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

# FACTUM OF INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., and COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

(Motion for Sanction Order returnable December 7 & 10 2012)

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**TO: THE SERVICE LIST**

## Part I – FACTUAL BACKGROUND

1. Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc. (the "Funds") object to the proposed Sanction Order in this proceeding, which would approve the Plan of Compromise and Reorganization, as amended and dated December 3, 2012 (the "Plan"), for Sino-Forest Corporation ("Sino-Forest").

2. Sino-Forest had become well known as the largest forestry company in Canada, with extensive operations in China, headquarters in Ontario, and a listing on the Toronto Stock Exchange ("TSX"). Its market capitalization in early 2011 was approximately $6.2 billion.

3. The Funds are institutional public and private equity funds that purchased securities of Sino-Forest and held them on June 2, 2011, the date on which a securities analyst by the name of Muddy Waters LLC published a report asserting that Sino-Forest was a "near total fraud." In response to the report, shares of Sino-Forest stock collapsed from $18.21 to $5.23 over the course of two days, and trading was halted, resulting in large losses for holders of the stock at that time, including the Investors. The value of Sino-Forest notes was also decimated.

4. Later in 2011, several investors who had suffered losses commenced class actions in Ontario, Quebec and New York against Sino-Forest, many of its directors and officers, its auditors during the relevant years (Ernst & Young LLP and BDO Limited, who had issued clean audit opinions on the company's financial statements), thirteen underwriters of company securities offerings, and other experts, for misrepresenting the condition of the company. On January 6, 2012 Justice Paul Perell of the Ontario Superior Court of

Justice granted carriage of the Ontario Class Action to the law firms of Koskie Minsky LLP and Siskinds LLP ("Class Counsel") in *Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, Court File No. CV-11-431153-00CP (the "Class Action"), and stayed the other Ontario class actions that had been filed. [1]

5. In the decision granting carriage, Justice Perell specifically noted that the large institutional putative class members did not require the class action structure and were prime candidates to opt out of the class proceeding allowing them to pursue the defendants to obtain compensation for their respective members.[2]

6. The proposed plaintiff class in the Class Action consists of all persons and entities, wherever they may reside who acquired Sino-Forest's securities by distribution in Canada or on the TSX or other secondary market in Canada, which includes securities acquired over-the-counter, and all persons and entities who acquired Sino Forest's securities who are resident of Canada or were resident of Canada at the time of acquisition from March 19, 2007 to and including June 2, 2011, except for excluded persons related to Sino-Forest.

7. The Funds fall within the class definition. However, the class has not been certified, and investors have not yet been afforded their statutory right to exclude themselves (opt out) from the Class Action if and when it is certified.

8. On March 30, 2012, Sino-Forest applied for protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("*CCAA*"). A stay of proceedings was imposed, essentially preventing the Class Action from moving forward. On May 9, 2012, Sino-Forest's common shares were delisted from the TSX.

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[1] *Smith v. Sino-Forest Corp.*, 2012 ONSC 24, [2012] O.J. No. 88 (S.C.J.).
[2] *Smith v. Sino-Forest Corp.*, 2012 ONSC 24, [2012] O.J. No. 88 at para. 280 (S.C.J.).

9. To date the Monitor has issued thirteen reports on to its investigation into Sino-Forest and its subsidiaries. The Sixth Report noted the Monitor's inability to verify Sino-Forest's operations, assets, and receivables in any meaningful way. In particular, the Monitor stated it had been unable to verify more than 8% of Sino-Forest's reported net stocked forests. The Monitor noted that three of Sino-Forest's important purchasing agents ("authorized intermediaries"), which owed the company some $504 million in receivables, had de-registered themselves in the People's Republic of China.[3]

10. Sino-Forest filed its initial Plan of Compromise and Reorganization in this proceeding on August 27, 2012. The Plan has been modified several times, including on October 19, 2012, November 28, 2012, and finally on the date of the creditors' meeting, this past Monday, December 3, 2012. The prior versions of the Plan contained fairly standard provisions that all claims against the company and certain officers and directors would be barred except claims related to s. 5.1(2) of the *CCAA*, to fraud, conspiracy and insured claims. But there had been no provisions barring claims against, or providing releases in favour of, other "Third Party Defendants" -- i.e., Ernst & Young LLP, BDO Limited, the underwriters, certain experts, and other directors and officers who may have been involved in fraud.

11. The most recent (December 3, 2012) version of the Plan changed that. For the first time in the *CCAA* proceedings, the Plan contained, in the new Article 11, specific provisions for proposed settlement of claims against a Third Party Defendant, Ernst & Young LLP and certain related entities ("E&Y"), and also provided a structure for settlement of claims against other Third Party Defendants. None of the moving parties

[3] Third Report of the Monitor dated May 25, 2012 at paras. 58, 86.

released the E&Y settlement agreement, but they did describe the amount -- $117 million, to be paid by E&Y into a Settlement Trust -- as unprecedented in Canada.

12. Also on December 3, 2012, a meeting of creditors was held to consider the Plan. It has been reported that a large majority of creditors approved the Plan.

13. Also on December 3, 2012, the Ontario Securities Commission ("OSC") issued a Statement of Allegations against Ernst & Young LLP, alleging that it had had failed to perform its audit work on Sino-Forest's financial statements in accordance with Generally Accepted Auditing Standards, in violation of ss. 78(2), 78(3) and 122(1)(b) of the Ontario *Securities Act*, R.S.O. 1990, c. S-5, as amended. A hearing on those allegations is scheduled for early January 2013.

14. On Tuesday, December 4, 2012, the Monitor issued a Supplemental Report to the Thirteenth Report of the Monitor ("Supplemental Report"), reporting on recent events, including the proposed E&Y settlement. The Monitor reported that the Sanction Hearing would only consider the "framework" pursuant to which a release of the E&Y claims under the Plan would happen if several conditions were met.[4] The Supplemental Report did not elucidate how the proposed settlement with E&Y was to be effectuated, including whether Investors would have the right to opt-out from the settlement, and whether approval of the Class Action Court was required.

15. After requests to counsel for many parties to the Plan, Funds' counsel received a copy of the Minutes of Settlement for the E&Y settlement on Wednesday evening, December 5, 2012. The Minutes of Settlement propose that the settlement is to be approved and implemented in the Sino-Forest *CCAA* proceedings and is conditional upon

[4] Supplemental Report to the Thirteenth Report of the Monitor dated December 4, 2012 at para. 7(d).

full and final releases and claims bar orders that extinguish all claims against E&Y without opt-outs.

16. Schedule B of the Minutes of Settlement purports to require certification and settlement approval in the Class Action along with opt-out rights which would be approved by the Class Action case management judge. A Court hearing on certification and settlement approval and opt-out rights are a meaningless exercise in light of the proposed release and claims bar sought to be sanctioned in the *CCAA* Plan. If the Plan is sanctioned, any investors who opt out of the Class Action would be forever precluded from pursuing their individual claims against E&Y.[5]

17. Counsel for E&Y informed the Funds' counsel that the parties had decided to exclude any request to this Court for approval of the E&Y settlement itself from the motion for approval of the Sanction Order and Plan, scheduled to be heard on Friday, December 7, and Monday, December 10, 2012. However, the Court is still asked to sanction the framework for the releases provided in the Plan.

## Part II -- STRUCTURE OF RELEASES AND APPROVALS

18. Article 11.2 of the Plan would, if approved, establishes an open-ended mechanism for Eligible Third Party Defendants, defined to include the 11 underwriters named as defendants in the Class Action, BDO Limited, and/or E&Y (if its proposed settlement is not already concluded), to enter into a "Named Third Party Defendant Settlement" with "one or more of (i) counsel to the plaintiffs in any of the Class Actions..."[6]

[5] Investors would similarly lose any opt-out rights and be forever precluded from pursuing their individual claims against BDO and the Underwriters if Class Counsel reaches a settlement with those parties since they are Eligible Third Party Defendants as defined by the Plan.
[6] Plan of Compromise and Reorganization dated December 3, 2012 at pp. 17-18.

19. Under Articles 11.2(b) & (c), once such a settlement is concluded among the specified parties, the settling defendant will obtain releases and bar orders in the *CCAA* proceeding, preventing the continued litigation of any Sino-Forest-related claims against them. If a settlement is reached in the future, the *CCAA* release and bar orders would remain available notwithstanding that the *CCAA* process may have concluded.

20. Accordingly, it appears that these provisions purport to vest authority in the parties as described to enter into settlements that may have the effect of barring any claimants (such as the Funds) from prosecuting Sino-Forest-related claims against the underwriters, BDO, and/or E&Y, subject to the approval of this Court. The bar would be imposed without complying with the established prerequisites of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*") -- including class certification, a fairness hearing, approval by the court supervising the class action, and provision of opt out rights -- necessary to impose releases or other restrictions on class members who are not named parties before that court.[7]

21. Stated more succinctly, the Plan appears designed to unnecessarily fetter the powers of a future Court, namely the Class Action case management Court, by assigning to this *CCAA* Court the power to approve and effectuate class-wide settlements without regard to established statutory and rule-based procedural safeguards found in the *CPA*. Under the regime imposed by the Plan, the Funds and other absent putative class members would forever lose their statutorily enshrined rights to opt out of a class settlement and maintain their claims against affected defendants,. The Funds object to the proposed usurpation of class action jurisdiction, rights, and safeguards, for the reasons described in the next section.

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[7] *Class Proceedings Act, 1992*, S.O. 1992, c. 6 at ss. 5, 8, 9, 29 ("*CPA*").

## Part III -- ISSUES AND THE LAW

### A. Request for Adjournment

22. The Funds object to the moving parties' submission of material amendments to the Plan four days before commencement of the scheduled hearing for approval of the Sanction Order and the Plan. This is particularly unseemly because objections to the Plan were required to be submitted at least five days prior to the hearing. The fact that the late-included provisions concern matters of vital importance to the Funds, and presumably to other absent putative class members who may not even have received notice of the late filings, underscores the prejudice that may arise if these matters are heard on such short notice.

23. In addition, the moving parties have not submitted any explanatory materials or factums in support of their requests. As demonstrated in Part II above, it is therefore difficult even to understand what they are asking and why.

24. The Funds accordingly request adjournment of the hearing for one month.

### B. Investors May Not Properly Be Deprived of Their Opt Out Rights and Other Procedural Protections

25. As described in Part II above, it appears to be the intent of the moving parties that the auditor and underwriter defendants in the Sino-Forest Class Action be permitted to obtain complete releases of the claims against them as may be asserted by any and all absent putative class members, without satisfying any of the established statutory requirements for class action settlements, including notice to the class, class certification, approval of the class action settlement, consideration of objections to the settlement, and provision of opt out rights to class members who do not wish to be bound.

26. Use of the *CCAA* proceedings for the purpose of circumventing valid statutory protections found in the *CPA* is improper, and the effect would be unlawful.

27. The Ontario Class Action has not yet been certified under the *CPA*.[8] There is no class action at this time, only a proposed class action for which the Ontario class action has been granted carriage. When there is a carriage motion, the action that is not granted carriage is not brought to an end, but rather stayed. The unsuccessful plaintiffs retain the right to prosecute their action as an ordinary lawsuit and can opt out of the class and continue with their own action.[9]

28. Prior to certification as a class proceeding, there is no solicitor and client relationship between counsel for representative plaintiffs and putative class members.[10]

29. The named plaintiffs in the proposed class proceedings have simply commenced actions and purport to act on behalf of others. It is yet to be determined whether the status of a class proceeding will be granted through class certification.[11]

30. The importance of class action procedural protections was recognized by Class Counsel in April 2012, when they specifically sought an order to represent absent class members in these *CCAA* proceedings. Moreover, the Representation Order they proposed contained an Opt-Out Letter, which would have allowed absent class members to opt-out from having Class Counsel represent them in these *CCAA* proceedings.[12] A class member's invocation of that opt out right presumably would have prevented Class Counsel from binding the class member to any settlement entered into as part of the

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[8] *CPA*, s. 5(1).
[9] *Locking v. Armtec Infrastructure Inc.*, 2012 ONCA 774 at para. 13 (C.A.).
[10] *Pearson v. Inco* (2001), 57 O.R. (3d) 278, [2001] O.J. No. 4877 at para. 18 (S.C.J.).
[11] *Pearson v. Inco* (2001), 57 O.R. (3d) 278, [2001] O.J. No. 4877 at para. 15 (S.C.J.).
[12] Notice of Motion, Lawyers for an Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action against the Applicant, dated April 10, 2012.

*CCAA* proceedings, such as the E&Y settlement. However, the Representation Order and Opt-Out Letter were never approved by the *CCAA* court.

31. In Ontario's class proceedings regime, the right of a party to opt-out is fundamental to the Court's jurisdiction over un-named class members. It is also fundamental to preserve the legal entitlement of those who wish to exercise their legal rights outside of a particular class action.[13] The opt-out period allows individuals to pursue their self-interest and to preserve their rights to pursue individual actions.[14]

32. The Ontario Court of Appeal has recognized that the right to opt out is fundamental and should not negated by the Courts:

> While this speculation about future opting out may ultimately prove to be correct, it ignores the well-settled principle that a right to opt out is an important element of procedural fairness in class proceedings. It is not an illusory right that should be negated by speculation, judicial or otherwise.[15]
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> [Emphasis added]

33. In the absence of a class certification order in the Class Action, Class Counsel do not represent absent putative class members, and only represent their direct clients who are named plaintiffs. Not all absent class members wish to be represented by Class Counsel.[16]

34. Since Class Counsel are not counsel to absent class members, they cannot bind them.

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[13] *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321, [2005] O.J. No. 506 at para. 28 (C.A.).
[14] *Mangan* v. *Inco Ltd.*, [1998] O.J. No. 551 at para. 36 (Gen. Div.).
[15] *Fischer v. IG Investment Management Ltd.*, 2012 ONCA 47 at para. 69 (C.A.).
[16] Affidavit of Eric J. Adelson sworn December 6, 2012 at paras. 6 and 18.

### C. Circumvention of Class Action Procedural Safeguards Is Not Permitted in These Circumstances, Even Under the Flexible Standard of the *CCAA*

35. The purpose of the *CCAA* is to facilitate the making of a compromise or arrangement between an insolvent company and its creditors so that the company is able to continue in business.[17]

36. In considering whether to sanction a reorganization plan, the court should consider fundamental principles of fairness and reasonableness[18] The *CCAA* does not provide an appropriate forum to release absent putative class members' claims against the third party defendants.

37. Release of investors' claims against an insolvent *CCAA* applicant may readily be seen as necessary in order to restructure the applicant. In contrast, there is no cogent reason that an investor needs to release a third party defendant in order to effectuate a restructuring. In the case of Sino-Forest, releasing the underwriters or auditors from misrepresentation claims asserted by investors would not assist Sino-Forest.

38. Sanctioning third party releases in a plan should be the exception, and such releases should not be requested or granted as a matter of course in a *CCAA* sanction hearing.[19]

39. There are seven factors that the courts have considered when determining whether third party releases are justified in a *CCAA* plan of reorganization. These factors are:

i.) the parties released are necessary and essential to the restructuring of the debtor;

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[17] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 3164 at para. 50 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337.
[18] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265 at para. 61(S.C.J.), aff'd, [2008] O.J. No. 3164 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337
[19] *Canwest Global Communications (Re)*, 2010 ONSC 4209 at para. 29 (S.C.J.).

ii.) the claims to be released are rationally related to the purpose of the plan and necessary for it;

iii.) the plan cannot succeed without the releases;

iv.) the parties who are to have claims against them released are contributing in a tangible and realistic way to the plan;

v.) the plan will benefit not only the debtor companies but creditors generally;

vi.) the creditors approved the plan with knowledge of the nature and effect of the releases; and

vii.) the court is satisfied that in the circumstances the releases are fair and reasonable in the sense that they are not overly broad and not offensive to public policy.[20]

40. None of those factors is present here.

41. With respect to the first three factors, it is obvious that the releases of Named Third Party Defendants are not essential to the Plan because several viable iterations of the Plan were proposed without any mention of such releases. In fact, the settlements and third party releases are eleventh-hour add-ons that have nothing to do with Sino-Forest's reorganization; they are only sought to be imported into the *CCAA* process for the convenience of non-parties. Third party releases should only be sanctioned when the releases are integral or necessary to the restructuring.[21]

42. The central provision of the Plan is the creation and transfer of notes and shares of Newco and Newco II to affected creditors with proven claims.[22] Settlements and releases involving Third Party Defendants do not affect or impact the restructuring or improve its chances for success.

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[20] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265 at para. 143 (S.C.J.), aff'd, [2008] O.J. No. 3164 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337.
[21] *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017, [2011] O.J. No. 3946 at para. 61 (S.C.J.).
[22] Plan of Compromise and Reorganization dated December 3, 2012, Article 6.

43. The settlement with E&Y provides for the creation of a Settlement Trust to receive settlement consideration.[23] The purpose and operation of the Settlement Trust are not defined in the Plan. The Trust has not been designed to serve any purpose of Sino-Forest.

44. Even the vote of creditors is suspect with regard to the Third Party Defendant settlements and releases. Creditors who voted on the Plan by proxy had to submit their proxies by November 26, 2012, or at the latest (due to the adjournment of the creditors' meeting) on November 30, 2012.[24] Creditors who voted by proxy could not have had knowledge of the settlements and releases when they voted, because the settlements were reached later.

45. Presumably, proponents of the Plan will seek to use the *Allen-Vanguard (Re)*[25] and *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. ("ATB Financial")*[26] cases to try to justify the release provision of the Plan and settlements, but those cases are clearly distinguishable.

46. In *Allen-Vanguard (Re)*, Justice Campbell approved releases of the underwriters (who were non-party defendants) in that *CCAA* proceeding because class counsel, who were the ones seeking to preserve their claims against the underwriters, had failed to object to the release provisions in the Sanction Order, which had been previously entered.[27] The present motion involves a Sanction Order and the Funds are objecting. Accordingly the setting is the opposite of that in *Allen-Vanguard (Re)*.

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[23] Plan of Compromise and Reorganization dated December 3, 2012, Article 11.1(a).
[24] Ordinary Affected Creditors' Proxy, October 24, 2012; Noteholders' Proxy, October 24, 2012.
[25] *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017, [2011] O.J. No. 3946 (S.C.J.).
[26] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265 (S.C.J.), aff'd, [2008] O.J. No. 3164 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337.
[27] *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017, [2011] O.J. No. 3946 at paras. 108-109 (S.C.J.).

47. *ATB Financial* involved releases granted to third party banks through a *CCAA* plan in a "unique" circumstance[28] following a liquidity crisis, which threatened the entire Canadian market in Asset Backed Commercial Paper ("ABCP"), and which was exacerbated by the pendency of the lawsuits in which claims were sought to be released in the *CCAA* plan. Justice Campbell justified allowance of the releases by focusing on the salutary effect of releases on the market -- similar to the more conventional consideration of whether a *CCAA* remedy will assist the applicant in reentering its market. On appeal, the Ontario Court of Appeal affirmed that reasoning.[29] Here, the moving parties cannot articulate any salutary effect on Sino-Forest or any segment of a relevant market that would follow from granting the proposed Third Party Defendant releases. On the contrary, it is suggested that allowing the releases would produce an adverse effect on the perceived integrity of our securities markets, given the importance of motivating auditors and underwriters to fulfill their gatekeeper roles in performing their audit and due diligence responsibilities.[30]

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[28] *Canwest Global Communications (Re)*, 2010 ONSC 4209 at para. 28 (S.C.J.).
[29] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 3164 at para. 56 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337.
[30] Affidavit of Eric J. Adelson sworn December 6, 2012 at para. 17.

## Part IV – ORDER SOUGHT

48. The Funds request that the Court adjourn the Sanction Hearing to January 7, 2012.

49. In the alternative, the Funds request that the Court dismiss the motion to sanction the Plan.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 6TH DAY OF DECEMBER, 2012**

p/c Won J. Kim P.C.

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per Michael C. Spencer

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**Schedule A – Authorities**

*Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017, [2011] O.J. No. 3946 (S.C.J.)

*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265 (S.C.J.), aff'd, [2008] O.J. No. 3164 (C.A.), leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337

*Canwest Global Communications (Re)*, 2010 ONSC 4209 (S.C.J.)

*Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321, [2005] O.J. No. 506 (C.A.)

*Fischer v. IG Investment Management Ltd.*, 2012 ONCA 47 (C.A.), leave to appeal to S.C.C. granted, [2012] S.C.C.A. No. 135

*Locking v. Armtec Infrastructure Inc.*, 2012 ONCA 774 (C.A.)

*Mangan* v. *Inco Ltd.*, [1998] O.J. No. 551 (Gen. Div.)

*Pearson v. Inco* (2001), 57 O.R. (3d) 278, [2001] O.J. No. 4877 (S.C.J.)

*Smith v. Sino-Forest Corp.*, 2012 ONSC 24, [2012] O.J. No. 88 (S.C.J.)

## Schedule B – Legislation

*Class Proceedings Act, 1992,* S.O. 1992, c. 6

**5.** (1) The court shall certify a class proceeding on a motion under section 2, 3 or 4 if,

(a) the pleadings or the notice of application discloses a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;

(c) the claims or defences of the class members raise common issues;

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who,

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and

(iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members. 1992, c. 6, s. 5 (1).

**8.** (1) An order certifying a proceeding as a class proceeding shall,

(a) describe the class;

(b) state the names of the representative parties;

(c) state the nature of the claims or defences asserted on behalf of the class;

(d) state the relief sought by or from the class;

(e) set out the common issues for the class; and

(f) specify the manner in which class members may opt out of the class proceeding and a date after which class members may not opt out. 1992, c. 6, s. 8 (1).

**9.** Any member of a class involved in a class proceeding may opt out of the proceeding in the manner and within the time specified in the certification order. 1992, c. 6, s. 9.

**29.** (1) A proceeding commenced under this Act and a proceeding certified as a class proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate. 1992, c. 6, s. 29 (1).

(2) A settlement of a class proceeding is not binding unless approved by the court. 1992, c. 6, s. 29 (2).

(3) A settlement of a class proceeding that is approved by the court binds all class members. 1992, c. 6, s. 29 (3).

(4) In dismissing a proceeding for delay or in approving a discontinuance, abandonment or settlement, the court shall consider whether notice should be given under section 19 and whether any notice should include,

(a) an account of the conduct of the proceeding;

(b) a statement of the result of the proceeding; and

(c) a description of any plan for distributing settlement funds. 1992, c. 6, s. 29 (4).

*Securities Act*, R.S.O. 1990, c. S.5

1. (1) In this Act,

...

"self-regulatory organization" means a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of its members and their representatives with a view to promoting the protection of investors and the public interest; ("organisme d'autoréglementation")

1.1 The purposes of this Act are,

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets. 1994, c. 33, s. 2.

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

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

(2) A provision for the compromise of claims against directors may not include claims that

(*a*) relate to contractual rights of one or more creditors; or

(*b*) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

**Court File No.: CV-12-9667-00cl**

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

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

Proceeding commenced at Toronto

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**FACTUM of INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., and COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.**
**(Motion for Sanction Order returnable December 7 & 10 2012)**

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