

**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**

Applicant

APPLICATION UNDER THE *COMPANIES CREDITORS'*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**RESPONDING PARTY'S FACTUM
(Motion returnable October 9 and 10, 2012)**

October 4, 2012

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TO: **ATTACHED SERVICE LIST**

PART I - OVERVIEW

1. The Ad Hoc Committee of Purchaser of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action (the "Class Action Plaintiffs") seek various forms of relief: (a) a representation order in the CCAA proceedings; (b) an order granting members of the proposed Class leave to vote on Sino-Forest Corporation's ("Sino-Forest" or the "Applicant") Plan of Compromise and Reorganization dated August 14, 2012; (c) an order lifting the stay of proceedings, in various different potential permutations; and (d) directing the public non-confidential production in both the CCAA and the Class Actions of certain documents made available for the purposes of mediation and expressly pursuant to an order of this Court.

2. Ernst & Young LLP ("E&Y") takes no position on the relief sought by the Class Action Plaintiffs in (a) and (b), other than to support the Company's position that the motions are premature and to reserve its rights to make argument at a Sanction Hearing in respect of any relief sought by the Class Action Plaintiffs, and to confirm that if such an order is made it shall have no effect whatsoever on the proposed Class Actions in Ontario and Quebec or any motions in those proceedings, including certification and/or authorization.

3. E&Y opposes the other relief sought by the Class Action Plaintiffs. The Class Action Plaintiffs have not discharged their onerous burden to show why the stay of proceedings ordered (and extended) by this Court should be lifted. The Class Action Plaintiffs simply seek to gain an advantage in this CCAA proceeding and in the Class Action by diverting the attention of the parties.

4. Further, the Class Action Plaintiffs come before this Court to ask it to exercise its discretion to lift the stay, when the Class Action Plaintiffs have taken several steps in violation of

this Court's orders. In particular, the Class Action Plaintiffs have brought several motions in Quebec (and obtained one order) to *inter alia* add defendants and change the very foundation of their case. In these circumstances, the Court should not exercise its discretion to grant the relief that they seek.

5. E&Y also opposes the Class Action Plaintiffs' request for access to certain documents made available as part of the mediation process. The Class Action Plaintiffs seek to advantage themselves from the good faith participation of the parties in settlement discussions and to obtain production of documents in the CCAA and the Class Action at a stage when they would not otherwise be entitled to them. This is unfair and prejudicial and may create a chilling effect on the willingness of these parties in particular to engage in further settlement discussions and generally.

PART II - THE FACTS

Background

6. During the periods relevant to the class action proceedings, E&Y was retained as Sino-Forest's auditor – from 2007 until it resigned on April 4, 2012.

Reference Affidavit of W. Judson Martin sworn April 23, 2012 (“April 23 Martin Affidavit”) , Motion Record of Sino-Forest Corporation returnable May 8, 2012, at para. 13, Tab 2

7. On June 2, 2011, a short-seller, Muddy Waters LLC, issued a report which purported to reveal alleged fraud at the Company and cast various aspersions on the Company's advisors. In the wake of that report, Sino-Forest's share price plummeted and Muddy Waters profited handsomely from its short position.

Reference Affidavit of W. Judson Martin sworn March 30, 2012, at para, 114 (“March 30 Martin Affidavit”) attached as Exhibit A to Affidavit of W. Judson Martin sworn April 23, 2012, Motion

Record of Sino-Forest Corporation returnable May 8, 2012,
Tab 2

8. E&Y was served with a multitude of class action claims in numerous jurisdictions including Ontario and Quebec (the “Class Actions”). In Ontario alone, E&Y was served with four competing proposed class actions. Following a carriage motion, an uneasy peace was brokered between two law firms and a number of proposed representative plaintiffs were absorbed into what is now the Ontario Class Action.

Reference April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012 at paras. 7-8, Tab 2

9. The plaintiffs in the Ontario Class Action claim damages in the aggregate, and against all defendants, of \$9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)*, R.S.O. 1990, c.S-5 and at common law, in negligence and negligent misrepresentation. The central claim is that Sino-Forest made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and in particular that E&Y’s audit did not comply with Canadian generally accepted auditing standards. Similar claims are advanced in the Quebec and U.S. actions, (together with the Ontario Class Action, the “Class Actions”).

Reference Schedule “A2” to Exhibit A to the Affidavit of Christina Shiels sworn June 21, 2012 (“June 21 Shiels Affidavit”), Motion Record of E&Y returnable June 26, 2012, paras 11-13, Tab 1

10. E&Y has contractual claims of indemnification against Sino-Forest and its subsidiaries for all relevant years, in respect of work done in connection with its annual audits as well as related to prospectus and note offerings. E&Y also has statutory and common law claims of contribution and/or indemnity against Sino-Forest and its subsidiaries for all relevant years.

E&Y filed Proofs of Claim with the Monitor in accordance with the claims procedure process setting out its claims for contribution and indemnity from Sino-Forest, its directors and officers and subsidiaries.

Reference April 23 Martin Affidavit at paras. 13-15, Exhibits H and I, Motion Record of Sino-Forest Corporation, Tabs, 2 2-H, 2-I

Exhibits A-J to the Affidavit of Christina Shiels sworn April 24, 2012, Motion Record of E&Y returnable May 8, 2012, Tabs 1A-J

Schedule "A2" to Exhibit A to June 21 Shiels Affidavit, Motion Record of E&Y returnable June 26, 2012, Tab 1

11. On March 30, 2012, this Honourable Court granted the Initial Order, which stayed the proceedings (the "Stay"). This Court found that the necessary conditions existed to extend the Stay on April 13, May 31, 2012 and September 28, 2012. The Stay currently expires on October 11, 2012 and the Applicant has brought a motion to have it extended to December 3, 2012 to allow for the meeting of creditors and fairness hearing to take place. On May 8, 2012 this Court ordered, on consent of the parties, that the Stay extends to the third party defendants to the Ontario Class Action, including E&Y (the "Third Party Stay Order"). Contrary to the assertions of the Class Action Plaintiffs, the Third Party Stay Order was not predicated on the successful mediation of the issues between the parties.

Reference April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2, at para. 5

Affidavit of W. Judson Martin sworn May 2, 2012, ("May 2 Martin Affidavit"), Motion Record of Sino-Forest Corporation returnable May 8, 2012, at paras. 4-6, Tab 2

October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 4-5, Tab 2

12. As a result of the Initial Order, the various Stay Extension Orders and the Third Party Stay Order, the Class Actions (including the Ontario and Quebec Class Actions) have been stayed. Given the nature of the claims against E&Y and the other third party defendants, the Company's participation in any Class Action is of central importance. It would be prejudicial to E&Y and the other defendants to proceed without the Company.

13. The Class Actions are at a very early stage and have not been certified. When the Initial Order was made, a seven month schedule leading up to the certification and leave hearings had been set by Justice Perell in the Ontario Class Action.

Reference	Affidavit of Daniel Bach, sworn September 24, 2012, Motion Record of the Class Action Plaintiffs returnable October 9 and 10, 2012, para. 29, Tab 2
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14. The parties to the Ontario Class Action entered into a tolling agreement, effective March 6, 2012 in respect of the limitation periods in Part XXIII.1 of the *Securities Act* (Ontario) and, if necessary, under concordant provisions of securities legislation in other provinces. The tolling agreement suspends the operation of those limitations periods until February 28, 2013. If necessary, EY is prepared to consider extending the tolling period.

15. There is one narrow exception to the Stay, as ordered by this Court on May 8, 2012 (the "Pöyry Settlement Leave Motion Order"), which permitted the proposed representative plaintiffs in Ontario and Quebec Class Actions to proceed with certain motions related to a settlement agreement entered into with Pöyry (Beijing) Consulting Company (the "Pöyry Settlement").

16. The Plaintiffs have taken a number of steps in Quebec which directly violate this Court's Stay Orders, including bringing several motions to substantially amend the Quebec Plaintiffs' Motion to Authorize the Bringing of a Class Action and to Obtain the Status of a Representative.

Contrary to their assertions, these steps, and in particular these motions, are not necessary to give effect to the Pöyry settlement and do not fall within the narrow exception to the Stay.

Reference Affidavit of Christine Shiels, sworn October 4, 2012, (“October 4 Shiels Affidavit”), Motion Record of E&Y returnable October 9 and 10, 2012 at [insert]

17. On July 25, 2012, on a motion made by the Class Action Plaintiffs, this Court ordered that the parties, including the Applicant, the Class Action Plaintiffs, the Ad Hoc Committee of Noteholders, the Monitor, the Third Party Defendants (including E&Y) and any insurers (the “Mediation Parties), participate in a mediation process (the “Mediation Order”). As part of the Mediation Order, this Court ordered that the Mediation Parties have access to an existing data room established by the Company in furtherance of its sales process (the “Data Room”). This Court specifically ordered that to access the Data Room and the documents contained therein, the Mediation Parties were required to enter into a confidentiality agreement with the Applicant on terms acceptable to the Applicant and the Monitor (the “NDA”). This Court also specifically ordered that any Mediation Party entering into the NDA shall comply with its terms. Further this Court ordered that “the disclosure of such materials and the information contained [in the Data Room] in accordance with this Order is not and shall not be public disclosure in any way”.

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 1, 24-27, Exhibits I and J, Tab 2.

18. On July 30, 2012, on a motion made by the Class Action Plaintiffs, this Court ordered that certain additional documents be added to the Data Room, subject to the applicable provisions of the Mediation Order and specifically subject to the NDA requirements.

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 1, 24-27, Exhibits I and J, Tab 2.

19. The Class Action Plaintiffs executed an NDA substantially in the form attached to the Applicant's Motion Record. The Class Action Plaintiffs now seek to have documents from the Data Room publicly disclosed for use in the Class Actions. On October 1, 2012, the Class Action Plaintiffs amended their Notice of Motion to ask that the documents from the Data Room also publicly disclosed for use in the CCAA proceedings.

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 1, 24-27, Exhibits I and J, Tab 2

Motion Record of the Ad Hoc Committee Purchasers of the Applicant's Securities returnable October 9 and 10, 2012

20. The Mediation ordered for September 4, 5 and 10, 2012 did not result in a settlement. Settlement discussions are continuing.

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, para. 24

PART III - THE LAW

Stay of Proceedings Should Not be Lifted

21. The conditions that existed at the time the Third Party Stay Order was made still exist. Lifting the Stay will not serve the goals of the CCAA and will prejudice the Applicant and E&Y.

22. The *CCAA* is remedial legislation which should be given a large and liberal interpretation:

The modern approach to interpretation of the Act in accordance with its nature and purpose militates against a narrow interpretation and towards one that facilitates and encourages compromises and arrangements.

Reference *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 3164 (C.A.) at paras. 44 and 74-95 [*Metcalfe and Mansfield*], EY Brief of Authorities, Tab 1.

23. A stay of proceedings ensures that the *status quo* is maintained during restructuring efforts and further prevents “manoeuvring for position” amongst creditors, where one creditor tries to get a “leg up” on the others. It also protects the dynamics involved in the CCAA process.

- Reference** *Canadian Airlines Corp. (Re)*, [2000] A.J. No. 1692 (Q.B.) at paras. 17-19, EY Brief of Authorities, Tab 2.
- Stelco Inc. (Re)*, [2005] O.J. No. 1171 (C.A.) at para. 36, EY Brief of Authorities, Tab 3.
- Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.) at para. 19, EY Brief of Authorities, Tab 4.
- Timminco Ltd. (Re)*, 2012 ONSC 2515, at para. 15, EY Brief of Authorities, Tab 5.

24. The party seeking to a lift a stay has a very heavy onus. Lifting a stay is a discretionary decision of the Court. When considering whether there are compelling reasons to lift a stay, the Court should consider whether lifting the stay is consistent with the objectives of the CCAA, including considering the balance of convenience, relative prejudice to the parties and, where relevant, the merits of the proposed action.

- Reference** *Re Canwest Global Communications Corp.* (2009), 61 C.B.R. (5th) 200 at para. 32 (Ont. S.C.J.) [Canwest], EY Brief of Authorities, Tab 6.
- Re NFC Acquisition GP Inc.*, 2012 ONSC 1244 at para. 11 (Ont. S.C.J.) [NFC Acquisition], EY Brief of Authorities, Tab 7.

25. The Court has considered whether to exercise its discretion to a lift a stay of proceedings in the following circumstances:

- (a) When the plan is likely to fail;

- (b) The moving party shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the moving party);
- (c) The moving party shows necessity for payment (where the moving party's financial problems are created by the order or where the failure to pay the moving party would cause it to close and thus jeopardize the debtor's company's existence);
- (d) The moving party would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;
- (e) It is necessary to permit the moving party to take steps to protect a right which could be lost by the passing of time;
- (f) After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period;
- (g) There is a real risk that a moving party's loan will become unsecured during the stay period;
- (h) It is necessary to allow the moving party to perfect a right that existed prior to the commencement of the stay period;
- (i) It is in the interests of justice to do so.

26. None of these conditions exist here. In particular:

- (a) The Plan does not appear likely to fail;
- (b) The Ontario Plaintiffs will not be significantly prejudiced by a continued stay of approximately two (2) months to December 3, 2012, especially in light of the tolling agreement amongst the parties. There is evidence that the Applicant and the Third Party Defendants, including E&Y, would be prejudiced by lifting the stay;
- (c) The Class Action Plaintiffs are not required to take any steps prior to December 3, 2012 to protect any rights which will be lost through the passing of time; and
- (d) It is not in the interests of justice to lift the stay, especially at this late stage of the CCAA process.

27. These factors apply to lifting the stay not just as against the Applicant, but as against the Third Party Defendants as well. This Court recently refused such a motion in *Timminco*:

With respect to the claim against Photon, as pointed out by their counsel, it makes no sense to lift the stay only as against Photon and leave it in place with respect to the Timminco Entities. As counsel submits, the Timminco Entities have an interest in both the legal issues and the factual issues that may be advanced if Mr. Penneyfeather proceeds as against Photon, as any such issues as are determined in Timminco's absence may cause unfairness to Timminco, particularly, if Mr. Penneyfeather later seeks to rely on those findings as against Timminco. I am in agreement with counsel's submission that to make such an order would be prejudicial to Timminco's business and property. In addition, I accept the submission that it would also be unfair to Photon to require it to answer Mr. Penneyfeather's allegations in the absence of Timminco as counsel has indicated that Photon will necessarily rely on documents and information produced by Timminco as part of its own defence.

I am also in agreement with the submission that it would be wasteful of judicial resources to permit the class proceedings to proceed as against Photon but not Timminco as, in addition to the duplicative use of court time, there would be the possibility of inconsistent findings on similar or identical factual issues and legal issues. For these reasons, I have concluded that it is not appropriate to lift the stay as against Photon. [Emphasis added]

Reference *Timminco Limited (Re)*, 2012 ONSC 2515 (S.C.J.) at para. 23 [Timminco], EY Brief of Authorities, Tab 5.

See also: *Campeau v. Olympia & York Developments*, [1992] O.J. No. 1946 at 4 (Gen. Div.), EY Brief of Authorities, Tab 8.

The Documents Produced for Settlement Purposes Should Not be Disclosed

28. The documents which the Class Action Plaintiffs now seek to have produced publicly were made available to them under the NDA, pursuant to this Court's Mediation Order and Document Order and for the purposes of mediation.

29. The terms of the Mediation Order, made by this Court on July 25, 2012, are clear:

8. THIS COURT ORDERS that any Mediation Parties who enter into a confidentiality agreement as contemplated by paragraph 7 of this order shall comply with the terms of such a confidentiality agreement.
9. THIS COURT ORDERS that [...] the disclosure of such materials and the information contained [in the Data Room] in accordance with this Order is not and shall not be public disclosure in any respect. Nothing in this paragraph affects any rights or causes of action that any person may have in relation to the prior disclosure of any of the contents of the Data Room, insofar as such rights or causes of action are independent from and not related to the provision of materials and information in accordance with this Order.

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest returnable October 9 and 10, 2012, Exhibit 1, Tab 2

30. The terms of the NDA are equally clear and limit the use to which the documents can be made to the CCAA Proceedings. The NDA requires that the recipient of the "Information" hold it in strict confidence. "Information" is broadly defined to mean "all information in whatever form [...] that has or hereafter comes into the knowledge of the recipient."

Reference October 3 Martin Affidavit, Motion Record of Sino-Forest
returnable October 9 and 10, 2012, Exhibit K, Tab 2

31. The framing of the Class Action Plaintiffs' motion makes it clear that they are seeking to advantage themselves as a result of the disclosure of documents in the Data Room. The Class Action Plaintiffs' request is not for a category of documents that they would otherwise be entitled to at this stage of the CCAA or Class Action proceedings. Rather, they have prepared a confidential list of particular documents which they have identified as a result of access to the Data Room.

32. The Court recognizes the sanctity of settlement discussions and that there is considerable public interest in preserving confidentiality when settling disputes.

Reference *Ontario (Liquor Control Board) v. Magnotta Winery Corp*, 97
O.R. (3d) 665, at para.45, (Ont. Div. Ct.) , aff'd 2011 ONCA
681 on different grounds, EY Brief of Authorities at Tab 9.

Rudd v. Trossacs Investment Inc., (2006) 208 O.A.C. 95,
(Ont. Div. Ct.), [Rudd], EY Brief of Authorities at Tab 10.

33. The Courts have found that settlement discussion meet the four-part *Wigmore* test for confidentiality there:

- (a) the confidentiality agreement (if one is executed) between parties confirms the expectation of confidentiality;
- (b) confidentiality is essential to meaningful, frank and candid settlement discussions;
- (c) there is a significant public interest in protecting the confidentiality of settlement discussions to make the process as effective as possible; and,
- (d) there is a public interest in preserving the confidentiality of settlement negotiations.

Reference *Bot Construction (Ontario) Ltd. v. Dumolin*, 2011 ONSC 492, 6 C.L.R. (4th) 99, at paras. 9-13, EY Brief of Authorities at Tab 11.

34. In *Rudd*, the Ontario Divisional Court held:

The ability of parties to engage in full and frank disclosure is fundamental to the mediation process and to the likelihood that it will lead to resolution of a dispute. There is a danger that they will be less candid if the parties are not assured that their discussions will remain confidential....

Reference *Rudd*, supra at para. 33, EY Brief of Authorities at Tab 10.

35. The Class Action Plaintiffs would not otherwise be entitled to production of these documents, either in the CCAA process or the Class Actions, at this stage. Under the *Class Proceedings Act*, the *Securities Act* (Ontario) and the *Rules of Civil Procedure*, there is no documentary discovery contemplated prior to hearings for certification or leave under Part XXII.1 of the *Securities Act*. Furthermore, the Courts generally (and Justice Perell in this matter) have held that whether a defendant files affidavit evidence in response to a certification or leave motion is a matter for the defendant.

Reference *Ainslie v. CV Technologies Inc. et al.*, 93 O.R. (3d) 200, EY Book of Authorities at Tab 12.

Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp., [2012] O.J. No. 1331 (S.C.J.), EY Book of Authorities at Tab 13.


36. The Class Action Plaintiffs, having sought a Mediation Order and document production for that purpose, now seek to use the parties' good faith participation to their advantage.

PART IV - ORDER REQUESTED


37. E&Y respectfully requests:

- (a) that the relief sought by the Class Action Plaintiffs be denied;
- (b) a declaration that the Class Action Plaintiffs have violated the Order of this Court dated March 30, 2012, as varied May 8, 2012 and as extended; and
- (c) costs of this motion on a partial indemnity basis.


38. **ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4th day of October, 2012.



Peter H. Griffin *pel*



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SCHEDULE “A”

List of Authorities

1. *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*, 2008 ONCA 587
2. *Canadian Airlines Corp. (Re)*, [2000] A.J. No. 1692 (Q.B.)
3. *Stelco Inc. (Re)*, [2005] O.J. No. 1171 (C.A.)
4. *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.)
5. *Timmico Ltd. (Re)*, 2012 ONSC 2515
6. *Re Canwest Global Communications Corp.* (2009), 61 C.B.R. (5th) 200 at para. 32 (Ont. S.C.J.)
7. *Bank of Montreal v. NFC Acquisition GP Inc.*, 2012 ONSC 1244, (Ont. S.C.J.)
8. *Campeau v. Olympia & York Developments*, [1992] O.J. No. 1946 at 4 (Gen. Div.)
9. *Ontario (Liquor Control Board) v. Magnotta Winery Corp.*, 97 O.R. (3d) 665
10. *Rudd v. Trossacs Investment Inc.*, (2006) 208 O.A.C. 95, (Ont. Div. Ct.)
11. *Bot Construction (Ontario) Ltd. v. Dumolin*, 2011 ONSC 492, 6 C.L.R. (4th) 99
12. *Ainslie v. CV Technologies Inc. et al.*, [2008] O.J. No. 4891 (S.C.J.)
13. *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.*, [2012] O.J. No. 1331 (S.C.J.)

SCHEDULE "B"

List of Legislation

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

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

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

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

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

SINO-FOREST CORPORATION
Applicant

-and- ERNST & YOUNG LLP
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**RESPONDING PARTY'S FACTUM
(Motion returnable August 28, 2012)**

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