SCC File No.: 35541

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE 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 Sino-Forest Corporation

BETWEEN:

INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂIRENTE INC., MATRIX ASSESSMENT MANAGEMENT INC., GESTION FÉRIQUE, and MONTRUSCO BOLTON INVESTMENTS INC.

APPLICANTS
(Moving Parties)

- and –

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

RESPONDENTS
(Plaintiffs)

RESPONSE TO APPLICATION FOR LEAVE TO APPEAL
(AD HOC COMMITTEE OF PURCHASERS OF THE APPLICANTS' SECURITIES INCLUDING THE REPRESENTATIVE PLAINTIFFS IN THE ONTARIO CLASS ACTION AGAINST THE APPLICANT, RESPONDENTS)
(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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- and –

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Proceeding under the *Class Proceedings Act, 1992*

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(Pursuant to Section 25 of the *Rules of the Supreme Court of Canada*)

We, Charles M. Wright, A. Dimitri Lascaris, Kirk M. Baert, Jonathan Ptak, Jonathan Bida and Garth Meyers, Counsel for the Respondents, The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde SP-Fonden, David Grant, Robert Wong ("Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action against the Applicant"), hereby certify that:

(a) there is no sealing order or confidentiality order in effect in the file of the lower court and no document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation;

(b) there is no ban on the publication of evidence or the names or identity of a party or witness;

(c) there is, pursuant to legislation, no information that is subject to limitations on public access.

Dated at the City of Toronto, in the Province of Ontario, this 22nd day of October, 2013.

Eugene Meehan Q.C. as agent.

Respondents

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PART I. OVERVIEW AND STATEMENT OF FACTS

(A) Overview: Fact-Specific Insolvency Case

1. The fundamental factual flaw in the position of the Applicants (the "Kim Orr Group") is they ignore that the orders from which they seek leave to appeal are orders made in the context of a complex insolvency under the *Companies' Creditors Arrangement Act* ("*CCAA*").[1]

2. On December 10, 2012, Morawetz J. issued an order sanctioning a plan of compromise and arrangement under the *CCAA* for the purpose of restructuring Sino-Forest Corporation ("Sino-Forest") (the "Plan Sanction Order"). On March 20, 2013, Morawetz J. issued an order approving a settlement and release of claims against Ernst & Young LLP ("E&Y") relating to Sino-Forest (the "Settlement Approval Order").

3. Both orders were the result of fact-driven exercises of discretion in a complex insolvency proceeding supervised by a specialist superior court judge. Those orders involved the factual balancing of the interests of various Sino-Forest stakeholders within complex *CCAA* proceedings.

4. To speak plainly, the Kim Orr Group's argument ducks and weaves so as to avoid taking into account two key factors:

> a) The orders from which the Ontario Court of Appeal denied leave to appeal (and which the Kim Orr Group seeks leave to appeal for the second time) were made in the context of a large, complex insolvency supervised by Justice Morawetz, and were the product of a carefully crafted compromise that was supported by over 98% of all stakeholders;[2] and
>
> b) The primary imperative of insolvency law generally, and the *CCAA* in particular, is to facilitate the compromise of claims by a special majority of affected stakeholders. The "opt-out" concept is simply inconsistent with that imperative.

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[1] RSC 1985, c C-36, Application for Leave to Appeal of the Applicant ("Application Record"), Volume II, Tab 1A

[2] Reasons of Morawetz J., dated December 12, 2012 (the "*Plan Sanction Reasons*") at para 46, Application Record, Volume I, Tab 3B, p. 38

5. The Kim Orr Group side-steps the main issue and tries now to focus on the manner in which a class action operates outside of the insolvency context and effectively contends that the insolvency is irrelevant. Both the supervising *CCAA* Judge and the Ontario Court of Appeal rejected this approach.

6. The style of cause which the Kim Orr Group chose to use on this application is consistent with their deliberated and continued ignorance of the *CCAA* proceedings and their tunnel-like view that only the *Class Proceedings Act, 1992*[3] (the "*CPA*") applies. The materials before each of the courts below listed dual styles of cause that reflected both the *CCAA* proceeding and the *CPA* proceeding. On this Leave application, however, the Kim Orr Group deliberately omitted the *CCAA* style of cause so as to invent their own style of cause that suggests that this action was proceeding solely under the *CPA*.

7. Further, the Kim Orr Group go on to deliberately craft their own style of cause in such a way as to imply that they were parties to the *CPA* proceeding – a transparent, last-ditch attempt to bypass the Ontario Court of Appeal's finding that they did not have standing to appeal as of right under ss 30(3) and (5) of the *CPA* because they were not parties to the class action proceeding.

8. The $117 million settlement between the Ad Hoc Committee of Purchasers of the Applicant's Securities including the Representative Plaintiffs in the Ontario Class Action (the "Class Action Plaintiffs") and E&Y (the "E&Y Settlement") was achieved in the course of a complex, hard-fought *CCAA* process that included a claims procedure in which the Kim Orr Group chose not to file a claim, a failed court-ordered global mediation in which the Kim Orr Group chose not to participate, and months of bilateral settlement negotiations from which the Kim Orr Group chose to be absent. At each juncture, the Class Action Plaintiffs took appropriate steps to protect the interests of a class of investors which included the Kim Orr Group, and the Kim Orr Group accepted that representation.

9. The Kim Orr Group's irresponsive inaction throughout the *CCAA* proceedings and in litigation against E&Y is telling. The members of that group, who now describe themselves as

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[3] SO 1992, c 6, Application Record, Volume II, Tab 1D

"serious and responsible investors," chose to defer to the representation of the Class Action Plaintiffs at every stage of the *CCAA* proceedings until the E&Y Settlement was announced. For nearly seven months, they never once took a step to protect their interests even though their claims against Sino-Forest, E&Y and other defendants were at risk of being compromised in the *CCAA* proceedings.

10. Only upon the announcement of the E&Y Settlement did the Kim Orr Group surface like a submarine in the *CCAA* proceedings and argue that they should be able to opt-out of the *CCAA* plan and be unaffected by it. This argument was rejected by Justice Morawetz. Though no right to opt out is available in the *CCAA* context, the *CCAA* provided the Kim Orr Group with a right (that they do not have in the class proceedings context) – the right to appeal the approval of the E&Y Settlement, upon obtaining leave of the Ontario Court of Appeal. In that Court, however, they failed to establish, among other criteria, that the proposed appeal was of significance to the parties or the action, or that the proposed appeal was meritorious.

11. The Kim Orr Group seeks (a) leave to appeal directly from two superior court decisions; (b) leave to appeal from the Ontario Court of Appeal's denial of leave to appeal from those same superior court decisions; and (c) leave to appeal from an order of the Court of Appeal quashing an attempt to directly appeal from one of those same superior court decisions.

12. Leave to Appeal to this Court from these decisions should be denied:

a) Direct Appeal From Superior Court: The Kim Orr Group should not be permitted to appeal directly from Superior Court orders where they were denied leave to appeal from those same orders to the Ontario Court of Appeal. The Kim Orr Group pursued an appeal to the Ontario Court of Appeal and did not succeed.

b) Appeal From Denial Of Leave To Appeal: The Ontario Court of Appeal held that the Kim Orr Group's proposed appeals from the Plan Sanction Order and Settlement Approval Order did not merit its attention. The proposed appeal arises from complex insolvency proceedings supervised by a specialist superior court judge. The orders from which the Kim Orr Group unsuccessfully sought leave to appeal to the Ontario Court of Appeal were the result of a fact-driven exercise of discretion.

c) Appeal From An Order Quashing An Appeal: The Ontario Court of Appeal quashed the direct appeal of the Settlement Approval Order because the Ontario *Class Proceedings Act, 1992* did not permit a direct appeal. The *Class Proceedings Act, 1992* is a procedural statute that applies only in Ontario. Further, these particular provisions relate to the appeal routes to Ontario courts.

13. The E&Y settlement provides for a payment of $117 million to settle all claims against E&Y. The settlement proceeds will be divided among investors in Sino-Forest securities, including the Kim Orr Group (assuming they suffered losses). However, the payment of the settlement proceeds will not occur until all appeals from the Settlement Approval Order are exhausted. Thus, given their lack of merits, proposed appeals to this Honourable Court would serve only to delay compensation to investors and allow the Kim Orr Group to leverage the appeals so that they receive more compensation than other investors.

14. The Kim Orr Group has already once failed to show that these issues are meritorious or of significance to the parties or the action, let alone the public at large.

(B) Relevant Factual Context

(i) The Commencement of the Class Actions

15. Sino-Forest was a forestry company, with most of its assets and the majority of its business operations in China. It was a holding company that carried on business through its subsidiaries.[4]

16. On June 2, 2011, Muddy Waters, a research firm and short-seller, issued a report that included allegations of fraud against Sino-Forest. Sino-Forest, its senior executives and directors, its auditors (including E&Y), and underwriters became defendants in multiple class actions in Canada and the United States. These included a class action in Ontario brought by the Class Action Plaintiffs (the "Ontario Class Action"), as well as two other class proceedings commenced in Ontario relating to Sino-Forest, one of which was commenced by

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[4] *Plan Sanction Reasons* at paras 13-14 and 31, Application Record, Volume I, Tab 3B, pp 33-34, 36

a group represented by Kim Orr PC.[5] A class action was also subsequently commenced against Sino-Forest and other defendants, including E&Y, in the United States.[6]

17. In December 2011, a motion was heard to determine which of the three actions in Ontario should be permitted to proceed and which should be stayed. On January 6, 2012, the Ontario Superior Court of Justice granted carriage to the Class Action Plaintiffs, appointed Siskinds LLP and Koskie Minsky LLP ("Class Counsel") to prosecute the Ontario Class Action, and stayed the other two actions.[7]

18. Justice Perell ranked Kim Orr last of the three groups competing for carriage.[8]

(ii) The Insolvency and CCAA Proceeding

19. Following the Muddy Water allegations, there was a precipitous decline in Sino-Forest's financial circumstances. On March 30, 2012, Sino-Forest applied for and was granted protection from its creditors pursuant to an initial order under the *CCAA*. The initial order also granted a stay of proceedings in respect of Sino-Forest's subsidiaries.[9]

20. Litigation claims were at the centre of the Sino-Forest insolvency. Sino-Forest was a holding company and did not have many, if any, trade creditors. Instead, aside from the claims in respect of Sino-Forest notes, it was anticipated that most or all of the remaining claims would be either litigation claims by current and former securityholders or indemnity claims from the third party defendants arising from the class action litigation. The third party defendants, such as E&Y, advanced contractual and statutory claims for indemnity from Sino-Forest and its subsidiaries.[10]

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[5] Endorsement of Justice Morawetz dated March 20, 2013 ("*Settlement Approval Decision*") at paras 8 and 10, Application Record, Volume I, Tab 3C, pp. 47-48

[6] *Settlement Approval Decision* at para 8, Application Record, Volume I, Tab 3C, p. 47

[7] *Settlement Approval Decision* at para 11, Application Record, Volume I, Tab 3C, p. 48

[8] Endorsement of the Ontario Court of Appeal, dismissing the Kim Orr Group's motion for leave to appeal, dated June 26, 2013 ("*ONCA Leave Decision*") at para 7, Application Record, Volume I, Tab 3D, p. 64

[9] *Plan Sanction Reasons* at para 19, Application Record, Volume I, Tab 3B, pp. 34-35

[10] Excerpts from the Thirteenth Report of the Monitor dated November 22, 2012 ("*Monitor's Thirteenth Report*") at paras 27-28 and 46 **[Tab 3A]**; *Plan Sanction Reasons* at paras 28-29, Application Record, Volume I, Tab 3B, p. 36

21. It was apparent from the outset that the *CCAA* proceeding presented a material risk to the Class Action Plaintiffs, the plaintiffs in the US class action, and the current and former security holders on whose behalf those class actions were being prosecuted (collectively, the "Class Members"). In particular, the *CCAA* proceeding could have resulted in an order approving a plan of arrangement which provided releases to some or all of the defendants while imposing a meagre settlement on Class Members.[11]

22. The Class Action Plaintiffs were alert to the risk presented by the *CCAA* proceedings and were active participants from the outset. In the course of the *CCAA* proceeding, Class Counsel participated in extensive negotiations with other stakeholders having competing interests, and appeared numerous times to advance the interests of the Class Members. These court attendances included motions (1) to lift the *CCAA* stay partially or fully; (2) regarding the claims procedure; (3) to permit a motion to approve a litigation funding arrangement for the Class Actions; (4) to implement a previously negotiated settlement with one of the defendants to the Ontario Action; (5) to secure access to non-public documents that were relevant to the claims advanced in the Canadian Actions; and (6) to schedule the mediation.[12] The Kim Orr Group was absent throughout.

23. On May 14, 2012, the court issued the claims procedure order. It provided that persons with claims against Sino-Forest, directors and officers, or subsidiaries were to file proofs of claim with the court-appointed monitor on or before June 20, 2012, and any claims not submitted by that date would be permanently barred. In addition, any person who did not file a claim would not be entitled to participate in the *CCAA* proceedings.[13]

24. There were 232 claims filed. Only three of them were trade claims. Other than claims in respect of the notes, the overwhelming balance of the claims filed in the claims process were litigation claims by the plaintiffs for the Canadian and US class actions and claims by

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[11] Excerpt from Affidavit of Charles M. Wright (the *"Wright Affidavit"*) at para 47 **[Tab 3C]**
[12] *Wright Affidavit*, paras 47-49 **[Tab 3C]**
[13] *Monitor's Thirteenth Report* at para 44 **[Tab 3A]**

the third party defendants in those class actions.[14] No member of the Kim Orr Group filed a proof of claim.[15]

25. On July 25, 2012, the court directed a mediation of the claims against Sino-Forest and against the third party defendants. [16] The Class Action Plaintiffs were directed to participate. No member of the Kim Orr Group sought to participate.

26. The mediation was conducted on September 4 and 5, 2012. Although a settlement was not achieved at the mediation, the Class Action Plaintiffs and E&Y continued to negotiate and remained focused on determining whether a resolution within the *CCAA* proceeding was possible.[17]

(iii) The E&Y Settlement

27. The E&Y Settlement was reached on November 29, 2012, following a bilateral mediation held from November 27 to 29, 2012, between E&Y and the Class Action Plaintiffs. Clifford Lax, Q.C., presided over that mediation. The negotiations were "protracted and challenging".[18]

28. The key terms of the E&Y Settlement are as follows: (a) E&Y will pay $117 million; (b) all claims or possible claims against E&Y relating to Sino-Forest will be released; and (c) the E&Y settlement terms will be incorporated into the Plan, and is conditional upon the granting of a final order sanctioning the Plan.[19]

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[14] *Monitor's Thirteenth Report* at para 45-46 and 57 **[Tab 3A]**; *Plan Sanction Reasons* at paras 25-31, Application Record, Volume I, Tab 3B, pp. 35-36
[15] *Plan Sanction Reasons* at para 25, Application Record, Volume I, Tab 3B, p. 35
[16] *Monitor's Thirteenth Report* at para 31 **[Tab 3A]**
[17] *Monitor's Thirteenth Report* at para 31 **[Tab 3A]**
[18] *Wright Affidavit*, paras 64 **[Tab 3C]**
[19] *Settlement Approval Decision* at para 27, Application Record, Volume I, Tab 3C, p. 50

(iv) The CCAA Plan

29. The Plan always contained provisions relating to litigation claims against third parties, including current and former officers and directors, E&Y, BDO Limited ("BDO") and the underwriters.[20]

30. On August 14, 2012, Sino-Forest filed a draft Plan with the court and brought a motion for a meeting order.[21] In accordance with its terms, amendments to the Plan were made over the following months, leading to further revised versions in October and November, and a final version on December 3, 2012.[22]

31. The final amendments to the Plan reflected a compromise among all major stakeholders that brought consensus to what had been acrimonious proceedings and permitted the restructuring to succeed.

32. The Kim Orr Group in their memorandum of law states that "[b]y late November 2012, all parties were ready to sign off on the plan" and that "the plan was poised for approval by creditors when E&Y and the class plaintiffs announced their proposed settlement." This is unambiguously false.

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[20] Releases of third party defendant claims for Sino-Forest notes: Section 7.2(e) of the Plan always released note purchaser claims against Ernst & Young, BDO and the underwriters for amounts in excess of $150 million (in aggregate) where those third party defendants had a valid and enforceable indemnity claim. Section 7.2(e) of August 14 version of Plan, 7.1(e) of November 28 and December 3 versions of Plan **[Tab 3E]**
Releases that may have prevented recovery from Sino-Forest's third party liability insurer: the initial August version of the Plan released all claims against Sino-Forest and made no provision for recovery from Sino-Forest's liability insurer. Under the initial Plan, the insurance proceeds may have been irrecoverable. The Class Action Plaintiffs secured amendments to the final version of the Plan so that there can be recovery directly from the liability insurer. Section 2.4 of December 3 versions of Plan **[Tab 3E]**
Releases of third party defendant directors and officers: the Plan always provide releases of class action claims and third party defendant claims against former and current officers and directors. Section 7.2(a), (c) and (d) of August 14 version of Plan, Sections 7.1 (a), (c), and (d) of the November 28 and December 3 version of Plan **[Tab 3E]**

[21] *Monitor's Thirteenth Report* at paras 35-38 **[Tab 3A]**

[22] *Plan Sanction Reasons* at para 38, Application Record, Volume I, Tab 3B, p. 37

33. Until the December 3, 2012 version of the Plan, E&Y, BDO and the underwriters vigorously opposed the Plan.[23] One of their key criticisms was that the Plan not only released their claims against Sino-Forest (the Canadian debtor), but went farther and released their indemnification claims against Sino-Forest subsidiaries (non-debtors) without the right to vote on such releases. This opposition was significant as a plan for Sino-Forest's restructuring could not succeed without the assets of the subsidiaries and the release of claims against them.[24]

34. The opposition to the Plan, had it continued, might have resulted in no plan being approved, or substantial and prejudicial delay to plan implementation. Delay was a significant concern because Sino-Forest had dwindling resources to continue in the insolvency. Throughout its insolvency, Sino-Forest's business relationships were under considerable strain and its ability to collect sizeable accounts receivable was significantly constrained.[25]

35. The final amendments that were incorporated into the December 3rd version of the Plan were made to obtain the support of E&Y and the underwriters. BDO availed itself of those terms on December 5, 2012.[26]

36. The Plan included the following compromises:

a) Excluding E&Y, BDO and the underwriters from any distributions under the plan to which they would otherwise be entitled to receive as creditors and releasing their claims against Sino-Forest and its subsidiaries;

b) Releasing claims against the underwriters by Sino-Forest and current noteholders;

c) Restricting litigation claims in respect of notes against E&Y, BDO, and the underwriters to a maximum of $150 million;[27]

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[23] *Settlement Approval Decision* at para 56, Application Record, Volume I, Tab 3C, p. 56
[24] *Plan Sanction Reasons* at paras 72-74, Application Record, Volume I, Tab 3B, pp. 42-43
[25] *Monitor's Thirteenth Report* at paras 20, 22, 110 **[Tab 3A]**
[26] *Plan Sanction Reasons* at para 38, Application Record, Volume I, Tab 3B, p. 37
[27] The prior versions of the plan recognized there was a dispute about the validity of the third party defendants' indemnity claims against Sino-Forest. Accordingly, there was a limit of $150 million for note purchaser claims, but only where it was established that there was a valid and enforceable

d) Incorporating a framework for the E&Y Settlement and a framework for potential future settlements with other defendants; and

e) Incorporating obligations on Sino-Forest for the preservation and production of documents that are relevant to the class action claims. [28]

37. In essence, the amendments reflected a resolution and compromise among all of Sino-Forest's major creditors and stakeholders and eliminated all major opposition to the plan.[29]

38. The Kim Orr Group, which never filed a claim or ever appeared in the *CCAA* proceedings, filed the sole objection to the Plan.[30]

39. The Kim Orr Group may speculate that Justice Morawetz would have sanctioned earlier versions of the Plan over the objections of E&Y, BDO and the underwriters – who had large indemnity claims against Sino-Forest and its subsidiaries. However, speculation is not evidence and such imagining by the Kim Orr Group demonstrates how little they understood about the *CCAA* proceedings.

(v) Sanction of the Plan

40. Justice Morawetz issued the Plan Sanction Order on December 10, 2012, with reasons following on December 12, 2012. The Plan Sanction Order provided that the plan and all of its terms and conditions were fair and reasonable.[31] Unlike the Kim Orr Group who had played no role, Justice Morawetz was intimately and fully familiar with the contours of the *CCAA* proceedings, and the various compromises that it represented.

41. In his reasons, Justice Morawetz found (a clear finding of facts):

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indemnity. There was no limit for note purchaser claims where the indemnity was not valid. However, this changed with the compromises in the December 3, 2012 plan. The indemnities as they related to note purchaser claims were deemed valid and enforceable. Given that the auditors and underwriters claimed an indemnity for their entire liability for note purchaser claims, the practical result is that note purchaser claims are limited to $150 million.

[28] Supplemental Report to the Thirteenth Report of the Monitor dated December 4, 2012 ("*Supplement to Monitor's Thirteenth Report*") at paras 5-10 **[Tab 3B]**

[29] *Plan Sanction Reasons* at paras 3, 4, 8, and 9, Application Record, Volume I, Tab 3B, pp. 32-33

[30] *Plan Sanction Reasons* at paras 3 and 4, Application Record, Volume I, Tab 3B, pp. 32-33.

[31] Order of the Hon. Justice Morawetz re: Plan Sanction dated December 10, 2012 at para 7, Application Record, Volume I, Tab 4A, p. 70

a) Sino-Forest had met the test for the sanctioning of the Plan, and that there had been strict compliance with statutory requirements and court orders;

b) Sino-Forest had entered insolvency having met the statutory criteria under the *CCAA*;

c) Sino-Forest had regularly filed affidavits and the court-appointed monitor had provided regular reports;

d) The court appointed monitor consistently reported that Sino-Forest was acting in good faith and with due-diligence;

e) The monitor had considered the possibility of liquidation and bankruptcy alternatives and had determined that these were not preferable alternatives to the Plan and that there were no other viable alternatives presented that would be acceptable to Sino-Forest and to the affected creditors;

f) The Plan provided a "fair and reasonable balance" among stakeholders while simultaneously providing the ability for the Sino-Forest business to continue as a going concern for the benefit of all stakeholders; and

g) the Plan removed uncertainty for Sino-Forest's employees, suppliers, customers and other stakeholders and provided a path for recovery of the debt owed to unsecured creditors.[32]

42. Justice Morawetz distinguished between (i) approval of a framework for the E&Y Settlement; and (ii) approval of the settlement itself. Justice Morawetz noted that the plan contained provisions that "provide a framework pursuant to which a release of the E&Y claims under the Plan will be effective if several conditions are met." One of those conditions was further court approval of the settlement. Accordingly, Justice Morawetz noted that any issues relating to the E&Y Settlement would be dealt with at a further court-approval hearing.[33]

43. That further hearing took place on February 4, 2013 with a full evidentiary record. The Kim Orr Group made substantive submissions at that point.

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[32] *Plan Sanction Reasons* at para 53, 60, 62, 64, 65, 79, Application Record, Volume I, Tab 3B, pp. 39-41, 43

[33] *Plan Sanction Reasons* at paras 47-49, Application Record, Volume I, Tab 3B, p. 39

(vi) Implementation of the Plan

44. The Sino-Forest Plan was implemented on January 30, 2013, completing the restructuring. This implementation occurred with notice to and without opposition from the Kim Orr Group.

45. In letters exchanged between Kim Orr, P.C. and counsel for Sino-Forest on January 3, 2013, the Kim Orr Group confirmed that they were not seeking a stay pending appeal of the Plan Sanctions Order or an expedited appeal. It was also confirmed that they were not seeking to prevent or stay implementation of the *CCAA* plan.[34]

(vii) Approval of the Ernst & Young Settlement

46. On December 21, 2012, Justice Morawetz ordered that notice of the E&Y Settlement be disseminated, and directed that objections to the E&Y Settlement be delivered by January 18, 2013. The members of the Kim Orr Group were the only institutional investors who filed objections and did not subsequently withdraw them.[35]

47. Contrary to correspondence from Kim Orr suggesting that it had "been contacted by a number of other private and public funds and expect to have further retainers from approximately a dozen funds shortly,"[36] the Kim Orr Group consists of only six funds. Moreover, in an attempt to garner support for their objections, Kim Orr conducted unsolicited mailings of at least two different letters to a variety of institutional investors across the world.[37]

48. In an attempt to appear that the Kim Orr Group had broad support, one of the unsolicited mailings also incorrectly stated that Kim Orr represented Mackenzie Financial Corporation.[38] Kim Orr refused to answer the question of whether this false representation was ever corrected. Despite the unfair and inflammatory characterizations of the E&Y

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[34] Letters between R. Staley and W.J. Kim dated January 3, 2013 **[Tab 3F]**
[35] Excerpt from Supplemental Affidavit of Charles M. Wright at paras 11-13 **[Tab 3D]**
[36] Questions for Tanya Jemec **[Tab 3G]**
[37] Questions for Tanya Jemec, Questions 1 and 8 **[Tab 3G]**
[38] Questions for Tanya Jemec, Questions 1 and 6 **[Tab 3G]**

Settlement in the unsolicited mailings, the Kim Orr Group was unable to recruit a single additional objector to its cause.

49. As of June 2, 2011, the day on which the initial Muddy Waters report on Sino-Forest was released, those funds collectively held only approximately 1.6% of the approximately 246 million shares which Sino-Forest had outstanding. In contrast, Davis Selected Advisors and Paulson and Co., two of numerous institutional investors who expressly supported the E&Y Settlement, controlled more than 25% of Sino's shares at that time.[39]

50. On March 20, 2013, Morawetz J. approved the E&Y Settlement and issued the Settlement Approval Order. In his reasons approving the E&Y Settlement, His Honour held that:

> a) The E&Y Settlement is part of a *CCAA* plan process, and that claims are regularly compromised and settled within *CCAA* proceedings;
>
> b) There are no opt outs in the *CCAA* and it is not possible to ignore the *CCAA* proceedings;
>
> c) Third party releases are not an uncommon feature of complex restructurings under the *CCAA*;
>
> d) In *Metcalfe v. ATB Financial*, the Ontario Court of Appeal held that a *CCAA* plan may include a third party release where there is a "reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third party release in the plan;
>
> e) The claims to be released against E&Y are rationally related to the purpose of the Plan and necessary for it;
>
> f) E&Y is contributing in a tangible way to the Plan by its significant contribution of $117 million;
>
> g) The Plan benefits the claimants in the form of a tangible distribution;
>
> h) The E&Y release is fair and reasonable and not overly broad or offensive to public policy; and

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[39] *Settlement Approval Decision* at para 33, Application Record, Volume I, Tab 3C, p. 51

i) The E&Y Settlement provides a substantial benefit to relevant stakeholders and is consistent with the purpose of the *CCAA*.[40]

51. The settlement with E&Y facilitated the *CCAA* restructuring of Sino-Forest and was not limited to resolving the claims advanced in the Ontario Class Action. It constituted a global resolution of claims arising from E&Y's relationship with Sino-Forest. The settlement released the claims of any person against E&Y relating to Sino-Forest, including claims by Sino-Forest, its directors and officers, BDO or the underwriters. In return, and as part of the sanctioning of the Plan, E&Y withdrew its opposition to the *CCAA* Plan, E&Y was excluded from any distributions under the *CCAA* Plan to which they would otherwise be entitled and E&Y's claims against Sino-Forest and its subsidiaries were released.

(viii) The Kim Orr Group's Failed Attempts to Appeal to the Ontario Court of Appeal

52. The Kim Orr Group sought to appeal the Plan Sanction Order and Settlement Approval Order to the Ontario Court of Appeal via two separate routes: by seeking leave to appeal, and a direct appeal pursuant to section 30 of the Ontario *Class Proceedings Act, 1992*. The motions for leave to appeal the Plan Sanction Order and leave to appeal the Settlement Approval Order were consolidated and heard together at the Ontario Court of Appeal.

53. The Ontario Court of Appeal denied leave to appeal. It refused leave to appeal the Plan Sanction Order, noting that the proposed appeal was moot since the Kim Orr Group did not move to stay that order and the Plan had since been implemented. In any event, the Ontario Court of Appeal held that there was "no basis to interfere with the supervising judge's decision."[41]

54. With respect to the Settlement Approval Order, the Ontario Court of Appeal again held that there was "no basis on which to interfere with [the supervising judge's] decision" and that "[t]he issues raised on this proposed appeal are, at their core, the very issues settled by this court in *ATB Financial*."[42]

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[40] *Settlement Approval Decision* at paras 36, 40, 46, 47, 61, 63-65, 66, 72, 77, Application Record, Volume I, Tab 3C, pp. 51-55, 57-59

[41] *ONCA Leave Decision* at paras 11-12, Application Record, Volume I, Tab 3D, p. 65

[42] *ONCA Leave Decision* at paras 13-14, Application Record, Volume I, Tab 3D, p. 66

55. In a six-paragraph endorsement dated June 28, 2013, the Ontario Court of Appeal quashed the Kim Orr Group's appeal under section 30 of the Ontario *Class Proceedings Act, 1992*, holding that they did not meet the requirements for a direct appeal under either subsection 30(3) or (5) of the *Class Proceedings Act, 1992*.[43]

56. The leave to appeal denial order and quash order provided for costs against the Kim Orr Group totalling $18,000. The Kim Orr Group refused to pay the costs despite repeated requests and the fact that the Kim Orr Group is comprised of investment funds, including a "very large Ontario based private mutual fund." The Class Action Plaintiffs were forced to issue writs of seizure and sale. On being informed of the writs, the Kim Orr Group proposed on August 28, 2013 to pay the costs into court pending these leave applications. The Class Action Plaintiffs agreed to this compromise so as to avoid the additional expense of further enforcement proceedings.

57. The Kim Orr group now seeks a last-minute leave to this Honourable Court from the Plan Sanction Order, Settlement Approval Order and the orders dismissing their leave to appeal and quashing their direct appeal.

(ix) The Kim Orr Group Did Not Opt Out Of The Ontario Class Action

58. The Kim Orr Group asserts that their rights to opt out of the Ontario Class Action have been abrogated. However, the fact is that the Kim Orr Group had the opportunity to opt out of the Ontario Class Action, but did not exercise that right. As a result, even if the E&Y Settlement were limited to the Ontario Class Action (which it is not), the Kim Orr Group would still be bound by it.

59. On September 25, 2012, the Ontario Class Action was certified as a class proceeding for the purposes of a settlement with Pöyry (Beijing) Consulting Company Limited ("Pöyry"). The Pöyry settlement was entered into before the *CCAA* proceeding and was limited to a resolution of claims in the Ontario Class Action.[44]

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[43] Endorsement of the Court of Appeal quashing the appeal of the Kim Orr Group, dated June 28, 2013 ("*ONCA Quash Decision*") at paras 2-5, Application Record, Volume IV, Tab 3A, pp. 27-28

[44] *Settlement Approval Decision* at para 17, Application Record, Volume I, Tab 3C, p. 49

60. As a result of certification, class members such as the Kim Orr Group, had the opportunity to opt out of the Ontario Class Action. The deadline was January 15, 2013.[45] The Kim Orr Group filed an opt out form on the last date of the opt out period, but altered the court-approved opt out form purporting to conditionally opt out:

> This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by [the Kim Orr Group]. Otherwise, this opt out right would be wholly illusory.[46]

61. Justice Morawetz considered whether the Kim Orr Group had properly opted out of the Ontario Class Action. His Honour found as fact that the Kim Orr Group did not opt out:

> [t]hey purported to create a conditional opt-out. Under the *CPA*, the right to opt-out is "in the manner and within the time specified in the certification order". There is no provision for a conditional opt-out in the *CPA*...[47]

62. The Kim Orr Group did not seek to appeal this factual finding to the Ontario Court of Appeal, nor have they sought to raise this factual issue in the proposed appeals to this Court.

PART II. STATEMENT OF THE QUESTIONS IN ISSUE

63. The issue is whether this Court should grant leave to appeal under section 40 of the *Supreme Court Act*[48] from (1) two lower court decisions of the Ontario Superior Court of Justice; (2) the Ontario Court of Appeal's refusal of leave to appeal from those same Superior Court decisions; and (3) leave to appeal from an order of the Ontario Court of Appeal quashing an attempt to directly appeal from those same Superior Court decisions.

64. The Kim Orr Group's posture on these leave applications ignores the fact that the Ontario Court of Appeal did not hear either of their proposed appeals. Leave to appeal the

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[45] *Settlement Approval Decision* at para 19, Application Record, Volume I, Tab 3C, p. 49
[46] Opt Out Form of Invesco Canada Ltd, Exhibit "D" to the Affidavit of Eric Adelson, Application Record, Volume III, Tab 8C, p. 100
[47] *Settlement Approval Decision* at para 80, Application Record, Volume I, Tab 3C, p. 60
[48] *Supreme Court Act*, R.S.C. 1985, c. S-26, s.40(1).

Plan Sanction Order and Settlement Approval Order was dismissed, and the direct appeal regarding the Settlement Approval Order was quashed.

65. The Kim Orr Group poses three "questions in issue" as if the appeals were heard, and decisions rendered, on the merits by the Ontario Court of Appeal. This did not occur.

PART III. STATEMENT OF ARGUMENT

66. The Ontario Court of Appeal refused leave to appeal from the Plan Sanction Order and Settlement Approval Order. The Kim Orr Group seeks three different appeal routes to this Court in order to appeal that leave decision. Leave to appeal to this Court should be denied.

(A) Leave To Appeal From The Orders Of The Superior Court

67. Leave to appeal from the Ontario Superior Court of Justice's Plan Sanction Order and Settlement Approval Order should be denied.

68. The Kim Orr Group should not be permitted to appeal directly from Superior Court orders where they were denied leave to appeal from those same orders to the Ontario Court of Appeal. The Kim Orr Group pursued an appeal to the Ontario Court of Appeal and did not succeed.

(B) Leave To Appeal From A Denial Of Leave To Appeal

69. The Ontario Court of Appeal found that the proposed appeals did not merit its attention. They certainly do not merit review by this Honourable Court.

70. The proposed appeal arises from complex insolvency proceedings supervised by a specialist superior court judge, Morawetz J. The supervising *CCAA* judge had the benefit of a complete record, intimate familiarity with the issues in the insolvency proceedings and thorough submissions of the parties as well as the Kim Orr Group. The orders from which the Kim Orr Group unsuccessfully sought leave to appeal to the Ontario Court of Appeal were the result of a fact-driven exercise of discretion under the *CCAA*. Those orders involved the balancing of the interests of various Sino-Forest stakeholders.

71. As noted by Justice Morawetz in the settlement approval decision: "the reality facing the parties is that SFC is insolvent, it is under *CCAA* protection, and stakeholder claims are to be considered in the context of the *CCAA* regime."[49] In that context:

> claims, including contingent claims, are regularly compromised and settled within *CCAA* proceedings. This includes outstanding litigation claims against the debtor and third parties. Such compromises fully and finally dispose of such claims, and it follows that there are no continuing procedural or other rights in such proceedings.
>
> [...] It is well established that class proceedings can be settled in a *CCAA* proceeding. See *Robertson v ProQuest Information and Learning Co.*, 2011 ONSC 1647.[50]

72. Justice Morawetz concluded that if opt outs were possible in such a context, "no creditor would take part in any *CCAA* compromise where they were to receive less than the debt owed to them." There is no right to opt-out of any *CCAA* process.[51]

73. His Honour's statements at paragraph 68 through 70 of the settlement approval decision are illustrative of his reasoning:

> 68 In my view, it is clear that the claims Ernst & Young asserted against SFC, and SFC's subsidiaries, had to be addressed as part of the restructuring. The interrelationship between the various entities is further demonstrated by Ernst & Young's submission that the release of claims by Ernst & Young has allowed SFC and the SFC subsidiaries to contribute their assets to the restructuring, unencumbered by claims totalling billions of dollars. As SFC is a holding company with no material assets of its own, the unencumbered participation of the SFC subsidiaries is crucial to the restructuring.
>
> 69 At the outset and during the *CCAA* proceedings, the Applicant and Monitor specifically and consistently identified timing and delay as critical elements that would impact on maximization of the value and preservation of SFC's assets.
>
> 70 Counsel submits that the claims against Ernst & Young and the indemnity claims asserted by Ernst & Young would, absent the Ernst & Young Settlement, have to be finally determined before the *CCAA* claims could be quantified. As such, these steps had the potential to significantly delay the

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[49] *Settlement Approval Decision* at para 72, Application Record, Volume I, Tab 3C, p. 59
[50] *Settlement Approval Decision* at para 36-37, Application Record, Volume I, Tab 3C, p. 51
[51] *Settlement Approval Decision* at para 77, Application Record, Volume I, Tab 3C, p. 59

> *CCAA* proceedings. Where the claims being released may take years to resolve, are risky, expensive or otherwise uncertain of success, the benefit that accrues to creditors in having them settled must be considered.[52]

74. In essence, Justice Morawetz recognized that absent the settlement, E&Y, through its claims against Sino-Forest's subsidiaries, was in a position to tie-up and possibly veto a restructuring effort that otherwise had the support of over 98% of affected stakeholders holding billions of dollars of claims.

75. The Ontario Court of Appeal refused leave to appeal from Justice Morawetz's decisions. It found that the proposed appeals did not merit its attention and there was "no basis to interfere" with the decisions of the supervising *CCAA* judge.[53]

(C) Leave To Appeal From An Order Quashing Direct Appeal

76. Leave to appeal from the Ontario Court of Appeal's order quashing the Kim Orr Group's direct appeal from the Settlement Approval Order should be denied.

77. The Court of Appeal quashed the direct appeal of the Settlement Approval Order because the Ontario *Class Proceedings Act, 1992* does not permit such an appeal:

> The appellants rely on ss. 30(3) and (5) of the *CPA*. In our view, they do not come within either section.
>
> Under s. 30(3) only a party to a class proceeding has a direct appeal to the court from a judgment on common issues or an order under s. 24 of the *CPA* on an aggregate assessment of monetary relief. The appellants are not parties to the class proceeding and therefore cannot appeal as of right under s. 30(3). It is only under s. 30(5) that a class member has any right to appeal and then only if that member first obtains leave of this court to act as a representative party for the purposes of subsection (3): the right of appeal from a judgment on common issues or under s. 24. These appeals are neither.[54]

78. The availability of an appeal route was not an issue in this case. The Kim Orr Group had a right to seek leave to appeal to the Court of Appeal under section 13 of the *CCAA*. The Kim Orr Group sought and was denied leave to appeal to the Court of Appeal.

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[52] *Settlement Approval Decision* at paras 68-70, Application Record, Volume I, Tab 3C, p. 58
[53] *ONCA Leave Decision* at paras 12 and 14, Application Record, Volume 1, Tab 3D, pp. 65, 66
[54] *ONCA Quash Decision* at paras 3-4, Application Record, Volume IV, Tab 3A, pp. 27-28

PART IV. SUBMISSIONS AS TO COSTS

79. The Kim Orr Group did not succeed in opposing the motions in the Ontario Superior Court and were denied leave to appeal to the Ontario Court of Appeal. There should be a disincentive for litigants such as the Kim Orr Group to seek review of every single decision of lower courts.

PART V. ORDER SOUGHT

80. The Class Action Plaintiffs respectfully request an order dismissing this application for leave to appeal, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 23RD DAY OF OCTOBER, 2013

Eugene Morham Q.C. as agent.

Siskinds LLP
Koskie Minsky LLP
Paliare Roland Rosenberg Rothstein LLP

Counsel for the Respondents, The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde SP-Fonden, David Grant, Robert Wong ("Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action against the Applicant")

PART VI. TABLE OF AUTHORITIES

None

PART VII. STATUTORY PROVISIONS

Companies' Creditors Arrangement Act, RSC 1985, c C-36, s. 13

Class Proceeding Act, 1992, SO 1992, c 6, ss. 30(3)(5)

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 13**

Leave to appeal

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

Permission d'en appeler

13. Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge dont la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.

***Class Proceeding Act, 1992*, SO 1992, c 6, ss. 30(3)(5)**

Appeals: judgments on common issues and aggregate awards

(3) A party may appeal to the Court of Appeal from a judgment on common issues and from an order under section 24, other than an order that determines individual claims made by class members. 1992, c. 6, s. 30 (3).

Idem

(5) If a representative party does not appeal as permitted by subsection (3), or if a representative party abandons an appeal under subsection (3), any class member may make a motion to the Court of Appeal for leave to act as the representative party for the purposes of subsection (3). 1992, c. 6, s. 30 (5).

Appel relatif aux questions communes

(3) Une partie peut interjeter appel devant la Cour d'appel d'un jugement rendu sur les questions communes et d'une ordonnance rendue aux termes de l'article 24, à l'exclusion d'une ordonnance qui décide les demandes individuelles présentées par les membres du groupe. 1992, chap. 6, par. 30 (3).

Idem

(5) Si le représentant n'interjette pas appel en vertu du paragraphe (3) ou s'il se désiste de l'appel visé au paragraphe (3), un membre du groupe peut demander à la Cour d'appel, par voie de motion, l'autorisation d'agir comme représentant pour l'application du paragraphe (3). 1992, chap. 6, par. 30 (5).

Court File No. CV-12-9667-00CL

Sino-Forest Corporation

THIRTEENTH REPORT OF THE MONITOR

November 22, 2012

Volume I of II

(f) issues surrounding efforts on asset verification, including an inability to obtain forestry bureau maps.

20. Since the outset of the CCAA Proceedings, the Monitor has also advised the Court, the Company and others that there is a finite amount of funds available for the CCAA Proceedings. The Monitor has advised on the Company's cash flow throughout the CCAA Proceedings and noted the negative cash flow due to disbursements relating primarily to professional fees with no source of income for the Company.

21. The Company and the Monitor have also indicated ongoing issues arising from the termination of several members of senior management (who received enforcement notices from the OSC) and the fact that these individuals have not been replaced.

22. The Company has consistently expressed the view that the lack of resolution within the CCAA Proceedings has had an ongoing negative impact on the operations and financial status of the Sino-Forest Subsidiaries.

The RSA and the Sale Process[5]

23. As part of the relief sought on the Filing Date, the Company announced that it had entered into a restructuring support agreement (the "**RSA**") with certain initial consenting Noteholders (as defined in the Plan) (the "**ICNs**") which provided for a framework for a resolution and restructuring transaction acceptable to the ICNs.

24. In connection with the RSA and the CCAA Proceedings, the Company sought approval of a sale process for the marketing of the Sino-Forest Business (the "**Sale Process**") to be conducted by the Company's financial advisor, Houlihan Lokey ("**HL**"). The Sale Process set out the procedures pursuant to which bids for the Company would be solicited in a multi-stage process. During Phase 1, letters of intent were solicited, which letters of intent were required to provide for consideration in an amount equal to 85% of the aggregate principal amount of the Notes, plus all accrued and unpaid interest on the

[5] Capitalized terms used in this subsection and not otherwise defined have the meaning given to them in the Sale Process Order.

Notes at the regular rates provided in each respective note indenture up to March 30, 2012 (the "**Qualified Consideration**").

25. Subsequent to the Filing Date, the Company, through HL, canvassed the market for a potential buyer or buyers of the Sino-Forest Business. On the Phase I Bid Deadline (as defined in the Sale Process Order), a number of letters of intent were received. However, none of those letters of intent met the criteria of being a "Qualified Letter of Intent" due to their failure to provide for the Qualified Consideration. The Sale Process was thereafter terminated by the Company (in consultation with the Monitor). More details regarding the Sale Process are set out in the Monitor's Fourth Report dated July 10, 2012. Subsequent to the termination of the Sale Process and as set out in the Monitor's eighth report dated September 25, 2012, the Monitor was informed by the Company and the ICNs that there was some continued interest expressed by parties in purchasing the Company's assets. To date, no such transaction has been successfully negotiated or completed.

26. Concurrently with the conduct of the Sale Process, the Company also sought further support for the restructuring transaction contemplated by the RSA. In accordance with the terms of the RSA, on or before May 15, 2012 (the "**Early Consent Deadline**"), Noteholders representing approximately 72% of the outstanding noteholder debt (including ICNs) (with more than 66.67% of the principal amount of each of the four (4) series of Notes) agreed to support the Plan.

Claims, the Class Actions and the Mediation[6]

27. From the outset of the CCAA Proceedings, it was apparent that addressing the claims against Sino-Forest would be important given the extent of the litigation against the Company and resulting indemnification claims from others named in the Class Actions. To further that process, on May 14, 2012, the Company obtained a claims procedure

[6] Capitalized terms used in this subsection and not otherwise defined have the meaning given to them in the Claims Procedure Order.

order (the "**Claims Procedure Order**"),[7] which provided for the calling of claims against the Company, its directors and officers and its subsidiaries.

28. Notably, the Claims Procedure Order did not provide a specific mechanism for the resolution of Claims. This was largely in recognition of the relatively unique nature of the claims that were anticipated to be asserted in the claims process. As set out above, as a holding company, unlike many CCAA debtors, the Company does not have many, if any, trade creditors. Instead, aside from the claims in respect of the Notes, it was anticipated that most or all of the remaining claims filed would be in connection with the Class Actions either directly by the plaintiffs in the Class Actions (the "**Plaintiffs**") or indemnity claims from the Third Party Defendants (defined below). Details regarding the Claims, D&O Claims and D&O Indemnity Claims filed in connection with the claims process is set out below in the section entitled "The Claims Process".

29. On June 26, 2012, the Company brought a motion seeking a direction that Claims by the Plaintiffs in respect of the purchase of securities and resulting indemnification claims by the Third Party Defendants constituted "equity claims" pursuant to section 2(1) of the CCAA. On July 27, 2012, the Court issued its decision determining that such claims did constitute "equity claims" under section 2(1) of the CCAA (the "**Equity Claims Decision**"). The Equity Claims Decision was appealed by Ernst & Young LLP ("**EY**"), BDO Limited ("**BDO**") and the underwriters group (the "**Underwriters**"). The appeal was heard by the Court of Appeal on November 13, 2012. As of the date of this Thirteenth Report, the Court of Appeal's decision has not been released.[8]

30. As the process continued, it became apparent to the Monitor that the nature, complexity and number of parties involved in the litigation claims surrounding the Company had the potential to cause extensive delay and additional costs in the CCAA Proceedings. As such, it was the view of the Monitor (with the agreement of the Company) that there was merit in a global resolution of not only the Plaintiffs' claims against the Company, but

[7] See Appendix J for a copy of the Claims Procedure Order.
[8] See Appendix K for a copy of the Equity Claims Decision

also against the other defendants named in the Class Actions other than Pöyry Beijing (the "**Third Party Defendants**").[9]

31. On July 25, 2012 the Court granted an order (the "**Mediation Order**"), directing a mediation (the "**Mediation**") of the class action claims against the Company and the Third Party Defendants (as defined in the Mediation Order). The Mediation was conducted on September 4 and 5, 2012 but was unsuccessful. Notwithstanding the fact that the Mediation was not successful, the Monitor is aware that many of the Third Party Defendants have remained focused on determining whether a resolution within the CCAA Proceedings is possible.

The OSC Investigation and the Enforcement Notices

32. In addition to facing the litigation claims asserted against the Company, the Company has also faced an ongoing investigation by the OSC. As set out in the Initial Order Affidavit, after the release of the MW Report, the OSC launched an investigation on the Company which led to the granting of a temporary cease trade order issued on August 26, 2011 (which has since been extended).

33. On April 9, 2012, the Company announced that it had received an enforcement notice from the OSC and was aware that certain current and former officers (the "**Individual Respondents**")[10] of the Company had also received enforcement notices. On May 23, 2012, the Company announced that it had learned that the OSC had commenced proceedings against the Company and the Individual Respondents and issued a statement of allegations dated May 22, 2012. On September 26, 2012, the Company announced that it had received a second enforcement notice from the OSC.

34. As of the date of the Report, the OSC investigation and enforcement proceedings are ongoing.

The Plan and the Plan Filing and Meeting Order

[9] The Third Party Defendants are: EY, BDO, the Underwriters, Allen Chan, Judson Martin, Kai Kit Poon, David Horsley, William Ardell, James Bowland, James Hyde, Edmund Mak, Simon Murray, Peter Wang and Garry West.
[10] The Individual Respondents are Allen Chan, Albert Ip, Alfred Hung, George Ho, Simon Yeung and David Horsley.

35. On August 14, 2012, the Company announced that it had filed a draft plan of compromise and reorganization (the "**August 14 Draft Plan**") with the Court.[11] On August 15, 2012, the Company filed a draft information circular with the Court (the "**August 15 Draft Information Circular**").

36. In connection with the filing of the August 14 Draft Plan, the Company also brought a motion seeking approval of a plan filing and meeting order (the "**Meeting Order**")[12] which, among other things, provided for the calling of a meeting of creditors (the "**Meeting**"). It was agreed that the Meeting Date would be subsequent to the completion of the Mediation.

37. The motion for the Meeting Order was returnable on August 28, 2012. Due to concerns raised by certain of the Third Party Defendants, the motion was postponed to determine whether the parties could agree to changes that would result in a mutually satisfactory proposed order, which was ultimately achieved. On August 31, 2012, the Court granted the Meeting Order.

38. At the request of certain of the Third Party Defendants, the Meeting Order was granted on the express understanding that there had been no determination of: (a) the test for approval of the plan including (i) the jurisdiction of the Court to approve the plan in its then current form; (ii) whether the plan complied with the CCAA; and (iii) whether any aspect of the plan was fair and reasonable; (b) the validity or quantum of claims; and (c) the classification of creditors for voting purposes. The Company advised the Monitor that this reservation was acceptable to the Company given that it anticipated that many of these matters would be appropriately addressed at a sanction hearing.

Current Status of the CCAA Proceedings

39. On October 19, 2012, the Company filed a revised plan of compromise and reorganization (the "**Plan**")[13] and information statement (the "**Information**

[11] A further draft of the Plan dated August 27, 2012 was filed prior to the return of the motion for the Meeting Order.
[12] See Appendix L for a copy of the Meeting Order.
[13] See Appendices A and B for a copy of the Plan and the Blackline of the Plan to the August 14 Draft Plan.

Statement")[14] in contemplation of the Meeting to be held on November 29, 2012 at 10am at the offices of Bennett Jones LLP. The Company is focused on moving forward with its Plan to seek approval by the Required Majority (as defined in the Plan) and, if that is achieved, to move before the Court for the sanctioning of the Plan. The ICNs have similarly expressed their desire and priority of moving forward with the Plan.

40. In that regard, the Company has made significant progress with various parties within the CCAA Proceedings. The current Plan is acceptable not only to the Company and the ICNs, but due to lengthy arms' length negotiations, the revised terms of the Plan are also acceptable to the Ontario Plaintiffs and the Quebec Plaintiffs (as both terms are defined in the Claims Procedure Order).

41. The Ontario Plaintiffs and the Quebec Plaintiffs have continued to express a desire to move forward with their actions against EY, BDO, the Underwriters, Allen Chan, David Horsely and Kai Kit Poon (the "**Specified Defendants**"). In that regard, in late September, the Ontario Plaintiffs and Quebec Plaintiffs served a number of motions within these proceedings for, among other things, (a) representation and voting rights within the CCAA Proceedings; (b) certain document production; and (c) a lift stay against the Company and the Third Party Defendants (the "**Lift Stay Motion**").

42. Ultimately, due to an agreed upon resolution between the Company and the Ontario Plaintiffs and Quebec Plaintiffs, on October 29, 2012, the Ontario Plaintiffs and Quebec Plaintiffs did not proceed with their first two motions and brought their Lift Stay Motion against only the Specified Defendants. The Lift Stay Motion was not opposed by the Company, the Monitor or the ICNs.

43. On November 6, 2012, the Court issued its decision, upholding the stay as against the Specified Defendants for a limited period of time while the Meeting and the Sanction Hearing were pending, but acknowledged that, failing a resolution, the Class Actions against these parties would proceed, the only question was when. The Court further directed that the issue be re-evaluated no later than December 10, 2012.

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[14] See Appendices C and D for a copy of the Information Statement and a blackline of the Information Statement to the August 15 Draft Information Circular.

THE CLAIMS PROCESS[15]

44. As set out above, on May 14, 2012, the Court granted the Claims Procedure Order. The Claims Procedure Order established claims bar dates for the filing of Claims, D&O Claims and D&O Indemnity Claims (the "**Claims Process**"). Pursuant to the Claims Procedure Order, claimants were also requested to list whether they intended to assert claims against any or all of the Sino-Forest Subsidiaries based in whole or in part on facts, underlying transactions, causes of action or events relating to a Claim made against the Company. The primary Claims Bar Date was set as June 20, 2012.

45. The Sixth Report previously reported that on or about the Claims Bar Date, the Company received 228 claims with a face value in excess of $112 billion. This includes duplicative claims filed against the Company and its directors, officers and subsidiaries and does not account for marker and/or contingent claims filed. Since the Claims Bar Date, the Company has received a further four (4) claims with a face value in excess of approximately $23,000 and one Restructuring Claim in the amount of $485,000. Additionally, 151 D&O Indemnity Claims filed in respect of the D&O Claims that named Directors and Officers have been filed.

Nature of Claims Filed

46. As anticipated, other than with respect to three (3) trade Claims filed against the Company, the balance of the Claims, D&O Claims and D&O Indemnity Claims filed pursuant to the Claims Procedure Order can be categorized as follows:

    (a) Claims filed by the Note Indenture Trustees in respect of the Notes (the "**Noteholder Claims**");[16]

    (b) Claims by plaintiffs in the Ontario, Quebec and US Class Actions relating to damages relating to share purchases and note purchases;

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[15] Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Claims Procedure Order.

[16] As permitted by the Claims Procedure Order, claims filed by individual noteholders in respect of the Notes have been disregarded by the Monitor.

(c) Equity Claims filed by individuals;

(d) Class Action Indemnity Claims filed by the Third Party Defendants;

(e) D&O Indemnity Claims filed by Directors and Officers for indemnity; and

(f) Various individual claims which provided no information as to the nature of the claimant's claim (the "**Bare Claims**").

47. Additionally, pursuant to the Meeting Order, the OSC was required to indicate whether it intended to assert any OSC Monetary Claims (defined below) against the Company and/or the Officers and Directors. Details regarding the OSC Monetary Claims are discussed in further detail below in the sub-section entitled "OSC Monetary Claims".

The Noteholder Claims

48. As set out in the Initial Order Affidavit, the Company has issued four (4) series of Notes which remain outstanding:

(a) two series of senior notes (the "**Senior Notes**") which have guarantees from sixty of the Sino-Forest Subsidiaries and share pledges from ten of the Sino-Forest Subsidiaries; and

(b) two series of unsecured convertible notes (the "**Convertible Notes**" and together with the Senior Notes, the "**Notes**") which have guarantees from sixty-four Sino-Forest Subsidiaries.

49. The Monitor's legal counsel has reviewed legal opinions (the "**Note Opinions**") regarding the validity and enforceability of the indentures and guarantees entered into in connection with the Senior Notes and Convertible Notes and the share pledges entered into in connection with the Senior Notes. The Monitor's legal counsel has concluded that the Note Opinions are generally satisfactory in form and scope for transactions of this nature and contain the customary assumptions and qualifications for such opinions. Where, in the view of the Monitor's legal counsel, the Note Opinions were not phrased in customary terms or did not address matters customarily the subject of comparable

opinions, legal opinions were obtained from independent local counsel addressing these matters.

50. The Noteholder Claims have been accepted as Voting Claims (as defined in the Plan) by the Monitor for the purposes of the Meeting and the Meeting Order.

Impact of the Equity Claims Decision on Claims

51. Each of the Third Party Defendants has filed potentially significant, contingent Claims. In particular, each of EY, BDO and the Underwriters filed contingent Claims each in the billions of dollars.

52. The Equity Claims Decision held that claims against the Company resulting from the ownership, purchase or sale of equity interests in the Company, including claims on behalf of current or former shareholders ("**Shareholder Claims**") and indemnity claims arising from Shareholder Claims ("**Share Purchase Indemnity Claims**"), are "equity claims" under section 2(1) of the CCAA. In coming to this decision, the Court noted that although the legal basis for the indemnity claims may be different from the Shareholder Claims, the substance of the underlying claims related to the Shareholder Claims and were therefore "equity claims". The potential exception to this classification is or was claims by the defendants for "defence costs" ("**Defence Costs Claims**") which, the Court noted, might not be equity claims (although no definitive decision was reached).

53. The Equity Claims Decision left it open for the Company to bring a motion for declarations relating to claims in respect of the purchase of securities other than shares (i.e. Claims by former noteholders). To date, no such motion has been brought. In the meantime, the Company has agreed to the Noteholder Class Action Limit (as defined in the Plan) of $150 million, which limits the maximum liability of all of the Third Party Defendants in respect of those claims (discussed in more detail below in the sections entitled "The Plan" and "The Reserves"). However, the right to bring a motion as contemplated above has been reserved by the Company.

54. As set out above, on November 13, 2012, the Court of Appeal heard the appeal of the Equity Claims Decision but has not yet released its decision.

Status of Claims Resolution

55. As set out above, the Claims Procedure Order did not set out a pre-determined process for the resolution of Claims. Other than with respect to the Bare Claims, for which there was no information provided as to the nature or characterization of the Claim, no notices of disallowance have been issued.

56. Instead, as set out in the sections entitled "The Plan", "The Meeting of the Affected Creditors Class" and "Sanction of the Plan" below, the Company has addressed the Claims, D&O Claims and D&O Indemnity Claims in the context of the Plan. Specifically, section 4.7 of the Plan provides that, the Claims of the Third Party Defendants are categorized as follows:

(a) Claims against Sino-Forest Subsidiaries, which are released;

(b) Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims, which are limited to the Indemnified Noteholder Class Action Limit (as such terms are defined in the Plan), which are treated as Unresolved Claims and which will be accounted for in the Unresolved Claims Reserve;

(c) Defence Costs Claims, which are treated as Unresolved Claims and will be accounted for in the Unresolved Claims Reserve; and

(d) Equity Claims (as defined in the Plan), which are released.

57. Given:

(a) the fact that other than the Claims in respect of the Notes, the overwhelming balance of the Claims and D&O Claims filed in the Claims Process were contingent Claims and D&O Claims by the Plaintiffs for their Class Actions and by the Third Party Defendants (and others) for indemnification (which only crystallize upon claims being successfully made against such parties and which are then found to be properly indemnifiable by the Company); and

(b) the subsequent categorization of the Third Party Defendants' Claims as set out above and particularly in light of the Equity Claims Decision; and

(c) the establishment of the Unresolved Claims Reserve (discussed in greater detail below in the section entitled "Reserves") to provide for Unresolved Claims which may ultimately become Proven Claims (as defined in the Plan),

the Monitor is of the view that it was not necessary to go through a separate dispute and resolution process through the issuance of Notices of Disallowance prior to a vote on the Plan. Third Party Defendants who object to the classification and treatment of their Claims under the Plan will have the opportunity to object to such treatment at the Sanction Hearing (defined below). The issuance of Notices of Disallowance in these circumstances would be duplicative of the other efforts that have been taken to date and would have the potential for increased delay and additional costs to the process.

OSC Monetary Claims

58. The Claims Procedure Order excluded any claims of the OSC against the Company or the Directors and Officers. Subsequently, as part of the Meeting Order, the OSC was required to advise the Company and the Monitor whether it intended to pursue any monetary claims against the Company or any Officers and Directors ("**OSC Monetary Claims**") on or prior to September 13, 2012 and, if so, the quantum of any such OSC Monetary Claims.

59. The OSC has advised the Company and the Monitor that in light of the substantial losses that stakeholders would potentially suffer, the OSC did not intend to assert any OSC Monetary Claims against the Company. Through various correspondence, the OSC has further confirmed that it has not yet determined whether it will pursue OSC Monetary Claims against any of the Officers and Directors. However, with a view to being helpful and to facilitate the Plan process, and as disclosed in the "Risk Factors" set out in the Information Statement the OSC initially confirmed that any OSC Monetary Claims against the Officers and Directors would be limited to an aggregate amount of no more than $100 million. Subsequent to its initial confirmation, the OSC confirmed that it did

RECOMMENDATION AND CONCLUSIONS

110. The Monitor's Twelfth Report dated November 16, 2012 attaches the Company's proposed cash flow forecast (the "**November 3 Forecast**") for its stay extension request to February 1, 2013. The November 3 Forecast projects that the Company will have sufficient funds to the proposed stay extension date. However, as set out above and is further evidenced by the November 3 Forecast, the Company continues to burn cash and cannot afford to remain in a CCAA process for much longer.

111. At this time, the only alternative to liquidation is the Plan. The Plan is acceptable to the ICNs (and those Noteholders that signed joinder agreements) who, in total, consist of the vast majority of the Company's funded debt. The Plan further provides actual and tangible benefits to the Third Party Defendants (such as the imposition of the Indemnified Noteholder Class Action Limit) and the Plaintiffs have indicated the Plan is acceptable to them. All of these factors and those set out in the above sections inform the Monitor's conclusion that the Plan provides the best viable alternative to the Company's creditors.

112. Accordingly, the Monitor respectfully recommends that this Honourable Court grant the Company's request for sanction of the Plan.

Court File No. CV-12-9667-00CL

Sino-Forest Corporation

SUPPLEMENTAL REPORT TO THE THIRTEENTH REPORT OF THE MONITOR

December 4, 2012

FTI

Changes to the Plan (Third Party Defendants)

5. In addition to the foregoing changes, the Plan was also amended to incorporate changes that relate specifically to the Underwriters and Ernst & Young as well as additional changes to provide a mechanism for a Plan release in the event that the Underwriters and BDO enter into settlements with the Class-Action Plaintiffs or the Litigation Trustee (on behalf of the Litigation Trust), all of which is discussed below.

6. Changes relating to the Underwriters:

   (a) Claims of the Underwriters against the Company for indemnification in respect of any Noteholder Class Action Claims (other than claims against them for fraud or criminal conduct) shall, for the purposes of the Plan, be deemed to be valid and enforceable Class Action Indemnity Claims against the Company.

   (b) The Underwriters shall not be entitled to any distributions under the Plan.

   (c) All Causes of Action against the Underwriters by the Company or the Trustees are deemed to be Excluded Litigation Trust Claims.

   (d) Any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than such claims for fraud or criminal conduct) that exceeds the Indemnified Noteholder Class Action Limit is released under the Plan.

   (e) The Underwriters are Named Third Party Defendants (as discussed and defined below).

7. Changes relating to Ernst & Young (as defined in the Plan):

   (a) Any and all indemnification rights and entitlements of Ernst & Young and any indemnification agreement between Ernst & Young and the Company shall be deemed to be valid and enforceable in accordance with their terms for the purposes of determining whether the Claims of Ernst & Young for

indemnification in respect of the Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) the Plan.[2]

(b) Ernst & Young shall not be entitled to any distributions under the Plan.

(c) The Sanction Order shall contain a stay against Ernst & Young between the Plan Implementation Date and the earlier of the Ernst & Young Settlement Date (as defined in the Plan) or such other date as may be ordered by the Court on a motion to the Court.

(d) In addition to the foregoing, Ernst & Young has now entered into a settlement with the Ontario Plaintiffs and the Quebec Plaintiffs, which is still subject to several conditions and approval of the Ernst & Young Settlement itself, does not form part of the Sanction Order. Section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the Ernst & Young Claims[3] under the Plan would happen if several conditions were met. That release will only be granted if all conditions are met including further Court approval. A summary of those terms is as follows:

(i) Notwithstanding anything to the contrary in the Plan, subject to (A) the granting of the Sanction Order; (B) the issuance of the Settlement Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and the Company (if occurring on or prior to the Plan Implementation Date), the Monitor and the ICNs, as applicable, to the extent, if any, that such modifications affect the Company, the Monitor or the ICNs, each acting reasonably); (C) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States; (D) any other order necessary to give effect to the Ernst & Young

[2] Section 4.4(b) of the Plan, among other things, establishes the Indemnified Noteholder Class Action Limit.
[3] "Ernst & Young Claims" has the definition given to it in the Plan and does not include any proceedings or remedies that may be taken against Ernst & Young by the Ontario Securities Commission or by staff of the Ontario Securities Commission and the jurisdiction of the Ontario Securities Commission is expressly preserved.

Settlement (the orders referenced in (C) and (D) being collectively the "**Ernst & Young Orders**"); (E) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and (F) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge, Ernst & Young shall pay the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order (the "**Settlement Trust**");

(ii) Upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming receipt of such settlement amount, the Monitor shall deliver to Ernst & Young the Monitor's Ernst & Young Settlement Certificate. The Monitor shall thereafter file the Monitor's Ernst & Young Settlement Certificate with the Court;

(iii) Notwithstanding anything to the contrary in the Plan, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (A) all Ernst & Young Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young; (B) section 7.3 of the Plan shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (C) none of the plaintiffs in the Class Actions shall be permitted to claim from any of the other Third Party Defendants that portion of any damages that corresponds to the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement; and

(iv) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release will not become

effective (and any claims against Ernst & Young will be assigned to the Litigation Trust).

8. Changes relating to Named Third Party Defendants:

(a) The Plan now provides a mechanism that would provide the framework for any Eligible Third Party Defendants[4] to become a "Named Third Party Defendant" with the consent of such Third Party Defendant, the Monitor, the ICNs, counsel to the Ontario Plaintiffs and, if occurring prior to the Plan Implementation Date, the Company. As set out above, the Underwriters have become Named Third Party Defendants pursuant to the Plan.

(b) The deadline for an Eligible Third Party Defendant to become a Named Third Party Defendant is 10am on December 6, 2012 or such later date as may be consented to by the Monitor, the Company (if on or prior to the Plan Implementation Date) and the ICNs. As set out above, the Underwriters have become Named Third Party Defendants.

(c) Any Named Third Party Defendants will not be entitled to any distributions under the Plan.

(d) If an Eligible Third Party Defendant becomes a Named Third Party Defendant, then any indemnification rights and entitlements of such party and any indemnity agreements between such party and by the Company shall be deemed valid and enforceable in accordance with their terms for the purpose of determining whether the Claims of that Named Third Party Defendant for indemnification in respect of the Noteholder Class Action Claims are valid and enforceable within the meaning of section 4.4(b) the Plan.

[4] The Eligible Third Party Defendants are the Underwriters, BDO and, if the Ernst & Young Settlement is not completed, Ernst & Young.

(e) The Plan now provides the framework pursuant to which a Named Third Party Defendant Settlement would be approved and such Named Third Party Defendant would obtain a release under the Plan as follows:

(i) Notwithstanding anything to the contrary in the Plan, subject to: (A) the granting of the Sanction Order; (B) the granting of the applicable Named Third Party Defendant Settlement Order; and (C) the satisfaction or waiver of all conditions precedent contained in the applicable Named Third Party Defendant Settlement, the applicable Named Third Party Defendant Settlement shall be given effect in accordance with its terms;

(ii) Upon receipt of a certificate (in form and in substance satisfactory to the Monitor) from each of the parties to the applicable Named Third Party Defendant Settlement confirming that all conditions precedent thereto have been satisfied or waived, and that any settlement funds have been paid and received, the Monitor shall deliver to the applicable Named Third Party Defendant a Monitor's Named Third Party Defendant Settlement Certificate stating that (A) each of the parties to such Named Third Party Defendant Settlement has confirmed that all conditions precedent thereto have been satisfied or waived; (B) any settlement funds have been paid and received; and (C) immediately upon the delivery of the Monitor's Named Third Party Settlement Certificate, the applicable Named Third Party Defendant Release will be in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Named Third Party Settlement Certificate with the Court; and

(iii) Notwithstanding anything to the contrary in the Plan, upon delivery of the Monitor's Named Third Party Settlement Certificate, any claims and Causes of Action shall be dealt with in accordance with the terms of the applicable Named Third Party Defendant Settlement, the Named Third Party Defendant Settlement Order and the Named Third Party Defendant Release. To the extent provided for by the terms of the applicable Named

Third Party Defendant Release: (A) the applicable Causes of Action against the applicable Named Third Party Defendant shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the applicable Named Third Party Defendant; and (B) section 7.3 of the Plan shall apply to the applicable Named Third Party Defendant and the applicable Causes of Action against the applicable Named Third Party Defendant *mutatis mutandis* on the effective date of the Named Third Party Defendant Settlement.

Other Changes that Relate to the Third Party Defendants

9. Indemnified Noteholder Class Action Limit:

(a) It has been clarified that in the event that a Third Party Defendant is found to be liable for or agrees to a settlement in respect of Noteholder Class Action Claims (other than for fraud or criminal conduct), and such amounts are paid by the Third Party Defendant, then the amount of the Indemnified Noteholder Class Action Limit applicable to the remaining Third Party Defendants shall be reduced by the amount of such judgement or settlement.[5]

10. Document Preservation.

(a) Prior to Plan Implementation, the Company shall:[6]

(i) preserve or cause to be preserved copies of any documents (as such term is defined in the *Rules of Civil Procedure* (Ontario)) that are relevant to the issues raised in the Class Actions; and

(ii) make arrangements acceptable to SFC, the Monitor, the ICNs, counsel to Ontario Class Action Plaintiffs, counsel to Ernst & Young, counsel to the Underwriters and counsel to any other Eligible Third Party Defendant if

[5] Section 4.4(b)(iii)
[6] Section 8.2(x)

they become a Named Third Party Defendants to provide the parties to the Class Actions with access thereto, subject to customary commercial confidentiality, privilege or other applicable restrictions, including lawyer-client privilege, work product privilege and other privileges or immunities, and to restrictions on disclosure arising from s. 16 of the *Securities Act* (Ontario) and comparable restrictions on disclosure in other relevant jurisdictions, for purposes of prosecuting and/or defending the Class Actions, as the case may be, provided that nothing in the foregoing reduces or otherwise limits the parties' rights to production and discovery in accordance with the *Rules of Civil Procedure* (Ontario) and the *Class Proceedings Act, 1992* (Ontario).

ADDITIONAL INFORMATION RELATING TO THE RESERVES

The Cash Reserves

11. Information relating to the purpose of the Administration Charge, the Unaffected Claims Reserve and the Monitor's Post-Implementation Reserve was contained in the Thirteenth Report. The Plan now provides for the amounts of these Reserves as follows:

(a) *Administration Charge Reserve ($500,000).* The Plan now provides for the payment of the final invoices of the beneficiaries of the Administration Charge Reserve as a condition to the implementation of the Plan. The amount of $500,000 has been allocated to the Administration Charge Reserve as a safeguard in the event that there are miscellaneous amounts which are inadvertently missed upon the final payments prior to Plan implementation.

(b) *Monitor's Post-Implementation Reserve ($5,000,000).* The Monitor's Post-Implementation Reserve is intended to capture costs in administering the SFC estate and the Claims Process post-implementation.

(c) *The Unaffected Claims Reserve ($1,500,000).* Pursuant to the Plan, the following categories of Claims are Unaffected Claims under the Plan: (i) Claims secured by the Administration Charge; (ii) Government Priority Claims; (iii) Employee

Court File No.: CV-12-9667-00CL

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF CHARLES M. WRIGHT

defendants in the action, including Ernst & Young. The Ontario Plaintiffs agreed not to oppose this order on condition that (a) there was an order permitting a settlement approval hearing and certification hearing relating to a settlement with the defendant Pöyry (Beijing) Consulting Company Limited (described below); and (b) the defendants execute the second tolling agreement reflecting the delay caused by the Insolvency Proceeding. The stay of proceedings is currently extended through to February 1, 2013.

47. From the outset, it was apparent to counsel to the Ontario Plaintiffs that the Insolvency Proceeding presented a material risk to the Ontario Plaintiffs. Namely that in order to effect a restructuring that generated as much value as possible for Sino's creditors, there could be a plan of arrangement that had the effect of imposing an unfavourable settlement on the Ontario Plaintiffs.

48. Consequently, Class Counsel immediately entered into negotiations with other stakeholders in the Insolvency Proceeding, and took a number of steps to vigorously represent the interests of the purchasers of Sino's securities. The following were among Class Counsel's main objectives:

(a) Reserving the Ontario Plaintiffs' rights to object to various features of the Insolvency Proceeding, so as to generate and/or preserve momentum for the Ontario Plaintiffs' claims and positions;

(b) Ensuring that a Claims Process was established that identified the universe of stakeholders having an interest in the Insolvency Proceeding while ensuring the recognition of the totality of the representative claim advanced by the Ontario Plaintiffs;

(c) Establishing a process for the mediation in the Insolvency Proceeding through which the positions of the various stakeholders would be defined; and

(d) Obtaining access to information that would permit Class Counsel to make informed recommendations to the Ontario Plaintiffs and the court in connection with the terms of any Plan.

49. To further these objectives, Class Counsel took a number of steps in the Insolvency Proceeding, including the following:

(a) Bringing or appearing in response to the following motions:

(i) March 30, 2012 – Attending at the initial application regarding *CCAA* protection and sales process for Sino and its subsidiaries, including a stay of proceedings against Sino, its subsidiaries and directors and officers;

(ii) April 13, 2012 – Attending at the Company's motion regarding stay extension;

(iii) April 20, 2012 – Bringing a motion regarding advice and direction on the *CCAA* stay and its impact on the pending motions in the Ontario Action;

(iv) April 20, 2012 – Attending at the Company's motion regarding expansion of the powers of the Monitor;

(v) May 8, 2012 – Attending and participating actively in the motion regarding a third party stay;

(vi) May 8, 2012 – Bringing a motion regarding Pöyry settlement leave;

(vii) May 14, 2012 – Attending and participating in a motion regarding Claims Procedure Order, including granting of leave to the Ontario Plaintiffs to file a Claim in respect of the substance of the matters set out in the Ontario Action on behalf of the proposed Class and the same leave to the Quebec Plaintiffs;

(viii) May 14, 2012 – Attending a motion brought by Contrarian, one of Sino's noteholders;

(ix) May 17, 2012 – Bringing a motion in the Ontario Action regarding a third-party funding agreement;

(x) May 17, 2012 – Bringing a motion in the Ontario Action regarding Pöyry settlement approval;

(xi) May 31, 2012 – Attending at the Company's motion regarding stay extension;

(xii) June 26, 2012 – Attending at the Company's motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;

(xiii) July 25, 2012 – Precipitating and attending at a motion regarding mediation in the *CCAA* proceedings, which included an order that the Ontario Plaintiffs were a party to the mediation;

(xiv) July 27, 2012 – Attending at the Company's motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;

(xv) July 30, 2012 – Bringing a motion regarding document production and a data room;

(xvi) August 31, 2012 – Attending at the Company's motion regarding plan filing and meeting Order;

(xvii) August 31, 2012 – Attending at the Company's motion regarding adjournment of Ad Hoc Committee's motion (regarding appointment of Representative Plaintiff and leave to vote on Plan of Compromise);

(xviii) September 28, 2012 – Attending at the Company's motion regarding stay extension;

(xix) October 9, 2012 – Attending and participating in the Company's motion regarding adjournment of the Ad Hoc Committee's motion (regarding lifting of the stay against the Third Parties);

(xx) October 9, 2012 – Attending at the Company's motion regarding stay extension;

(xxi) October 28, 2012 – Bringing a motion to limit the scope of stay to exclude to the Third Party Defendants and others;

(xxii) October 29, 2012 – Attending at the Company's motion regarding revised noteholder noticing process;

(xxiii) November 13, 2012 – Attending an appeal regarding Equity Claims decision; and

(xxiv) November 23, 2012 – Attending at the Company's motion regarding stay extension;

(xxv) December 7, 2012 – Attending and participating in the motion to sanction the Plan;

(b) almost from the inception of the Insolvency Proceeding, engaging in extensive and protracted negotiations with the Ad Hoc Noteholder Group and with Sino with respect to the terms of the Plan of Reorganization;

(c) bringing a motion early in the proceeding seeking various relief challenging the framework of the Insolvency Proceeding, such as the appointment of a receiver and providing for representation on behalf of the Class Members, and reserving all rights with respect to those issues throughout the Insolvency Proceeding;

(d) supporting a motion for an order increasing the powers of the Monitor to administer Sino which took away powers from entrenched management and the then-existing board, protecting the assets of the company for all stakeholders and ensuring greater transparency and balance in the proceeding;

(e) negotiating the claims procedure in the Insolvency Proceeding and obtaining the right to file a representative claim so as to protect the interests of the putative Class;

(f) obtaining a data room of confidential non-public documents from Sino, which related principally to the audits of Sino's financial statements so as to permit the Ontario Plaintiffs to negotiate with other stakeholders at the Mediation and respond to any plan of arrangement in an informed manner;

(g) examining all applicable insurance policies and indemnity agreements and assessed the capacity to pay of various defendants, including Ernst & Young;

(h) compelling the attendance of Sino's CEO at a cross-examination and testing his evidence in the Insolvency Proceeding;

(i) engaging in multiple formal and informal, group and individual mediation and negotiation sessions with other stakeholders regarding the Class Members' claims, including a court-ordered, 2-day Mediation in September presided over by the Honourable Justice Newbould; and

(j) bringing a motion, in response to the form of the restructuring plan initially filed with the court, which the Ontario Plaintiffs deemed to be contrary to their interests, challenging various features of the Plan, and seeking the right to vote on the Plan, and expressly reserving all of the Ontario Plaintiffs' rights in connection with that motion pending the presentation of the plan for sanction by the court, to ensure that the plan was in the best interests of the Class Members.

SETTLEMENT WITH PÖYRY (BEIJING)

50. The Ontario Plaintiffs engaged in settlement discussions with Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), a defendant in these proceedings, starting in January 2012. Following arm's-length negotiations, the Ontario Plaintiffs entered into a settlement with Pöyry (Beijing) in March 2012. In connection with the motion for court approval of the Pöyry settlement agreement, a notice was disseminated in the form marked and attached hereto as **Exhibit "X."** No one, including any potential Class Member, objected to the settlement with Pöyry (Beijing) at the motion to approve the settlement.

51. On September 25, 2012, this action was certified as a class proceeding as against Pöyry (Beijing) for the purposes of settlement and the Pöyry settlement was approved between the Class (as defined) and Pöyry (Beijing). A copy of the certification and settlement approval order is attached hereto as **Exhibit "Y."**

52. Notice of the certification and Pöyry settlement has been given in accordance with the order of the Honourable Justice Perell, dated September 25, 2012. A copy of this notice is marked and attached hereto as **Exhibit "Z."**

hereto as Exhibit "CC" is copy of the Endorsement of the Honourable Justice Morawetz dated November 6, 2012.

63. In late November Ernst & Young and the Ontario Plaintiffs agreed to further formal mediation.

64. On November 27, 2012, Clifford Lax, Q.C. conducted a mediation between Ernst & Young and the Ontario Plaintiffs. The parties exchanged mediation briefs in advance of the mediation which were, in the main, the briefs previously filed for the September mediation. At the conclusion of the day, the parties had made progress, but a resolution had not been reached. The parties reconvened the next day and did reach agreement on quantum, but continued to aggressively negotiate other terms of the Minutes of Settlement until the early morning of November 29. At 4 a.m. on November 29, the parties took a four-hour break, and then came back to discuss the terms of the Minutes of Settlement which were finalized in the evening of November 29. The discussions were protracted and challenging.

65. The mediation session resulted in the Ernst & Young Settlement, which conditions include court approval of the Ernst & Young Settlement, and the Ernst & Young Release. Following satisfaction of all conditions precedent as set out in the Minutes of Settlement, Ernst & Young agreed to pay CAD$117,000,000.

66. The Minutes of Settlement reflect that Ernst & Young would not have entered into the settlement agreement with the Ontario Plaintiffs (and would not have offered the large Settlement Amount) but for the *CCAA* proceedings. Paragraph 10 and Schedule B of the Minutes of Settlement make it clear that the parties intend the settlement to be approved in the

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SUPPLEMENTAL AFFIDAVIT OF CHARLES M. WRIGHT

OPT OUTS IN THE ONTARIO ACTION AND OBJECTIONS TO THE PROPOSED ERNST & YOUNG SETTLEMENT

11. This Court fixed January 18, 2013 as the date by which eligible persons had to file objections to the proposed Ernst & Young Settlement. By that deadline, 86 persons or entities submitted valid Notices of Objection to the proposed Ernst & Young Settlement, including the six Objectors. Excluding the six Objectors, five of the valid objections were filed by institutional investors and corporate entities.

12. I am advised by Michael G. Robb, Serge Kalloghlian and Sajjad Nematollahi of Siskinds LLP and Jonathan Bida and Garth Myers of Koskie Minsky LLP, that they have had discussions regarding the proposed settlement with 26 of the persons and entities who filed objections to the settlement for the purpose of inquiring into their reasons for objecting and explaining to them the basis of the settlement.

13. I am further advised by Messrs. Robb, Kalloghlian, Nematollahi, Bida and Myers that 23 of such objectors have since withdrawn their objections, including all five of the institutional investors and corporate entities referenced in the last sentence of paragraph 11 above. Certain of those objectors indicated that they misunderstood the Notice of Objection and did not in fact intend to object. Others withdrew their objections after the basis of the proposed Ernst & Young Settlement was explained to them. In any event, no institutions other than the Objectors continue to object to the Ernst & Young Settlement.

14. Attached hereto as **Exhibit "O"** is a chart (a) identifying each objector who filed an objection and who has not withdrawn his, her or its objection as of the time I have sworn this affidavit, and (b) setting forth a short summary of the reasons he, she or it provided for objecting to the settlement. As appears from the attached chart, 10 of those objectors have given no reason for their objection.

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ONTARIO
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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 AND ARRANGEMENT OF SINO-FOREST CORPORATION

APPLICANT

PLAN OF COMPROMISE AND REORGANIZATION

pursuant to the *Companies' Creditors Arrangement Act*
and the *Canada Business Corporations Act*
concerning, affecting and involving

SINO-FOREST CORPORATION

August 14, 2012

(x) insurers from their obligations under insurance policies; and

(xi) any Released Party for fraud or criminal conduct.

7.2 Specific Plan Releases

Without limiting the generality of section 7.1 hereof, and subject to 7.1(b) hereof, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date:

(a) all Affected Claims, including all Affected Creditor Claims, Equity Claims, D&O Claims (other than Retained D&O Claims, Continuing Other D&O Claims and Non-Released D&O Claims), D&O Indemnity Claims (except as set forth in section 7.2(d)) and Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims against the Third Party Defendants);

(b) all Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;

(c) all Class Action Claims (including the Noteholder Class Action Claims) against or in respect of SFC; the Subsidiaries or the Named Directors or Officers of SFC or the Subsidiaries (other than Class Action Claims that are Retained D&O Claims or Non-Released D&O Claims);

(d) all Class Action Indemnity Claims (including related D&O Indemnity Claims), other than any Class Action Indemnity Claim by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (including any D&O Indemnity Claim in that respect), which shall be limited to the Indemnified Noteholder Class Action Limit pursuant to the releases set out in section 7.2(f) hereof and the injunctions set out in section 7.3 hereof;

(e) any portion or amount of or liability of the Third Party Defendants for the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all Indemnified Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(f) any portion or amount of, or liability of SFC for, any Class Action Indemnity Claims by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims to the extent that such Class Action Indemnity Claims exceed the Indemnified Noteholder Class Action Limit; and

(g) any and all claims or rights of any kind against the Subsidiaries or liabilities of the Subsidiaries for or in connection with: any Claim (including, notwithstanding anything to the contrary herein, any Unaffected Claim); any Affected Claim (including any Affected Creditor Claim, Equity Claim, D&O Claim, D&O Indemnity Claim and Noteholder Class Action Claim); any Retained D&O Claim;

any Continuing Other D&O Claim; any Non-Released D&O Claim; any Class Action Claim; any Class Action Indemnity Claim; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, share pledges or Encumbrances relating to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries; any right or claim in connection with or liability for the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC and the Subsidiaries (whenever or however conducted), the administration and/or management of SFC and the Subsidiaries, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any indemnification obligation to Directors or Officers of SFC or the Subsidiaries pertaining to SFC, the Notes, the Note Indentures, the Existing Shares, the Equity Interests, any other securities of SFC or any other right, claim or liability for or in connection with the RSA, the Plan, the CCAA Proceedings, the Restructuring Transaction, the Litigation Trust, the business and affairs of SFC (whenever or however conducted), the administration and/or management of SFC, or any public filings, statements, disclosures or press releases relating to SFC; any right or claim in connection with or liability for any guaranty, indemnity or claim for contribution in respect of any of the foregoing; and any Encumbrance in respect of the foregoing.

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

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ONTARIO
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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 AND ARRANGEMENT OF SINO-FOREST CORPORATION

APPLICANT

AMENDED PLAN OF COMPROMISE AND REORGANIZATION

pursuant to the *Companies' Creditors Arrangement Act*
and the *Canada Business Corporations Act*
concerning, affecting and involving

SINO-FOREST CORPORATION

November 28, 2012

Claims, Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims, Non-Released D&O Claims; Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, causes of action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing. For greater certainty, with respect to the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries: (i) the vesting free and clear in Newco and Newco II that occurs by operation of this paragraph shall only apply to SFC's direct and indirect ownership interests in the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries; and (ii) except as provided for in the Plan (including section 6.6(a) and sections 4.9(g), 6.4(k), 6.4(l) and 6.4(m) hereof and Article 7 hereof) and the Sanction Order, the assets, liabilities, business and property of the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries shall remain unaffected by the Restructuring Transaction.

ARTICLE 7
RELEASES

7.1 Plan Releases

Subject to 7.2 hereof, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date:

(a) all Affected Claims, including all Affected Creditor Claims, Equity Claims, D&O Claims (other than Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims and Non-Released D&O Claims), D&O Indemnity Claims (except as set forth in section 7.1(d) hereof) and Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims);

(b) all Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;

(c) all Class Action Claims (including the Noteholder Class Action Claims) against SFC, the Subsidiaries or the Named Directors or Officers of SFC or the Subsidiaries (other than Class Action Claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims);

(d) all Class Action Indemnity Claims (including related D&O Indemnity Claims), other than any Class Action Indemnity Claim by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (including any D&O Indemnity Claim in that respect), which shall be limited to the Indemnified Noteholder Class Action Limit pursuant to the releases set out in section 7.1(f) hereof and the injunctions set out in section 7.3 hereof;

(e) any portion or amount of or liability of the Third Party Defendants for the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all Indemnified Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(f) any portion or amount of, or liability of SFC for, any Class Action Indemnity Claims by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims to the extent that such Class Action Indemnity Claims exceed the Indemnified Noteholder Class Action Limit;

(g) any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing, for or in connection with or in any way relating to: any Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims); Affected Claims; Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims; Non-Released D&O Claims; Class Action Claims; Class Action Indemnity Claims; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, claims for contribution, share pledges or Encumbrances related to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries;

(h) any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, the Named Directors and Officers, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any

Court File No. CV-12-9667-00CL

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 AND ARRANGEMENT OF SINO-FOREST CORPORATION

APPLICANT

PLAN OF COMPROMISE AND REORGANIZATION

pursuant to the *Companies' Creditors Arrangement Act*
and the *Canada Business Corporations Act*
concerning, affecting and involving

SINO-FOREST CORPORATION

December 3, 2012

(c) to transfer ownership of the SFC Business to Newco and then from Newco to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries, so as to enable the SFC Business to continue on a viable, going concern basis; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the Litigation Trustee.

The Plan is put forward in the expectation that the Persons with an economic interest in SFC, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the SFC Business as a going concern than would result from a bankruptcy or liquidation of SFC.

2.2 Claims Affected

The Plan provides for, among other things, the full, final and irrevocable compromise, release, discharge, cancellation and bar of Affected Claims and effectuates the restructuring of SFC. The Plan will become effective at the Effective Time on the Plan Implementation Date, other than such matters occurring on the Equity Cancellation Date (if the Equity Cancellation date does not occur on the Plan Implementation Date) which will occur and be effective on such date, and the Plan shall be binding on and enure to the benefit of SFC, the Subsidiaries, Newco, Newco II, SFC Escrow Co., any Person having an Affected Claim, the Directors and Officers of SFC and all other Persons named or referred to in, or subject to, the Plan, as and to the extent provided for in the Plan.

2.3 Unaffected Claims against SFC Not Affected

Any amounts properly owing by SFC in respect of Unaffected Claims will be satisfied in accordance with section 4.2 hereof. Consistent with the foregoing, all liabilities of the Released Parties in respect of Unaffected Claims (other than the obligation of SFC to satisfy such Unaffected Claims in accordance with section 4.2 hereof) will be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred pursuant to Article 7 hereof. Nothing in the Plan shall affect SFC's rights and defences, both legal and equitable, with respect to any Unaffected Claims, including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

2.4 Insurance

(a) Subject to the terms of this section 2.4, nothing in this Plan shall prejudice, compromise, release, discharge, cancel, bar or otherwise affect any right, entitlement or claim of any Person against SFC or any Director or Officer, or any insurer, in respect of an Insurance Policy or the proceeds thereof.

(b) Nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any such insurer in respect of any such Insurance Policy. Furthermore, nothing in this Plan shall prejudice, compromise, release or otherwise affect (i) any right of subrogation any such insurer may have against

any Person, including against any Director or Officer in the event of a determination of fraud against SFC or any Director or Officer in respect of whom such a determination is specifically made, and /or (ii) the ability of such insurer to claim repayment of Defense Costs (as defined in any such policy) from SFC and/or any Director or Officer in the event that the party from whom repayment is sought is not entitled to coverage under the terms and conditions of any such Insurance Policy

(c) Notwithstanding anything herein (including section 2.4(b) and the releases and injunctions set forth in Article 7 hereof), but subject to section 2.4(d) hereof, all Insured Claims shall be deemed to remain outstanding and are not released following the Plan Implementation Date, but recovery as against SFC and the Named Directors and Officers is limited only to proceeds of Insurance Policies that are available to pay such Insured Claims, either by way of judgment or settlement. SFC and the Directors or Officers shall make all reasonable efforts to meet all obligations under the Insurance Policies. The insurers agree and acknowledge that they shall be obliged to pay any Loss payable pursuant to the terms and conditions of their respective Insurance Policies notwithstanding the releases granted to SFC and the Named Directors and Officers under this Plan, and that they shall not rely on any provisions of the Insurance Policies to argue, or otherwise assert, that such releases excuse them from, or relieve them of, the obligation to pay Loss that otherwise would be payable under the terms of the Insurance Policies. For greater certainty, the insurers agree and consent to a direct right of action against the insurers, or any of them, in favour of any plaintiff who or which has (a) negotiated a settlement of any Claim covered under any of the Insurance Policies, which settlement has been consented to in writing by the insurers or such of them as may be required or (b) obtained a final judgment against one or more of SFC and/or the Directors or Officers which such plaintiff asserts, in whole or in part, represents Loss covered under the Insurance Policies, notwithstanding that such plaintiff is not a named insured under the Insurance Policies and that neither SFC nor the Directors or Officers are parties to such action.

(d) Notwithstanding anything in this section 2.4, from and after the Plan Implementation Date, any Person having an Insured Claim shall, as against SFC and the Named Directors and Officers, be irrevocably limited to recovery solely from the proceeds of the Insurance Policies paid or payable on behalf of SFC or its Directors or Officers, and Persons with any Insured Claims shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from SFC, any of the Named Directors and Officers, any of the Subsidiaries, Newco or Newco II, other than enforcing such Person's rights to be paid from the proceeds of an Insurance Policy by the applicable insurer(s), and this section 2.4(d) may be relied upon and raised or pled by SFC, Newco, Newco II, any Subsidiary and any Named Director and Officer in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this section

Claims, Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims, Non-Released D&O Claims; Class Action Claims, Class Action Indemnity Claims, claims or rights of any kind in respect of the Notes or the Note Indentures, and any right or claim that is based in whole or in part on facts, underlying transactions, Causes of Action or events relating to the Restructuring Transaction, the CCAA Proceedings or any of the foregoing, and any guarantees or indemnities with respect to any of the foregoing. For greater certainty, with respect to the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries: (i) the vesting free and clear in Newco and Newco II that occurs by operation of this paragraph shall only apply to SFC's direct and indirect ownership interests in the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries; and (ii) except as provided for in the Plan (including section 6.6(a) and sections 4.9(g), 6.4(k), 6.4(l) and 6.4(m) hereof and Article 7 hereof) and the Sanction Order, the assets, liabilities, business and property of the Subsidiaries, Greenheart and Greenheart's direct and indirect subsidiaries shall remain unaffected by the Restructuring Transaction.

ARTICLE 7
RELEASES

7.1 Plan Releases

Subject to 7.2 hereof, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date:

(a) all Affected Claims, including all Affected Creditor Claims, Equity Claims, D&O Claims (other than Section 5.1(2) D&O Claims, Conspiracy Claims, Continuing Other D&O Claims and Non-Released D&O Claims), D&O Indemnity Claims (except as set forth in section 7.1(d) hereof) and Noteholder Class Action Claims (other than the Continuing Noteholder Class Action Claims);

(b) all Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;

(c) all Class Action Claims (including the Noteholder Class Action Claims) against SFC, the Subsidiaries or the Named Directors or Officers of SFC or the Subsidiaries (other than Class Action Claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims);

(d) all Class Action Indemnity Claims (including related D&O Indemnity Claims), other than any Class Action Indemnity Claim by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (including any D&O Indemnity Claim in that respect), which shall be limited to the Indemnified Noteholder Class Action Limit pursuant to the releases set out in section 7.1(f) hereof and the injunctions set out in section 7.3 hereof;

(e) any portion or amount of liability of the Third Party Defendants for the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all Indemnified Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(f) any portion or amount of liability of the Underwriters for the Noteholder Class Action Claims (other than any Noteholder Class Action Claims against the Underwriters for fraud or criminal conduct) (on a collective, aggregate basis in reference to all such Noteholder Class Action Claims together) that exceeds the Indemnified Noteholder Class Action Limit;

(g) any portion or amount of, or liability of SFC for, any Class Action Indemnity Claims by the Third Party Defendants against SFC in respect of the Indemnified Noteholder Class Action Claims (on a collective, aggregate basis in reference to all such Class Action Indemnity Claims together) to the extent that such Class Action Indemnity Claims exceed the Indemnified Noteholder Class Action Limit;

(h) any and all Excluded Litigation Trust Claims;

(i) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing, for or in connection with or in any way relating to: any Claims (including, notwithstanding anything to the contrary herein, any Unaffected Claims); Affected Claims; Section 5.1(2) D&O Claims; Conspiracy Claims; Continuing Other D&O Claims; Non-Released D&O Claims; Class Action Claims; Class Action Indemnity Claims; any right or claim in connection with or liability for the Notes or the Note Indentures; any guarantees, indemnities, claims for contribution, share pledges or Encumbrances related to the Notes or the Note Indentures; any right or claim in connection with or liability for the Existing Shares, Equity Interests or any other securities of SFC; any rights or claims of the Third Party Defendants relating to SFC or the Subsidiaries;

(j) any and all Causes of Action against Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, the Named Directors and Officers, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation

Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Robert W. Staley
Direct Line: 416.777.4857
e-mail: staleyr@bennettjones.com

January 3, 2013

Sent By Email

Mr. Won J. Kim
Kim Orr Barristers P.C.
200 Front Street West
Suite 2300
Toronto ON M5V 3K2

Dear Mr. Kim:

Re: Sino-Forest Corporation ("Sino-Forest") CCAA Proceeding

I am writing to confirm our telephone conversation of January 2, 2013.

On behalf of your clients you have served a notice of motion for leave to appeal to the Court of Appeal for Ontario from the December 10, 2012 order of Justice Morawetz sanctioning Sino-Forest's CCAA Plan. I confirm your advice that your clients are not seeking a stay pending appeal, nor an expedited appeal, of the Plan sanction order. I also confirm that your advice that your clients are not seeking to prevent the implementation of Sino-Forest's CCAA Plan.

The Plan currently is scheduled to be implemented on or by January 15, 2013. In light of the foregoing, as the Plan sanction order has not been stayed, Sino-Forest (with the consent and support of the Initial Consenting Noteholders and the Monitor) intends to proceed to implement the Plan.

Yours truly,

Robert W. Staley

RWS/jm

cc: Service List

WSLegal\059230\00008\8497684v1

KIM·ORR

Won J. Kim P.C.
Tel: (416) 349-6570
E-mail: wjk@kimorr.ca

January 3, 2013

VIA EMAIL

Mr. Robert W. Staley
Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4

Dear Mr. Staley:

RE: Sino-Forest Corp. CCAA Proceeding

Thank you for your letter of January 3, 2012.

We confirm that the proposed appeal only concerns Article 11 of the Plan of Compromise and Reorganization ("Plan") and sections 40 and 41 of the Plan Sanction Order. Since Article 11 does not appear to be connected or integral to the Plan, we do not intend to seek a stay of the Plan Implementation.

Please note that our office has moved to 19 Mercer Street, 4th Floor, Toronto, Ontario, M5V 3K2.

Yours truly,

Won J. Kim P.C.

cc. Service List

QUESTIONS FOR TANYA JEMEC

Defined Terms

For purposes of the following questions, the following terms have the following meanings:

(1) "*CCAA*" means the *Companies' Creditors Arrangement Act*;

(2) "**Class Counsel**" means Siskinds LLP, Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP;

(3) "**Client**" means any of Invesco Canada Ltd., Northwest & Ethical Investments LP, Comité Syndical National De Retraite Bâtirente Inc., Matrix Asset Management Inc., Montrusco Bolton Investments Inc. or Gestion Férique, and "**Clients**" two or more of them;

(4) "**E&Y**" means Ernst & Young LLP;

(5) "**Insolvency Proceeding**" means the proceeding commenced by **Sino** under the *CCAA* on March 30, 2012;

(6) "**Kim Orr**" means Kim Orr Barristers P.C.;

(7) "**Prospective Client**" means any person or entity who solicited from **Kim Orr** advice in relation to that person's or entity's claims or possible claims against **Sino** or in relation to the **Insolvency Proceeding**, and who did so prior to the time that that person or entity received the communication in question, and "**Prospective Client**" does not include any person or entity who did not solicit such advice from **Kim Orr** prior to the time that that person or entity received the communication in question; and

(8) "**Sino**" means Sino-Forest Corporation.

Questions

1. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim

Orr or a Client, send or caused to be sent a written communication on Kim Orr letterhead to any person or entity who was not a Client, and which communication included the following text (or text that is materially the same as the following text):

> We are writing to ask you to join a group of institutional investors seeking to protect important rights concerning recoveries from responsible parties in cases of securities fraud in Canada. In particular, we want to ensure that investors retain "opt out" rights to pursue individual remedies if class action counsel negotiate premature or inadequate settlements.
>
> We represent certain institutional investors that purchased securities of Sino-Forest Corp. before it was revealed as a probable fraud in June 2011. Those investors include: Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Mackenzie Financial Corporation, Fonds Fériquc, Montrusco Bolton Investments Inc., and Matrix Asset Management Inc.
>
> Our clients are *not* participating as active named plaintiffs in the class action against Sino-Forest and certain of its directors and officers, underwriters, and its auditors (Ernst & Young LLP and BDO). Our clients are, however, "absent" members of the class (not yet certified), and as such they may be affected by those proceedings.
>
> On December 3, Class Counsel (Siskinds LLP and Koskie Minsky LLP) announced they had negotiated a $117 million settlement with E&Y. This would be the largest securities settlement in Canada, but in our view it is premature (since documents about E&Y's audit work have not been available, and the Ontario Securities Commission has just begun enforcement proceedings against E&Y) and may well be inadequate. Class Counsel presented this settlement in the Commercial Court handling Sino-Forest's insolvency ("CCAA") proceedings, not the class action court in which claims against E&Y and other defendants were brought. On December 7, Class Counsel and E&Y, over our objections, obtained an order in the Commercial Court providing a "framework" for effectuating such settlements. Apparently in extreme haste to push through approval of the settlement, E&Y and Class Counsel obtained a hearing to finalize approval of the settlement on January 4, 2013, with submissions scheduled over the preceding holiday weeks.
>
> Several important aspects of their proposals are objectionable:
>
> 1. E&Y and Class Counsel are using the CCAA (insolvency) proceeding to try to avoid normal class action requirements. The settlement in effect deprives investors of their established rights in a class action settlement:

(a) No "opt-out" rights. The settlement would provide a full general release to E&Y, in the form of a "bar order" in the Sino-Forest CCAA proceedings, without allowing opt-outs for class members who want to litigate individually.

(b) Inadequate notice to class members - normal notice is not being given.

(c) No approval by class action court - this procedure is also being avoided.

2. In this case, E&Y is at most a "third party defendant" in the Sino-Forest CCAA (insolvency) action. It is improper and unprecedented for a party in E&Y's situation to use a client's insolvency to short-circuit investors' class action rights that otherwise apply. If this is allowed to proceed, it will set an intolerable precedent and dilute investors' rights.

3. The amount of the proposed E&Y settlement, $117 million, is rather small compared to the investor losses suffered in Sino-Forest (market cap losses of roughly $6 billion). Auditors providing audit reports and underwriters performing due diligence for securities offerings are crucial bulwarks against fraud, and in this case represent the only likely source of recoveries for investors.

4. The unseemly haste with which this settlement is being pushed through the courts indicates that E&Y and Class Counsel are anxious to avoid normal scrutiny. Again, this is an unfortunate precedent.

In short, the proposed E&Y settlement is inconsistent with the goals of transparency, investor protections, and good corporate governance. We hope that investors who care about these principles in Canada will join us in opposing this result - whether or not you are Sino-Forest class members. We invite you to contact us.

2. If the answer to question 1 above is yes, then to how many persons or entities who were not Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above?

3. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above to any person or entity who was not a Client or a Prospective Client?

4. If the answer to question 3 above is yes, then to how many persons or entities who were not Clients or Prospective Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above?

5. Please identify all persons and entities who were not Clients or Prospective Clients and to whom Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, sent or caused to be sent the written communication referred to in question 1 above. If the person or entity to whom the communication was sent was an employee or other representative of an institutional investor, then please identify the institutional investor of whom the person was then an employee or other representative. If the person to whom the communication was sent was a lawyer, then please identify the law firm of which that lawyer was an employee or partner at the time at which the communication was sent. If the person or entity to whom the communication was sent was an investor rights organization, then please so state. If the person or entity to whom the communication was sent was an employee or other representative of an investor rights organization at the time at which the communication was sent, then please identify the investor rights organization of which the person or entity was then an employee or other representative.

6. In the communication referred to in question 1 above, it is stated that Kim Orr 'represents' Mackenzie Financial Corporation ("Mackenzie"). At the time that that communication was disseminated, had Mackenzie retained Kim Orr? If not, did Kim Orr subsequently inform the persons to whom the communication was disseminated that Mackenzie had not then retained Kim Orr?

7. In the communication referred to in question 1 above, it is stated that the institutional investors represented by Kim Orr "include" seven named institutions. At the time at which that communication was disseminated, had institutional investors other than the seven institutions named in the communication retained Kim Orr? If so, please state how

many institutional investors other than the seven institutions named in the communication had by then retained Kim Orr. Further, please identify those other institutional investors.

8. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent a written communication to any person or entity who was not a Client, and which communication included the following text (or text that is materially the same as the following text):

> [...]
>
> **OVERVIEW OF THE SANCTION HEARING**
>
> **Background**
>
> Numerous proposed class actions were commenced against Sino-Forest Corporation ("SFC"), its directors and officers, the underwriters and the auditors in Ontario, Quebec, Saskatchewan and New York after SFC's stock collapsed following allegations that the company had been vastly overstating its assets and revenues while engaging in extensive related-party transactions.
>
> In December 2011 a carriage motion was heard before Justice Perell to determine which of the three proposed Ontario class actions should proceed. On January 6, 2012, Justice Perell awarded carriage of the Ontario class action to *The Trustees of Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, making Koskie Minsky LLP and Siskinds LLP Class Counsel (the "Koskie-Siskinds action").
>
> The proposed class action commenced by Kim Orr on behalf of Northwest & Ethical Investments L.P. ("NEI"), Comité Syndical National de Retraite Bâtirente Inc. ("Bâtirente") and British Columbia Investment Management Corporation was stayed by Justice Perell's carriage order.
>
> On March 30, 2012, SFC filed for creditor protection under the *Companies' Creditors Arrangement Act ("CCAA")*. Under the Initial Order issued by Justice Morawetz on March 30, 2012 all proceedings against SFC have been stayed, including the Koskie-Siskinds action. The Koskie-Siskinds action was stayed prior to the hearing of any certification motion.
>
> Counsel for the Koskie-Siskinds action participated in the *CCAA* proceedings representing the Ad Hoc Committee of Purchasers of the Applicant's Securities. Class Counsel never received a representation order in the *CCAA;* putative class

members have not been afforded the opportunity to opt-out of representation by class counsel in the *CCAA* proceeding.

SFC attempted to enter into a sales process, but failed to attract any qualifying offers. Following the failure of the sales process, SFC announced its intent to proceed with a restructuring transaction. In August 2012 SFC filed a Plan of Compromise and Reorganization where restructuring occurred through the creation of two new corporations. The plan was modified a number of times.

Originally the Creditor's Meeting to vote on the Plan of Compromise and Reorganization was scheduled for November 29, 2012. The date of the meeting was rescheduled when the plan was amended on November 28, 2012.

[...]

E& Y Settlement Approval

In the evening of Wednesday December 12, 2012 Kim Orr received notice that E&Y was appearing before Justice Morawetz on Thursday December 13, 2012 at 9:30 am seeking to schedule the settlement approval for the E&Y settlement.

At the appearance Kim Orr argued that Justice Morawetz did not have the authority to hear a motion in a class proceeding, including the motion for approval of the E&Y settlement, and that a notice program was necessary for the motion for settlement approval to inform putative class members of the possible binding settlement and how that settlement would impact their substantive rights in the litigation.

Justice Morawetz scheduled the settlement approval for Friday, January 4, 2013 without ordering any requirement to disseminate notice to putative class members or other potentially affected individuals. In an unusual move, at the same time the Regional Senior Judge for Toronto, Justice Edward F. Then, assigned the *CCAA* judge, Justice Morawetz, the power to hear the motion to approve the E&Y settlement and ancillary matters in his capacity as a *CCAA* judge and as a class proceedings judge.

Also of note, scheduling the approval hearing for Friday January 4, 2013 means that it will be heard on the last business day prior to the Ontario Securities Commission hearing against E&Y, which is scheduled for Monday January 7, 2013.

Lack of Procedural Protections

The framework for release under the Plan and the settlement approval scheduling has occurred in an expedited and closed door manner. The process has not contemplated or given any credence to the importance of ensuring that the

putative class members are provided with full and proper notice of the settlement and its impact on their substantive rights, thereby depriving class members of the opportunity to appear and/or to file materials voicing any objections to the settlement. Further, if the settlement in its current form is approved, class members will be deprived of their substantive right to opt-out of the class action and to pursue their own actions against E&Y and potentially the other Third Party Defendants. The expedited manner in which the E&Y settlement approval has been approached appears to be intended to render it difficult, if not impossible, for any objectors to compile a sufficient mass and resources to ensure that their voices are heard.

9. If the answer to question 8 above is yes, then to how many persons or entities who were not Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above?

10. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above to any person or entity who was not a Client or a Prospective Client?

11. If the answer to question 10 above is yes, then to how many persons or entities who were not Clients or Prospective Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above?

12. Please identify all persons and entities who were not Clients or Prospective Clients and to whom Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, sent or caused to be sent the written communication referred to in question 8 above. If the person or entity to whom the communication was sent was an employee or other representative of an institutional investor, then please identify the institutional investor of whom the person was then an employee or other representative. If the person or entity to whom the communication was sent was a lawyer, please identify the law firm of which that lawyer was an employee or partner at the time at which the communication was sent. If the person or entity to whom the communication was sent was an investor

rights organization, then please so state. If the person or entity to whom the communication was sent was an employee or other representative of an investor rights organization at the time at which the communication was sent, then please identify the investor rights organization of which the person or entity was then an employee or other representative.

13. On December 5, 2012, Jim Orr of Kim Orr sent an email to Dimitri Lascaris of Siskinds LLP in which Mr. Orr stated, among other things, that Kim Orr 'acts for' "Mackenzie Financial". A copy of that email is attached as **Exhibit "1"**. At the time at which Mr. Orr made that statement, was that statement correct? If not, did anyone from Kim Orr correct that statement at any time prior to January 25, 2013?

14. Is it correct that, following the commencement of the Insolvency Proceeding and prior to the announcement of the Ernst & Young settlement on December 3, 2012, Kim Orr never requested from Class Counsel any information in regard to the Insolvency Proceeding? If Kim Orr maintains that it did request such information from Class Counsel during that period, then please describe the information sought by Kim Orr and please state the date(s) on which and the means by which the information was sought. If Kim Orr maintains that it requested such information by means of a written communication to Class Counsel, then please produce copies of such written communications.

15. Did any Client ever purchase shares or notes of Sino in an offering of Sino shares or notes? If so, please identify the offering and please state the name of the Client who participated in each such offering, the number of shares or notes purchased in each such offering by each Client, and whether each such Client continued to own any of such shares or notes on June 2, 2011.

16. If the answer to question 15 is that no Client ever purchased shares or notes of Sino in an offering of Sino shares or notes, then do you agree that no Client has a viable claim against any of the underwriters named as defendants in the class proceeding being prosecuted against Sino and others by Class Counsel? If you do not agree with that

proposition, then please explain on what basis you believe that a Client could assert a claim against any such underwriter.

17. At any time after January 18, 2013, did any Kim Orr lawyer, any non-lawyer employee of Kim Orr, or any person acting at the behest of Kim Orr or a Client, contact any person or entity other than a Client who had filed an objection (whether timely or not) to the E&Y settlement, but who subsequently evinced an intention to withdraw his, her or its objection? If so, please state the number of such persons and entities.

18. At any time after January 18, 2013, did any Kim Orr lawyer, any non-lawyer employee of Kim Orr, or any person acting at the behest of Kim Orr or a Client, contact any person or entity other than a Client or a Prospective Client who had filed an objection (whether timely or not) to the E&Y settlement, but who subsequently evinced an intention to withdraw his, her or its objection? If so, please state the number of such persons and entities, the identities of such persons and entities, and the manner by which each of them was contacted. If the communications disseminated to any such persons or entities were in writing, then please produce copies of all such communications.

A. Dimitri Lascaris

From: Y G [YG@kimorr.ca] on behalf of Jim Orr [JO@kimorr.ca]
Sent: Wednesday, December 05, 2012 3:16 PM
To: A. Dimitri Lascaris
Cc: Won Kim; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert; Charles M. Wright
Subject: RE: EY Settlement

Dimitri:

At this point we act for the plaintiffs in our stayed class action as well as Invesco Canada Limited and MacKenzie Financial. We have also been contacted by a number of other private and public funds and expect to have further retainers from approximately a dozen funds shortly.

I do not understand why you are refusing to provide the Settlement Agreement given that you purported to negotiate the agreement on behalf of our clients and expect them to be bound by it. Surely the document is not a secret.

Jim

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Direct: 416 349 6571

Tel: 416 598 1414
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From: A. Dimitri Lascaris [mailto:dimitri.lascaris@siskinds.com]
Sent: Wednesday, December 05, 2012 12:44 PM
To: Won Kim
Cc: Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'; Charles M. Wright
Subject: RE: EY Settlement

Won, may I please have a response to my email below?

From: A. Dimitri Lascaris
Sent: Tuesday, December 04, 2012 5:42 PM
To: 'Won Kim'
Cc: 'Jim Orr'; 'Victoria Paris'; 'Megan McPhee'; 'Michael Spencer(milberg)'; 'Kirk M. Baert'; Charles M. Wright
Subject: RE: EY Settlement

Won, I did not ask you who whether you will be preparing materials. I asked you who your clients are. You have twice requested information from us in relation to the settlement and we are entitled to know the identities of all of the putative class members on whose behalf you seek that information. Please advise.

From: Won Kim [mailto:WJK@kimorr.ca]
Sent: Tuesday, December 04, 2012 5:22 PM
To: A. Dimitri Lascaris
Cc: Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert; Charles M. Wright
Subject: RE: EY Settlement

We will be preparing matenals for the hearing which will be circulated.

From: A. Dimitri Lascaris [mailto:dimitri.lascaris@siskinds.com]
Sent: Tuesday, December 04, 2012 5:17 PM
To: Won Kim
Cc: Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'; Charles M. Wright
Subject: RE: EY Settlement

Won, in accordance with Rule 15, please indentify to us all members of the putative class on whose behalf you act in relation to the Sino-Forest litigation.

From: Won Kim [mailto:WJK@kimorr.ca]
Sent: Tuesday, December 04, 2012 12:34 PM
To: A. Dimitri Lascaris
Cc: Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert
Subject: RE: EY Settlement

Thank you for your email.

We have the plan of Arrangement.

Can you send us the settlement agreement today? We will ask EY as well.

Regards,

WJK

From: A. Dimitri Lascaris [mailto:dimitri.lascaris@siskinds.com]
Sent: Tuesday, December 04, 2012 12:31 PM
To: Won Kim
Cc: Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'
Subject: RE: EY Settlement

Won, thank you for your note.

The settlement reached with Ernst & Young LLP was a global liability settlement reached in the context of the Sino-Forest Plan of Arrangement under the CCAA.

The transaction forms a part of that Plan of Arrangement which is scheduled for approval before the CCAA Court this Friday and next Monday, as you are aware.

The settlement involves a payment by Ernst & Young and the compromise of its indemnification claims into the Sino-Forest Corporation estate.

Claimants such as those who you might represent would have their entitlements to participate in the settlement funds determined within the context of the trust fund arrangements set up by virtue of the terms of the settlement.

In that way, their entitlement to participate in this settlement is addressed.

The settlement, as part of the Plan of Arrangement, must, and will, extinguish all liabilities against Sino-Forest Corporation and Ernst & Young LLP with respect to these claims.

Should you wish to examine in greater detail the amended Plan of Arrangement, you can do so by clicking on this link:
http://cfcanada.fticonsulting.com/sfc/docs/CCAA%20Plan%20-%20December%203%202012.pdf.

Regards, Dimitri

From: Won Kim [mailto:WJK@kimorr.ca]
Sent: Monday, December 03, 2012 3:45 PM
To: A. Dimitri Lascaris; Kirk M. Baert; Daniel Bach
Cc: Jim Orr; Victoria Paris; Megan McPhee; Spencer, Michael
Subject: EY Settlement
Importance: High

Dimitri and Kirk,

First of all, congratulations on the EY settlement.

As you are aware, we represent NEI and Batirente. We've also been retained on behalf of private funds including Invesco (Trimark) and other funds both here and abroad who represent a sizable portion of the holders who will want to review the settlement prior to Friday's attendance.

On behalf of our clients, I would request that you provide us with the details of the settlement including whether our clients' statutory right to opt out have been addressed.

We will be attending the hearing and take steps to notify other parties of our clients intentions.

Thank you.

WJK

Won J Kim P.C.*

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*Won J. Kim, certified by the Law Society as a Specialist in Civil Litigation

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