOTICE that the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("Sino-Forest" or the "Applicant") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Proposed Ontario Class Action", respectively) and the petitioner in the petition commenced against the Applicant in the Quebec Superior Court bearing Court File No. 200-06-000132-111, (the "Quebec Petitioner" and the "Proposed Quebec Class Action", respectively) (together, the "Proposed Class Actions" and the "Class Action Plaintiffs"), will make a motion to a Judge of the Commercial List on October 9 and 10, 2012 at 10:00 a.m., 330 University Avenue, 8th Floor, Toronto, Ontario, or at such other time and place as the Court may direct, returning the relief sought in their motion originally returnable in this proceeding on August 28, 2012, as well as the additional relief stated below.

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

THE MOTION IS FOR:

- (a) An order, if necessary, validating and abridging the time for service and filing of this motion and motion record, and dispensing with any further service thereof;

- (b) A direction or order that the stay of proceedings imposed by the initial order in these proceedings dated March 30, 2012 (the “Initial Order”), as extended from time to time (the “Stay of Proceedings”), not apply to the pending motions and petition for:
- (i) certification of the Proposed Ontario Class Action as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) (the “Ontario Certification Motion”);
 - (ii) authorization in the Proposed Quebec Class Action to commence a class action under the Quebec *Code of Civil Procedure*, RSQ c C-25 (the “Quebec Petition” and, together with the Ontario Certification Motion, the “Certification Motions”);
 - (iii) leave to proceed with statutory secondary market claims in the Proposed Ontario Class Action pursuant to s. 138.3 of the *Securities Act*, R.S.O. 1990, c. S.5 (“OSA”) (the “Ontario Leave Motion”);
 - (iv) leave to proceed with the statutory secondary market claims in the Proposed Quebec Class Action pursuant to article 225.4 of the *Securities Act*, RSQ c V-1-1 (“QSA”), to be filed (the “Quebec Leave Motion” and, together with the Ontario Leave Motion, the “Leave Motions”);
 - (v) leave to proceed with a motion to add CONDEX Wattco Inc. as a plaintiff in the Proposed Quebec Class Action with Ilan Toledano as its representative, to be filed (the “Corollary Motion”); and
 - (vi) if necessary, leave to amend the pleading in the Quebec Class Action to plead the Securities Act, RSQ c V-1-1 and add BDO Limited as a party (together with the Corollary Motion, Certification Motions and Leave Motions, the “Class Action Motions”);

- (c) In the alternative, an order exempting the Class Action Motions from the Stay of Proceedings as against only Ernst & Young LLP, BDO Limited, the underwriter defendants, Allen T.Y. Chan, (“Chan”), David J. Horsley (“Horsley”) and Kai Kit Poon (“Poon”, and collectively the “Third Party Defendants”);
- (d) In the further alternative, an order lifting the stay of proceedings imposed by the Initial Order to require the Third Party Defendants to serve and file their responding materials, if any, in the Leave and Certification Motions, and to deliver statements of defense for the Ontario Leave Motion and the Ontario Certification Motion, to permit the Class Action Plaintiffs to serve and file their reply materials, if any; in the Leave and Certification Motions, and to permit the parties to the Proposed Class Actions to conduct cross-examinations on affidavits filed in relation to the Leave Motions and/or the Certification Motions and to litigate any refusals motions arising therefrom, all within the time limits to be imposed by the Courts presiding over the Proposed Class Actions; and
- (e) An order directing the production of the documents described in the Confidential Appendix “A” of this Notice of Motion on a non-confidential basis (the “Documents”), such that such documents may be used in this proceeding and filed in the Proposed Class Actions for use on the Leave and Certification Motions; and
- (f) Such further and other relief as this honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (g) Sino-Forest, its directors, officers, and a number of third parties are the defendants in the Proposed Ontario Class Action brought by the Ontario Plaintiffs on behalf of all persons, wherever they reside, who: acquired Sino-Forest’s securities between March 19, 2007, to and including June 2, 2011, by distribution in Canada on the Toronto Stock Exchange or other

secondary market in Canada; or, are residents of Canada, or were resident of Canada at the time of acquisition, and who acquired Sino-Forest's securities outside of Canada, except certain excluded persons.

- (h) The Proposed Ontario Class Action was commenced on July 20, 2011, and seeks damages of approximately \$9.18 billion.
- (i) The Ontario Plaintiffs were awarded carriage of the Proposed Ontario Class Action to the exclusion of other claims commenced in Ontario by order of the Honourable Mr. Justice Perell dated January 6, 2012.
- (j) The Ontario Leave Motion and the Ontario Certification Motion are both pending in the Proposed Ontario Class Action, and were scheduled by the Honourable Justice Perell to be heard together from November 21 - 30, 2012. These motions seek leave to proceed with the statutory secondary market claims pursuant to Part XXIII.1 of the *OSA* and certification of the Proposed Ontario Class Action pursuant to the *CPA*.
- (k) The Proposed Quebec Class Action was filed on June 9, 2011;
- (l) On August 3, 2012, a motion for permission to amend the Quebec Petition was filed in order to add defendants;
- (m) On August 30, 2012, Justice Jean-François Émond of the Québec Superior Court, granted the motion for permission to amend;
- (n) On March 30, 2012, Sino-Forest filed for and obtained protection from its creditors under the *CCAA*. As a result of these proceedings, the Class Actions have been stayed.
- (o) Sound reasons exist to lift the stay of proceedings as it applies to the Proposed Class Actions and the pending motions therein, including, among other things:

- (i) The Proposed Class Actions raise serious claims having a real chance of success;
- (ii) It is now clear that this CCAA process will not address “the uncertainty created by the [Muddy Waters] Report” because, among other things:

 - (A) Fifteen months following the Muddy Waters Report, and having spent tens of millions of dollars on investigations, Sino-Forest and its “Independent Committee” have been unable to meaningfully refute many of the allegations contained in that report;
 - (B) Sino-Forest has been unable to produce reliable financial statements for 2011, its auditor has resigned and no new auditor has been appointed;
 - (C) the Monitor has reported similar and significant difficulties in verifying and enforcing Sino-Forest’s assets and receivables; and
 - (D) the Ontario Securities Commission has commenced formal enforcement proceedings against Sino-Forest and certain of its former directors and officers, and has alleged serious fraudulent conduct on the part of Chan and other former officers of Sino-Forest.
- (iii) the restructuring has progressed to the point where proceeding with the Proposed Class Actions is no longer unduly burdensome, as Sino-Forest has completed its sale process, and is now proceeding with a meeting of creditors to vote on a plan to transfer its assets to current noteholders, no later than November 30, 2012;

- (iv) Efforts to mediate the disputes in the Proposed Class Actions have been made but were unsuccessful;
- (v) the continuation of the Proposed Class Actions is consistent with the current proposed plan of arrangement; and
- (vi) The Leave Motions and Certification Motions will require minimal attention on the part of Sino-Forest's directors and officers and, to the extent the Class Actions are still relevant to the restructuring, the disposition of the Leave Motions and Certification Motions will bring greater clarity to the stakeholders' position in the restructuring, in part because those motions may narrow the claims in the Proposed Class Actions.

- (p) It is consistent with the objectives of the CCAA and in the interests of justice to lift the stay of proceedings.
- (q) Sino-Forest has produced the documents referred to in Confidential Appendix "A" to this Notice of Motion on a confidential basis (the "Confidential Documents"), but did so without restricting any rights at law to separately compel production or disclosure of any of the confidential information as part of any legal proceeding, nor the use of such information so separately compelled or disclosed as permitted by the rules of civil procedure or applicable law.
- (r) The Confidential Documents are relevant to the matters in issue in the Proposed Class Actions, they are not privileged, and their suppression is not in the public interest.
- (s) There is no serious risk to Sino-Forest if the Confidential Documents are produced.

- (t) The production of the Confidential Documents will promote the Class Action Plaintiffs' right to a fair hearing, and the public interest in open and accessible court proceedings.
- (u) Sections 11, 11.02, 11.03 of the *Companies' Creditors Arrangement Act*.
- (v) Rules 1.04, 3.02, 12, 16.08 and 37 of the *Rules of Civil Procedure*.
- (w) Such further grounds as counsel may advise and this Honourable Court may consider.

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

- (a) Affidavit of Daniel E. H. Bach, sworn April 11, 2012;
- (b) Affidavit of Daniel E. H. Bach, sworn September 24, 2012; and
- (c) such further or other material as counsel may advise and this Honourable Court may permit.

September 24, 2012

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TO: SERVICE LIST

APPENDIX "A"

CONFIDENTIAL

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Court File No: CV-11-431153-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario

NOTICE OF MOTION
(RETURNABLE OCTOBER 9 and 10, 2012)

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