

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*

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

(Motion for Notice Approval)

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Northwest & Ethical Investments L.P., and  
Comité Syndical National de Retraite  
Bâtirente Inc.

**TO: THE SERVICE LIST**

## Part I – OVERVIEW & FACTUAL BACKGROUND

1. Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc. (the “Funds”) object to the lack of meaningful notice proposed in the Notice Plan.
2. The requested Notice Approval pertains to a proposed settlement (“E&Y Settlement”) negotiated between Class Counsel in the Ontario and Quebec class proceedings and Ernst & Young LLP, a defendant in the proceedings.
3. Sino-Forest Corporation, the applicant in the *Companies Creditors Arrangement Act* (“CCAA”) proceeding listed above and a defendant in the class proceedings, applied for CCAA protection on March 30, 2012. More than eight months have elapsed since that time.
4. Class Counsel reached a proposed settlement with one defendant in the class proceeding, Pöyry (Beijing) Consulting Company Limited, on March 20, 2012, shortly before Sino-Forest’s CCAA filing, and undertook a normal process for settlement certification, notice, and approval in the class proceeding court, including an order dated May 17, 2012 approving notice months in advance of the proposed settlement hearing date, and an order dated September 25, 2012, certifying a settlement class for purposes of the Pöyry settlement and approving the settlement. The latter order allows settlement class members to opt out within 60 days (a period which expires in January 2013),<sup>1</sup> and

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<sup>1</sup> Order of the Honourable Justice Perell, September 25, 2012 at para. 20, Motion Record (Notice Approval) of the Plaintiffs, Tab 3, p. 290.

provides that “any aspect of any certification” may be challenged by the other defendants.<sup>2</sup>

5. Sino-Forest filed its first Plan of Compromise and Reorganization in August 2012, and has modified its plan several times since then. Only on the adjourned date for the creditors’ meeting called to consider approval of the plan, December 3, 2012, did the parties introduce proposed provisions, in a new Article 11, for settlement of claims against E&Y and for a “framework” for other third-party (non-party) settlements. The proposed E&Y settlement agreement itself was not disclosed by the parties at that time.

6. Since then, Class Counsel and E&Y, abetted by the other parties in the *CCAA* proceeding, have moved with most unseemly haste to force the entire notice and approval process for the proposed E&Y Settlement into a one-month holiday period, even though the Sanction Order has now been signed and entered on December 12, 2012, and any possible Plan-related reason for early scheduling of settlement approval has disappeared.

7. Class Counsel and E&Y apparently are anxious to schedule the approval hearing prior to the scheduled initial hearing date -- January 7, 2013 -- for the Ontario Securities Commission’s (“OSC’s”) allegations that E&Y breached the Ontario *Securities Act* sections 78(2), 78(3) and 122(1)(b)<sup>3</sup> and did not adhere to the generally accepted auditing standards (“GAAS”) in its auditing of Sino-Forest from 2007 to 2012. The OSC proceedings certainly may be germane to class members’ consideration of the proposed E&Y settlement.

8. The present motion for Notice Approval continues E&Y’s and Class Counsel’s rush to obtain settlement approval without providing affected investors – putative class

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<sup>2</sup> Order of the Honourable Justice Perell, September 25, 2012 at para. 36. Motion Record (Notice Approval) of the Plaintiffs, Tab 3, p. 296.

<sup>3</sup> *Securities Act*, R.S.O. 1990, c. S.5, ss. 78(2), 78(3) and 122(1)(b).

members who were injured by E&Y's misconduct in connection with Sino-Forest matters -- adequate notice, let alone any realistic ability to evaluate the proposed settlement. Even more egregiously, the parties propose to deprive investors of their well-established rights to opt out of class settlements, by forcing through a non-party release and bar order in favor of E&Y, without making the slightest showing that such an extreme measure serves any legitimate purpose in the *CCAA* proceeding.

9. As described more fully below, there is no possible way that adequate notice can be given in advance of the hearing scheduled for January 4, 2013. Since counsel have not articulated any good reason that such haste is appropriate, the only logical conclusion to be drawn is that E&Y and Class Counsel are determined to shield the proposed settlement from the full dose of sunlight it deserves. This Court should not countenance this gross abuse of process.

## **Part II -- ISSUES AND THE LAW**

### **A. Adequate Advance Notice for the Present Motion and Hearing Has Not Been Provided**

10. Class Counsel served their notice of motion and motion materials, without any prior notice of their intent, at 5:55 p.m. on the eve of the requested motion hearing, in breach of the timelines set in *Rules of Civil Procedure*.<sup>4</sup>

11. The Court should refuse to abridge the normal service and time requirements. No explanation or evidence has been provided to excuse non-compliance with the prescribed timelines.<sup>5</sup>

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<sup>4</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, section 37.07(6), requires a notice motion to be served seven days prior to the hearing of a motion.

<sup>5</sup> *Thomas v. Thiessen*, [2009] O.J. No. 1371, 2009 CarswellOnt 1790 at paras. 45-48 (S.C.J.).

12. The Funds and other interested persons have not received adequate notice of this motion and hearing, and submit that the present motion accordingly should be dismissed.

**B. Standards Governing Notices in Class Proceedings:  
The Class Proceedings Act and the Requirements of Natural Justice**

13. The *Class Proceedings Act, 1992* (“CPA”)<sup>6</sup> requires that notice be provided to members of a proposed class in a number of important circumstances -- including on motions for class certification and for settlement approval.

14. The Supreme Court of Canada has recognized the importance of notice to absent class members and its purpose:

¶49 Other procedural issues may arise. One is notice. A judgment is binding on a class member only if the class member is notified of the suit and is given an opportunity to exclude himself or herself from the proceeding. This case does not raise the issue of what constitutes sufficient notice. However, prudence suggests that all potential class members be informed of the existence of the suit, of the common issues that the suit seeks to resolve, and of the right of each class member to opt out, and that this be done before any decision is made that purports to prejudice or otherwise affect the interests of class members.<sup>7</sup>

[Emphasis added]

15. The Ontario Court of Appeal has held that in approving a class action notice, the Court must have regard both to fundamental principles of natural justice and specific class action rules.<sup>8</sup> The Supreme Court of Canada has held that a misleading notice will not comply with the principles of fundamental justice.<sup>9</sup>

16. The Courts in this province have recognized that notice can be subverted and abused:

<sup>6</sup> *Class Proceedings Act, 1992*, S.O. 1992, c. 6 at ss. 17, 19 and 29 (“CPA”).

<sup>7</sup> *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para. 49.

<sup>8</sup> *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321(Ont. C.A.), at para. 42 [“McDonalds”].

<sup>9</sup> *Canada Post Corp. v. Lepine* 2009 SCC 16, at paras. 43-44, ,Book of Authorities (Notice Approval) of the Plaintiffs, Tab 1.

¶22 American courts have recognized that notice in a class action is a powerful instrument that carries with it a great potential for abuse. For example, various parties will have a strong interest in the decisions of Class members to opt out or not. Court supervision of any attempt to systematically notify the class about the case is essential if the opt-out decision is to be informed, balanced and independent:

It is essential that class members' decisions to participate or to withdraw be made on the basis of independent analysis of their own self interest, and the vehicle for accomplishing this is the class notice. See *Impervious Paint Ind. v. Ashland Oil*, 508 F. Supp. 720, 723 (W.D. Ky.), appeal dismissed without op., 659 F.2d 1081 (6th Cir. 1981). Accordingly, it is essential that the district court closely monitor the notice process and take steps necessary to ensure that class members are informed of the opportunity to exclude themselves or to participate in the judgment. *Id.* at 1202; see Fed. R. Civ. P. 23(c)(2).

The notice disseminated to class members is "crucial" to the entire scheme of Rule 23. See *Kleiner* 751 F.2d at 1202 ("In view of the tension between the preference for class adjudication and the individual autonomy afforded by exclusion, it is critical that the class receive accurate and impartial information regarding the status, purposes and effects of the class action."). Notice "sets forth an impartial recital of the subject matter of the suit, informs members that their rights are in litigation, and alerts them to take appropriate steps to make certain their individual interests are protected." *Erhardt v. Prudential Group, Inc.*, 629 F. 2d 843, 846 (2d Cir. 1980); *Impervious Paint Ind.*, 508 F. Supp. at 723.

"It is the responsibility of the court to direct the 'best notice practicable' to class members, Rule 23(c)(2), and to safeguard them from unauthorized, misleading communications from the parties or their counsel." *Erhardt*, 629 F.2d at 846. Misleading communications to class members concerning litigation pose a serious threat to the fairness of the litigation process, the adequacy of representation and the administration of justice generally. *In re School Asbestos Litigation*, 842 F.2d at 680. "Unsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the facts, without opportunity for rebuttal. The damage

from misstatements could well be irreparable." Kleiner 751 F.2d at 1203. Here, I find that unilateral communications with class members by various attorneys were misleading and made it unlikely that class members, who received these communications or were informed of their contents, made an informed choice to exclude themselves from the class.<sup>10</sup>

17. As further explained below, the notice plan proposed by Class Counsel and E&Y fail to satisfy the *Class Proceedings Act, 1992* and the requirements of natural justice, with respect to the timing and dissemination of notice and with respect to its content.

**B. The Proposed Plan Does Not Provide Sufficient Advance Notice For a Settlement Approval Hearing on January 4, 2013**

18. Class Counsel and E&Y propose that notice to the putative class members of the hearing for approval of the E&Y Settlement be provided during the period December 18, 2012 to January 4, 2013. Due to statutory holidays, there are only ten business days in that period.<sup>11</sup>

19. The moving parties give themselves five days to post the Notice on the Class Counsel and Sino-Forest websites; to send the Notice to the June 2, 2011 Shareholder list; to send copies of the Notice to the 196 Canadian brokers known to Class Counsel; to issue a press release related to the Notice; and to publish copies in print publications.<sup>12</sup> If the plan is approved and implementation is commenced immediately, five business days later will be December 27, 2012.<sup>13</sup>

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<sup>10</sup> *Mangan v. Inco Ltd.*, [1998] O.J. No. 551 (S.C.J.) at para. 22.

<sup>11</sup> The ten business days are December 19, 20, 21, 24, 27, 28 and 31, and January 2, 3, 4. This excludes "holidays" as defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, s. 1.03(1) of any Saturday or Sunday, New Year's Day, Christmas Day and Boxing Day.

<sup>12</sup> Proposed Order of the Ad Hoc Committee of Purchasers of the Applicant's Securities, section 3.

<sup>13</sup> If the Notice is approved on December 18, five business days later (December 19, 20, 21, 24 and 27) is December 27, 2012.



20. From December 27, 2012 to January 4, 2013, that leaves only five business days until the settlement approval hearing.<sup>14</sup>

21. The timeframe for responding to notice is even shorter, as the moving parties propose that putative class members who wish to object at the settlement approval hearing must provide notice to Class Counsel at least four days prior to the settlement approval hearing.<sup>15</sup> Due to the holidays, four business days prior to the settlement approval hearing is December 28, 2012.

22. In effect, the proposed notice plan compresses the ability for anyone to object potentially into a one-day period, from notice disseminated on December 27, 2012, to the response deadline of December 28, 2012.

23. Such a timeframe -- whether it is considered to give one or six days' advance notice -- from notice dissemination to the deadline for providing an objection -- is insufficient. This is particularly true for institutions, such as the Funds, that may require approval from internal boards and committees, and that have a large stake in ensuring appropriate corporate governance is maintained.

24. In contrast to the rushed notice period proposed by Class Counsel and E&Y for the hearing on the E&Y Settlement, far more time for notice and response was provided in connection with the Pöyry Settlement Agreement. Back then, the hearing notice was disseminated by the end of May 2012, and the settlement approval hearing was on September 21, 2012. Over three months' advance notice was given.

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<sup>14</sup> The five business days are December 28, 31, January 2, 3 and 4.

<sup>15</sup> Affidavit of Jonathan Ptak sworn December 17, 2012, Motion Record of the Plaintiffs (Notice Approval), Tab 2J, at p. 281.

25. Class Counsel and E&Y are asking this Court to approve what appears to be the shortest notice period in the history of class actions in this country. Notice periods are typically over at least a month in length:

<b>Case</b>	<b>Type of Notice</b>	<b>Notice period</b>
<i>Chrysler Canada Inc. v. Gatens</i> <sup>16</sup>	Certification and Settlement Approval Hearing	1 month
<i>General Motors of Canada Ltd. v. Abrams</i> <sup>17</sup>	Certification and Settlement Approval Hearing	At least 20 days, possibly more
<i>Henault v. Bear Lake Gold Ltd.</i> <sup>18</sup>	Certification and Settlement Approval Hearing	2 months
<i>Lavier v. MyTravel Canada Holidays Inc.</i> <sup>19</sup>	Certification and Settlement Approval Hearing	2.5 months
<i>Nor-Dor Developments Limited et al v. Reline Communications Group Inc et al</i> <sup>20</sup>	Certification and Settlement Approval Hearing	At least 30 days
<i>Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp. (Settlement with Pöyry)</i> <sup>21</sup>	Certification and Settlement Approval Hearing	At least 3 months
<i>Price v. Mattel Canada Inc.</i> <sup>22</sup>	Certification and Settlement Approval Hearing	2 months
<i>Pysznyj v. Orsu Metals Corp.</i> <sup>23</sup>	Certification and Settlement Approval Hearing	1 month
<i>Richard v. British</i>	Certification and	1 month and 10 days

<sup>16</sup> [2010] O.J. No. 4185 (S.C.J.).

<sup>17</sup> [2011] O. J. No. 4175 (S.C.J.).

<sup>18</sup> [2010] O.J. No. 3463 (S.C.J.).

<sup>19</sup> [2012] O.J. No. 1364 (S.C.J.).

<sup>20</sup> Plan of Notice, Schedule C to the Settlement Approval and Certification order, dated November 22, 2011, Book of Authorities (Notice Approval), Tab 8

<sup>21</sup> Pöyry Approval Order and Notice, Motion Record of Plaintiffs (Notice Approval), Tab 3.

<sup>22</sup> 2011 QCCS 2906 (Q.Sup.Ct.).

<sup>23</sup> [2010] O.J. No. 1994 (S.C.J.).

<i>Columbia</i> <sup>24</sup>	Settlement Approval Hearing	
<i>Robertson v. ProQuest Information and Learning Company</i> <sup>25</sup>	Certification and Settlement Approval Hearing	3 months
<i>Wamboldt v. Northstar Aerospace (Canada) Inc.</i> <sup>26</sup>	Certification and Settlement Approval Hearing	20 days
<i>Wiggins v. Mattel Canada Inc.</i> <sup>27</sup>	Certification and Settlement Approval Hearing	21 days

**C. The Supposed Urgency to Approve the Proposed Settlement Has Not Been Explained**

26. Class Counsel’s factum suggests there is “urgency with which this Settlement Agreement must be approved” and “[t]ime is of the essence in regard to the *CCAA* plan in this case”.<sup>28</sup>

27. Nowhere are those assertions explained.

28. The E&Y Settlement is not integral to the Plan Implementation. The E&Y Settlement does not form part of the Sanction Order.<sup>29</sup> Sino-Forest’s restructuring is not conditioned on approval of the E&Y Settlement.

29. In the absence of any explanation of the purported urgency for approving the settlement, the Court should not approve a plan that gives at a maximum only six days<sup>30</sup> advance notice for responding to the settlement proposal.

**D. The Content of the Proposed Notice Is Inadequate**

<sup>24</sup> [2010] B.C.J. No. 1363 (B.C.S.C.).

<sup>25</sup> 2011 ONSC 1647 (S.C.J.).

<sup>26</sup> [2009] O.J. No. 2583 (S.C.J.).

<sup>27</sup> 2011 ONSC 2964 (S.C.J.).

<sup>28</sup> Factum (Notice Approval) of the Plaintiffs, December 17, 2012, at paras. 15, 19.

<sup>29</sup> Endorsement of Justice Morawetz, *Sino-Forest Corporation (Re)*, 2012 ONSC 7050 at para. 48 (S.C.J.).

<sup>30</sup> Six days is calculated to include December 19, 20, 21, 24, 27 and 28, as the objecting material is to be submitted on December 28, 2012.

30. The Proposed Notice does not mention opt out rights, and does not state that members of the putative settlement class are being deprived of normal opt out rights from the E&Y Settlement. There is no mention of the fact that this is remarkable and unprecedented. The ordinary class member would not understand from reviewing the Proposed Notice that he or she will not be able to opt out of the E&Y Settlement if it is approved.

31. The Ontario Court of Appeal has held that notices must use ordinary and clear language in order to comply with the fundamental principles of justice:

¶39 It was open on the evidence for the motion judge to conclude that the wording of the notice was so technical and obscure that the ordinary class member would have difficulty understanding the implications of the proposed settlement on their legal rights in Canada or that they had the right to opt out. As I have already indicated, that right is of vital importance to the jurisdiction of the foreign court in international class action litigation. The right to opt out must be made clear and plain to the non-resident class members and I see no basis upon which to disagree with the motion judge's assessment of this notice.<sup>31</sup>

[Emphasis added]

32. Similarly, the Notice of Motion for the proposed hearing on January 4, 2013, and the accompanying Proposed Notice do not make any reference to certification of a settlement class for the E&Y Settlement.

33. In those two respects, the proposed notice for the E&Y Settlement is markedly different from the notice approved by Justice Perell for the Pöyry Settlement, belying the statement in Class Counsel's factum that they are similar.<sup>32</sup>

#### **E. The Proposed Modes of Notice Distribution Are Inadequate**

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<sup>31</sup> *McDonalds's*, *supra* note 8 at para. 39.

<sup>32</sup> Factum (Notice Approval) of the Plaintiffs, December 17, 2012, at para. 13.

34. The mode of notice is inadequate when it is published in a manner so that it only reaches a small proportion of the members of the class.<sup>33</sup> The Court will not approve notices that are published in modes that are inappropriate for their purpose.<sup>34</sup>

35. The proposed E&Y Settlement is remarkable in that (a) the parties are proposing a complete release for an important, culpable, and solvent defendant in the class action, (b) only the briefest period of advance notice is proposed to be given, (c) that period occurs during the busiest holiday season of the year, (d) the parties have not given any reason for such haste, (e) no motion to certify the settlement class has been made, (f) the parties have not given any reasons for invoking *CCAA* procedures or for pushing this proposed non-party-defendant settlement through using those procedures, and perhaps most importantly (g) the parties propose to deprive putative class members of their fundamental right to opt out.

36. Under those circumstances, the amount of notice being proposed is insufficient. It is doubtful that one weekday publication in the proposed print publications will reach affected investors in time to provide adequate notice and time to respond, and no amount of Twitter and press release add-ons can remedy that problem.

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<sup>33</sup> *McDonald's*, *supra* note 8 at para. 40.

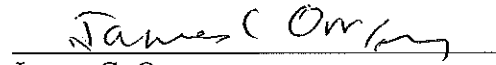
<sup>34</sup> *McDonald's*, *supra* note 8 at para. 40, where notice was published in McLean's magazine was not a typical publication for legal notices such as class action notices.


**Part III – ORDER SOUGHT**

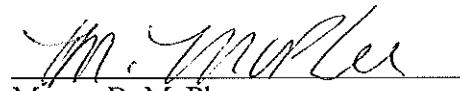
37. The Funds respectfully request that the Court dismiss the motion for Notice Approval.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 18<sup>TH</sup> DAY OF DECEMBER, 2012**

  
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## Schedule A – Authorities

1. *Canada Post Corp. v. Lepine* 2009 SCC 16 (S.C.C.)
2. *Chrysler Canada Inc. v. Gatens* [2010] O.J. No. 4185 (S.C.J.)
3. *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321(C.A.)
4. *General Motors of Canada Ltd. v. Abrams* [2011] O.J. No. 4175 (S.C.J.)
5. *Henault v. Bear Lake Gold Ltd.* [2010] O.J. No. 3463 (S.C.J.)
6. *Lavier v. MyTravel Canada Holidays Inc.* [2012] O.J. No. 1364 (S.C.J.)
7. *Mangan v. Inco Ltd.*, [1998] O.J. No. 551 (S.C.J.)  
  
*Nor-Dor Developments Limited et al v. Reline Communications Group Inc et al*,  
Plan of Notice, Schedule C to the Settlement Approval and Certification order,  
dated November 22, 2011, Book of Authorities of Ad Hoc Committee of  
Purchasers, Tab 8
8. *Price v. Mattel Canada Inc.* 2011 QCCS 2906 (Q.Sup.Ct.)
9. *Pysznyj v. Orsu Metals Corp.* [2010] O.J. No. 1994 (S.C.J.)
10. *Richard v. British Columbia* [2010] B.C.J. No. 1363 (B.C.S.C.)
11. *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647  
(S.C.J.)
12. *Thomas v. Thiessen*, [2009] O.J. No. 1371, 2009 CarswellOnt 1790 (S.C.J.)
13. *Wamboldt v. Northstar Aerospace (Canada) Inc.*[2009] O.J. No. 2583 (S.C.J.)
14. *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (S.C.C.)
15. *Wiggins v. Mattel Canada Inc.* 2011 ONSC 2964 (S.C.J.)
- 16.

## Schedule B – Legislation

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

17. (1) Notice of certification of a class proceeding shall be given by the representative party to the class members in accordance with this section.
- (2) The court may dispense with notice if, having regard to the factors set out in subsection (3), the court considers it appropriate to do so.
- (3) The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to,
- (a) the cost of giving notice;
  - (b) the nature of the relief sought;
  - (c) the size of the individual claims of the class members;
  - (d) the number of class members;
  - (e) the places of residence of class members; and
  - (f) any other relevant matter.
- (4) The court may order that notice be given,
- (a) personally or by mail;
  - (b) by posting, advertising, publishing or leafleting;
  - (c) by individual notice to a sample group within the class; or
  - (d) by any means or combination of means that the court considers appropriate.
- (5) The court may order that notice be given to different class members by different means.
- (6) Notice under this section shall, unless the court orders otherwise,
- (a) describe the proceeding, including the names and addresses of the representative parties and the relief sought;
  - (b) state the manner by which and time within which class members may opt out of the proceeding;
  - (c) describe the possible financial consequences of the proceeding to class members;
  - (d) summarize any agreements between representative parties and their solicitors respecting fees and disbursements;
  - (e) describe any counterclaim being asserted by or against the class, including the relief sought in the counterclaim;
  - (f) state that the judgment, whether favourable or not, will bind all class members who do not opt out of the proceeding;
  - (g) describe the right of any class member to participate in the proceeding;
  - (h) give an address to which class members may direct inquiries about the proceeding; and
  - (i) give any other information the court considers appropriate.
- (7) With leave of the court, notice under this section may include a solicitation of contributions from class members to assist in paying solicitor's fees and disbursements.



19. (1) At any time in a class proceeding, the court may order any party to give such notice as it considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding.

(2) Subsections 17 (3) to (5) apply with necessary modifications to notice given under this section.

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.

(2) A settlement of a class proceeding is not binding unless approved by the court.

(3) A settlement of a class proceeding that is approved by the court binds all class members.

(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.

#### ***Rules of Civil Procedure, R.R.O. 1990, Regulation 194***

1.03(1) "holiday" means,

(a) any Saturday or Sunday,

(b) New Year's Day,

(b.1) Family Day,

(c) Good Friday,

(d) Easter Monday,

(e) Victoria Day,

(f) Canada Day,

(g) Civic Holiday,

(h) Labour Day,

(i) Thanksgiving Day,

(j) Remembrance Day,

(k) Christmas Day,

(l) Boxing Day, and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday; ("jour férié")

37.07 (6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard.

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

78. (2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer or mutual fund prepared in accordance with the regulations.

(3) The auditor of a reporting issuer or mutual fund shall make such examinations as will enable the auditor to make the report required by subsection (2).

122. (1) Every person or company that,

...

(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; or

...

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED, AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, *et al.*

v. Sino-Forest Corporation, *et al.*

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM of INVESCO CANADA LTD.,  
NORTHWEST & ETHICAL INVESTMENTS  
L.P., and COMITÉ SYNDICAL NATIONAL DE  
RETRAITE BÂTIRENTE INC.  
(Motion for Notice Approval Returnable  
December 18, 2012)**

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