

Court of Appeal File No.: C56961 / M42404 / M42453  
S.C.J. Court File No.: CV-12-9667-00CL

**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**

Court of Appeal File No.: C56961 / M42404 / M42453  
S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N :**

**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*

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**MOTION RECORD OF THE RESPONDENTS (APPELLANTS),  
INVESCO CANADA LTD.,  
NORTHWEST & ETHICAL INVESTMENTS L.P.,  
COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.,  
MATRIX ASSET MANAGEMENT INC., GESTION FÉRIQUE, and  
MONTRUSCO BOLTON INVESTMENTS INC.  
(Motions to Quash Returnable June 28, 2013)**

---

May 17, 2013

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Invesco Canada Ltd., Northwest & Ethical  
Investments L.P., Comité Syndical National  
de Retraite Bâtirente Inc., Matrix Asset  
Management Inc., Gestion Férique and  
Montrusco Bolton Investments Inc.

**TO: THE SERVICE LIST**

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# **Tab 1**

Court of Appeal File No.:  
S.C.J. Court File No.: CV-12-9667-00CL

**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**

Court of Appeal File No.:  
S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N :**

**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*

**NOTICE OF MOTION  
(Motion For Directions)**

**THE APPELLANTS (MOVING PARTIES), Invesco Canada Ltd., Northwest &  
Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix**

Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc. (“Appellants”), will make a motion to a judge of the Court of Appeal for Ontario on May 1, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen St. West, Toronto, Ontario.

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

**PROPOSED TIME REQUIRED FOR HEARING:** One hour

**THIS MOTION IS FOR:**

1. an Order waiving or abridging the notice, service and filing obligations pursuant to the *Rules of Civil Procedure* with respect to this motion for directions;
2. if necessary, an Order waiving or abridging the service, notice and filing obligations pursuant to the *Rules of Civil Procedure* and validating any late service and/or filing of the Notice of Motion for Leave to Appeal from the orders dated March 20, 2013 of Justice Morawetz, being the Settlement Approval Order and Representation Dismissal Order;
3. an Order directing that all materials related to this motion, the motions for leave to appeal, and, should leave be granted, all related appeals, may be served by electronic mail, and that proof of receipt of that email is not necessary to validate service for the purpose of filing the materials with the Court;
4. an Order consolidating the present motion for leave to appeal with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 (“Sanction Order”), and, should leave be granted, all related appeals;



5. an Order directing that the hearings of the motions for leave to appeal and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order be consolidated and heard together before a panel of three judges, orally;
6. an Order expediting the hearing of all such motions for leave to appeal and all such appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order;
7. an Order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and
8. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary.

**THE GROUNDS FOR THE MOTION ARE:**

1. The present motion for leave to appeal and the motion for leave to appeal the Sanction Order, pending in Court of Appeal File No.: M42068, concern a common principal issue: under what circumstances are non-debtor third-party releases available in *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") restructuring plans;

2. The present motions for leave, the motion for leave to appeal the Sanction Order, and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order should be heard together as soon as possible by this Court;
3. The proposed within appeals raise serious issues of importance to the parties which affect the parties, the capital markets and the administration of justice in Canada;
4. The Plan of Compromise and Reorganization of Sino-Forest Corporation has been implemented and the *CCAA* litigation stay has expired. The proposed appeal and this motion for directions will not unduly hinder the progress of the *CCAA* proceeding;
5. The Applicant and Respondents in this proceeding will not suffer prejudice if the relief sought herein is granted;
6. The Service List is lengthy and service by facsimile is onerous for the parties. Service by electronic mail is a just, fair, efficient and expeditious manner for effecting service;
7. The Initial Order of Justice Morawetz under the *CCAA* proceedings, dated March 30, 2012, provided that “the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website”;
8. It would be an efficient use of resources to transfer the materials filed on the hearings before Justice Morawetz to the Court of Appeal;

9. The *CCAA*, in particular, sections 6, 13, and 14 thereof;
10. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*;
11. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
12. Rules 1.04, 2.01, 6.01, 10, 16.08, 37, and 61 of the *Rules of Civil Procedure*;
13. Section 11.2 of the *Practice Direction Concerning Civil Appeals in the Court of Appeal*; and
14. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
3. Sections 13 and 14 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

**THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING OF THE MOTION:**

1. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013);
2. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012);
3. All orders made, and the Monitor's reports filed, in the *CCAA* proceedings; and
4. such other documents as counsel may advise and this Honourable Court may permit.

6

April 17, 2012

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Ltd., Northwest & Ethical Investments L.P.,  
Comité Syndical National de Retraite  
Bâtirente Inc., Matrix Asset Management  
Inc., Gestion Férique and Montrusco Bolton  
Investments Inc.

**TO: THE SERVICE LIST**

Court of Appeal File No.:  
Commercial Court File No.: CV-12-9667-00CL

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 of Appeal File No.:  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.  
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.

Defendants

*COURT OF APPEAL FOR ONTARIO*

(Proceeding Commenced at Toronto)

NOTICE OF MOTION  
(Motion For Directions)

**KIM ORR BARRISTERS P.C.**

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Investments L.P., Comité Syndical National de Retraite  
Bâtiment Inc., Matrix Asset Management Inc., Gestion  
Férique and Montrusco Bolton Investments Inc.

## **Tab 2**

Court of Appeal File No.: M42404  
S.C.J. Court File No.: CV-12-9667-00CL

**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**

Court of Appeal File No.: M42404  
S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

**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*

**AMENDED NOTICE OF MOTION  
(Motion For Directions)**

**THE APPELLANTS (MOVING PARTIES), Invesco Canada Ltd., Northwest &  
Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix**

Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc. (“Appellants”), will make a motion to a judge of the Court of Appeal for Ontario on May 1, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen St. West, Toronto, Ontario.

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

**PROPOSED TIME REQUIRED FOR HEARING:** One hour

**THIS MOTION IS FOR:**

1. an Order waiving or abridging the notice, service and filing obligations pursuant to the *Rules of Civil Procedure* with respect to this motion for directions;
2. if necessary, an Order waiving or abridging the service, notice and filing obligations pursuant to the *Rules of Civil Procedure* and validating any late service and/or filing of the Notice of Motion for Leave to Appeal from the orders dated March 20, 2013 of Justice Morawetz, being the Settlement Approval Order and Representation Dismissal Order;
3. an Order directing that all materials related to this motion, the motions for leave to appeal, and, should leave be granted, all related appeals, may be served by electronic mail, and that proof of receipt of that email is not necessary to validate service for the purpose of filing the materials with the Court;
4. an Order consolidating the present motion for leave to appeal with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 (“Sanction Order”), and, should leave be granted, all related appeals;



5. an Order directing that the hearings of the motions for leave to appeal and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order be consolidated and heard together before a panel of three judges, orally;
6. an Order directing that the hearing on the motion to quash the Appellants' Notice of Appeal in Court of Appeal File No. C56961 be consolidated and heard together, orally, before the same panel of three judges assigned to hear the motions for leave to appeal and, should leave be granted, all related appeals;
7. an Order expediting the hearing of all such motions for leave to appeal and all such appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order;
8. an Order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and
9. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary.

**THE GROUNDS FOR THE MOTION ARE:**

1. The present motion for leave to appeal and the motion for leave to appeal the Sanction Order, pending in Court of Appeal File No.: M42068, concern a common principal issue: under what circumstances are non-debtor third-party releases available in *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*") restructuring plans;
2. The present motions for leave, the motion for leave to appeal the Sanction Order, and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order should be heard together as soon as possible by this Court;
3. The proposed within appeals raise serious issues of importance to the parties which affect the parties, the capital markets and the administration of justice in Canada;
4. Judicial economy would be served by directing that the motion to quash the Appellants' Notice of Appeal in Court of Appeal File No. C56961 be heard at the same time as the consolidated hearing for the motions for leave to appeal and all related appeal;
5. The Plan of Compromise and Reorganization of Sino-Forest Corporation has been implemented and the *CCAA* litigation stay has expired. The proposed appeal and this motion for directions will not unduly hinder the progress of the *CCAA* proceeding;
6. The Applicant and Respondents in this proceeding will not suffer prejudice if the relief sought herein is granted;

7. The Service List is lengthy and service by facsimile is onerous for the parties. Service by electronic mail is a just, fair, efficient and expeditious manner for effecting service;
8. The Initial Order of Justice Morawetz under the *CCAA* proceedings, dated March 30, 2012, provided that “the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels’ email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor’s Website”;
9. It would be an efficient use of resources to transfer the materials filed on the hearings before Justice Morawetz to the Court of Appeal;
10. The *CCAA*, in particular, sections 6, 13, and 14 thereof;
11. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*;
12. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
13. Rules 1.04, 2.01, 6.01, 10, 16.08, 37, and 61 of the *Rules of Civil Procedure*;
14. Section 11.2 of the *Practice Direction Concerning Civil Appeals in the Court of Appeal*; and
15. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:**

1. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
3. Sections 13 and 14 *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

**THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING  
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1. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013);
2. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012);
3. All orders made, and the Monitor's reports filed, in the *CCAA* proceedings; and
4. such other documents as counsel may advise and this Honourable Court may permit.

April 17, 2012

**KIM ORR BARRISTERS P.C.**  
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Lawyers for the Appellants, Invesco Canada  
Ltd., Northwest & Ethical Investments L.P.,  
Comité Syndical National de Retraite  
Bâtirente Inc., Matrix Asset Management  
Inc., Gestion Férique and Montrusco Bolton  
Investments Inc.

**TO: THE SERVICE LIST**

Court of Appeal File No.: M42404  
Commercial Court File No.: CV-12-9667-00CL

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 of Appeal File No.: M42404  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.  
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.

Defendants

*COURT OF APPEAL FOR ONTARIO*

(Proceeding Commenced at Toronto)

AMENDED NOTICE OF MOTION  
(Motion For Directions)

**KIM ORR BARRISTERS P.C.**  
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Investments L.P., Comité Syndical National de Retraite  
Bâtirente Inc., Matrix Asset Management Inc., Gestion  
Férique and Montrusco Bolton Investments Inc.

## **Tab 3**

Court of Appeal File No.: M4344ps  
Commercial Court File No.: CV-12-0047-0001

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 of Appeal File No.: M4344ps  
Superior Court File No.: CV-10-010800CF

THE TRUSTEES OF THE LABORERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al  
Plaintiffs

- and - SINO-FOREST CORPORATION, et al

Defendants

COURT OF APPEAL FOR ONTARIO

COURT OF APPEAL FOR ONTARIO

BEFORE: SIMMONS JA

DATE: August 2013

DISPOSITION OF MOTION

MOTION RECORD OF THE MOVING PARTIES  
(APPELLANTS) (Notes for Directions)

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Lawyers for the Moving Parties (Appellants), Investors Canada Ltd., Northshore & Federal Investments L.P., Credit Symbolical National de Banque Biltmore Inc., Matrix Asset Management Inc., Canadian Foreign and International Business Investments Inc.

*Order to go to follow:  
1 of same motion for the  
next had appeared order & the  
Reportation also miss of order to  
be produced by Mar 16/13  
supplied that said dated by  
Mar 17/13*

- 3. The case notes for the standard order to be consolidated with the case notes for the settlement order & represented in a combined order.
- 4. Action to be taken to be ordered for hearing during the same week the case notes are listed (probably Monday or Tuesday)
- 5. The issue of a representation for the purposes of the appeal reserved to the case panel or the appeal panel as the issues of representation are of appeal.
- 6. Service of all documents on



by e-mail; proof of service  
dispensed with

7. Reply / actions, if any, ~~to be~~  
determined within 5 days of  
response returned.

8. Perfection of the appeal not required  
leave suspended pending the matter  
to quash; in other words time shall  
not run.

9. Leave motions to be lodged for  
the week of Jan 27/13, the  
motion to quash is set for.

Jan 28/13      30min MOVING PARTY  
20min RESPONDING PARTY.

10. Costs of today assessed to the  
Respondent being the ~~cost~~ <sup>cost</sup> of motion & return <sup>to</sup> quash.

Court of Appeal File No.: M42404  
Commercial Court File No.: CV-12-9667-00CL

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 of Appeal File No.: M42404  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.  
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**AFFIDAVIT OF TANYA T. JEMEC**  
sworn April 22, 2013

**KIM ORR BARRISTERS P.C.**  
19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario: M5V 1H2

Michael C. Spencer (LSUC #59637F)  
Won J. Kim (LSUC #32918H)  
Megan B. McPhee (LSUC #48351G)  
Tel: (416) 349-6574  
Fax: (416) 598-0601

Lawyers for the Moving Parties (Appellants), Invesco  
Canada Ltd., Northwest & Ethical Investments L.P., Comité  
Syndical National de Retraite Bâtière Inc., Matrix Asset  
Management Inc., Gestion Férique and Montrusco Bolton  
Investments Inc.

11. The motion to  
consolidate the two  
motions + the appeals  
is dismissed.

**Typed version of handwritten motion endorsement**

**The Trustees of the Labourers' Pension Fund of Central and Eastern  
Canada et al v. Sino-Forest Corporation et al**

**Court File No.: M42404 (M42399)**

**Heard: May 1, 2013**

**Simmons J.A.:**

[1] Order to go as follows:

1. Leave motion for the settlement approval order and the representation dismissal order to be perfected by May 10, 2013 and responding material delivered by May 17, 2013.
2. Motion to quash to be perfected by May 10, 2013.
3. Leave motion for the sanction order to be consolidated with the leave motion for the settlement order and representation dismissal order.
4. Motion to quash to be listed for hearing during the same week the leave motions are listed (preferably Thursday or Friday).
5. The issue of representation for the purposes of any appeal reserved to the leave panel or the appeal panel as are issues of expediting any appeals.
6. Service of all documents may be by email; proof of service dispensed with.

7. Reply factums, if any, to be delivered within 5 days of responding material.
8. Perfection of the appeal not requiring leave suspended pending the motion to quash; in other words time shall not run.
9. Leave motions to be listed for the week of June 24, 2013, the motion to quash is set for June 28, 2013 – 30 minutes for the moving party, 20 minutes for the responding party.
10. Costs of today reserved to the panel hearing the leave motions and motion to quash.
11. The motion to consolidate the leave motions and the appeals is dismissed.

“Janet Simmons J.A.”

## **Tab 4**

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 ERIC J. ADELSON**  
**(Sworn January 18, 2013)**

I, ERIC J. ADELSON, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Senior Vice President, Secretary, and Head of Legal of Invesco Canada Ltd. (“Invesco”) and as such I have personal knowledge of the matters to which I depose in this affidavit.

2. Invesco was established in 1981 and is one of Canada’s leading investment management companies, with approximately \$24 billion in assets under management. Invesco’s parent company, Invesco Ltd., is a leading independent global investment manager with approximately \$680 billion in assets under management.

3. I respectfully submit this affidavit in support of Invesco’s and the other Objectors’<sup>1</sup> objections to the proposed settlement between the plaintiffs (“Ontario Plaintiffs”) in the *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, Court file No. 11-CV-431153CP (“Class Action”) and Ernst & Young LLP and its related entities (“E&Y”) (the “E&Y Settlement”).

4. I also respectfully submit this affidavit in support of the motion by Invesco under Rule 10.03 of the *Rules of Civil Procedure* for relief from the binding effect of a Representation Order and a Settlement Approval Order in the event this Court appoints the Ontario Plaintiffs as representatives of all Securities Claimants and grants the proposed Settlement Approval Order.

#### **Objections to the E&Y Settlement**

5. Invesco objects to the E&Y Settlement as follows:

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<sup>1</sup> Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc.

- a) It was improper for the Ontario Plaintiffs to have traded away the opt out rights of class members in this Class Action, or to have rendered such opt out rights illusory, by agreeing to provide a full and final release under Article 11.1 (“Release”) of the Plan of Compromise and Reorganization (“Plan”) of the claims of Securities Claimants (as defined in Schedule A of the proposed order) against E&Y in this *Companies’ Creditors Arrangement Act* (“CCAA”) proceeding, in return for what the Ontario Plaintiffs’ counsel believe to be a “substantial premium” amount to be paid by E&Y into the proposed Settlement Trust;
- b) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement and any release of Securities Claimants’ claims against E&Y, in this CCAA proceeding, under the present circumstances;
- c) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement of class members’ claims against E&Y in this Class Action without either (a) excluding the persons who opted out in response to the Pöyry notice if the Pöyry opt out procedure is found to have been proper, or (b) providing for certification, notice, and opt out rights to Securities Claimants in connection with this settlement – and in either case assuring that any such opt outs are not illusory by virtue of any Releases as described above;



- d) it is improper and belated for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, the requested representation order in connection with the Release and settlement described above;
- e) it is improper for the Ontario Plaintiffs to present, and it would be improper for the Court to consider and approve, the E&Y Settlement in instalments, particularly in the absence of any plan for distributing any funds deposited in the proposed Settlement Trust. In the absence of a distribution plan, the Objectors cannot evaluate the sufficiency of the E&Y settlement consideration; and
- f) the Objectors reserve the right to supplement these grounds in response to further information emerging in these proceedings.

Attached hereto and marked as Exhibit "A" is the Notice of Objection of Invesco dated January 17, 2013.

6. Invesco caused mutual funds managed by it ("Funds") to purchase a large amount of Sino-Forest shares during the class period. Those Funds held those shares on June 2, 2011, and suffered substantial losses. I and others at Invesco were aware of the ensuing class litigation and knew Invesco was an absent class member in the Class Action. We were also aware that Sino-Forest sought *CCAA* protection, but we did not anticipate that the apparently routine activity in the *CCAA* proceedings would affect Invesco's rights as against E&Y and other defendants in the Class Action, other than as against Sino-Forest and its subsidiaries and perhaps against the company's directors and officers to some extent.

7. Invesco retained Kim Orr Barristers P.C. ("Kim Orr") in mid-November 2012 when it appeared that upcoming events in the Sino-Forest *CCAA* proceedings might affect investors' rights. However, I did not see anything in the *CCAA* proceedings that could or would imperil Invesco's right to proceed separately against E&Y or any other "third-party defendants" if Invesco determined that such a course of action would be prudent once a class was certified or a settlement was proposed, because I believed that opt out rights would be provided as a matter of normal procedure in the Class Action.

8. I believe that there was nothing in the pre-December 3, 2012 versions of the Plan which raised concern at Invesco. In fact, the November 28, 2012 version of the Plan preserved under Article 7.5 the equity Class Action claims against third-party defendants. Attached as Exhibit "B" is a true copy of the November 28, 2012 Plan.

9. On December 3, 2012, Class Counsel announced that a settlement had been entered into with E&Y, whereby E&Y would pay \$117 million into a Settlement Trust formed as part of the *CCAA* proceedings, in return for release of all claims that could be advanced against E&Y by any person in connection with Sino-Forest. Also on December 3, 2012, an amended Plan was filed. For the first time in the *CCAA* proceedings, Article 11 of this Plan contained a so called "framework" for settlement of claims against third-party defendants, including specific provisions concerning the settlement by and Releases for E&Y, and also allowing Named Third Party Defendants to avail themselves of similar provisions for unspecified settlements and Releases in the future.

10. The disclosures of the proposed E&Y Settlement and the Plan "framework" in early December 2012 caused me to have grave concerns about the direction of these proceedings, about the preservation of investors' opt out rights as against E&Y and other

third-party defendants, and ultimately about investors' ability to obtain a fair adjudication of the merits of their claims against E&Y and other third-party defendants.

11. I previously submitted my affidavit in this *CCAA* proceeding, sworn on December 6, 2012, requesting an adjournment of the application before the Court at that time and offering preliminary reasons for objecting to the Plan's Release provisions. As I stated at paragraph 10 of my December 6, 2012 affidavit, the Ontario Securities Commissions ("OSC") issued a Statement of Allegations against E&Y on December 3, 2012, alleging that E&Y had failed to comply with Generally Acceptable Auditing Standards in connection with its audits of Sino-Forest's financial statements.<sup>2</sup> Attached hereto and marked as Exhibit "C" is a real and true copy of my affidavit sworn December 6, 2012.

12. Since that time, the events that have unfolded have deepened my objections to the Plan, which this Court subsequently sanctioned in the Order of Justice Morawetz dated December 10, 2012, and to the E&Y Settlement, which is now before this Court for review in both the *CCAA* and *Class Proceedings Act, 1992* ("*CPA*") contexts.

13. The statements I made in my December 6, 2012 affidavit remain valid, and I respectfully adopt them in support of Invesco's objections.

14. I expressed concerns, in paragraph 15 of my December 6, 2012 affidavit, that the Plan "framework" might have been devised to allow E&Y to "bind investors to [a] settlement without giving them the opportunity to opt out and pursue their claims on the merits outside the Class Action."

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<sup>2</sup> Statement of Allegations against Ernst & Young by the Ontario Securities Commission dated December 3, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab FF, at p. 825.

15. This Court, in its Endorsement denying Invesco's request to adjourn the Sanction Hearing dated December 10, 2012, determined that such concerns were premature and should be addressed in connection with a later motion for approval of the settlement with E&Y.<sup>3</sup> That time has now arrived. It appears to me that my previously expressed concerns were and are wholly valid. Invesco accordingly renews its strenuous objection and opposition to approval of this settlement.

16. I have not seen anything to indicate that either the "framework" or the Minutes of Settlement between the Ontario Plaintiffs and E&Y was or is necessary for the remainder of the Plan to be implemented.

17. Invesco was also mindful that Class Counsel had reached a proposed settlement with Pöyry (Beijing) Consulting Company Ltd ("Pöyry"), one of the defendants in the Class Action, on March 20, 2012, and that January 15, 2013, was the opt out deadline established by the class action court in connection with that settlement. Invesco determined to opt out, inasmuch as we were not satisfied with Class Counsel's representation of our interests as a class member. A true copy of Invesco's opt out form without Invesco's trading records is attached as Exhibit "D".

18. It appeared to us that the Pöyry opt out procedure might involve a "Catch 22" provision -- if we opted out to pursue our remedies individually, we might be giving up our ability to share in any settlement proceeds, but the proposed full Release of E&Y might prevent us from seeking remedies on our own, thus making the opt out right illusory. Accordingly, in an effort to avoid such a trap, our opt out form states that:

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<sup>3</sup> Plan Sanction Endorsement dated December 10, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab E1, at p. 215-216 at paras. 20, 22-25.

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 Invesco Canada Ltd. Otherwise this opt out right would be wholly illusory.

19. I believe that following the sanction hearing, Class Counsel disseminated a memorandum in which they openly stated they “believe that E&Y paid a substantial premium in order to be released from all claims through the Insolvency Proceeding.” Attached hereto and marked as Exhibit “E” is a true copy of the Memorandum by Siskinds LLP to institutional investors dated December 31, 2012. That Memorandum incorrectly stated that Invesco “ignored” an invitation to discuss the E&Y Settlement with Class Counsel; in fact, I had gone out of town for the holidays by the time that invitation was extended. Furthermore, on January 11, 2013, Invesco participated in a teleconference with Class Counsel on a without prejudice basis.

20. As stated at paragraph 16 of my December 6, 2012 affidavit, Invesco does not view the Ontario Plaintiffs and Class Counsel, with whom it has no direct relationship, as authorized to represent its interests in connection with Sino-Forest and/or E&Y. Invesco never instructed Class Counsel to bargain away Invesco’s right to opt out of the Class Action.

21. Invesco views the grant of no-opt-out Releases to third-party defendants to constitute a misuse of the *CCAA* process.

22. On January 11, 2013, Invesco’s concerns about the misuse of the *CCAA* to grant third-party defendants no-opt-out Releases were reinforced when it was announced that

Allen Chan, alleged by the OSC to have committed fraud in connection with Sino-Forest<sup>4</sup>, was added as a Named Third Party Defendant and thus became eligible to receive a Release under Article 11.2 of the Plan without opt outs. Attached as Exhibits "F", "G" and "H" are the letters from Jennifer Stam to the Service List dated January 11, 2013, the response from Kim Orr, dated January 11, 2013, and the reply dated January 12, 2013, respectively.

23. Under the present circumstances, Invesco is unable to assess the adequacy and fairness of the proposed settlement amount offered by E&Y:

- a) Invesco and its counsel have not been provided access to any documents relating to E&Y's audit work at Sino-Forest. I believe that Class Counsel has not had full access to such documents either;
- b) investigations by the OSC and the RCMP into E&Y's audit work at Sino-Forest have not been completed and the results have not been reported to the public;
- c) the amount of insurance coverage available to E&Y with respect to its audit work for Sino-Forest has not been publicly disclosed; and,
- d) it is not yet established whether E&Y or its agents had knowledge that Sino-Forest's public representations (including its financial statements) concerning the company's assets and business operations were materially false, or whether those parties were reckless in not recognizing those facts.

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<sup>4</sup> Statement of Allegations issued against Sino and certain officers and directors issued by the Ontario Securities Commission dated May 22, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab EE, at p. 786.

24. Approval of the E&Y Settlement in these circumstances would send a signal to publicly listed companies, professional service firms, and other third parties that may be accused of securities fraud, that the *CCAA* process can be used by them to procure settlements and Releases of the claims against them without providing opt out rights to injured investors.

**Ontario Plaintiffs Should Not Be Appointed as Representatives**

25. The Ontario Plaintiffs and Class Counsel should not be appointed under Rule 10 of the *Rules of Civil Procedure* to represent Invesco and the other Objectors represented by Kim Orr. Kim Orr already represents our interests.

26. The Ontario Plaintiffs and Class Counsel previously sought to represent class members in the *CCAA* proceeding, but that motion was never granted.

27. I do not believe that the Ontario Plaintiffs and Class Counsel have properly represented Invesco's interests in this matter, and in fact they have acted contrary to our interests, as described above.

28. The fact that Class Counsel believe that the proposed settlement consideration includes a "substantial premium" attributable to the negation of opt out rights also leads me to conclude that Class Counsel are in a conflict position with investors who seek to opt out, in that Class Counsel will seek an award of class counsel fees based on a percentage of the overall settlement consideration, which reportedly includes a premium reflecting loss of our opt out rights. Attached as Exhibit "I" is, to the best of my knowledge and belief, an excerpt from a true copy of Contingency Fee Joint Retainer

Agreement between the Ontario Plaintiffs and Class Counsel signed in July and August 2012.

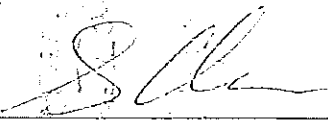
29. The Ontario Plaintiffs' representation request is particularly misguided in that it seeks to vest authority in Class Counsel retroactively, to provide a veneer of regularity over a previously negotiated settlement to which Invesco in fact objects.


**Order Requested**

30. Invesco respectfully requests that this Court dismiss the motion to approve the E&Y Settlement.

31. In the alternative, Invesco respectfully requests that relief from the binding effect of the Representation Order and Settlement Approval Order be granted to Invesco and the other Objectors represented by Kim Orr.

SWORN before me at the City of )  
Toronto, in the Province of Ontario, )  
this 18<sup>th</sup> day of January, 2013. )

  
\_\_\_\_\_  
A Commissioner for taking affidavits. )

  
\_\_\_\_\_  
ERIC J. ADELSON



# **Tab A**

This is Exhibit "E" to the affidavit of Eric J. Adelson,  
sworn before me at the City of Toronto, in the Province  
of Ontario, this 18<sup>th</sup> day of January, 2013.



---

A Commissioner for taking affidavits.

100 Lombard Street, Suite 302, Toronto, ON M5C 1M3



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## MEMORANDUM

FROM Siskinds LLP  
DATE December 31, 2012  
SUBJECT The Ernst & Young Settlement in the Sino-Forest Securities Litigation

We write in response to disinformation circulated recently by the Toronto-based law firm of Kim Orr PC ("Kim Orr"), in connection with a class action (the "Ontario Action") pending in the Ontario Superior Court of Justice (the "Court") against Sino-Forest Corporation ("Sino") and certain other defendants, including Ernst & Young LLP ("E&Y"), Sino's former auditors.

By way of background, our firm and the Toronto-based law firm of Koskie Minsky LLP (together, "Siskinds-Koskie") are counsel to the plaintiffs in the Ontario Action. Siskinds-Koskie were appointed as such by the Court in January 2012. Two other law firms vied with Siskinds-Koskie for the role of counsel to the putative class, including Kim Orr. When the Court appointed Siskinds-Koskie to act for the putative class, it ranked Kim Orr last of the three competing counsel groups.

It has come to our attention that Kim Orr has sent correspondence to various institutional investors in which Kim Orr claims to have a better appreciation of the class members' interests than Court-appointed counsel to the putative class. We have reviewed the Kim Orr correspondence and write to you in order to respond to Kim Orr's criticisms of the proposed settlement with E&Y ("E&Y Settlement"). Kim Orr's criticisms are meritless.

Preliminarily, we note that Kim Orr has never requested an explanation of the rationale for the E&Y Settlement from us. In fact, on December 12, 2012, we invited Kim Orr and its clients to discuss the E&Y settlement with us. They ignored that invitation.

The proposed E&Y Settlement is for CAD\$117 million. This is by far the largest auditor settlement in the history of Canadian securities class actions. It is also, to the knowledge of Siskinds-Koskie, the fifth largest auditor settlement of a securities class action in the world. By any rational measure, the E&Y Settlement is, in the words of Kim Orr partner Won Kim, "a very big settlement."

Kim Orr's correspondence also neglects to mention that the historic E&Y Settlement enjoys the support of numerous large institutions, including:

- Paulson & Co., the largest holder of Sino shares prior to the release of the Muddy Waters report in June 2011 (approximately 14% of Sino's outstanding shares);
- Davis Selected Advisers LP, the second largest holder of Sino shares prior to the Muddy Waters report (approximately 13% of Sino's outstanding shares);

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- The trustees of the Labourers' Pension Fund of Central and Eastern Canada, one of the representative plaintiffs, a pension fund with more than \$2.5 billion in assets;
- The trustees of the International Union of Operating Engineers, one of the representative plaintiffs, a pension fund with more than \$1.5 billion in assets; and
- Sjunde AP-Fonden, one of the representative plaintiffs, the Swedish National Pension Fund managing approximately \$15.9 billion in assets.

Collectively, these institutions have a stake in the litigation which dwarfs that of Kim Orr's clients.

The class reached the historic E&Y Settlement despite a range of challenges, including an auditor liability limit under Canada's statutory regime for secondary market misrepresentation which may well be less than \$10 million. Siskinds-Koskie was also obliged to contend with a Canadian insolvency proceeding instituted by Sino in March 2012 (the "Insolvency Proceeding"). The Insolvency Proceeding resulted in a stay of the Ontario Action, and had the potential to result in the release of all claims against E&Y for a sum that is far less than \$117 million.

In considering Kim Orr's assertions, you should also be aware that Kim Orr has not participated in the Insolvency Proceeding, has not reviewed relevant audit documents that were produced in the course of that proceeding, did not seek to participate in the mediation and other settlement discussions that took place during that proceeding, and took no overt steps to further the interests of its clients or those of other members of the putative class in the Insolvency Proceeding, notwithstanding that Kim Orr was aware of and actively monitored the Insolvency Proceeding. By contrast, Siskinds-Koskie took numerous steps to protect the interests of the putative class in the Insolvency Proceeding, including filing a proof of claim on behalf of the putative class to ensure that the claims of its members were not extinguished.

In its correspondence, Kim Orr also complains that the E&Y Settlement does not provide for opt out rights, and warns that this is an ominous precedent for investor rights in Canada. What Kim Orr ignores is that this feature of the E&Y Settlement arises in the peculiar context of the Insolvency Proceeding. It is not a precedent for class actions generally in Canada. On the contrary, the absence of opt-out rights has long been a standard feature of Canadian insolvency proceedings. Moreover, Siskinds-Koskie believe that E&Y paid a substantial premium in order to be released from all claims through the Insolvency Proceeding.

Finally, in its correspondence, Kim Orr claims that the settlement approval process is being conducted with "unseemly haste." In fact, Siskinds-Koskie have been working and continue to work to an expedited schedule that is coordinated with Sino's Insolvency Proceeding, with the goal of ensuring that the putative class does not lose the opportunity for this extraordinary

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settlement. All steps taken in the Insolvency Proceeding are subject to court supervision, and the date for the court's consideration of the settlement was set by the court, on notice to Kim Orr, after hearing Kim Orr's objections. Regardless, events have unfolded in a way that has permitted the settlement approval hearing to be adjourned from January 4, 2013 to February 4, 2013, so as to afford class members additional time to evaluate the settlement.

### Conference Calls

Members of the putative class should make their own assessment of the fairness and reasonableness of the E&Y Settlement. For this purpose, Siskinds-Koskie will be hosting two conference calls to discuss the settlement with members of the putative class. If you are a member of the putative class,<sup>1</sup> we hope that you can join us to discuss the E&Y Settlement, an opportunity which Kim Orr and its clients have regrettably disregarded.

The conference calls are limited to the members of the putative class, namely, persons who bought any securities of Sino between March 31, 2006 and August 26, 2011 ("Class Members") and their counsel. Each participant will be required to provide his or her name and, if calling on behalf an organization that purchased Sino securities during that period, the name of his or her organization.

Participants should dial-in 15-20 minutes in advance of the call. Each conference call will include a presentation followed by a Q&A session.

Date	Time	Dial-in Numbers
Wednesday, January 9, 2013	10:00 a.m. (EST)	Tel: 416-340-2216 Toll-free: 866-226-1792
Thursday, January 17, 2013	4:30 p.m. (EST)	Tel: 416-340-2216 Toll-free: 866-226-1792

<sup>1</sup> For purposes of the E&Y Settlement, the putative class includes all persons and entities, wherever they may reside, who purchased securities of Sino between March 31, 2006 and August 26, 2011.

100 Lombard Street, Suite 302, Toronto, ON M5C 1M3

**SISKINDS** | THE  
LAW  
FIRM

Website

Siskinds-Koskie will post the settlement approval materials on their websites at the addresses provided below no later than January 12, 2013. For further information about this settlement, or if you are unable to participate in the calls, we encourage you to consult our websites at:

- <http://www.classaction.ca/classaction-ca/master-page/actions/Securities/Current-Actions/Sino-Forest-Corp.aspx>
- <http://www.kmlaw.ca/Case-Central/Overview/?rid=143>

**About Siskinds LLP and Koskie Minsky LLP**

In both 2010 and 2011, Securities Class Action Services, a unit of Institutional Shareholder Services (ISS), named Siskinds LLP the top Canadian law firm in its annual global ranking of the world's 50 leading securities class action law firms. Siskinds was co-lead counsel in the *Imax Securities Litigation*, the first securities class action in which leave was granted to commence an action under Part XXIII.1 of the Ontario *Securities Act*. Siskinds has been lead or co-lead counsel in every Ontario securities class action in which leave was granted. Siskinds was also the first law firm to secure certification of a class proceeding under the *Class Proceedings Act, 1992*.

Koskie Minsky LLP is a 45-lawyer firm in Toronto specializing in class actions, pension and benefits, trade union labour law, employment law, civil litigation and construction law. Its class action group consists of 10 lawyers who specialize in cases relating to institutional abuse, securities fraud, pension fund mismanagement, consumer protection and employment issues. It has been involved in many of the leading cases across Canada and has recovered more than 4 billion dollars for its class action clients.

## **Tab 5**

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 TANYA T. JEMEC**  
 (Sworn January 18, 2013)




I, Tanya T. Jemec, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an Associate at Kim Orr Barristers P.C. ("Kim Orr") and as such have personal knowledge of the matters to which I depose in this affidavit.
2. Kim Orr represents a group of six Securities Claimants as that term is defined in Appendix A to the draft Settlement Approval Order: Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc., which purchased shares of Sino-Forest Corporation ("Sino-Forest") (together, the "Objectors").
3. The Objectors have submitted notices of objection to the proposed settlement between the plaintiffs ("Ontario Plaintiffs") in the *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, Court file No. 11-CV-431153CP ("Class Action") and Ernst & Young LLP and its related entities ("E&Y") (the "E&Y Settlement").
4. Attached hereto and marked as Exhibits "A" to "D" are true copies of the Notices of Objection for Northwest & Ethical Investments L.P., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc.
5. Attached hereto and marked as Exhibits "E" to "H" are true copies of the opt out forms (without trading records) for Northwest & Ethical Investments L.P., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc., respectively.
6. It is my belief from reviewing the trading records that the Objectors have purchased a total of 6,275,422 shares of Sino-Forest during the Class Period and that as of June 2, 2011 the Objectors held a total of 3,995,932 shares.

7. On December 17, 2012 Counsel in the New York Class Action (*Leopard et al. v. Chan et al.*, 1:12-cv-01726-VM) wrote a letter to the Ontario Plaintiffs' Counsel raising concerns about the E&Y Settlement. Attached hereto and marked as Exhibit "I" is a letter from Mr. Richard Spiers to Mr. A. Dimitri Lascaris dated December 17, 2012.

SWORN before me at the City of )  
Toronto, in the Province of Ontario, )  
this 18<sup>th</sup> day of January, 2013. )

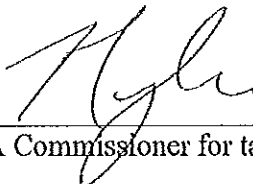
  
\_\_\_\_\_  
A Commissioner for taking affidavits. )

**NORMAN T. MIZOBUCHI**

  
\_\_\_\_\_  
TANYA T. JEMEC

# **Tab A**

This is Exhibit "E" to the affidavit of Tanya T. Jemec,  
sworn before me at the City of Toronto, in the Province  
of Ontario, this 18<sup>th</sup> day of January, 2013.

  
\_\_\_\_\_  
A Commissioner for taking affidavits.

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding<sup>256</sup> 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 Northwest & Ethical Investments L.P. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖRY (BEIJING) SETTLEMENT AGREEMENT.  
**DO NOT** USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: WORTHWEST & ETHICAL INVESTMENTS First Name: \_\_\_\_\_

Current Address: L.P. 155 UNIVERSITY AVENUE, 4TH FLOOR

City: TORONTO Prov./State: ON Postal Code/Zip Code: M5H 3B7

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 416-933-6288 Telephone Number (Home): \_\_\_\_\_

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 714,095

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöry (Beijing) Consulting Company Limited ("Pöry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s): \_\_\_\_\_

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

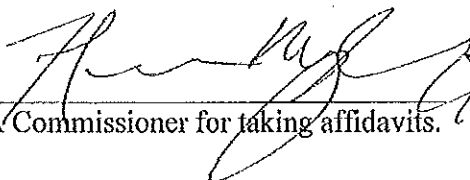
Signature: [Handwritten Signature] Date Signed: 2013/01/11

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3



# **Tab B**

This is Exhibit "F" to the affidavit of Tanya T. Jemec,  
sworn before me at the City of Toronto, in the Province  
of Ontario, this 18<sup>th</sup> day of January, 2013.



A Commissioner for taking affidavits.

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 Matrix Asset Management Inc.. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OF A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: MATRIX ASSET MANAGEMENT INC  
First Name:

Current Address:  
130 KING STREET WEST SUITE  
2200 PO BOX 422

City: TORONTO  
Prov./State: ON  
Postal Code/Zip Code: M5X 1E3

Social Insurance Number/Social Security Number/Unique Tax Identifier:  
N/A

Telephone Number (Work): 416-362-3077  
Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 478222

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöry (Beijing) Consulting Company Limited ("Pöry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: David Galt Date Signed: Jan 15/2013

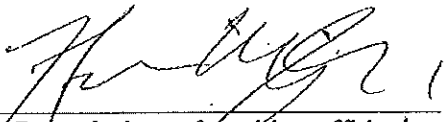
Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3333  
London, ON N6A 4K3





# Tab C

This is Exhibit "G" to the affidavit of Tanya T. Jemec,  
sworn before me at the City of Toronto, in the Province  
of Ontario, this 18<sup>th</sup> day of January, 2013.

  
A Commissioner for taking affidavits.

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 Gestion FÉRIQUE. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
**DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.**

Last Name: G E S T I O N F É R I Q U E  
First Name: [ ]

Current Address: 1 0 1 0 d e L A G A U C H E T I È R E S T W E S T  
S U I T E 1 0 0 0

City: M O N T R É A L Prov./State: Q C Postal Code/Zip Code: H 3 B 2 N 2

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 5 1 4 - 8 4 0 - 9 2 0 6 Telephone Number (Home): [ ] [ ] - [ ] [ ] - [ ] [ ] [ ] [ ]

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 1 9 4 9 2 5

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):  
 I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):  
 My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.  
 I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

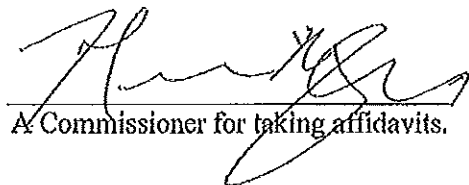
Signature: [Handwritten Signature] Date Signed: 14/1/2012

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3



# **Tab D**

This is Exhibit "H" to the affidavit of Tanya T. Jemec,  
sworn before me at the City of Toronto, in the Province  
of Ontario, this 18<sup>th</sup> day of January, 2013.



A Commissioner for taking affidavits.

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 Montrusco Bolton Investments Inc. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
**DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.**

Last Name: MONTRUSCO BOLTON | First Name: INVESTMENTS INC.

Current Address: 1501 MCGILL COLLEGE AVENUE  
SUITE 1200

City: MONTREAL | Prov/State: QC | Postal Code/Zip Code: H3A 3M8

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 514-842-6464 | Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 302565

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: [Signature] | Date Signed: 14 January 2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON, N6A 4K3



**Tab 6**

Court File Number: CV-12-9667-00CC

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

SINO FOREST

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order     Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

*Motion to Approve Ex 7 Settlement.*

*Monday Feb 4, 2013.*

*1 Day heard*

*January 4<sup>th</sup>, 2013 to be vacated.*

*Parties have to exchange materials*

*based on attached email.*

*Best efforts to be used to provide*

*relevant materials in advanced draft*

*from to Kin Don prior to Jan 11, 2013*

December 19, 2012  
Date

[Signature]  
Judge's Signature

Additional Pages \_\_\_\_\_



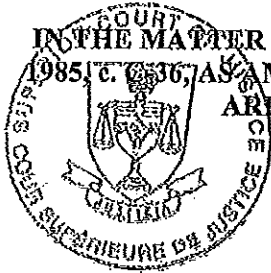
**Tab 7**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE MR. )  
 )  
JUSTICE MORAWETZ ) **FRIDAY** , THE 21<sup>ST</sup> DAY  
 ) OF DECEMBER, 2012



**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 COMPRISE 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 Bauc of America Securities LLC)**

**Defendants**

- 2 -

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("Sino-Forest") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively) for an order i) approving the form of notice to class members, and everyone, including non-Canadians, who has, had, could have had or may have a claim of any kind against Ernst & Young LLP, Ernst & Young Global Limited or any of its member firms and any person or entity affiliated or connected thereto ("Ernst & Young"), in relation to Sino-Forest, Ernst & Young's audits of Sino-Forest's financial statements and any other work performed by Ernst & Young related to Sino-Forest., of the hearing to approve the Ernst & Young Settlement (as defined in the Plan of Compromise and Reorganization of Sino-Forest dated December 3, 2012 as approved by the Order of the Honourable Justice Morawetz dated December 10, 2012 (the "Plan")) between the Ontario Plaintiffs and the defendant Ernst & Young ("Notice"); and ii) approving the plan of distribution of the Notice ("Notice Plan"), was heard on December 20, 2012, in Toronto, Ontario.

**WHEREAS** the Ontario Plaintiffs and Ernst & Young have agreed to the Ernst & Young Settlement in order to resolve all Ernst & Young Claims, including all claims asserted or that could be asserted against Ernst & Young in the above-captioned class proceeding;

**AND ON BEING ADVISED** that the defendant Sino-Forest has delivered to counsel for the plaintiffs a list of holders of Sino-Forest's securities as of June 2, 2011 (the "June 2, 2011 Shareholder List");

**AND ON READING** the materials filed, and on hearing submissions of counsel for the Ontario Plaintiffs and Ernst & Young, and upon hearing from counsel to the Monitor of Sino-Forest, FTI Consulting Inc.,

1. **THIS COURT ORDERS** that the time for service and filing of this notice of motion and motion record is validated and abridged and any further service thereof is dispensed with.
2. **THIS COURT ORDERS** that the Notice substantially in the form attached as Schedule "A" be and hereby is approved and shall be published, subject to the right of the plaintiffs and Ernst & Young to make minor non-material amendments to such form, by mutual agreement, as may be necessary or desirable.
3. **THIS COURT ORDERS** that notice shall be provided as follows:
  - a. Siskinds LLP and Koskie Minsky LLP (together, "Class Counsel") shall provide or cause to be provided a copy of the Notice directly, either electronically or by mail, to all individuals or entities who have contacted Siskinds LLP and Koskie Minsky LLP (together, "Class Counsel") or Siskinds Desmeules sncrl ("Desmeules") regarding this action, and to any person or entity who requests a copy of the Notice, provided that such person or entity has furnished his, her or its contact information to Class Counsel or Desmeules;
  - b. Within 5 business days of this Order, copies of the Notice, in English and French, will be posted by Class Counsel on their websites;
  - c. Within 5 business days of this Order, a copy of the Notice, in English and French, will be posted by Sino-Forest in a prominent location on the main page of the Sino-Forest website;

- 4 -

- d. Within 5 business days of this Order, Class Counsel will send or will cause to be sent copies of the Notice to the addresses on the June 2, 2011 Shareholder List and to the current Service Lists in Court File Nos. CV-12-9667-00CL (the CCAA Proceeding) and CV-11-431153-00CP (the Ontario Class Action) by electronic mail;
- e. Within 5 business days of this Order, Class Counsel will send or cause to be sent copies of the Notice to all 196 Canadian brokers who are known to Class Counsel, with a cover letter directing those brokers to provide a copy of the Notice, either by mail or electronically, to those of their clients who are or have been beneficial owners of Sino-Forest securities. Brokers will be requested to send a statement to Class Counsel or its designee indicating that such mailing or electronic communication was completed as directed;
- f. Within 5 business days of this Order, Class Counsel will issue and cause to be disseminated a press release which incorporates the Notice;
- g. Class Counsel will provide hyper-links to the Notice from the following Twitter accounts:
- i. @kmlawllp; and
  - ii. @SiskindsLLP;
- h. Within 5 business days of this Order, Class Counsel will cause copies of the Notice to be published in the following print publications:
- i. *The Globe and Mail*, in English, in one weekday publication;
  - ii. *Wall Street Journal*, in English, in one weekday publication;

- 5 -

iii. *National Post*, in English, in one weekday publication

iv. *La Presse*, in French, in one weekday publication; and

v. *Le Soleil*, in French, in one weekday publication.

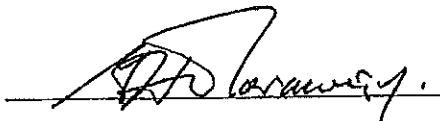
4. **THIS COURT ORDERS** that any persons objecting to the Settlement Agreement (as defined in the Notice), other than the persons who have filed a Notice of Appearance in the CCAA proceedings (the "Core Parties"), shall:

- a. deliver a Notice of Objection substantially in the form attached hereto as Schedule "B" ("Notice of Objection") to be received by the Monitor by no later than 5:00 p.m. (Eastern Time) on January 18, 2013, by mail, courier or email transmission, to the coordinates indicated on the Notice of Objection; and,
- b. comply with the litigation timetable attached hereto as Schedule "C",

and forthwith upon receipt of a Notice of Objection, the Monitor shall provide a copy of same to each of the Applicant, the Ad Hoc Committee of Noteholders, the Ad Hoc Committee of Purchasers of the Applicant's Securities and Ernst & Young LLP, and shall deliver a report to this court attaching all such notices.

5. **THIS COURT REQUESTS**, pursuant to the *Companies' Creditors Arrangement Act* (Canada), together with such other statutes, regulations and protocols as may apply, and as a matter of comity, that all courts, regulatory and administrative bodies, and other tribunals, in all provinces and territories of Canada, in the United States of America, and in all other nations or states, recognize this order and act in aid of and in a manner complementary to this order and this court in carrying out the terms of this order.

Date: December 21, 2012



ENTERED AT / INSCRIT A TORONTO  
 ON / BOOK NO:  
 LE / DANS LE REGISTRE NO.:



DEC 21 2012



# **Tab A**



- 6 -

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**SCHEDULE "A": NOTICE**

**(ATTACHED)**

## SINO-FOREST CORPORATION

### NOTICE OF PROPOSED SETTLEMENT WITH ERNST & YOUNG LLP

**TO:** Everyone, including non-Canadians, who acquired Sino-Forest Corporation (“Sino-Forest”) securities (including shares and/or notes) in the primary or secondary market in any jurisdiction between March 31, 2006 and August 26, 2011 (the “E&Y Settlement Class”) and to everyone, including non-Canadians, who has, had, could have had or may have a claim of any kind against Ernst & Young LLP, Ernst & Young Global Limited or any of its member firms and any person or entity affiliated or connected thereto (“Ernst & Young”), in relation to Sino-Forest, Ernst & Young’s audits of Sino-Forest’s financial statements and any other work performed by Ernst & Young related to Sino-Forest.

#### Background of Sino-Forest Class Action and CCAA Proceeding

In June and July of 2011, class actions were commenced in the Ontario Superior Court of Justice (the “Ontario Proceeding”) and the Québec Superior Court (the “Québec Proceeding”) (collectively, the “Proceedings”) by certain plaintiffs (the “Plaintiffs”) against Sino-Forest, its senior officers and directors, its underwriters, a consulting company, and its auditors, including Ernst & Young. In January 2012, a proposed class action was commenced against Sino-Forest and other defendants in the Southern District of New York (the “US Action”). The actions alleged that the public filings of Sino-Forest contained false and misleading statements about Sino-Forest’s assets, business, and transactions.

Since that time, the litigation has been vigorously contested. On March 30, 2012, Sino-Forest obtained creditor protection under the *Companies’ Creditors Arrangement Act* (the “CCAA”), within which proceeding the Ontario Superior Court ordered a stay of proceedings against the company and other parties, including Ernst & Young (the “CCAA Proceeding”). Orders and other materials relevant to the CCAA Proceeding can be found at the CCAA Monitor’s website at <http://cfcanada.fticonsulting.com/sfc/> (the “Monitor’s Website”).

On December 10, 2012, a Plan of Arrangement was approved by the court in the CCAA Proceeding. As part of this Plan of Arrangement, the court approved a framework by which the Plaintiffs may enter into settlement agreements with any of the third-party defendants to the Proceedings. The Plan expressly contemplates the Ernst & Young Settlement (as defined in the Plan), approval of which is now sought.

- 2 -

### Who Acts For the E&Y Settlement Class

Koskie Minsky LLP, Siskinds LLP, and Siskinds Desmeules, senecl ("Class Counsel") represent the E&Y Settlement Class in the Proceedings. If you want to be represented by another lawyer, you may hire one to appear in court for you at your own expense.

You will not have to directly pay any fees and expenses to Class Counsel. However, if this action succeeds or there is a monetary settlement, Class Counsel will seek to have their fees and expenses paid from any money obtained for the class or paid separately by the defendants.

### Proposed Settlement with Ernst & Young

The Plaintiffs have entered into a proposed settlement with Ernst & Young (the "Settlement Agreement"). If the settlement is approved, it will be final and binding and there will be no ability to pursue a claim (if any) against Ernst & Young through an opt-out process under class proceedings or similar legislation. The proposed settlement would settle, extinguish and bar all claims, globally, against Ernst & Young in relation to Sino-Forest including the allegations in the Proceedings. Ernst & Young does not admit to any wrongdoing or liability. The terms of the proposed settlement do not involve the resolution of any claims against Sino-Forest or any of the other defendants. For an update on CCAA orders affecting Sino-Forest, please see the CCAA Monitor's website: [www.cfcanda.fticonsulting.com/sfc](http://www.cfcanda.fticonsulting.com/sfc). A complete copy of the Settlement Agreement and other information about these proceedings is available at: [www.kmlaw.ca/sinoforestclassaction](http://www.kmlaw.ca/sinoforestclassaction) and [www.classaction.ca](http://www.classaction.ca) (the "Class Action Website").

The proposed settlement, if approved and its conditions fulfilled, provides that Ernst & Young will pay CAD\$117,000,000.00 to a Settlement Trust to be administered in accordance with orders of the court. It is the intention of Class Counsel to seek the court's approval of a plan of allocation that distributes the settlement funds, net of counsel fees and other administrative costs and expenses, to members of the E&Y Settlement Class.

In return, the action will be dismissed against Ernst & Young, and there will be an order forever barring claims against it in relation to Sino-Forest including any allegations relating to the Proceedings, including claims (if any) that could be advanced through an opt-out process under class proceedings or similar legislation. In considering whether or how they are affected by the proposed settlement, members of the E&Y Settlement Class and anyone else with claims against Ernst & Young in relation to Sino-Forest should consider the effect of the orders made and steps taken in the Sino-Forest CCAA Proceedings. More information on the Sino-Forest CCAA Proceedings can be found on the Monitor's Website.

- 3 -

The settlement agreement with Ernst & Young is subject to court approval, as discussed below.

**Hearings to Approve Settlement on February 4, 2013 in Toronto, Ontario and Subsequent Hearings in Ontario, Quebec and the United States.**

On February 4, 2013 at 10:00 a.m. (Eastern Time), there will be a settlement approval hearing before the Ontario Superior Court of Justice. The hearing will be heard at the Canada Life Building, 330 University Avenue, 8th Floor, Toronto, Ontario. The exact courtroom number will be available on a notice board on the 8th Floor.

If the settlement approval motion which is being heard by the Ontario Superior Court of Justice on February 4, 2013 (the "Settlement Approval Motion") is granted, then there will be a further hearing at a later date before the Ontario Superior Court of Justice (the "Ontario Allocation/Fee Motion") at which Class Counsel will seek that Court's approval of (1) the plan for allocating the net Ernst & Young settlement fund among the members of the E&Y Settlement Class; and (2) the fees and expense reimbursement requests of Class Counsel.

In addition, if the Settlement Approval Motion is granted, then there may be additional hearings at later dates in the Quebec Superior Court (the "Quebec Motion") and in the United States Bankruptcy Court for the Southern District of New York (the "US Motion") at which recognition and implementation of the Settlement Approval Motion and the Ernst & Young Settlement may be sought.

If the Settlement Approval Motion is granted, then a further notice will be disseminated to members of the E&Y Settlement Class advising them of the time and place of the Ontario Allocation/Fee Motion and any Quebec Motion and/or US Motion.

Members of the E&Y Settlement Class, and everyone, including non-Canadians, who has, had, could have had or may have a claim of any kind against Ernst & Young, in relation to Sino-Forest, Ernst & Young's audits of Sino-Forest's financial statements and any other work performed by Ernst & Young related to Sino-Forest, may attend at the hearing of the Settlement Approval Motion and ask to make submissions regarding the proposed settlement with Ernst & Young.

Persons intending to object to the Ernst & Young Settlement Agreement are required to: (a) deliver a Notice of Objection, substantially in the form that can be found on the Monitor's Website and the Class Action Website, and, if this Notice is received by mail, enclosed with this Notice (the "Notice of Objection"), to the Monitor, by regular mail, courier or email transmission, to the coordinates indicated on the Notice of Objection, so that it is received by no later than 5:00 p.m. (Eastern Time) on January 18, 2013; and (b) comply with the litigation timetable set forth below. Copies of the Notices of Objection sent to the Monitor will be filed with the court.

- 4 -

**Litigation Timetable**

By order of the Ontario Superior Court of Justice, persons intending to participate in the Settlement Approval Motion must comply with the following timetable:

1. Motion materials are to be delivered no later than January 11, 2013.
2. Responding motion materials are to be delivered by January 18, 2013.
3. Cross-examinations on affidavits (if any) are to be conducted on January 24 and 25, 2013.
4. Written Submissions are to be exchanged on January 30, 2013.

**Further Information**

If you would like additional information or to object to the Ernst & Young Settlement Agreement, please contact Koskie Minsky LLP, Siskinds LLP, or Siskinds Desmeules LLP at the addresses below:

**Koskie Minsky LLP**

20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3

Re: Sino-Forest Class Action

Tel: 1.866.474.1739

Email: [sinoforestclassaction@kmlaw.ca](mailto:sinoforestclassaction@kmlaw.ca)

**Siskinds LLP**

680 Waterloo Street, P.O. Box 2520 London, ON N6A 3V8

Re: Sino-Forest Class Action

Tel: 1.800.461.6166 x.2380

Email: [nicole.young@siskinds.com](mailto:nicole.young@siskinds.com)

**Siskinds Desmeules, senerl**

43 Rue Buade, Bureau 320, Québec City, Québec, G1R 4A2

Re: Sino-Forest Class Action

Tel: 418.694-2009

Email: [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com)

**Interpretation**

- 5 -

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

Please do not direct inquiries about this notice to the Court. All inquiries should be directed to Class Counsel.

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO  
SUPERIOR COURT OF JUSTICE

# **Tab B**

**SCHEDULE "B"**

**NOTICE OF OBJECTION**

**TO: FTI CONSULTING CANADA INC.**  
acting in its capacity as Monitor of Sino-Forest Corporation  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa

Email: Jodi.porepa@fticonsulting.com

**RE: SINO-FOREST CORPORATION—PROPOSED SETTLEMENT WITH ERNST & YOUNG LLP (the "ERNST & YOUNG SETTLEMENT")**

I, \_\_\_\_\_ (please check all boxes that apply):  
(insert name)

- am a current shareholder of Sino -Forest Corporation
- am a former shareholder of Sino -Forest Corporation
- am a current noteholder of Sino -Forest Corporation
- am a former noteholder of Sino -Forest Corporation
- other (please explain)

\_\_\_\_\_  
\_\_\_\_\_

I acknowledge that pursuant to the order of Mr. Justice Morawetz dated December 20, 2012 (the "Order"), persons wishing to object to the Ernst & Young Settlement are required to complete and deliver this Notice of Objection to FTI Consulting Canada Inc., acting in its capacity as Monitor of Sino-Forest Corporation, by mail, courier or email to be received by no later than 5:00 p.m. (Eastern Time) on January 18, 2013, and comply with the litigation timetable appended as Schedule C to the Order.

I hereby give notice that I object to the Ernst & Young Settlement, for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_



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- I DO NOT intend to appear at the hearing of the motion to approve the Ernst & Young Settlement, and I understand that my objection will be filed with the court prior to the hearing the motion at 10:00 a.m. on February 4, 2013, at 330 University Ave., 8th Floor Toronto, Ontario.
  
- I DO intend to appear, in person or by counsel, and to make submissions at the hearing of the motion to approve the Ernst & Young Settlement at 10:00 a.m. on February 4, 2013, at 330 University Ave., 8th Floor Toronto, Ontario.

**MY ADDRESS FOR SERVICE IS:**

**MY LAWYER'S ADDRESS FOR SERVICE IS (if applicable):**

Name:

Name:

Address:

Address:

Tel.:

Tel.:

Fax:

Fax:

Email:

Email:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**SCHEDULE "C"**  
**LITIGATION TIMETABLE**

1. Motion materials are to be delivered no later than January 11, 2013.
2. Responding motion materials are to be delivered by January 18, 2013.
3. Cross-examinations on affidavits (if any) are to be conducted on January 24 and 25, 2013,
4. Factums are to be exchanged on January 30, 2013
5. Motion to be heard on February 4, 2013.

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

ORDER

Paliare Roland Rosenberg Rothstein LLP  
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Toronto, ON M5V 3H1  
Ken Rosenberg / Massimo Stamino  
Tel: 416.646.4300 / Fax: 416.646.4301

Koskie Minsky LLP  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3  
Kirk Baert / Jonathan Bida  
Tel: 416.977.8353 / Fax: 416.977.3316

Siskinds LLP  
680 Waterloo Street  
London, ON N6A 3V8  
A. Dimitri Lascaris / Charles M. Wright  
Tel: 519.672.2121 / Fax: 519.672.6065

Lawyers for the Ad Hoc Committee of Purchasers of the Applicant's  
Securities, including the Representative Plaintiffs in the Ontario Class  
Action

820694\_1.DOC

**Tab 8**

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

**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 COMPRISE AND 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

**QUESTIONS ON WRITTEN CROSS-EXAMINATION**  
**ON AFFIDAVIT OF MIKE P. DEAN, SWORN JANUARY 11, 2013**

- 2 -

1. **Provide a copy of the insurance policies that provide, or may provide, coverage to E&Y in connection with E&Y's audits of Sino-Forest, including any litigation related thereto.**

Ernst & Young LLP is prepared to share the responsive insurance policies with Kim Orr Barristers P.C., with its agreement on behalf of its clients, on a confidential, without-prejudice basis and on terms acceptable to Ernst & Young LLP. Ernst & Young LLP does not consent to their public filing or dissemination or the public disclosure of their contents. Ernst & Young LLP understands that Kim Orr has already been provided with particulars regarding its available insurance coverage on a confidential, without-prejudice basis.

2. **Describe the coverage amount, available coverage (if different), and any other terms and/or conditions of the policies that may affect availability and/or coverage in this situation.**

See the answer to question 1 above.

3. **What was or is the "opt out threshold" referred to in Schedule B, paragraph I(B)(ii)(a)(iii) of the Minutes of Settlement?**

The conditions precedent to the Ernst & Young Settlement and the Ernst & Young Release as defined in the Plan are set out in the Sanction Order. The opt-out threshold referred to at Schedule B of the Minutes of Settlement, if it ever became operative, is at the discretion of Ernst & Young and would be set by it at such time.

4. **Describe any consideration or any arrangement entered into with Paulson & Co. Inc., Davis Selected Advisers LP, and/or any current or former Sino-Forest security holder, in connection with securing the support or non-opposition of any such current or former Sino-Forest security holder to the E&Y Settlement.**

The consideration for the Ernst & Young Settlement, including for the agreement of Ernst & Young to support the Plan and the agreement of the Ad Hoc Committee of Noteholders to support the Ernst & Young Settlement, has been set out in the motion materials. No additional amount is to be paid by Ernst & Young to any entities or persons holding Sino-Forest securities (including those identified) as consideration for the Ernst & Young Settlement or its approval, other than defraying certain legal costs to be incurred in the Chapter 15 proceedings.

- 3 -

5. If arrangements or consideration of any kind pursuant to #4 have in fact been entered into or agreed to, provide copies of any documentation or correspondence evidencing such agreement and/or consideration in exchange for supporting or not opposing the E&Y Settlement.

See the answer to question 4 above. Ernst & Young refuses any further response,

January 29, 2013

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)  
Peter J. Osborne (33420C)  
Shara N. Roy (49950H)  
Tel: (416) 865-9500  
Fax: (416) 865-9010

Lawyers for Ernst & Young LLP

TO: THE ATTACHED SERVICE 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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court File No. CV-12-9667-00-CL  
SINO-FOREST CORPORATION, et al

Plaintiffs

THE TRUSTEES OF THE LABOURERS, et al.

Defendants

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

RESPONSES ON WRITTEN CROSS-  
EXAMINATION  
ON AFFIDAVIT OF MIKE P. DEAN

LENCZNER SLAGHT ROYCE

SMITH GRIFFIN LLP

Barristers

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Lawyers for Ernst & Young LLP



## **Tab 9**

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 THE OBJECTORS

(Motion for Settlement Approval returnable February 4, 2013)

ii

KIM ORR BARRISTERS P.C.  
19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario  
M5V 1H2

James C. Orr (LSUC #23180M)  
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Tel: (416) 596-1414  
Fax: (416) 598-0601

Lawyers for Invesco Canada Ltd.,  
Northwest & Ethical Investments L.P.,  
Comité Syndical National de Retraite  
Bâtirente Inc., Matrix Asset Management  
Inc., Gestion Férique and Montrusco Bolton  
Investments Inc.

**TO: THE SERVICE LIST**

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## Part I – OVERVIEW

1. Invesco Canada Ltd. (“Invesco”), Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc. (“Bâtirente”), Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc. (the “Objectors”) are leading Canadian investment funds that held shares in Sino-Forest Corporation (“Sino-Forest”) on June 2, 2011, and were injured when the market in those shares plunged upon publication of the Muddy Waters securities analyst report alleging that Sino-Forest was a “near total fraud”.<sup>1</sup>
2. The Objectors oppose the settlement of claims against E&Y (the “E&Y Settlement”) proposed by the named plaintiffs (“Ontario Plaintiffs”) in the putative Superior Court class action titled above (the “Class Action”) and supported by some or all of the other parties in the Sino-Forest CCAA<sup>2</sup> proceeding titled above. The Objectors particularly oppose the no-opt-out and full CCAA third party release features of the Settlement. The Objectors also oppose the motion for a Representation Order sought by the Ontario Plaintiffs, and move instead for appointment of the Objectors to represent the interests of all objectors to the E&Y Settlement.
3. Evidence has just come to the attention of the Objectors showing that E&Y had actual knowledge as early as April 2010 that Sino-Forest was refusing to provide sufficient information to verify the composition of its timber holdings.<sup>3</sup> At a meeting among high level E&Y partners, Sino-Forest officers Allen T.Y. Chan (“Chan”) and David Horsley, and key employees of Pöyry (Beijing) Consulting Company Limited

<sup>1</sup> Muddy Waters Report dated June 2, 2011 (“Muddy Waters Report”), Exhibit “G” to Affidavit of Charles Wright, sworn January 10, 2013, (“Wright Aff”), Plaintiffs’ Motion Record, Volume 1, Tab 2G, pp. 239-279.

<sup>2</sup> *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“CCAA”).

<sup>3</sup> Responses to Questions on Written Cross Examination on Affidavit of Christina Doria, dated January 29, 2013 (“Doria Written Cross Examination”) at para.1.

("Pöyry"), E&Y appears to have defended Sino-Forest's lack of informational forthrightness by pointing out that "Sino-Forest's business model is truly unique" because the "purchasers of Sino-Forest stock are financial players that purchase and hold, betting on timber prices to increase".<sup>4</sup> Whatever E&Y's explanation was, the evidence from Pöyry suggests that E&Y was aware at least as early as April 2010 that Sino-Forest would not corroborate its asset valuations -- yet E&Y continued to provide clean audit reports.

4. The present objections in a sense pick up where this Court left off in its Reasons, dated December 12, 2012,<sup>5</sup> released in support of the Endorsement of the Sanction Order of Sino-Forest's *CCAA* plan of compromise and reorganization (the "Plan").<sup>6</sup> At the time, the Court dismissed the Objectors' concerns about the no-opt out E&Y Settlement in conjunction with the "third party" releases in the Plan on the basis that the concerns were premature.<sup>7</sup> The Objectors renew their strenuous objection and opposition to the approval of this settlement.<sup>8</sup>

5. In the Plan Sanction Reasons, this Court found (among many other things) that the release of the Subsidiaries of Sino-Forest was justified according to the standards set forth for allowing such *CCAA* "third party" releases in *Metcalf & Mansfield Alternative*

<sup>4</sup> Minutes of Meeting dated April 9, 2010, Schedule A to the Doria Written Cross Examination ("Minutes of Pöyry meeting"), *ibid*.

<sup>5</sup> Plan Sanction Reasons, dated December 12, 2012 ("Sanction Reasons-Dec. 12"), Exhibit "E2" to the Affidavit of Charles Wright, sworn January 10, 2013, ("Wright Aff"), Plaintiffs' Motion Record, Volume 1, Tab 2E2, pp. 220-233.

<sup>6</sup> Plan of Compromise and Reorganization ("Plan"), Plaintiffs' Motion Record, Volume 6 Tab 7, pp. 1411-1505.

<sup>7</sup> Plan Sanction Endorsement dated December 10, 2012 ("Plan Sanction Endorsement-Dec. 10"), at paras. 20, 22-25, Exhibit "E1" to Wright Aff, Plaintiffs Motion Record, Volume 1, Tab E1, pp. 215-216.

<sup>8</sup> Affidavit of Eric J. Adelson, sworn January 18, 2012, ("Adelson Aff"), at para. 15., Responding Motion Record of the Objectors, Tab 2C, p. 13.

*Investments II Corp., (Re)*<sup>9</sup> (“*Metcalfé*”). This Court noted and accepted the submissions of Sino-Forest’s counsel that there “can be no effective restructuring of SFC’s business” without the releases of the Subsidiaries; that such releases were “necessary and essential” to the restructuring; and that it was “difficult to see how any viable plan could be made” without the releases.<sup>10</sup> This Court found that the Plan “cannot succeed without the releases of the Subsidiaries” and that the releases thus were “fair and reasonable and ... rationally connected to the overall purpose of the Plan”.<sup>11</sup> Those criteria are, the Objectors respectfully submit, the ones this Court should apply in analyzing the propriety of any proposed third party releases in a *CCAA* plan.

6. The proposed E&Y Settlement includes a requirement that E&Y receive a full *CCAA* release of all Sino-Forest-related claims that could be asserted against it -- in other words, a full third party release.<sup>12</sup> But the criteria for proper third party releases are not satisfied here.

7. *No party has even asserted -- let alone provided evidence -- that the Plan cannot succeed without the releases or the settlement.* The version of the Plan submitted to, and obviously on the verge of approval by, the creditors in late November 2012 did not make any mention of the E&Y Settlement or of the “framework” for third party releases now relied upon. That demonstrates, more clearly than any legal argument could, that the E&Y Settlement is not integral to the success of the Plan, and that the third party release called for by the Settlement does not qualify for approval under the *Metcalfé* factors.

<sup>9</sup> *Metcalfé & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 45 C.B.R. (5<sup>th</sup>) 163, leave to appeal to S.C.C. ref’d, [2008] S.C.C.A. No. 337 (“*Metcalfé*”).

<sup>10</sup> Sanction Reasons-Dec. 12, *supra* note 5 at para. 72. Plaintiffs’ Motion Record, Volume 1, Tab 2E2, pp. 219

<sup>11</sup> *Ibid.*, at para. 74, Plaintiffs’ Motion Record, Volume 1, Tab 2E2, pp. 231.

<sup>12</sup> Fifteenth Report of the Monitor, dated January 28, 2013 at paras. 13 and 31.

8. The Objectors thus submit that the proposed E&Y Settlement represents a simple case of overreaching. E&Y and Class Counsel seek to effectuate their settlement in this *CCAA* proceeding, using a full third party release, when in fact they instead should proceed by using the Class Action, as was done for the Pöyry settlement.

9. The salient difference between a *CCAA* settlement and a Class Action settlement here is that the former would extinguish or render illusory the right of investors to opt out of the settlement, whereas the latter would preserve and give effect to that important right.

10. The case precedents are unanimous in recognizing that opt out rights are fundamental to the entire structure of class actions, as described fully below.<sup>13</sup> The Objectors have opted out through the certification and settlement opt out process in connection with the prior settlement with another third party defendant, Pöyry; and according to the notice distributed in connection with that settlement the opt outs were effective as opt outs from the entire Class Action. The Objectors now wish, and should have the right, to pursue their claims against E&Y (and the other defendants) individually, and to have the results of that litigation not rendered illusory by third party *CCAA* releases in E&Y's favor obtained, we submit, without coming close to satisfying the *Metcalfé* criteria.

11. The Objectors understand that the parties and their counsel in the *CCAA* proceeding worked hard and devoted long hours to devising the Plan, which came to include the E&Y Settlement at the last moment. The Objectors also are aware of Class Counsel's position that the amount to be paid by E&Y -- \$117 million -- is very large for

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<sup>13</sup> See p. 23 of factum; see also *Fischer v. IG Investment Management Ltd*, 2012 ONCA 47 at para. 69 (C.A.) ("*Fischer*"); *Sauer v. Canada (Attorney General)*, 2010 ONSC 4399 at paras. 2 and 19 (S.C.J.) ("*Sauer*").



a Canadian settlement of claims against an auditor. With respect, however, we submit that those considerations do not address the fundamental issue raised by the present objections: whether such a settlement, when it is only incidental to a *CCAA* plan, can be “crammed down” as against class members in derogation of their opt out rights.

12. Many serious securities fraud cases have in the past involved, and will in the future involve, insolvency proceedings for the company at the center of the alleged misconduct. These situations also commonly include the presence of additional third parties asserting multiple and overlapping cross claims and claims over against the applicant, subsidiaries, and each other.

13. The Objectors submit that it would be a highly troubling precedent, from the viewpoint of investors deciding whether to trust in the integrity of Canadian securities markets, for such a “cram down” of a third party settlement and release to be countenanced by this Court.<sup>14</sup>

14. The alternative – use of normal class action procedures to effectuate such a settlement – is obviously appropriate, and would not, in the present situation at least, impose any unwarranted or problematic burdens. The Objectors should be free, as provided in class action procedures, to test their contention that the E&Y Settlement amount is really not so ample, in light of the gravity of defendants’ apparent misconduct and the magnitude of losses suffered by investors, by opting out.

15. Accordingly, the Objectors oppose the proposed release of E&Y, as described in Article 11.1 of the Plan and sections 8, 9 and 12 of the proposed Settlement Approval

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<sup>14</sup> *Adelson Aff*, supra note 8 at para. 24, Responding Motion Record of the Objectors, Tab 2, p. 16.

Order<sup>15</sup>, which would extinguish the right of all Security Claimants to pursue individual opt-out litigation against E&Y in connection with Sino-Forest.

16. For similar reasons, the Objectors oppose the Ontario Plaintiffs' motion for a representation order.<sup>16</sup> Clearly, the interests of the Ontario Plaintiffs and of persons who filed objections to the E&Y Settlement are divergent. The Objectors will more appropriately represent the other objectors' interests.

#### Part II – FACTS

17. The background facts concerning Sino-Forest, the class actions, and the *CCAA* proceedings have been recited by multiple parties. The Objectors here set forth some other facts that may deserve attention or emphasis.

18. The Objectors are Securities Claimants. Collectively they held 3,995,932 shares<sup>17</sup> of Sino-Forest on June 2, 2011 when Muddy Waters LLC publicized a report that accused Sino-Forest of being a "near total fraud". In comparison, the Ontario Plaintiffs who are seeking to represent all purchasers of Sino-Forest securities, have reported holdings of 1,110,898 shares as of the end of day on June 1, 2011.<sup>18</sup>

19. Sino-Forest's year-end market capitalization for 2010 was approximately \$5.7 billion and its market capitalization in early 2011 was approximately \$6.2 billion. The market decline in Sino-Forest stock, over the two days following the release of the

<sup>15</sup> Settlement Approval Order, Exhibit A to Notice of Motion dated January 11, 2013, Plaintiffs' Motion Record, Volume 1, Tab 1A, pp. 21-22.

<sup>16</sup> *Ibid.*, in the event this Court nevertheless grants representation to the Ontario Plaintiffs, the Objectors request that they be relieved of the binding effect of the Representation Order and Settlement Approval Order, relieved of any release, and allowed to opt out of the E&Y Settlement.

<sup>17</sup> The Supplemental Affidavit of Charles Wright calculates the holdings of the Objectors at 3,921,618. The 74,314 difference in the calculation is the holding of Invesco. Supplemental Affidavit of Charles M. Wright, sworn January 23, 2013, Plaintiffs' Reply Motion Record, Volume 1, Tab 1, pp. 3-4.

<sup>18</sup> Class Counsel declined to respond to the Objectors' interrogatory requesting evidence that any investors other than the Ontario Plaintiffs support the settlement.

Muddy Waters report alleging the company was a “near total fraud,” was from \$18.21 to \$5.23 per share.<sup>19</sup>

*E&Y's Knowledge of the Sino-Forest Fraud*

20. E&Y acted as the auditor of Sino-Forest for the majority of time that it was a public company,<sup>20</sup> including the years 2007-2012.<sup>21</sup> E&Y issued unqualified (“clean”) audit reports on Sino-Forest from 2007 to 2010 and specifically authorized Sino-Forest to use the audit reports in public filings and offering documents. E&Y represented that it had performed its audits in accordance with relevant industry standards, namely, Generally Accepted Auditing Standards (“GAAS”).<sup>22</sup>

21. From late 2007, Pöyry progressively raised concerns with Sino-Forest in relation to the quality and sufficiency of the information and data from Sino-Forest concerning the physical composition of the forest holdings to be valued.<sup>23</sup>

22. On April 9, 2010, shortly after E&Y issued an unqualified audit report on the 2008 and 2009 consolidated financial statements of the company, a high level meeting took place between Pöyry, E&Y and Sino-Forest.<sup>24</sup> The purpose of the meeting was to discuss Sino-Forest’s unwillingness to provide sufficient information to confirm its timber holdings, to provide an overview of Sino-Forest’s valuation requirements, and to develop an action plan that would allow Pöyry to verify Sino-Forest timber holdings with

<sup>19</sup> Muddy Waters Report, *supra* note 1, Plaintiffs’ Motion Record, Volume 1, Tab 2G, pp. 239-279; Statement of Claim issued in *Northwest & Ethical Investments L.P. et al. v. Sino-Forest Corporation et. al.*, at para. 9, Exhibit “T” to Wright Aff, Plaintiffs’ Motion Record, Volume 2, Tab 2T, p. 362.

<sup>20</sup> Muddy Waters Report, *ibid.*, Plaintiffs’ Motion Record, Volume 1, Tab 2G, p. 239-279.

<sup>21</sup> Affidavit of Mike P. Dean, sworn January 11, 2013 (“Dean Aff”), at paras. 8-9, Motion Record of Ernst & Young LLP, Tab 1, pp. 3-4; Statement of Allegations of Ontario Securities Commission, dated December 3, 2012 (“OSC Allegations-Dec. 3, 2012”), at para. 1, Exhibit “FF” to Wright Aff, Plaintiffs’ Motion Record, Volume 3, Tab 2FF, p. 826.

<sup>22</sup> *ibid.*, OSC Allegations-Dec. 3, 2012 at para. 1, Exhibit “FF” to Wright Aff, Plaintiffs’ Motion Record, Volume 3, Tab 2FF, p. 826.

<sup>23</sup> Doria Written Cross-Examination, *supra* note 3 at para. 1.

<sup>24</sup> Minutes of Pöyry meeting, *supra* note 4.

confidence.<sup>25</sup> The Minutes of Meeting taken by Pöyry clearly show that E&Y knew that there was a gap between the market capitalization value and forest resource valuation estimate, which Pöyry could not effectively verify at any rate.

23. Notwithstanding the concerns of Pöyry, it appears that E&Y took no steps to exercise reasonable skepticism as required by GAAS before providing Sino-Forest with unqualified audits. In fact, evidence of Pöyry suggests that E&Y intended to avoid probing Sino-Forest for sufficient evidence to corroborate its alleged timber valuations.

#### *OSC Investigation*

24. In August 2011, shortly after the collapse in price of Sino-Forest shares, the Ontario Securities Commission ("OSC") commenced regulatory proceedings and an investigation against Sino-Forest and some of its officers and directors.

25. On May 22, 2012, the Ontario Securities Commission formally alleged that Sino-Forest, and its former senior executives, engaged in a "complex fraudulent scheme" to inflate the assets and revenue of Sino-Forest, and made materially misleading statements in Sino-Forest's public disclosure record related to its primary business.<sup>26</sup> Allegations were made against Mr. Chan, former Chairman and Chief Executive Officer of Sino-Forest, for committing fraud and making "materially misleading statements".<sup>27</sup> Horsley was alleged to have failed to comply with Ontario securities laws and to have authorized, permitted or acquiesced in the commission of fraud.<sup>28</sup>

<sup>25</sup> *Ibid.*, See also email from Horsley to Chan dated March 26, 2010, Schedule A to the Doria Written Cross Examination, *Ibid.*

<sup>26</sup> Statement of Allegations of the Ontario Securities Commission, dated May 22, 2012 ("OSC Allegations-May 22"), at para 11, Exhibit "EB" to Wright Aff, Plaintiffs' Motion Record, Volume 3, Tab 2EE, p. 789.

<sup>27</sup> *Ibid.*, at paras. 12, 27-31, 142, 150-156, Plaintiffs' Motion Record, Volume 3, Tab 2EE, pp. 789, 792, 814, 816-817.

<sup>28</sup> *Ibid.*, at paras. 14, 40, 119, 141, Plaintiff's Motion Record, Volume 3, Tab 2EE, pp. 789, 793, 809, 814.

26. The OSC allegations remain outstanding.

*Sino-Forest's CCAA Proceedings*

27. The Ontario Plaintiffs participated in the CCAA proceedings as the "Ad Hoc Committee of Purchasers of the Applicant's Securities".

28. In its Reasons in support of the Sanction Order, this Court stated that the Committee, represented by Class Counsel, "has appeared to represent the interests of the shareholders and noteholders who have asserted Class Action Claims against SFC and others."<sup>29</sup> Class Counsel moved in the CCAA proceeding on April 10, 2012 for a Representation Order pursuant to Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules*").<sup>30</sup> The proposed Representation Order contained an Opt-Out Letter by which putative class members could have opted out from having Class Counsel represent them in these proceedings.<sup>31</sup> However, the Ontario Plaintiffs did not obtain the requested Representation Order and the motion was adjourned *sine die*.<sup>32</sup> Certain Objectors have previously stated in affidavits that they do not view Class Counsel as having represented their interests in these proceedings.<sup>33</sup>

29. During the CCAA proceedings, the Ontario Plaintiffs moved to lift the CCAA stay against Pöyry and its affiliated companies in order to move for settlement approval and

<sup>29</sup> Sanction Reasons-Dec. 12, *supra* note 5 at para. 26, Plaintiffs' Motion Record, Volume 1, Tab 2E2, p. 224.

<sup>30</sup> Draft Representation Order of the Ad Hoc Committee of Purchasers of the Applicant's Securities dated April 13, 2012 ("Draft Representation Order"), Exhibit "D" to Affidavit of Daniel Simard sworn January 18, 2013 ("Simard Aff"), Responding Motion Record of the Objectors, Tab 3D, pp. 155-160.

<sup>31</sup> *Ibid.*

<sup>32</sup> Order of Honourable Mr. Justice Morawetz, dated August 31, 2012 & October 9, 2012, Exhibit "E" to Simard Aff, Responding Motion Record of the Objectors, Tab 3E, pp. 161-162.

<sup>33</sup> Adolson Aff, *supra* note 8, Responding Motion Record of the Objectors, Tab 2, p. 8-18.; Affidavit of Daniel Simard, sworn on January 10, 2013 ("Simard Aff"), Responding Motion Record of the Objectors, Tab 3, p. 131-140.

certification for settlement purposes with Pöyry before the Class Action Court.<sup>34</sup> The settlement called for cooperation by Pöyry with Class Counsel but did not provide for any payment by Pöyry, other than sharing part of the notice costs. Notice of the proposed settlement and of a settlement approval hearing was disseminated to the class.<sup>35</sup> On September 25, 2011, Justice Perell, the Class Action case management judge, certified the claims against Pöyry for settlement purposes and approved the settlement.<sup>36</sup> A further notice was disseminated, which included opt out rights.<sup>37</sup> The notice stated that class members opting out of the settlement would also be opting out of the entire class proceeding:

IF YOU CHOOSE TO OPT OUT OF THE CLASS, YOU WILL BE OPTING OUT OF THE ENTIRE PROCEEDING. THIS MEANS THAT YOU WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGMENT REACHED WITH OR AGAINST THE REMAINING DEFENDANTS.<sup>38</sup>

30. The Objectors opted out of the Pöyry certification for settlement by the January 15, 2013 deadline.<sup>39</sup>
31. The first version of Sino-Forest's Plan was filed in August 2012. Revised versions of the Plan were filed on October 19, 2012 and November 28, 2012.<sup>40</sup> These

<sup>34</sup> Order of the Honourable Mr. Justice Morawetz entered May 11, 2012, Exhibit "C" to the Simard Aff, Responding Motion Record of the Objectors, Tab 3C, pp. 151-154.

<sup>35</sup> Notice of Settlement, Exhibit "X" to Wright Aff, Plaintiff's Motion Record, Volume 3, Tab 2X, pp. 694-696.

<sup>36</sup> Reasons of the Honourable Mr. Justice Morawetz, dated September 25, 2012, Exhibit "F" to Simard Aff, Responding Motion Record of the Objectors, Tab 3F, pp. 164-175.

<sup>37</sup> Pöyry Notice, Schedule B to the Order of the Honourable Mr. Justice Perell, dated September 25, 2012, Exhibit "G" to Simard Aff, Responding Motion Record of the Objectors, Tab 3G, pp. 228-231.

<sup>38</sup> *Ibid.*, Responding Motion Record of the Objectors, Tab 3G, pp. 230.

<sup>39</sup> Opt out form of Invesco Canada Ltd., Exhibit "D" to Adelson Aff, January 18, 2013, Responding Motion Record of the Objectors, Tab 2D, pp. 111; Opt out form of Comité Syndical National do Retrãite Bãtãtreite Inc., Exhibit "F" to Simard Aff, Responding Motion Record of the Objectors, Tab 3F, pp. 236-237; Opt out form of Northwest & Ethical Investments L.P., Matrix Asset Management Inc., Gestion FÉRIQUE, and Montrusco Bolton Investments Inc., Exhibits "E" to "H" to the Jemec Aff, Responding Motion Record of the Objectors, Tabs 4E-4H, pp. 255-261.

<sup>40</sup> Fifteenth Report of the Monitor, dated January 28, 2013 at para. 24.

versions contained standard language providing that all claims against Sino-Forest and certain claims against officers and directors would be barred (excepting claims described in section 5.1(2) of the *CCAA*, claims of fraud, claims of conspiracy and insured claims). Claims against Subsidiaries were released as necessary and essential to the restructuring, as described above. Any Equity Claims – which this Court had determined included defendants' claims for indemnification with respect to share purchaser claims in the Class Action<sup>41</sup> -- would be released as of the Plan Implementation Date or Equity Cancellation Date.

32. The Creditors' Meeting and vote on the Plan was scheduled to occur on November 29, 2012. When the Plan was amended on November 28, 2012 the Creditors' Meeting was adjourned to November 30, 2012. Up to this point, none of the versions of the Plan, including the version mailed to creditors along with their proxy forms, included or mentioned the E&Y Settlement; indeed, Article 7.5 of the Plan provided that claims against third party defendants were not being addressed:

Notwithstanding anything to the contrary in this Plan, any Class Action Claim against the Third Party Defendants that relates to the purchase, sale or ownership of Existing Shares or Equity Interests; (a) is unaffected by this Plan; (b) is not discharged, released, cancelled or barred pursuant to this Plan; (c) shall be permitted to continue as against the Third Party Defendants; (d) shall not be limited or restricted by this Plan in any manner as to quantum or otherwise (including any collection or recovery for any such Class Action Claim that relates to any liability of the Third Party Defendants for any alleged liability of SFC); and (e) does not constitute an Equity Claim or an Affected Claim under this Plan.<sup>42</sup>

[Emphasis added]

<sup>41</sup> *Sino-Forest Corp. (Re)*, 2012 ONSC 4377, aff'd 2012 ONCA 816.

<sup>42</sup> Plan of Compromise and Reorganization, dated December 3, 2012 ("Plan-Dec. 3"), Exhibit "C" to Wright Aff, Plaintiffs' Motion Record, Volume 1, Tab 2C, pp. 99-188.

Thus, in these earlier versions of the Plan there were no provisions barring claims against, or providing releases in favour of, "Third Party Defendants" named in the Class Action - i.e., E&Y, BDO Limited or the Underwriters.

*The Proposed E&Y Settlement*

33. On November 29, 2012, counsel for E&Y and Class Counsel concluded the proposed E&Y Settlement. The Creditors' Meeting was again adjourned, to December 3, 2012. On December 3, 2012, a new Plan revision was released in the morning<sup>43</sup> and the fact of the settlement was publicly announced.<sup>44</sup>

34. The Minutes of Settlement were not disclosed to the Objectors until December 5, 2012. The Minutes of Settlement provided, among other terms:

¶10 It is the intention of the Parties that this settlement shall be approved and implemented in the Sino-Forest Corporation CCAA Proceedings. The settlement shall be conditional upon full and final releases and claims bar orders in favour of EY and which satisfy and extinguish all claims against EY, and without opt-outs, and as contemplated by the additional terms attached hereto as Schedule B hereto and incorporated as part of these Minutes of Settlement.<sup>45</sup>

[Emphasis added]

35. The Plan now contained a new Article 11, reflecting the "framework" for the proposed E&Y Settlement and for third party releases for Named Third Party Defendants as identified at that time as the Underwriters or in the future. Section 7.5 was later amended to reflect Article 11's provisions.<sup>46</sup>

<sup>43</sup> Plan-Dec. 3, *Ibid.*, Plaintiffs' Motion Record, Tab 2C, pp. 99-188.

<sup>44</sup> Adelson Aff, *supra* note 8 at para. 9, Responding Motion Record of the Objectors, Tab 2, pp. 11.

<sup>45</sup> Minutes of Settlement at para. 10, Exhibit "A" to Wright Aff, Plaintiff's Motion Record, Volume 1, Tab 2A, p. 70. The attached Schedule "B" contains a cryptic reference (p.2) to a Final Order to be issued in the Ontario Class Action, to include an "opt-out threshold agreeable to E&Y." The Objectors have sought an explanation of that reference, but none has been furnished.

<sup>46</sup> Plan, Article 7.5, *supra* note 6 Plaintiffs' Motion Record, Volume 6, Tab 7, pp. 1474-1475.



36. On December 3, 2012, a large majority of creditors approved the Plan. The number of votes cast by proxy as opposed to in person has not been disclosed. The Objectors note, however, that proxy materials were distributed weeks earlier and proxies were required to be submitted three days prior to the meeting. It is evident that creditors submitting proxies only had a pre-Article 11 version of the Plan.

37. No equity claimants, such as the Objectors were entitled to vote on the Plan.<sup>47</sup>

38. Also on December 3, 2012, the OSC released a Statement of Allegations, asserting that E&Y had failed to perform its audit work on Sino-Forest's financial statements in accordance with GAAS, 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.<sup>48</sup> The document did not set forth extensive evidence, but did include some samples, including:

¶58 Some of these limitations were acknowledged by Ernst & Young staff in the course of performing their audits of the Material Financial Statements but were never adequately addressed. For example, in an e-mail exchange between the members of Ernst & Young's audit team, one auditor posed the question "[h]ow do we know that the trees that Poyry is inspecting (where we attend) are actually trees owned by the company? E.g. could they show us trees anywhere and we would not know the difference?" Another auditor answered "I believe they could show us trees anywhere and we would not know the difference..."<sup>49</sup>

39. On December 6, 2012, the Plan was further amended, adding E&Y and BDO Limited to Schedule A, thereby defining them as Named Third Party Defendants.

40. On December 7, 2012, the Sanction Hearing to approve the Plan was held.

41. Three of the Objectors -- Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc., at the time referred to as

<sup>47</sup> Fifteenth Report of the Monitor, dated January 28, 2013, at para. 27.

<sup>48</sup> OSC Allegations-Dec. 3, *supra* note 21, Exhibit "FF" to Wright Aff, Plaintiffs' Motion Record, Volume 3, Tab 2FF, pp.825-840.

<sup>49</sup> *Ibid.*, at para. 58, Plaintiffs' Motion Record, Volume 3, Tab 2FF, pp. 838-839, [emphasis added].

the "Funds" -- opposed the sanctioning of the Plan insofar as it included Article 11, the framework for the release of E&Y and other third party defendants. The Plan was nevertheless sanctioned on December 10, 2012 with Article 11.<sup>50</sup> The opposition of the Funds was dismissed as premature and on the basis that nothing in the Sanction Order affected their rights.<sup>51</sup>

42. At the Plan Sanction Hearing, counsel for Sino-Forest made it clear that the Plan itself did not embody the E&Y Settlement<sup>52</sup>, and that the parties' request that the Plan be sanctioned did not also cover approval of the settlement. Moreover, according to the Plan and the Minutes of Settlement, the settlement would not be consummated (i.e. money paid and releases effective) unless and until several conditions had been satisfied in the future.

43. In sanctioning the Plan, the Court reasoned that the implementation of the Plan was not conditional on the E&Y matter being successfully settled, and that any concerns with respect to the effect of the releases on the rights of the Funds could be addressed when settlements were presented for approval.<sup>53</sup>

44. Following the sanctioning of the Plan, three directors and officers were added as Named Third Party Defendants, making them eligible for broad no-opt-out releases under Article 11.2 of the Plan. On January 11, 2013, Chan and Poon were added.<sup>54</sup> On January

<sup>50</sup> Plan Sanction Order, dated December 10, 2012 ("Plan Sanction Order"), Exhibit "D" to Wright Aff, Plaintiffs' Motion Record, Volume 2, Tab 2D, pp. 189-209.

<sup>51</sup> Plan Sanction Endorsement-Dec. 10, *supra* note 7 at para. 25, Plaintiffs' Motion Record, Volume 1, Tab E1, p. 216

<sup>52</sup> *Ibid.*, at paras. 19-20, Plaintiffs' Motion Record, Volume 1, Tab E1, p. 215.

<sup>53</sup> Plan Sanction Endorsement-Dec. 10, *supra* note 7, at para. 25, Plaintiffs' Motion Record, Volume 1, Tab E1, p. 216

<sup>54</sup> Correspondence between Mr. James Orr and Ms. Jennifer Stam, Exhibits "F" to "H" to Adelson Aff, Responding Motion Record of the Objectors, Tabs 2F-2H, pp.117-125; OSC Allegations-May 22, *supra* note 26, Plaintiffs' Motion Record, Volume 3, Tab 2EE, pp. 786-824.

22, 2013, Horsley was added.<sup>55</sup> The OSC has accused both Chan and Horsley of unlawful conduct in connection with the Sino-Forest fraud.

45. Since obtaining the Sanction Order, Sino-Forest has taken and is taking further steps to implement the Plan.<sup>56</sup> It is now estimated that Plan Implementation will occur on January 29, 2013, and in any event prior to the end of January 2013.<sup>57</sup> Clearly, implementation is intended to occur prior to this Court's determination of the present objections, and prior to consummation of the E&Y Settlement.

46. On December 13, 2012, the Court directed that its hearing on the E&Y Settlement take place on January 4, 2013, under both the *CCAA* and the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*"), as assigned to the Court by the Regional Senior Justice.<sup>58</sup>

47. The Ontario Plaintiffs proposed a notice program for the settlement approval hearing that in effect provided only a one-day period between the deadline for notice dissemination and the deadline for submitting objections. The proposed Notice made no reference to the no-opt-out feature of the proposed E&Y Settlement. In response to the Funds' protests, E&Y and the Ontario Plaintiffs revised the contents of the notice to reflect the no-opt-out provision, and obtained a one-month adjournment of the hearing, to February 4, 2013.

48. On December 31, 2012, Class Counsel publicized in a memorandum to institutional investors that they believed that a "substantial premium" was negotiated with E&Y in exchange for extinguishing class members' statutory opt out rights.<sup>59</sup>

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<sup>55</sup> Appendix P to the Fifteenth Report of the Monitor, dated January 28, 2013.

<sup>56</sup> On January 21, 2013 Sino-Forest obtained a further order from the Court intended to facilitate the transfer of shares between a Sino-Forest subsidiary and Newco II. Order of the Honourable Mr. Justice Morawetz re Plan Implementation, entered January 21, 2013.

<sup>57</sup> Fifteenth Report of the Monitor, dated January 28, 2013 at para. 31.

<sup>58</sup> Fifteenth Report of the Monitor, dated January 28, 2013 at para. 39.

49. The Objectors submitted timely objections to the E&Y Settlement to the Monitor.<sup>60</sup> The objections were that: it is improper to trade away opt out rights, or render opt out rights illusory through a full and final release for a substantial premium; it is improper to approve a release to E&Y; it is improper to approve the E&Y Settlement to bind putative class members who have opted out and without certification, notice and opt out rights; it is improper to provide the Ontario Plaintiffs with a representation order; and, it is improper to approve the E&Y Settlement in installments in the absence of any plan for distribution or allocation.<sup>61</sup>

50. The Monitor received 93 objections (including the Objectors'). Eighty-four objections were counted as valid and timely.<sup>62</sup> Outside of the objections filed by the Objectors, 25 objections cited the proposed settlement amount as inadequate and six objections state that consideration of the settlement is premature in light of the ongoing investigation by the OSC and the lack of publicly available information. Nine investors objected on the ground that they purchased outside of the class period, never considered themselves represented by Class Counsel or the Ontario Plaintiffs, and yet would be bound by the proposed release.<sup>63</sup>

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<sup>59</sup> Memorandum by Siskinds LLP dated December 31, 2012 ("Siskinds Memo"), Exhibit "E" to Adelson Aff, Responding Motion Record of the Objectors, Tab 2E, pp. 112-116.

<sup>60</sup> Notice of Objection of Invesco Canada Ltd., Exhibit "A" to Adelson Aff-Jan 18, 2012, Responding Motion Record of the Objectors, Tab 2A, pp. 19-21; Notice of Objection of Comité Syndical National de Retraite Bâtière Inc., Exhibit "A" to Smard Aff, Responding Motion Record of the Objectors, Tab 3A, pp. 141-143; Notice of Objections of Northwest & Ethical Investments L.P., Matrix Asset Management Inc., Gestlon PÉRIQUE, and Montrusco Bolton Investments Inc., Exhibits "A" to "D" to Affidavit of Tanya T. Jemec ("Jemec Aff"), Responding Motion Record of the Objectors, Tab 4A-4D, pp. 242-253.

<sup>61</sup> Adelson Aff, *supra* note 8 at para. 5, Responding Motion Record of the Objectors, Tab 2C, pp. 8-10.

<sup>62</sup> Fourteenth Report of the Monitor, dated January 22, 2013, p. 2.

<sup>63</sup> Fourteenth Report of the Monitor, dated January 22, 2013; While 93 notices of objections were received, the Monitor counted a total of 91 objections.

### Part III – ISSUES AND THE LAW

#### A. The Proposed Full Release of E&Y Is Not Integral or Necessary to the Success of Sino-Forest's Restructuring Plan, and Therefore the Standards for Granting Third Party Releases in CCAA Proceedings Are Not Satisfied

51. E&Y is obviously not the applicant in this CCAA proceeding; nor is it a subsidiary of the applicant; nor is it seeking a director or officer release of the type treated specifically in Article 4.9. E&Y is a "third party" and the present motion includes at its core a request that this Court approve a third party release of all claims by anyone against E&Y relating to Sino-Forest.

52. As this Court has recognized, the authority of a court to sanction a CCAA plan incorporating a third party release is governed by the Court of Appeal's decision in *Metcalfe*.<sup>64</sup> More recently, the Superior Court has reiterated that such third party CCAA releases are permissible when they are necessary and integral to the restructuring of the applicant company, in furtherance of the purpose of the CCAA.<sup>65</sup> The British Columbia Supreme Court has observed that the purpose of the CCAA is to facilitate compromises and arrangements between a company and its creditors, "not to deal with disputes between a creditor of a company and a third party, even if the company was also involved in the subject matter of the dispute."<sup>66</sup>

53. Accordingly, as noted above, this Court was careful to point out the ways in which the proposed third party releases of Sino-Forest's Subsidiaries were essential to the

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<sup>64</sup> *Metcalfe*, *supra* note 9.

<sup>65</sup> *Allen-Vanguard Corporation (Re)*, 2011 ONSC 5017 at para. 61 (S.C.J.). The third party release was approved in this case only because class counsel had not objected to it on a timely basis.

<sup>66</sup> *Pacific Coastal Airline Ltd. v. Air Canada*, 2001 BCSC 1721 at para. 24 (S.C.).

restructuring, rendering that aspect of the proposed Plan “fair and reasonable”.<sup>67</sup> That was the correct analytical framework for assessing a third party release.

54. When the objecting Funds raised this issue at the sanction hearing, the parties objected that it was premature to do so, and that the objection should await the settlement approval hearing; and the Court agreed.<sup>68</sup> Thus it is clear the issue has not yet been decided by this Court.

55. Whatever terms are used to describe the standard – whether the third party release is “necessary,” “integral,” or “essential” to the success of the restructuring plan, such that the plan “cannot succeed without” the release – the proposed E&Y release, and thus the settlement, does not measure up.<sup>69</sup>

56. The most obvious evidence is the fact that all parties to the restructuring were fully ready to proceed with the Plan without the E&Y Settlement. The Affidavit of W. Judson Martin, Sino-Forest’s CEO and vice chairman, sworn November 29, 2012, does not say anything about the E&Y Settlement or about any possible exceptions to Section 7.5 of the Plan, as it then was, confirming that claims against third party defendants, including in the Class Action, were not affected.<sup>70</sup>

57. No one has asserted that the parties needed the E&Y Settlement or release to allow the Plan to go forward. In fact, there remains the possibility that the E&Y Settlement might not be approved by this Court, or other conditions precedent might fail – yet still the Plan would proceed (in fact, it will probably be implemented by the time of

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<sup>67</sup> Sanction Reasons-Dec. 12, *supra* note 5 at paras. 70-74, Plaintiffs’ Motion Record, Volume 1, Tab 2E2, pp. 231-232.

<sup>68</sup> Plan Sanction Endorsement-Dec. 10, *supra* note 7 at paras. 20 and 25, Plaintiffs Motion Record, Volume 1, Tab E1, pp. 215-216.

<sup>69</sup> See Schedule C for a number of definitions of the word “integral”.

<sup>70</sup> Affidavit of W. Judson Martin, sworn Nov. 29, 2012, Exhibit “C” to the Affidavit of W. Judson Martin sworn January 11, 2013, Responding Motion Record of Sino-Forest Corporation, Tab 1C, pp. 93-143.

the February 4 hearing), confirming again that the Settlement and release are not integral to the success of the Plan.

58. The Court made this disconnect clear in its December 10 and December 12, 2012 Endorsements, when it held that E&Y's Settlement and release is not a condition of Plan Implementation:

¶48 As noted in the endorsement dated December 10, 2012, which denied the Funds' adjournment request, the E&Y Settlement does not form part of the Sanction Order ...<sup>71</sup>

...  
 ¶20 Essentially, if certain conditions are met and further court approval and order are obtained, it is conceivable that E&Y will get a release. However, such a release is not being requested at this time. Further, it is not a condition of Plan Implementation that the E&Y matter be settled.<sup>72</sup>

[Emphasis added]

59. E&Y's affiant, Mike Dean, attempts to fill this void by describing a number of benefits E&Y provided to the CCAA proceeding, including supporting the Plan, releasing its indemnification claims, waiving leave to appeal the Equity Claims Order, and agreeing not to receive any distributions under the Plan.<sup>73</sup> However, he does not describe any of those benefits as being essential to the restructuring, and in fact they are all being provided regardless of whether the E&Y Settlement is approved and regardless of whether the requested CCAA release of E&Y is obtained.

60. The fact is that none of the benefits described by Mr. Dean were sufficiently important to convince any party to condition the implementation of the Plan on the approval of the E&Y Settlement and issuance of a third party release to E&Y.

<sup>71</sup> Sanction Reasons-Dec. 12 at para. 48, *supra* note 5 Plaintiffs' Motion Record, Volume 1, Tab 2E2, pp. 220-233.

<sup>72</sup> Plan Sanction Endorsement-Dec. 10 at para. 20, *supra* note 7, Plaintiffs Motion Record, Volume 1, Tab 2E1, p. 215.

<sup>73</sup> Dean Aff, *supra* note 21, Motion Record of Ernst & Young LLP, Tab 1, pp. 1-23.

61. Nor is the \$117 million settlement payment described as essential, or even related, to the restructuring. In fact, the \$117 million is to be paid into a Settlement Trust for the purpose of paying Securities Claimants who have not yet been identified, but who certainly include primarily share purchaser class members in the Class Action, whose equity claims against Sino-Forst are being barred in the Plan.

62. Lastly, it is questionable that varying the E&Y Settlement and release to accommodate opt outs would spell the end of the settlement. Notwithstanding the intention of the parties to effect a no-opt-out settlement, E&Y retained discretion to accept opt outs up to a certain threshold number.<sup>74</sup> E&Y has since confirmed that this provision, while it may be discretionary, is not just theoretical:

The conditions precedent to the Ernst & Young Settlement and the Ernst & Young Release as defined in the Plan are set out in the Sanction Order. The opt-out threshold referred to at Schedule B of the Minutes of Settlement, if it ever became operative, is at the discretion of Ernst & Young and would be set by it at such time.<sup>75</sup>

63. In summary, the E&Y settlement and release do not come close to resembling the extraordinary situations when these types of third party releases have been approved over objections.

64. Third party releases have been approved to avoid chaos in the Canadian airline industry or the collapse of the Canadian ABCP market.<sup>76</sup> In particular, the Court of Appeal in *Metcalf* carefully noted that the releases at issue were vital to the restructuring of the participants in the ABCP market and indeed the market itself;<sup>77</sup> that the parties

<sup>74</sup> Schedule B to Minutes of Settlement, Exhibit "A" to Wright Aff, Plaintiffs' Motion Record, Volume 1, Tab 2A, pp. 75-76.

<sup>75</sup> Answers of Written Examination of Mike Dean,

<sup>76</sup> *Metcalf*, *supra* note 9; see also *Canadian Airlines Corp. (Re)*, 2000 ABQB 442, leave to appeal ref'd, 2000 ABCA 238.

<sup>77</sup> *Metcalf*, *Ibid.*, at para. 118.



required to “give” releases were also creditors of the applicant market participants and thus were benefited by the plan; that the parties “receiving” releases were contributing in a tangible and realistic way to the plan; and that the creditors giving the releases were in the class of creditors that voted to approve the plan.<sup>78</sup> None of those characteristics could fairly be said to apply to the proposed release of E&Y in the present situation, directly or even by analogy.

65. Accordingly, the proposed third party Release of E&Y is not justified and the settlement is not fair and reasonable if it is implemented as proposed.

**B. The E&Y Settlement Should Not Be Approved Because It Would Negate the Objectors’ Opt Out Rights**

66. As described above in the Overview, if a Class Action settlement with E&Y is being proposed, it should be approved solely under the *Class Proceedings Act*, as the Pöyry settlement was, and not through misuse of a third party release procedure under the *CCAA*. However, since the Minutes of Settlement make it clear that E&Y retains discretion not to accept or recognize normal opt outs even if the *Class Proceedings Act* procedures are invoked, the E&Y Settlement should not be approved in this respect either.

67. The E&Y Settlement, as conceived by its proponents, would negate opt out rights of class members. The Minutes of Settlement state that the settlement is to be “approved and implemented in the Sino-Forest Corporation *CCAA* proceedings” “and without opt outs” (paragraph 10); as noted, however, the attached Schedule “B” (described in paragraph 10 as “additional terms ... incorporated as part of these Minutes of Settlement”) refers to approvals in all forums and to an “opt-out threshold agreeable to

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<sup>78</sup> *Ibid.*, at para. 113

E&Y" in the Ontario Class Action.<sup>79</sup> In any event, the proposed Release, as described in Article 11.1(b) of the sanctioned Plan, provides that "[n]otwithstanding anything to the contrary herein, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (i) 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 ..."<sup>80</sup> There is no exception in the release and discharge for objectors or opt outs.

68. The parties' intention to eliminate or negate any opt out right is exemplified in the case of the Objectors -- who have opted out from the Pöyry settlement, clearly would opt out from the E&Y Settlement (if a separate opt out were necessary or available), and yet clearly are not intended to retain any ability to assert their claims against E&Y in the wake of the proposed approval of the E&Y Settlement.<sup>81</sup>

69. The right to opt out is explicitly set forth in section 9 of the CPA: "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."<sup>82</sup>

<sup>79</sup> Recent responses to interrogatories by E&Y state that "the conditions precedent to the Ernst & Young Settlement and the Ernst & Young Release as defined in the Plan are set out in the Sanction Order. The opt-out threshold referred to at Schedule B of the Minutes Settlement, if it ever became operative, is at the discretion of Ernst & Young and would be set by it at such time." See Answers to Written Examination of Mike Dean.

<sup>80</sup> Plan, *supra* note 6 Article 11.1(b). Alternatively, if that direct method fails, the Plan also provides a framework for E&Y to obtain a full release as a Named Third Party Defendant through Article 11.2(e). Plan, Article 11.1(c). The conditions precedent under Article 11.2 only require the granting of the Sanction Order, the granting of the Named Third Party Defendant Settlement Order and the satisfaction or waiver of all conditions precedent in the settlement. Plan, *supra* note 6, Article 11.2(b).

<sup>81</sup> As noted in the Overview, the Objectors' opt out forms included a condition that it was intended to be effective only to the extent that any defendant did not obtain a final release of any claim, such as the release sought by E&Y. The Affidavit of Eric Adelson of Invosco explained the reason: "It appeared to us that the Pöyry opt out procedure might involve a 'Catch 22' provision -- if we opted out to pursue our remedies individually, we might be giving up our ability to share in any settlement proceeds, but the proposed full Release of E&Y might prevent us from seeking remedies on our own, thus making the opt out right illusory. Accordingly, in an effort to avoid such a trap," the opt out form included the stated condition. Adelson Aff, *supra* note 8 at para 18, Responding Motion Record of the Objectors, Tab 2C, p. 13.

<sup>82</sup> *Class Proceedings Act*, S.O.1996, C. 6, s. 9

70. The right to opt out of a class action is a fundamental element of procedural fairness in the Ontario class action regime.<sup>83</sup> It is not a mere technicality or an illusory right; rather, it is the foundation for the court's jurisdiction over class members and it is the mechanism by which the class members are bound by the court's decision. It has been described as absolute.<sup>84</sup> Contracting out of the opt-out right is objectionable in principle and impermissible in light of the *CPA*.<sup>85</sup> The opt-out period allows persons to pursue their self-interest and to preserve their rights to pursue individual actions.<sup>86</sup>

71. In *Western Canadian Shopping Centres v. Dutton*<sup>87</sup>, the Supreme Court of Canada held that the right to opt out is the foundation for a court's jurisdiction over class members in a class action – class members are bound only after proper notice has been given to the class and the right to opt out has been granted:

...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. ...<sup>88</sup>

72. The principle was further explained by the Supreme Court in *Canada Post Corp. v. Lepine*<sup>89</sup>:

... In many class proceedings, the representative acts on behalf of a very large class. The decision that is made not only affects the representative and the defendants, but may also affect all claimants in the classes covered by the action. For this reason, adequate information is necessary to satisfy the requirement that individual rights be safeguarded in a class proceeding. The notice procedure is indispensable in that it informs members about how the judgment authorizing the class action or certifying the class proceeding affects them, about the rights — in particular the possibility of opting out

<sup>83</sup> *Fischer*, *supra* note 13 at para. 69.

<sup>84</sup> *Darling v. Sunrise Propane Energy Group Inc.*, 2011 CarswellOnt 77 at para. 19 (S.C. J.); *Cheung v. Kings Land Developments Inc.*, 2001 CarswellOnt 3227 at para. 12 (S.C.J.).

<sup>85</sup> *Davles v. Clarington (Municipality)*, 2010 ONSC 418 at para. 32. (S.C.J.)

<sup>86</sup> *Mangan v. Inco Ltd.*, [1998] O.J. No. 551 at para. 36 (Ct. J.(Gen. Div.)).

<sup>87</sup> *Western Canadian Shopping Centres v. Dutton*, 2001 SCC 46.

<sup>88</sup> *Ibid.*, at para. 49; see also *Sauer*, *supra* note 13 at paras. 2, 19

<sup>89</sup> *Canada Post Corp. v. Lepine*, 2009 SCC 16 [emphasis added]

of the class action — they have under the judgment, and sometimes, as here, about a settlement in the case.<sup>90</sup>

[Emphasis added]

73. The Ontario Court of Appeal has recognized that the right to opt out is fundamental and should not be 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.<sup>91</sup>

[Emphasis added]

74. That Court has also described the opt out right as an important procedural protection afforded to unnamed class action plaintiffs:

The right to opt out is an important procedural protection afforded to unnamed class action plaintiffs. Taking appropriate steps to opt out and remove themselves from the action allows unnamed class action plaintiffs to preserve legal rights that would otherwise be determined or compromised in the class proceeding.<sup>92</sup>

75. There are no exceptions to these principles for situations in which class counsel and a settling defendant have devoted long hours to negotiating a class settlement and feel strongly that the settlement is a signal achievement for the class.

#### C. Other Aspects of the Proposed E&Y Settlement Are Not “Fair and Reasonable”

76. The E&Y Settlement is not fair or reasonable for reasons in addition to those stated above. The “fair and reasonable” standard for approving proposed settlements applies in both *CCAA* proceedings<sup>93</sup> and under the *CPA*.<sup>94</sup>

<sup>90</sup> *Ibid.*, at para 42.

<sup>91</sup> *Fischer*, *supra* note 16 at para. 69 [emphasis added].

<sup>92</sup> *Currie v. McDonald's Restaurants of Canada Ltd.*, [2005] 74 OR (3d) 321 at para. 28 (C.A.).

<sup>93</sup> *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647 at para. 22 (S.C.J.).

1. The proposed release of E&Y does not include any carve-out for fraud and is therefore not fair and reasonable under the *CCAA*

77. The Court of Appeal in *Metcalf* was careful to note that the releases at issue there included limited "carve-outs" so that certain fraud claims were not released.<sup>95</sup> The Release to be provided to E&Y is exceptionally broad in overriding the exclusions preventing release of fraud claims found elsewhere in the Plan.<sup>96</sup> The only exception to the proposed Release of E&Y is for claims by the Ontario Securities Commission; otherwise, the Release covers all claims, with no fraud exception whatsoever.<sup>97</sup>

78. The failure of the proposed Release to exclude at least the type of fraud claims identified in the *Metcalf* carve-out means the Plan, if implemented in that way, is not fair and reasonable.

2. Class Counsel's acknowledgement that E&Y paid a "substantial premium" in order to be released from all claims without opt out rights demonstrates that the proposed settlement is not fair to opt outs

79. As noted above, the memorandum circulated by Siskinds LLP on December 31, 2012, stated that "[t]he absence of opt-out rights has long been a standard feature of Canadian insolvency proceedings. Moreover, Siskinds-Koskie believe that E&Y paid a substantial premium in order to be released from all claims through the Insolvency Proceeding."<sup>98</sup>

<sup>94</sup> *Ibid.*, at para. 24 (S.C.J.).

<sup>95</sup> *Metcalf*, *supra* note 9 at paras. 109-112.

<sup>96</sup> Plan, *supra* note 6, Article 7.2, Plaintiffs' Motion Record, Volume 6, Tab 7, pp. 1473-1474.

<sup>97</sup> Plan, *supra* note 6.

<sup>98</sup> Siskinds Memo, *supra* note 59, Responding Motion Record of the Objectors, Tab 2E, pp. 112-116; See also Affidavit of Charles Wright, sworn January 10, 2013 ("Wright Aff") at para 66, Plaintiffs' Motion Record, Volume 1, Tab 2, pp. 50-51 (E&Y "would not have offered the large settlement amount" but for the *CCAA* proceedings, which is conditional upon full and final release of E&Y by order of the *CCAA* court); paragraph 70 (Plan Article 11.2 provides for the ability to complete further settlements,

80. This passage indicates, or at least strongly implies, that the Ontario Plaintiffs traded away the opt out rights of Class Members (or allowed them to be rendered illusory) in return for more consideration ("a substantial premium") to be paid by E&Y into the proposed Settlement Trust fund. Put more bluntly, E&Y paid more to rid themselves of having to deal with opt outs, and Class Counsel countenanced that bargain.

81. In view of the fundamental nature of opt out rights described in the previous section, it is clear that settlement payments to negate opt out rights are improper, and cannot be considered fair and reasonable under any circumstances.<sup>99</sup>

82. The fact that the Pöyry settlement was effectuated on a normal class action basis, with effective opt out rights, during the pendency of the *CCAA* proceedings, provides a clear counterpoint example of how the E&Y settlement should have been handled.

3. The partial information available from Class Counsel  
at a minimum calls the fairness and reasonableness  
86 of the E&Y Settlement into question

83. Other information that has become available, or whose availability has been withheld, calls the proposed settlement into further question.

84. In recommending the E&Y Settlement, Class Counsel had access to E&Y's responsive insurance policies and took coverage into account in assessing what could be reasonably recoverable from E&Y.<sup>100</sup> However, Class Counsel and E&Y decline to

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which could have the "benefit" of a full release for the Underwriters or BDO Limited "and would likely result in those parties paying a premium for settlement to resolve all claims against them").

<sup>99</sup> Siskinds' statement that "the absence of opt-out rights has long been a standard feature of Canadian insolvency proceedings" is itself misleading. Obviously, *CCAA* releases normally do not reflect opt out rights -- but in the present situation, we are dealing with opt outs by putative class members, who have appeared to object to the deprivation of opt out rights, with respect to claims asserted against third parties to a *CCAA* proceeding -- ingredients that have not often arisen together previously. As the Court of Appeal's *Metcalf* decision makes clear, a third party release cannot plausibly be called a "standard feature" when such situations do appear.

<sup>100</sup> *Wright Aff*, *supra* note 98 at paras. 87(d) and 118, Plaintiffs' Motion Record, Volume 1, Tab 2, pp. 56 and 65.

disclose the amount of available coverage.<sup>101</sup> One would expect, in a case involving audit failure as severe as alleged by the OSC, and involving losses as large as here, at least the insurance coverage would be exhausted. If that is not the case, the reasonableness of the amount of the proposed settlement would be highly dubious.

85. As described above, the OSC released its allegations against E&Y on the same day the proposed settlement was announced. Any fair reading of the allegations leads to the conclusion that they are a scathing indictment of E&Y's likely audit failures.

86. Class Counsel, however, concluded that the OSC's statement of allegations "does not include any allegations that amount to knowledge or recklessness with regards to a representation."<sup>102</sup> This conclusion casts doubt on Class Counsel's assessment of their own case, for two reasons: (a) Class Counsel apparently view the OSC allegations as a *negative* for their recovery prospects against E&Y, which seems implausible in light of the content of the allegations, as stated above; and, (b) Class Counsel has apparently concluded, after negotiations with E&Y, that "recklessness" will suffice as a type of "knowledge" for avoiding the secondary market (Part XXIII.1) liability cap applicable to experts (which is avoided if the defendant made a misrepresentation "knowing" it was false):

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.<sup>103</sup>

<sup>101</sup> Answers on Written Examinations of Mike Dean & Answers on Written Examinations of Charles Wright.

<sup>102</sup> Wright Aff, *supra* note 98 at para 112, Plaintiffs' Motion Record, Volume 1, Tab 2, pp. 63.

<sup>103</sup> *Securities Act*, R.S.O. 1990, c. S-138.7(2).

[Emphasis added]

87. Contrary to Class Counsel's assertions, the OSC's description of E&Y's alleged audit failures could readily lead to the conclusion that the failures were "reckless".

88. E&Y provided Class Counsel with "the opinion of an auditing expert, who opines that Ernst & Young complied" with GAAS and was "not negligent in the preparation of its 2010 audit report"<sup>104</sup> – but the opinion has not been furnished and the expert has not been identified.<sup>105</sup>

89. The Objectors and their legal counsel in these proceedings have not, as of this date at least, been privy to any of the documents generated while E&Y was doing its audit work, whether from E&Y or from other parties who were on the scene. However, based on logic and, to some extent, the account of the parties' negotiations, it appears that E&Y must have been persuaded by some powerful evidence that it could not rely on the liability cap applicable to the secondary market claim against it (it asserted the applicable cap was far below the amount it has agreed to pay<sup>106</sup>) – i.e., that it had a real risk that its misconduct could be proved to have been "knowing".

90. Finally, the lack of any plan of distribution of the proposed Settlement Trust fund makes it unrealistic to expect claimants to assess whether the outcome would be fair and reasonable as to them (including the Objectors, if they were eligible to receive distributions). This is a result of the parties' decision to handle this settlement "by installments" -- the framework for the Release was approved in the Plan, the E&Y Settlement itself is now being considered for approval, E&Y will contribute the

<sup>104</sup> Wright Aff, *supra* note 98 at para 106, Plaintiffs' Motion Record, Volume 1, Tab 2, pp. 61-62.

<sup>105</sup> Answers on Written Examinations of Mike Dean.

<sup>106</sup> Wright Aff, *supra* note 98 at para 110, Plaintiffs' Motion Record, Volume 1, Tab 2, pp. 61-63.



consideration to the Settlement Fund if and when conditions are satisfied in the future, and a plan for allocating or distributing the settlement monies has not yet been devised. The Securities Claimants who are potential recipients include purchasers of notes and shares, purchasers on the primary and secondary market, purchasers across Canada and abroad, those who purchased within the class period as well as those who purchased outside of the class period. Such an installment-based approach has been criticized.<sup>107</sup>

**D. The Ontario Plaintiffs' Request for a Representation Order  
Should Be Dismissed**

91. The Ontario Plaintiffs are seeking a Representation Order to try to distract from the fact that there is substantial dissent from the E&Y Settlement.

92. As described earlier, they previously sought such an order but let the application lapse. Now, even though the negotiation of the proposed settlement is a *fait accompli*, the Ontario Plaintiffs want retroactive cover.<sup>108</sup> The motion should be dismissed, and if anyone is appointed, it should be the Objectors, at least for all persons who have objected to the settlement.

93. The general authority of a *CCAA* court to grant a Representation Order derives from Rule 10.01 of the *Rules of the Civil Procedure*, which allows a court to appoint one or more persons to represent any person or a class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or

<sup>107</sup> *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629 at para. 90.

<sup>108</sup> E&Y and the Ontario Plaintiffs assert that the Mediation Order and the Data Room Order gave Class Counsel the authority to enter into settlement discussions: Dean Aff, *supra* note 21 at para. 51, Motion Record of Ernst & Young LLP, Tab 1, pp. 17-19. Those orders did not purport to go so far as to authorize Class Counsel to bind putative class members to any settlements; if they had, presumably the Ontario Plaintiffs would not have sought a Representation Order previously or now.

served.<sup>109</sup> The factors to be considered in deciding on a representation order in *CCAA* proceedings include: vulnerability and resources of the group; benefit to the debtor; social benefit to be derived from representation; facilitation of administration; avoidance of multiplicity of legal retainers; balance of convenience; whether it is fair and just to the parties; whether the representative counsel has already been appointed for those have similar interests; and the position of other stakeholders and the Monitor.<sup>110</sup> A representation order is not appropriate when the class of persons is overly broad, already represented by counsel, there is no issue with respect to ascertaining the members of the class, or conflicts of interests are present between class members.<sup>111</sup> The interest of judicial economy does not override persons' rights to have their representative or counsel of choice and to pursue their own litigation or settlement strategy against a common defendant.<sup>112</sup>

94. The Ontario Plaintiffs do not qualify under these standards. The six Objectors represent about three and half times as many shares as the Ontario Plaintiffs. There is a clear divergence among class members, with the Objectors and other objectors and opt outs taking positions at odds with the Ontario Plaintiffs and Class Counsel. The Objectors are represented by counsel (Kim Orr Barristers P.C.) who have appeared in

<sup>109</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 10.01; *Nortel Networks Corp., Re.*, 2009 CarswellOnt 3028, 53 C.B.R. (5th) 196 at para. 10 (S.C.J.) ("*Nortel*")

<sup>110</sup> *Camvest Global Communications Corp., Re.*, 2009 CarswellOnt 9398 ("*Camvest-2009*"); *Nortel, Ibid.*; *Re Camvest Publishing Inc./Publicatons Camvest Inc.*, 2010 CarswellOnt 1344, 65 C.B.R. (5th) 152.

<sup>111</sup> *Bruce (Township) v. Thornburn*, 1986 CarswellOnt 2124, 57 O.R. (2d) 77 at para. 24 (Div. Ct.); *Ravelston Corp. (Re)*, 2007 CarswellOnt 7288, O.J. No. 4350 at para. 9 (S.C.J.); *McGee v. London Life Insurance Co.*, 2008 CarswellOnt 2534, 63 C.P.C. (6th) 107 at para. 38 (S.C.J.)

<sup>112</sup> *Attard v. Maple Leaf Foods Inc.*, 1998 CarswellOnt 1548, 20 C.P.C. (4th) 346 at para. 4 (Ont. Gen. Div.)

these proceedings. The Objectors have strongly indicated that they do not view Class Counsel as representing them or their interests.<sup>113</sup>

95. Plaintiffs' counsel in a putative class action do not have a solicitor-client relationship with any putative class member with whom they do not have a retainer agreement until a court has certified the case as a class action. However, the law does recognize that class counsel owes certain duties to class members pre-certification. In *Canada Post Corp. v. Lepine*, the Supreme Court held that the representative plaintiff's duty extends to informing potential class members of the right to opt out.<sup>114</sup> It follows that there is a duty to protect the right to opt out as well. The Ontario Plaintiffs and Class Counsel evidently recognized exactly that when they moved for a Representation Order in April 2012 and included an "opt out letter" for claimants to execute if they did not desire the proposed representation.

96. Recent events – specifically, Class Counsel's agreement to relinquish class members' opt out rights in return for a premium payment by E&Y – create a further reason for denying the Ontario Plaintiffs' requested Representation Order: Class Counsel have a conflict of interest. As stated by Eric Adelson of Objector Invesco:

We became definitively dissatisfied on December 3, 2012, when it was revealed that Class Counsel, without authority, had purported to bargain away absent Class members' opt out rights. This was a clear conflict as Class Counsel will be seeking as fees a percentage of the amount received for bargaining away those rights. ...<sup>115</sup>

And as stated by Daniel Simard of Objector Bâtirente:

<sup>113</sup> Adelson Aff, *supra* note 8 at paras 25-29, Responding Motion Record of the Objectors, Tab 2, pp. 16-17; Affidavit of Eric J. Adelson, sworn December 6, 2012 at para. 6, Exhibit "C" to Adelson Aff, Responding Motion Record of the Objectors, Tab 2C, pp. 104

<sup>114</sup> *Canada Post Corp. v. Lepine*, 2009 SCC 16 at para. 42.

<sup>115</sup> Answers to Written Examination of Eric J. Adelson at para. 29.

¶12 In my view, the Ontario Plaintiffs and Class Counsel have violated their duties to class members by acceding to a settlement with E&Y in which class members' opt out rights will be negated and/or rendered illusory.<sup>116</sup>

97. Under these circumstances, it would be highly improper to impose representation by Class Counsel on class members who object, wish to opt out, and believe Class Counsel do not represent their interests and are indeed in conflict with them.

98. For the same reasons and at the very least, if the Court does appoint the Ontario Plaintiffs as representatives of Security Claimants, the Objectors and all other objectors and opt outs should be relieved of the binding effect of the Representation Order and Settlement Approval Order. This is specifically contemplated by Rule 10.03, which states:

10.03 Where a person or an estate is bound by reason of a representation order . . . a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

- (a) the order or approval was obtained by fraud or non-disclosure of material facts;
- (b) the interests of the person or estate were different from those represented at the hearing; or
- (c) for some other sufficient reason the order or approval should be set aside.<sup>117</sup>

99. The three criteria are met here. (a) As described above, many material facts concerning the E&Y Settlement have been withheld from disclosure to the Objectors, including insurance coverage, the content of E&Y's working papers and other documents

<sup>116</sup> Simard Aff at para. 15, Responding Motion Record of the Objectors, Tab 3, pp. 135.

<sup>117</sup> Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 10.03.

concerning its knowledge.<sup>118</sup> (b) There is a stark divergence of interest, and indeed a conflict of interest, between the interests of the Ontario Plaintiffs and the Objectors, as described above. (c) In general, it would be unacceptable to allow the Ontario Plaintiffs to obtain a representation order for the purpose of negating the Objectors' opt out rights and cramming down a controversial settlement.

100. The purpose of a Rule 10 Representation Order in the *CCAA* is to protect vulnerable and unsophisticated stakeholders who may not be able to protect their rights.<sup>119</sup> It should not be used to prejudice the rights of unwilling parties who are already represented. Relieving the Objectors from the binding effect of the Proposed Settlement Approval Order, offered by the Ontario Plaintiffs who do not represent the Objectors' interests, would be consistent with the overall purpose of the *CPA* and Rule 10.

101. For similar reasons, the Objectors move for appointment as representatives on behalf of all Security Claimants who filed an objection to the E&Y Settlement, pursuant to Rules 10.01(1)(c) and 10.01(1)(f). Many of those objectors evidently lack separate legal representation, and by virtue of their objections it is apparent that their interests align with those of the Objectors. It would be appropriate to appoint the Objectors and their counsel Kim Orr as representatives for all such objectors.

#### E. The Objectors Have Standing to Assert Their Objections

102. E&Y apparently intends to argue, as set out at paragraph 51 of the Dean Affidavit, that the Objectors have waived their positions here or lack standing to assert them, basically because they did not detect at an earlier point in the *CCAA* proceedings that a

<sup>118</sup> *Adelson Aff*, *supra* note 8 at paragraph 23, Responding Motion Record of the Objectors, Tab 2, p.

15.

<sup>119</sup> *Canwest-2009*, *supra* note 110 at para. 14; *Nortel*, *supra* note 109 at para. 13.

move was afoot to consummate a settlement between the Ontario Plaintiffs and E&Y on a third party release basis and without opt outs. E&Y's argument is not credible.

103. We doubt there is any authority or case precedent for the proposition that absent class members cannot raise objections at a settlement fairness hearing – unless they have opted out of the class action, which of course is the major problem here: the Objectors are being denied their effective opt out rights. In general, of course, class members who are affected by a class action settlement have standing to object at a fairness hearing.<sup>120</sup>

104. Mr. Deau contends (as “advised by counsel to E&Y”) that the Objectors’ failure to “participate” in the Third Party Stay Order, the Claims Procedure Order, the Mediation Order, and the Data Room Order – all entered in the period May through July 2012 – “may affect the ability of the Funds [Objectors] to maintain standing to oppose the Ernst & Young settlement at this time.”<sup>121</sup> This is tantamount to asserting that the Objectors, as absent class members, should have been second-chairing the Ontario Plaintiffs and Class Counsel as they participated in the *CCAA* proceedings, and if they did not, they would be disabled from objecting to any settlement or arrangement put forward by the Ontario Plaintiffs later in the proceeding. Even the Ontario Plaintiffs do not make such a suggestion – presumably because they are well aware, as experienced class counsel, that the continued participation of thousands of absent class members and their counsel in litigation activities after carriage is awarded would be unwise and unworkable. As discussed above, class counsel are supposed to represent the interests of the class, even pre-certification, and class members are entitled to rely on class counsel’s fulfillment of that duty.

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<sup>120</sup> *Kidd v. Canada Life Insurance*, 2011 ONSC 6324 at para. 66 (S.C.J.)

<sup>121</sup> *Deau Aff*, *supra* note 21 at para. 51, Motion Record of Ernst & Young LLP, Tab 1, pp. 17-19.

105. In any event, as a general matter, failure to challenge previous court orders in commercial matters does not create an estoppel.<sup>122</sup> Similarly, waiver (in this case of standing) can only be found where the party against whom waiver is asserted had (1) a full knowledge of rights and (2) an unequivocal and conscious intention to abandon them.<sup>123</sup> E&Y would not be able to come close to satisfying that standard. Certainly, none of the four cited orders explicitly said anything about standing. The Ontario Plaintiffs lacked authority to bind anyone other than themselves to the E&Y Settlement, as acknowledged by the parties themselves (including E&Y) at paragraph 14 of the Minutes of Settlement:

¶14. The Parties shall use all reasonable efforts to obtain all court approvals and/or orders necessary for the implementation of the Minutes of Settlement, including an order in the CCAA proceedings granting the plaintiffs appropriate representative status to affect the terms herein;<sup>124</sup>

[Emphasis added]

106. Moreover, as a matter of common sense, there was nothing in the events occurring in the CCAA proceeding in 2012 until December 3, 2012 -- when the terms of the E&Y Settlement were publicly described as including a "full" third party release designed to exclude opt out rights -- that would have alerted class members that their opt out rights might be infringed in this way.

107. Entry by the Ontario Plaintiffs into tolling agreements with defendants; the Ontario Plaintiffs' submission of a class CCAA proof of claim against the applicant; the

<sup>122</sup> *Livent Inc.*, 2010 ONSC 2267 at paras. 108 and 109. (S.C.J.)

<sup>123</sup> *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490 at paras. 19, 20 and 24

<sup>124</sup> Minutes of Settlement, *supra* note at para. 45, Plaintiff's Motion Record, Volume 1, Tab 2A, p. 71.

Ad Hoc Purchasers' participation in the mediation<sup>125</sup>; and their access to Data Room documents – none of those orders and events gave any indication that a third party release of E&Y without opt out rights was contemplated.

108. If third party releases of the type sought by E&Y here were granted in *CCAA* proceedings as a matter of routine, perhaps class members could be expected to be on guard against usurpation of opt out rights. Since the *Metcalf* case makes it clear that such releases are to be granted only in the most exceptional cases, and certainly not as a matter of routine, the parties' suggestion that the Objectors should have foreseen the objected-to aspects of the E&Y Settlement long before, and actively moved to block them, is simply not credible.

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<sup>125</sup> The July 25, 2012 Mediation Order included the Ad Hoc Purchaser group formed by Siskinds and Koskie Minsky as a party, and referred to that group as "Plaintiffs". The mediation occurred soon after the Pöyry settlement was announced, and particularly referred to negotiations with other third party defendants in that context. Since the Pöyry settlement was proceeding according to normal class action procedures, including opt out rights, and without third party *CCAA* releases, nothing in the mediation process could reasonably have alerted onlookers that opt out rights could be defeated. Mr. Dean cannot plausibly maintain that the order's grant of "full authority to settle" to the parties, including the Ad Hoc Purchasers, gave notice that class members' opt out rights could be defeated, and required other class members to insert themselves into the mediation process if they wanted to preserve opt out rights. Order of the Honourable Mr. Justice Morawetz, dated July 25, 2012, Plaintiffs' Motion Record, Vol. 3, Tab 2AA, pp. 763-770.



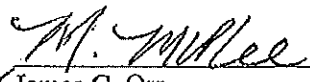
## Part IV – ORDER SOUGHT

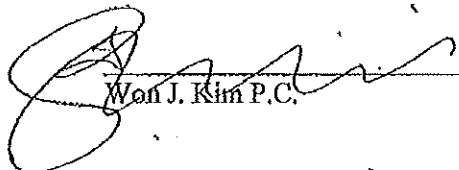
109. The Objectors request that the Court dismiss the motion to approve the E&Y Settlement and the request for a Representation Order.

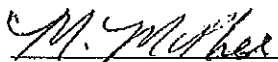
110. In the event that this Court grants a Representation Order to the Ontario Plaintiffs, the Objectors request an Order that the Objectors are not bound by any such Representation Order.

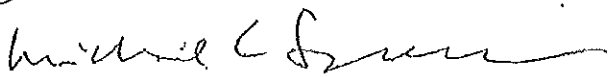
111. The Objectors request an Order declaring that the Objectors are representatives of all Securities Claimants who objected to the E&Y Settlement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 30<sup>TH</sup> DAY OF JANUARY, 2013

  
per James C. Orr

  
Won J. Kim P.C.

  
Megan B. McPhee

  
Michael C. Spencer

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## Schedule A- Authorities

Tab	Authority
1.	<i>Allen-Vanguard Corporation (Re)</i> , 2011 ONSC 5017 (S.C.J.)
2.	<i>ATB Financial v. Metcalfe &amp; Mansfield Alternative Investments II Corp.</i> , 2008 ONCA 587, 45 C.B.R. (5 <sup>th</sup> ) 163, leave to appeal to S.C.C. ref'd, [2008] S.C.C.A. No. 337.
3.	<i>Attard v. Maple Leaf Foods Inc.</i> , 1998 CarswellOnt 1548, 20 C.P.C. (4th) 346 (Gen. Div.)
4.	<i>Bruce (Township) v. Thornburn</i> , 1986 CarswellOnt 2124, 57 O.R. (2d) 77 (Div. Ct.).
5.	<i>Canada Post Corp. v. Lepine</i> , 2009 SCC 16
6.	<i>Canadian Airlines Corp. (Re)</i> , 2000 ABQB 442, leave to appeal ref'd, 2000 ABCA 238
7.	<i>Camwest Global Communications Corp., Re</i> , 2009 CarswellOnt 9398 (S.C.J.)
8.	<i>Camwest Publishing Inc./Publications Camwest Inc. (Re)</i> , 2010 CarswellOnt 1344, 65 C.B.R. (5th) 152 (S.C.J.)
9.	<i>Cheung v. Kings Land Developments Inc.</i> , 2001 CarswellOnt 3227 (S.C.J.)
10.	<i>Currie v. McDonald's Restaurants of Canada Ltd.</i> , [2005] 74 OR (3d) 321 (C.A.)
11.	<i>Dayles v. Clarington (Municipality)</i> , 2010 ONSC 418 (S.C.J.)
12.	<i>Durling v. Sunrise Propane Energy Group Inc.</i> , 2011 CarswellOnt 77 (S.C.J.)
13.	<i>Fischer v. IG Investment Management Ltd</i> , 2012 ONCA 47
14.	<i>Garland v. Consumers' Gas Co.</i> , 2004 SCC 25, [2004] 1 S.C.R. 629
15.	<i>Kidd v. Canada Life Insurance</i> , 2011 ONSC 6324 (S.C.J.)
16.	<i>Livent Inc. (Special Receiver and Manage of) v. Deloitte &amp; Touche</i> , 2010 ONSC 2267 (S.C.J.)
17.	<i>Mangan v. Inco Ltd.</i> , [1998] O.J. No. 551 (Ct. J.(Gen. Div.))
18.	<i>McGee v. London Life Insurance Co.</i> , 2008 CarswellOnt 2534, 63 C.P.C. (6th) 107 (S.C. J.)

Tab	Authority
19.	<i>Nortel Networks Corp., Re.</i> , 2009 CarswellOnt 3028, 53 C.B.R. (5th) 196 (S.C.J.)
20.	<i>Pacific Coastal Airline Ltd. v. Air Canada</i> , 2001 BCSC 1721 (S.C.)
21.	<i>Ravelston Corp. (Re)</i> , 2007 CarswellOnt 7288, O.J. No. 4350 (S.C.J.)
22.	<i>Robertson v. ProQuest Information and Learning Company</i> , 2011 ONSC 1647 (S.C.J.)
23.	<i>Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.</i> , [1994] 2 S.C.R. 490
24.	<i>Sauer v. Canada (Attorney General)</i> , 2010 ONSC 4399 (S.C.J.)
25.	<i>Sino-Forest Corporation (Re)</i> , 2012 ONSC 4377, aff'd 2012 ONCA 816
26.	<i>Western Canadian Shopping Centres v. Dutton</i> , 2001 SCC 46

### Schedule B-Legislation

#### *Companies Creditors' Arrangement Act, R.S.C. 1985, c. C-36, s. 5.1(2)*

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

#### *Securities Act, R.S.O. 1990, c. S-5, s. 78(2), 78(3), 122(1), 138.7(2)*

78. (1) Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to,

- (a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer or mutual fund has completed a financial year, the last financial year, as the case may be; and
- (b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

(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,

- (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act 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;

(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;

(c) contravenes Ontario securities law,

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.

138.7 (1) Despite section 138.5, the damages payable by a person or company in an action under section 138.3 is the lesser of,

(a) the aggregate damages assessed against the person or company in the action; and

(b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 16.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure. 2002, c. 22, s. 185.

*Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 10*

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (2).

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons. R.R.O. 1990, Reg. 194, r. 10.01 (3).

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (4).

**10.02** Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or

administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding. R.R.O. 1990, Reg. 194, r. 10.02.

10.03 Where a person or an estate is bound by reason of a representation order made under subrule 10.01 (1) or rule 10.02, an approval under subrule 10.01 (3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

(a) the order or approval was obtained by fraud or non-disclosure of material facts;

(b) the interests of the person or estate were different from those represented at the hearing; or

(c) for some other sufficient reason the order or approval should be set aside. R.R.O. 1990, Reg. 194, r. 10.03.

*Class Proceedings Act, S.O.1996, C. 6, s. 9.*

(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.

Schedule "C" – Definitions of the word "Integral"

1. In the 6<sup>th</sup> edition of *Black's Law Dictionary*, the word integral is defined as

"Term in ordinary usage means part or constituent component necessary or essential to complete the whole."

2. In *Words & Phrases Judicially Defined in Canadian Courts and Tribunals*, the definition of integral is drawn from the *Oxford Dictionary* (see below) and *Webster's New Collegiate Dictionary*. Webster's Collegiate Dictionary defines integral as including:

"essential to completeness; constituent; formed as a unit with another part; lacking nothing essential."

3. The second edition of the *Oxford English Dictionary* defines integral as

1. Of or pertaining to a whole. Said of a part or parts: Belonging to or making up an integral whole; constituent, component; *spec.* necessary to the completeness or integrity of the whole; forming an intrinsic portion or element, as distinguished from an adjunct or appendage.
2. Made up of component parts which together constitute a unity; in Logic, said of a whole consisting of or divisible into parts external to each other, and therefore actually (not merely mentally) separable.
3. Having no part or element separated, taken away, or lacking; unbroken, whole, entire, complete.



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

Superior Court File No.: CV-10-414302CP  
THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, et al. - and - SINO-FOREST CORPORATION, et al.

Plaintiffs

Defendants

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF THE OBJECTORS  
(Motion for Settlement Approval returnable  
February 4, 2013)

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Ethical Investments L.P., Comité Syndical  
National de Retraite Bâtiement Inc., Matrix Asset  
Management Inc., Gestion Férique and  
Montrusco Bolton Investments Inc.

## **Tab 10**

Court of Appeal File No.: M42399  
S.C.J. Court File No.: CV-12-9667-00CL

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

Court of Appeal File No.: M42399  
S.C.J. Court File No.: CV-11-431153-00CP

COURT OF APPEAL FOR ONTARIO

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 THE APPELLANTS,

INVESCO CANADA LTD.,  
NORTHWEST & ETHICAL INVESTMENTS L.P.,  
COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.,  
MATRIX ASSET MANAGEMENT INC., GESTION FÉRIQUE, AND  
MONTRUSCO BOLTON INVESTMENTS INC.

(Motion for Leave to Appeal from E&Y Settlement Approval Order  
and Representation Dismissal Order)

May 10, 2013

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Canada Ltd., Northwest & Ethical Investments L.P.,  
Comité Syndical National de Retraite Bâtirente Inc.,  
Matrix Asset Management Inc., Gestion Férique and  
Montusco Bolton Investments Inc.

TO: THE SERVICE LIST

PART I – APPELLANTS AND ORDER APPEALED FROM

1. The Appellants, Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique, and Montrusco Bolton Investment Inc. are institutional investors moving for leave to appeal two orders entered in the two proceedings titled above: the “E&Y Settlement Order,” dated March 20, 2013, approving the settlement of claims asserted against Ernst & Young LLP (“E&Y”), and the “Representation Dismissal Order,” also dated March 20, 2013, dismissing the Appellants’ motion for appointment as representatives of investors who object to the E&Y Settlement and for relief from the effect of the representation order sought by the Ontario Plaintiffs and Class Counsel.
2. The first three Appellants have previously moved for leave to appeal the order of the court in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”) proceeding titled above, dated December 10, 2012 (the “Sanction Order”), sanctioning the Plan of Compromise and Reorganization (“Plan”) of Sino-Forest Corporation (“Sino-Forest” or the “applicant”).
3. The two motions for leave have been consolidated for consideration by this Court. Accordingly, the Appellants in the present motion respectfully refer the Court to the Factum (dated January 29, 2013) and Reply Factum (dated March 1, 2013), along with the accompanying motion record and books of authorities of the Appellants, previously submitted with respect to the proposed appeal of the Sanction Order, and will in the present factum address facts and legal issues that have emerged since then.
4. As described below, Justice Morawetz’s entry of the E&Y Settlement Order and Representation Dismissal Order confirm the importance of appellate review in this litigation.
5. Sino-Forest’s complete corporate disintegration, resulting as it did from an apparent fraud, is by far the largest and most public investment debacle in Canada in the past decade and is one of the first major tests of how the secondary market misrepresentation provisions of Part XXIII.1 of the *Securities Act* will operate in practice -- particularly in class actions. It continues to be a widely publicized and visible dispute on that ground alone.

6. Sino-Forest's subsequent entry into *CCAA* restructuring proceedings, and the interaction between those proceedings and the securities class action, raise serious issues of considerable public interest. There is little to no guidance about the intersection of the *Class Proceedings Act, 1992* ("*CPA*")<sup>1</sup> and *CCAA*.

7. The coordination between the class action court and the *CCAA* court to lift the *CCAA* stay of the class action so the settlement of class claims against the expert defendant Pöyry (Beijing) Consulting Company Limited ("Pöyry") could be effectuated using normal class action procedures was a reassuring indication that the system was working well.

8. It is the view of the Appellants that E&Y, the Ontario Plaintiffs, and the other parties to the proceedings below have engaged in unnecessary and unjustified overreaching in diverting the proposed E&Y class action settlement away from its normal home in the class action court. The parties moved to approve the E&Y settlement within a *CCAA* environment that the parties specifically engineered to deprive class members of their fundamental class action right to exercise opt outs -- despite the fact that E&Y is solvent and is not a *CCAA* restructuring applicant. This is also notwithstanding the fact that the E&Y settlement and release were not integral to the Sino-Forest restructuring, and despite the specific wording in section 6(8) of the *CCAA* that prohibits precisely these types of compromises from being effectuated and administered within a *CCAA* Plan.

9. The issues raised by the Superior Court's decision to approve the E&Y Settlement despite the offending no-opt-out provision amply satisfy the four criteria used by this Court in evaluating whether leave to appeal should be granted, as discussed below.

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<sup>1</sup> *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ["*CPA*"].

## PART II – FACTUAL OVERVIEW

10. As set forth in the Appellants' Factum in support of leave to appeal the Sanction Order, the parties and the Court in the *CCAA* proceeding segmented the proposed implementation of third-party defendant settlements into several installments: first, the "framework" was established under Article 11 of the Plan in the Sanction Order<sup>2</sup>; second, eligible third party defendants in the class action could apply to be listed as designated as "Named Third Party Defendants" to use the framework established by Article 11.2 of the Plan<sup>3</sup>; third, settlements could be submitted to the *CCAA* Court for approval, as was being done with the E&Y Settlement; fourth, if settlements were approved, they could be implemented, and eventually the allocation of any proceeds would also be subject to court approval.

11. After the Sanction Order was issued, the parties and the court below proceeded with steps to effectuate the E&Y Settlement. An approval hearing was scheduled for early January 2013. On December 13, 2012, the parties obtained an assignment of the Sino-Forest class action to Justice Morawetz (who was already handling the *CCAA* proceeding) for purposes of the E&Y Settlement.<sup>4</sup> The approval hearing was eventually rescheduled to be heard on February 4, 2013.

<sup>2</sup> Sanction Order of the Hon. Mr. Justice Morawetz, dated December 10, 2012, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 4.

<sup>3</sup> Named Third Party Defendants listed are thirteen underwriters ("Underwriters"), Ernst & Young LLP ("E&Y") and BDO Limited ("BDO") and their affiliates or related parties, as well as Allen Chan, Kai Kit Poon and David Horsley. See Schedule A to Plan of Compromise and Reorganization, December 3, 2012, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 4A, pp. 440-536; Letter from Ms. Jennifer Stam to the Service List, dated January 11, 2013, Exhibit "R" to the affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 3R, pp. 394-397; Letter from Mr. James Orr to Ms. Jennifer Stam, dated January 11, 2013, Exhibit "S" to the affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 3S, pp. 398-400; Letter from Ms. Jennifer Stam to Mr. James Orr, dated January 12, 2013, Exhibit "T" to the affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 3T, pp. 401-402.

<sup>4</sup> Direction of the Hon. Mr. Justice Thien and Justice Morawetz re: Settlement Approval, dated December 13, 2012, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 19.

12. On December 31, 2012, Class Counsel publicized in a memorandum to institutional investors that they believed that E&Y was paying a “substantial premium” in the settlement, in return for the provision extinguishing class members’ statutory opt out rights.<sup>5</sup>

13. The Appellants (as Objectors below) submitted timely objections to the E&Y Settlement to the Monitor. The objections were: that it was improper for the parties to trade away opt out rights, or render opt out rights illusory by granting the settling defendant a full and final release in exchange for a substantial premium payment; that it would be improper to approve a release to E&Y; that it would be improper to bind opt-outs to the settlement; that it would be improper to appoint the Ontario Plaintiffs as representatives of investors who objected to the settlement; and that it would be improper to approve the settlement in installments in the absence of any plan for distribution or allocation of the proceeds.

14. The Monitor received 93 objections (including from the Appellants); 84 were counted as valid and timely.<sup>6</sup>

15. Sino-Forest’s Plan was implemented on January 30, 2013.<sup>7</sup> According to the Plan, as approved in the Sanction Order, on that date the assets of Sino-Forest were deemed conveyed to Newco entities established by the Plan; Affected Creditors received their allotted shares and notes in Newco; reserves were established; and creditors’ claims were compromised.

16. The Plan implementation was divorced from the E&Y Settlement -- the settlement approval hearing was still in the future.

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<sup>5</sup> Memorandum of Siskinds LLP, Exhibit “X” to the Affidavit of Yonatan Rozenszajn, sworn January 28, 2013 (“Siskinds Memo”), Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 3X.

<sup>6</sup> Fourteenth Report of the Monitor, dated January 22, 2013 (“Fourteenth Report”), Responding Motion Record of Ernst & Young LLP (Motion for Leave to Appeal from Sanction Order), Tab 21.

<sup>7</sup> Monitor’s Certificate of Implementation, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 22.



17. The approval hearing proceeded on February 4, 2013. All parties in the *CCAA* proceeding supported the settlement. The Appellants opposed. The Appellants held just under 4 million Sino-Forest shares when the fraud was revealed on June 2, 2011.<sup>8</sup> The Ontario Plaintiffs -- still appearing as an "Ad Hoc Committee" because a class had not yet been certified in the case -- held just over 1 million Sino-Forest shares on that date.<sup>9</sup> As share purchasers, both the Appellants and the Ontario Plaintiffs were equity claimants as against Sino-Forest, so none of them were permitted to vote on Sino-Forest's reorganization Plan as creditors.

18. Justice Morawetz issued his E&Y Settlement Approval Order and Representation Dismissal Order on March 20, 2013.<sup>10</sup> In his Endorsement, he approved the settlement and release, stating as follows:

- a) two Sino-Forest shareholders controlling more than 25% of the shares on June 30, 2011 "support the Ernst & Young Settlement"<sup>11</sup>;
- b) the *CCAA* court has jurisdiction to approve class action settlements;<sup>12</sup>
- c) third-party releases "are not an uncommon feature of complex restructurings under the *CCAA*" and are justified "where the release forms part of a comprehensive compromise," citing *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 ("*Metcalfe*");<sup>13</sup>

<sup>8</sup> Affidavit of Eric J. Adelson, sworn January 18, 2013; Affidavit of Daniel Simard, sworn January 18, 2013; Affidavit of Tanya Jemec, sworn January 18, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tabs 11, 12, & 13.

<sup>9</sup> Affidavit of Charles Wright sworn January 10, 2013 at para. 73, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 5.

<sup>10</sup> Order of the Hon. Mr. Justice Morawetz re: Settlement Approval, dated March 20, 2013 ("*Settlement Approval Order*"); Order of the Hon. Mr. Justice Morawetz re: Representation Dismissal, dated March 20, 2013 ("*Representation Dismissal Order*"), Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tabs 2 & 3.

<sup>11</sup> Neither entity has ever appeared in the proceedings and no evidence is cited for this assertion.

<sup>12</sup> Reasons of the Hon. Mr. Justice Morawetz re: Settlement Approval and Representation Dismissal ("*Settlement Approval Endorsement*"), dated March 20, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 4.

<sup>13</sup> *Ibid.*, at para. 46.

- d) the E&Y Release can be justified as part of the E&Y Settlement because it provides \$117 million, the “only monetary contribution that can be directly identified, at this time,” to Sino-Forest’s creditors; “in order to effect any distribution, the Ernst & Young Release has to be approved as part of the Ernst & Young Settlement”;<sup>14</sup>
- e) the claims to be released against E&Y are “rationally related to the purpose of the Plan and necessary for it,” and are “intertwined” with the claims of E&Y against Sino-Forest;<sup>15</sup>
- f) although Sino-Forest’s restructuring “can, on its face, succeed, as evidenced by its implementation, the reality is that without the approval of the Ernst & Young Settlement, the objectives of the Plan remain unfulfilled due to the practical inability to distribute the settlement proceeds”;<sup>16</sup>
- g) E&Y is “contributing in a tangible way to the Plan, by its significant contribution of \$117 million” and the Plan “benefits the claimants” and the “voting creditors who approved the Plan did so with the knowledge of the nature and effect of the releases”;<sup>17</sup>
- h) the releases were “fair and reasonable and not overly broad or offensive to public policy”;<sup>18</sup>
- i) the settlement is “fair and reasonable, provides substantial benefits to relevant stakeholders, and is consistent with the purpose and spirit of the CCAA”;<sup>19</sup>
- j) “there is a connection between the release of claims against Ernst & Young and a distribution to creditors. The plaintiffs in the litigation are shareholders and

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<sup>14</sup> *Ibid.*, at para. 60.

<sup>15</sup> *Ibid.*, at para. 61.

<sup>16</sup> *Ibid.*, at para. 62.

<sup>17</sup> *Ibid.*, at para. 63 & 64.

<sup>18</sup> *Ibid.*, at para. 65.

<sup>19</sup> *Ibid.*, at para. 66.

Noteholders of SFC. These plaintiffs have claims to assert against SFC that are being directly satisfied, in part, with the payment of \$117 million by Ernst & Young";<sup>20</sup>

- k) the release of claims by E&Y allowed Sino-Forest and its subsidiaries "to contribute their assets to the restructuring, unencumbered by claims totaling billions of dollars";<sup>21</sup>
- l) E&Y's indemnity claims would need to be finally determined "before the CCAA claims could be quantified," which would entail significant delay;<sup>22</sup>
- m) the Objectors' arguments were rejected; the relevant consideration is whether the settlement and release "sufficiently benefits all stakeholders to justify court approval," and in this case the \$117 million is "the only real monetary consideration available to all stakeholders";<sup>23</sup>
- n) the Objectors are wrong that the settlement should be approved solely under the *CPA*, because Sino-Forest is insolvent and under *CCAA* protection, so stakeholder claims are to be considered in the context of a *CCAA* regime;<sup>24</sup> and
- o) "Although the right to opt-out of a class action is a fundamental element of procedural fairness in the Ontario class action regime, this argument cannot be taken in isolation. It must be considered in the context of the *CCAA*." The Objectors are, in fact, part of the group that will "share in the spoils" from the E&Y Settlement.<sup>25</sup>

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<sup>20</sup> *Ibid.*, at para.67.

<sup>21</sup> *Ibid.*, at para.68.

<sup>22</sup> *Ibid.*, at para.70.

<sup>23</sup> *Ibid.*, at para.71.

<sup>24</sup> *Ibid.*, at para.72.

<sup>25</sup> *Ibid.*, at para.75.

19. Justice Morawetz also dismissed the Appellants' motion for an order allowing them to represent objecting claimants and for relief from Ontario Plaintiffs' representation order.<sup>26</sup> Without providing specific reasons, Justice Morawetz approved the Ontario Plaintiffs' request to be appointed as representatives of all Securities Claimants.

20. Following the release of reasons, the parties exchanged correspondence and attended before Justice Morawetz to settle the form of the Settlement Approval Order.<sup>27</sup> The Appellants raised the concern that the proposed order, in conjunction of with the reasoning for approving the E&Y settlement as a distribution under the Plan, would violate section 6(8) of the *CCAA*. Justice Morawetz dismissed the Appellants concerns and signed a slightly modified version of the Settlement Approval Order.<sup>28</sup>

21. In the Sino-Forest class proceeding, Justice Perell has scheduled a hearing on class certification and ancillary motions for the week of February 24-28, 2014.

### PART III – QUESTIONS ON APPEAL

22. The Appellants propose the following questions to be answered if leave to appeal is granted:

- 1) Did Justice Morawetz err in entering the Settlement Approval Order under the *CCAA* in connection with Sino-Forest's Plan, particularly in that:

<sup>26</sup> Representation Dismissal Order, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 3,

<sup>27</sup> Letter from Mr. Michael Spencer to the Hon. Mr. Justice Morawetz re: appointment to settle form of order, March 26, 2013; Letter from Mr. Max Starnino to the Hon. Mr. Justice Morawetz re: appointment to settle form of order, dated March 27, 2013; Letter from Mr. Peter Griffin to the Hon. Mr. Justice Morawetz re: appointment to settle form of order, dated March 27, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tabs 14-16,

<sup>28</sup> Direction of the Hon. Mr. Justice Morawetz to Mr. Michael Spencer and Mr. Max Starnino re: appointment to settle form of order, dated March 28, 2013, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 17,

- a) as a matter of law and fact, the E&Y Settlement and the E&Y Release were not and are not reasonably connected and necessary to the restructuring of the applicant, and do not meet the requirements for third-party non-debtor releases set forth in *Metcalfe*;
  - b) the *CCAA* does not provide jurisdiction for the court supervising a *CCAA* restructuring plan to release claims asserted against a person other than the applicant, its subsidiaries, or its directors or officers, by equity-level claimants against the applicant who are not entitled to vote on the plan;
  - c) the Ontario Plaintiffs did not appropriately and adequately represent the members of the class whose claims against E&Y are proposed to be settled and released;
  - d) the *CPA* provides an adequate and appropriate alternative framework for the proposed settlement of the class action claims asserted against E&Y;
  - e) the terms of the E&Y Settlement, if implemented as a distribution to creditors under the Plan, violate section 6(8) of the *CCAA* and do not provide any assurance that settlement consideration would flow to the parties whose claims are proposed to be settled and released;
  - f) the terms of the E&Y Settlement were construed by the court not to provide opt out rights to the members of the class whose claims against E&Y are proposed to be settled and released; and
  - g) the court did not address whether the amount of consideration in the proposed E&Y settlement was fair, reasonable, and adequate;
- 2) Justice Morawetz erred in entering the Representation Dismissal Order, particularly in that

the Appellants would have appropriately and adequately represented the interests of the members of the class who objected to the proposed E&Y Settlement, without any conflict of interest, and the interests of justice would have been served thereby.

#### PART IV – ISSUES AND THE LAW

23. In the *CCAA* context, leave to appeal is to be granted where there are serious and arguable grounds that are of real and significant interest to the parties. A four-part inquiry governs the Court's determination of whether leave ought to be granted:

- a) whether the point on the proposed appeal is of significance to the practice;
- b) whether the point is of significance to the action;
- c) whether the proposed appeal is *prima facie* meritorious or frivolous; and
- d) whether the appeal will unduly hinder the progress of the action.<sup>29</sup>

24. For the reasons stated below, and also for the reasons set forth in the Factum of the Appellants on the consolidated motion for leave to appeal the Sanction Order, the proposed appeal satisfies the test for leave.

- 1) Whether it was proper for the lower court to grant E&Y a non-debtor third-party release under the *CCAA* is a question of significance to the practice and to this action, and the Appellants' position is meritorious

25. As stated in the Factum of the Appellants on the motion for leave to appeal the Sanction Order, the Sino-Forest debacle presents our litigation system with a large and dismal financial failure to sort out, yet the contours of the situation are quite routine. Securities issued by a TSX company plummet after serious allegations of improprieties are publicized; a class action follows,

<sup>29</sup> *Timminco Limited (Re)*, 2012 ONCA 552, at para. 2, Book of Authorities (Motion for Leave to Appeal from the Sanction Order), Tab 27.

naming as defendants parties who may be liable to injured investors, including the issuer, directors and officers, experts, and auditors; the company itself files for protection under the *CCAA*. The “ground rules” for adjudicating the investors’ claims against the class action defendants are certainly significant to complex litigation practitioners and to the parties to the action. This pattern may be repeated in almost identical fashion in major cases of alleged securities fraud that devolve to *CCAA* proceedings. Given the magnitude of the failure and the attention paid to it in the media, the broader public interest is implicated as well in setting down the appropriate ground rules.

26. The parties here have already identified the main authority governing resolution of the propriety of non-debtor third-party releases in this situation: *Metcalfe*<sup>30</sup>, and the other cases before and after it applying the relevant principles.

27. The Appellants’ position is meritorious. As is now evident, the Plan was implemented before the E&Y Settlement and the E&Y Release were approved. Under these circumstances, no one can credibly say that the settlement and release were essential to the Plan. Indeed, Justice Morawetz held that the Plan has already on its face succeeded in restructuring Sino-Forest, without E&Y getting a release.<sup>31</sup> It is not a plausible reading of *Metcalfe* to conclude that the last-minute and contrived connection between the E&Y Settlement and the Plan satisfies the stringent and exceptional requirements for imposing non-debtor third-party releases on non-consenting claimants in *CCAA* proceedings, under *Metcalfe*.

28. None of the explanations by E&Y, the Ontario Plaintiffs, or Sino-Forest about the supposed importance of the settlement and release to the Plan are convincing. E&Y did not have the ability to veto the Plan in the creditors’ vote; in fact all the third-party defendants together did not have

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<sup>30</sup> *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 92 O.R.(3d) 513 (C.A.) [*“Metcalfe”*], Book of Authorities (Motion for Leave to Appeal from the Sanction Order), Tab 16.

<sup>31</sup> Settlement Approval Reasons, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 4, at para. 62.

that ability.<sup>32</sup> Although E&Y had indemnification claims against Sino-Forest, most of them were equity claims because they were based on E&Y's possible liability to share purchaser investors in the class action, and thus those claims were released in the Plan; E&Y had no leverage because of them. If E&Y had sought leave to appeal the classification of its indemnification claims as equity claims to the Supreme Court of Canada, its claims would have been valued and reserved against, but the restructuring would not have been held up. Similarly, E&Y's "noteholder" class action indemnification claims, if not released, would have been valued and reserved against -- this would not have held up the restructuring.

29. The salient feature of the Plan -- the conveyance of the assets of Sino-Forest and its subsidiaries<sup>33</sup> to the Newco entities and distribution of Newco securities to creditors -- could and would have proceeded regardless of positions taken by E&Y or any other class action defendants.

30. But for the overreaching by E&Y and the Ontario Plaintiffs, the proposed settlement of class action claims against E&Y could and should have proceeded according to normal procedures under the CPA before Justice Perell, following the precedent set by the Pöyry settlement.

31. The admission by Class Counsel that the \$117 million settlement amount included a "substantial premium" that E&Y was willing to pay for the no-opt-out feature of the settlement<sup>34</sup> compounds the overall unfairness of the process -- opt-outs' rights were relinquished, not as a matter of right or principle, but instead as a bargaining point in the settlement negotiations.

<sup>32</sup> Supplemental Report to the Thirteenth Report of the Monitor, Motion Record (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 18. Since E&Y's (and other third party defendants') indemnity claims related to share purchaser claims were deemed equity claims by the Court of Appeal (see *Sino-Forest Corporation (Re)*, 2012 ONSC 4377 (Sup. Ct.), aff'd 2012 ONCA 0816 (C.A.)), it was only left with noteholder class action indemnity claims which were capped at \$150 million and defence cost claims which amount in total to a small fraction of the total voting rights.

<sup>33</sup> The fact that E&Y asserted indemnification claims against Sino-Forest subsidiaries, as well as the company itself, is irrelevant in view of Justice Morawetz's decision, *correctly* applying the *Metcalfe* principles, that the release of claims asserted against the subsidiaries was *essential* to the success of the Plan. See *Sino-Forest (Re)*, 2012 ONSC 7050 at para. 74.

<sup>34</sup> Memorandum of Siskinds LLP dated December 31, 2012, Motion Record of the Appellants (Motion for Leave to Appeal from the Sanction Order), Tab 3X.



32. In *1250264 Ontario Inc. v. Pet Valu Canada Inc.*<sup>35</sup>, this Court recently *reconfirmed* fundamental importance of opt out rights in class litigation. Quoting a prior decision, the Court observed:

The primary protection for the absent class members in the class proceeding process is the right to opt out of the class action. *It is axiomatic that no class member need participate in a class action against his or her will.*<sup>36</sup>

[Emphasis added]

33. In this case, the apparent and intended effect of providing E&Y with an omnibus *CCAA* release was to deprive potential opt-outs like the Appellants from effectively exercising that right. Justice Morawetz erred in approving the E&Y settlement and release in these circumstances.

2) Approval of the E&Y settlement as a distribution to creditors under the Plan would violate section 6(8) of the *CCAA* and may lead to confiscation of share purchasers' litigation rights

34. The Settlement Approval Order provides that the E&Y settlement funds are to be paid into a "Settlement Trust" for distribution to "Securities Claimants," according to an allocation process to be determined later.<sup>37</sup> "Securities Claimants" is defined for the purpose of the E&Y settlement as a temporally unbounded class of all persons who acquired Sino-Forest securities, as defined by the

<sup>35</sup> *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279 ["Pet Value"], Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 1.

<sup>36</sup> *Ibid.* at para. 41 (quoting *176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.* (2002), 62 O.R. (3d) 535 (S.C.J.), *aff'd* (2004), 70 O.R. (3d) 182 (Div. Ct.), leave to appeal refused (May 11, 2004), Court File No. M31109 (Ont. C.A.) paras. 75-76), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 1.

<sup>37</sup> Settlement Approval Order, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 2, at para. 10.

*Securities Act*, R.S.O. 1990, c. S. 5, which includes debt instruments such as notes or equity securities such as publicly traded shares.<sup>38</sup>

35. The class action claims being settled as against E&Y were asserted on behalf of a class defined as all person and entities who acquired Sino-Forest securities from March 19, 2007 to and including June 2, 2011, although it was expanded in the Court Approved Notice to include acquisition of securities as early as March 31, 2006.<sup>39</sup> The securities may be shares or notes. However, the class of share purchasers and note purchasers is not coextensive with “shareholders” and “noteholders” (*i.e.*, persons who currently held shares or notes at the implementation date of the Plan -- not during the class period).

36. A proper class action settlement distributes monetary proceeds to class members on whose behalf the claims in the litigation were asserted. Those are the persons entitled to the consideration. Class Counsel stated that those persons would receive distributions of the \$117 million.<sup>40</sup>

37. As described in the Facts section above, Justice Morawetz viewed the \$117 million as a contribution to Sino-Forest’s reorganization Plan, not to members of the proposed class in the class action.<sup>41</sup> He defined the intended recipients of the \$117 million as “creditors” and “relevant stakeholders” -- not as class members.<sup>42</sup> He further stated: “there is a connection between the release of claims against Ernst & Young and a distribution to creditors. The plaintiffs in the litigation are shareholders and Noteholders of SFC. These plaintiffs have claims to assert against SFC that are being directly satisfied, in part, with the payment of \$117 million by Ernst &

<sup>38</sup> Settlement Approval Order, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 2, at Appendix “A”

<sup>39</sup> Notice of Proposed Settlement with Ernst & Young LLP in English, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 21.

<sup>40</sup> *Ibid.*

<sup>41</sup> Settlement Approval Reasons, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 4, at para. 60.

<sup>42</sup> *Ibid* at Para. 54, 60, 64, 66, 67 and 71.

Young.”<sup>43</sup> This articulation was incorrect, in that the plaintiffs (class members) in the class action are not shareholders and Noteholders, they are share and note purchasers during the class period; also, the settlement satisfies class members’ claims against E&Y, not against Sino-Forest.

38. These conceptual errors by the motion judge are important – they are not just a technicality. Section 6(8) prohibits any plan distributions to equity claimants unless creditors have been paid in full. In this case, the (non-equity) “creditors” are the holders of Sino-Forest notes as of the Plan Implementation Date -- a somewhat different group than note purchasers during the earlier class period, and a completely different group than share purchasers. Sino-Forest Noteholder creditors who are class members will not have their claims fully paid even if they were to receive the entire \$117 million from the E&Y Settlement -- their claim amount is fixed and capped by the Plan at \$150 million.

39. Thus, Justice Morawetz’s primary justification as to how the E&Y Settlement was integral to the Plan -- that it provided monetary consideration to distribute to creditors -- is in complete conflict with the principle that proceeds of a class action settlement must be distributed to class members asserting claims in the litigation. These warring concepts cannot coexist. The correct approach is that E&Y Settlement funds are not a contribution under the Plan for distribution to creditors; they instead are consideration to be paid to class members in a properly administered *CPA* settlement, in which opt-out rights must be honored.

40. Resolution of this conflict is important for practitioners who may in the future handle class actions in which a main defendant enters *CCAA* insolvency proceedings, and also for untangling these problems in the present litigation.

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<sup>43</sup> *Ibid* at para. 67

3) The Court below failed to consider the adequacy of the settlement amount and to insist on a fraud carve-out

41. The motions judge did not address the adequacy of the \$117 million of settlement consideration in his Endorsement. Neither E&Y nor the Ontario Plaintiffs provided any justification for deciding whether the amount was adequate, other than to make clear that their negotiations leading to that amount were adversarial and difficult. With the possible exception of the underwriter defendants, it is likely that the E&Y Settlement consideration (if paid to class members) may form the bulk of the recompense received by investors in this \$6+ billion debacle. It is improper for this case and for this practice area that adequacy of consideration did not receive any judicial attention.

42. Class Counsel and E&Y have declined to disclose the amount of insurance coverage available to E&Y in resolving the claims at issue. One would expect, in a case involving audit failure as severe as alleged in this case, that coverage would be exhausted in any settlement. If that is not the case, the reasonableness of the amount of the proposed settlement would be highly dubious.

43. This Court in *Metcalf* was careful to note that the third-party releases at issue there included limited carve-outs so that certain fraud claims were not released.<sup>44</sup> The E&Y Release is exceptionally broad and overrides the exclusions preventing release of fraud claims found elsewhere in the Plan. This aspect of the settlement is not fair and reasonable, and would set an unfortunate precedent for future cases.

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<sup>44</sup> *Ibid.*, at para. 109.

4) Resolution of the Appellants' positions on who should represent the interests of objecting claimants in contested *CCAA* proceedings is of significance to the practice and to this action, and the Appellants' position is meritorious.

44. The Sino-Forest class proceeding has not yet been class certified, and the Ontario Plaintiffs did not pursue their motion early in the *CCAA* proceedings for a representation order. Justice Morawetz recognized the Ontario Plaintiffs, who designated themselves the Ad Hoc Committee of Purchasers of the Applicant's Securities, as acting in the *CCAA* proceeding on behalf of the proposed class members, including the Appellants, without entering a representation order under Rule 10 of the *Rules of Civil Procedure*.

45. The Ad Hoc Committee finally moved for a representation order as part of the E&Y Settlement process and its motion was granted.<sup>45</sup> The Appellants opposed appointment of the Ad Hoc Committee to represent those who objected to the settlement, and moved to be appointed instead.<sup>46</sup> Justice Morawetz granted the Ad Hoc Committee's motion and denied the Appellants' motion.

46. The lower court's appointment of the Ad Hoc Committee to represent the Appellants after the clear adversity of the two groups was apparent was contrary to the letter and spirit of the rules on representation orders.

47. The general authority of a *CCAA* court to grant a Representation Order derives from Rule 10.01 of the *Rules of the Civil Procedure*, which allows a court to appoint one or more persons to represent any person or a class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot

<sup>45</sup> Notice of Motion re: E&Y Settlement Approval, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 6.

<sup>46</sup> Notice of Motion and Amended Notice of Motion re: Relief from the Binding Effect of Settlement Approval Order and Representation Order, Motion Record of the Appellants (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 10.

be readily ascertained, found or served.<sup>47</sup> The factors to be considered in deciding on a representation order in *CCAA* proceedings include: vulnerability and resources of the group; benefit to the debtor; social benefit to be derived from representation; facilitation of administration; avoidance of multiplicity of legal retainers; balance of convenience; whether it is fair and just to the parties; whether the representative counsel has already been appointed for those have similar interests; and the position of other stakeholders and the Monitor.<sup>48</sup> A representation order is not appropriate when the class of persons is overly broad, already represented by counsel, there is no issue with respect to ascertaining the members of the class, or conflicts of interests are present between class members.<sup>49</sup> The interest of judicial economy does not override persons' rights to have their representative or counsel of choice and to pursue their own litigation or settlement strategy against a common defendant.<sup>50</sup>

48. The Ontario Plaintiffs' decision to accept a proposed settlement with E&Y that included a blanket release and gave away class members' opt out rights set up the conflict from the outset of this process. Furthermore, the Objectors are represented by counsel. Applying the factors above, it is clearly inappropriate to grant the Ontario Plaintiffs a representation order over parties who are represented by counsel and with whom they have conflicts of interest. Again, it will be important

<sup>47</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 10.01; *Nortel Networks Corp., Re.*, 2009 CarswellOnt 3028, 53 C.B.R. (5th) 196 at para. 10 (S.C.J.) ("*Nortel*"), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 6.

<sup>48</sup> *Canwest Global Communications Corp., Re.*, 2009 CarswellOnt 9398 (Sup. Ct.), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 4; *Nortel, ibid;* *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 CarswellOnt 1344, 65 C.B.R. (5th) 152, Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 5.

<sup>49</sup> *Bruce (Township) v. Thornburn*, 1986 CarswellOnt 2124, 57 O.R. (2d) 77 at para. 24 (Div. Ct.), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 3; *Ravelston Corp. (Re)*, 2007 CarswellOnt 7288, O.J. No. 4350 at para. 9 (S.C.J.), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 7.

<sup>50</sup> *Attard v. Maple Leaf Foods Inc.*, 1998 CarswellOnt 1548, 20 C.P.C. (4th) 346 at para. 4 (Ont. Gen. Div.), Book of Authorities (Motion for Leave to Appeal from E&Y Settlement Approval Order and Representation Dismissal Order), Tab 2.

for future complex cases, and for this case, for proper guidelines for appointment of representatives to be set forth by this Court.

5) This appeal, if leave is granted, will not disrupt the implementation of the Plan or otherwise hinder the *CCAA* proceeding

49. Sino-Forest's reorganization principally involved marshalling the assets of the company and its subsidiaries and transferring them into the Newco entities, which the qualifying creditors owned. The parties contended that the assets needed to be dealt with promptly in order to avoid deterioration. The Plan proposed to the creditors for vote in late November 2012 evidently accomplished all those goals, independent of resolving claims against third-party defendants in the class action. The distribution of interests in the Newco entities was the main consideration provided to creditors under the Plan.

50. Nothing in this proposed appeal will disturb that process, which was implemented on January 30, 2013.

51. Obviously, the parties knew and accepted the fact that consideration of the E&Y Settlement in the lower court would not occur until after the implementation date, and thus was not assured to be approved as part of the Plan. Just as Justice Morawetz could (and should) have declined to approve the E&Y Settlement as proposed, without disturbing the other aspects of the Plan, so too can this Court.

52. The Appellants respectfully submit that the E&Y Settlement should have been presented to the lower court and considered under the normal procedures applicable under the *CPA*, including preservation of the right of class members to opt out and prosecute their claims individually, and

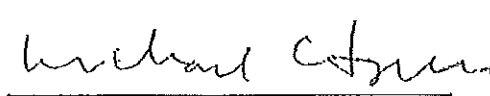
without entry of no-opt-out releases in E&Y's favor in the *CCAA* proceeding. If this Court agrees, then E&Y will have to decide whether to settle in the face of the Appellants' opt outs. That is the normal way a proposed class settlement should have been structured from the outset, and this Court would only be putting it on the track where it belonged in the first place.

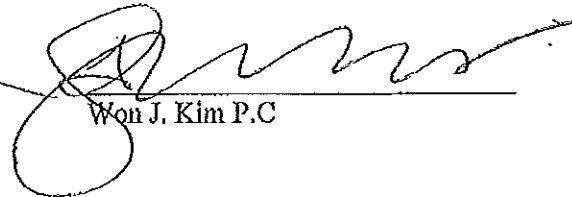


## PART V – RELIEF SOUGHT

53. The Funds respectfully request that this Court grant leave to appeal the E&Y Settlement Approval Order and Representation Dismissal Order .

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 10<sup>th</sup> DAY OF May, 2013

  
 Michael C. Spencer,

  
 Won J. Kim P.C

  
 Megan B. McPhee

Lawyers for the Appellants, Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc.

Kim Orr Barristers P.C.  
 19 Mercer Street, 4<sup>th</sup> Floor  
 Toronto, ON  
 M5V 1H2

## Schedule A—Authorities

## Jurisprudence

No.	Case
1.	<i>1250264 Ontario Inc. v. Pet Valu Canada Inc.</i> , 2013 ONCA 279 (C.A.)
2.	<i>Attard v. Maple Leaf Foods Inc.</i> , 1998 CarswellOnt 1548, 20 C.P.C. (4th) 346 (Ont. Gen. Div.)
3.	<i>Bruce (Township) v. Thornburn</i> , 1986 CarswellOnt 2124, 57 O.R. (2d) 77 (Div. Ct.)
4.	<i>Canwest Global Communications Corp., Re</i> , 2009 CarswellOnt 9398 (S.C.J.)
5.	<i>Canwest Publishing Inc./Publications Canwest Inc. Re</i> , 2010 CarswellOnt 1344, 65 C.B.R. (5th) 152 (S.C.J.)
6.	<i>Metcalfe &amp; Mansfield Alternative Investments II Corp. (Re)</i> , 92 O.R.(3d) 513 (C.A.).
7.	<i>Nortel Networks Corp., Re</i> , 2009 CarswellOnt 3028 (S.C.J.)
8.	<i>Ravelston Corp. (Re)</i> , 2007 CarswellOnt 7288, O.J. No. 4350 (S.C.J.)
9.	<i>Timmco Limited (Re)</i> , 2012 ONCA 552.

Schedule B—Legislation

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

6(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

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

1(1) In this Act,

"security" includes,

- (a) any document, instrument or writing commonly known as a security,
- (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
- (c) any document constituting evidence of an interest in an association of legatees or heirs,
- (d) any document constituting evidence of an option, subscription or other interest in or to a security,
- (e) a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than,
  - (i) a contract of insurance issued by an insurance company licensed under the *Insurance Act*, and
  - (ii) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies, by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or by an association to which the *Cooperative Credit Associations Act* (Canada) applies,
- (f) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under the *Insurance Act* which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,
- (g) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,
- (h) any certificate of share or interest in a trust, estate or association,

- (i) any profit-sharing agreement or certificate,
  - (j) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,
  - (k) any oil or natural gas royalties or leases or fractional or other interest therein,
  - (l) any collateral trust certificate,
  - (m) any income or annuity contract not issued by an insurance company,
  - (n) any investment contract,
  - (o) any document constituting evidence of an interest in a scholarship or educational plan or trust, and
  - (p) any commodity futures contract or any commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the *Commodity Futures Act* or the form of which is not accepted by the Director under that Act,
- whether any of the foregoing relate to an issuer or proposed issuer; (“valeur mobilière”)

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

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.

*Rules of Civil Procedure, R.R.O. 1990, reg. 194*

- 10.01 (1) In a proceeding concerning,
- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
  - (b) the determination of a question arising in the administration of an estate or trust;
  - (c) the approval of a sale, purchase, settlement or other transaction;
  - (d) the approval of an arrangement under the *Variation of Trusts Act*;
  - (e) the administration of the estate of a deceased person; or
  - (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

10.02 Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding.

10.03 Where a person or an estate is bound by reason of a representation order made under subrule 10.01 (1) or rule 10.02, an approval under subrule 10.01 (3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

(a) the order or approval was obtained by fraud or non-disclosure of material facts;

(b) the interests of the person or estate were different from those represented at the hearing; or

(c) for some other sufficient reason the order or approval should be set aside.

## Schedule C-Excerpts of the Plan of Compromise and Reorganization

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"Ernst & Young Claim" means any and all demands, claims, actions, Causes of Action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any claim, indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person, including any Person who may claim contribution or indemnification against or from them and also including for greater certainty the SFC Companies, the Directors (in their capacity as such), the Officers (in their capacity as such), the Third Party Defendants, Newco, Newco II, the directors and officers of Newco and Newco II, the Noteholders or any Noteholder, any past, present or future holder of a direct or indirect equity interest in the SFC Companies, any past, present or future direct or indirect investor or security holder of the SFC Companies, any direct or indirect security holder of Newco or Newco II, the Trustees, the Transfer Agent, the Monitor, and each and every member (including members of any committee or governance council), present and former affiliate, partner, associate, employee, servant, agent, contractor, director, officer, insurer and each and every successor, administrator, heir and assign of each of any of the foregoing may or could (at any time past present or future) be entitled to assert against Ernst & Young, including any and all claims in respect of statutory liabilities of Directors (in their capacity as such), Officers (in their capacity as such) and any alleged fiduciary (in any capacity) whether known or unknown, matured or unmatured, direct or derivative, foreseen or unforeseen, suspected or unsuspected, contingent or not contingent, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on, prior to or after the Ernst & Young Settlement Date relating to, arising out of or in connection with the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such) and/or professional services performed by Ernst & Young or any other acts or omissions of Ernst & Young in relation to the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such), including for greater certainty but not limited to any claim arising out of:

- (a) all audit, tax, advisory and other professional services provided to the SFC Companies or related to the SFC Business up to the Ernst & Young Settlement Date, including for greater certainty all audit work performed, all auditors' opinions and all consents in respect of all offering of SFC securities and all regulatory compliance delivered in

respect of all fiscal periods and all work related thereto up to and including the Ernst & Young Settlement Date;

- (b) all claims advanced or which could have been advanced in any or all of the Class Actions;
- (c) all claims advanced or which could have been advanced in any or all actions commenced in all jurisdictions prior the Ernst & Young Settlement Date; or
- (d) all Noteholder Claims, Litigation Trust Claims or any claim of the SFC Companies,

“Ernst & Young Settlement” means the settlement as reflected in the Minutes of Settlement executed on November 29, 2012 between Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms thereof and the plaintiffs in Ontario Superior Court Action No. CV-11-4351153-00CP and in Quebec Superior Court No. 200-06-00132-111, and such other documents contemplated thereby.

“Named Third Party Defendant Settlement” means a binding settlement between any applicable Named Third Party Defendant and one or more of: (i) the plaintiffs in any of the Class Actions; and (ii) the Litigation Trustee (on behalf of the Litigation Trust) (if after the Plan Implementation Date), provided that, in each case, such settlement must be acceptable to SFC (if on or prior to the Plan Implementation Date), the Monitor, the Initial Consenting Noteholders (if on or prior to the Plan Implementation Date) and the Litigation Trustee (if after the Plan Implementation Date), and provided further that such settlement shall not affect the plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.

“Named Third Party Defendants” means the Third Party Defendants listed on Schedule “A” to the Plan in accordance with section 11.2(a) hereof, provided that only Eligible Third Party Defendants may become Named Third Party Defendant

## ARTICLE 11 SETTLEMENT OF CLAIMS AGAINST THIRD PARTY DEFENDANTS

### 11.1 Ernst & Young

- (a) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the issuance of the Settlement



Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and SFC (if occurring on or prior to the Plan Implementation Date), the Monitor and the Initial Consenting Noteholders, as applicable, to the extent, if any, that such modifications affect SFC, the Monitor or the Initial Consenting Noteholders, each acting reasonably); (iii) 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; (iv) any other order necessary to give effect to the Ernst & Young Settlement (the orders referenced in (iii) and (iv) being collectively the "Ernst & Young Orders"); (v) 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 (vi) 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"). 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 a certificate (the "Monitor's Ernst & Young Settlement Certificate") stating that (i) Ernst & Young has confirmed that the settlement amount has been paid to the Settlement Trust in accordance with the Ernst & Young Settlement; (ii) the trustee of the Settlement Trust has confirmed that such settlement amount has been received by the Settlement Trust; and (iii) the Ernst & Young Release is in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Ernst & Young Settlement Certificate with the Court.

- (b) Notwithstanding anything to the contrary herein, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (i) 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; (ii) section 7.3 hereof shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (iii) 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.

- (c) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release and the injunctions described in section 11.1(b) shall not become effective.

#### 11.2 Named Third Party Defendants

- (a) Notwithstanding anything to the contrary in section 12.5(a) or 12.5(b) hereof, at any time prior to 10:00 a.m. (Toronto time) on December 6, 2012 or such later date as agreed in writing by the Monitor, SFC (if on or prior to the Plan Implementation Date) and the Initial Consenting Noteholders, Schedule "A" to this Plan may be amended, restated, modified or supplemented at any time and from time to time to add any Eligible Third Party Defendant as a "Named Third Party Defendant", subject in each case to the prior written consent of such Third Party Defendant, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, the Monitor and, if occurring on or prior to the Plan Implementation Date, SFC. Any such amendment, restatement, modification and/or supplement of Schedule "A" shall be deemed to be effective automatically upon all such required consents being received. The Monitor shall: (A) provide notice to the service list of any such amendment, restatement, modification and/or supplement of Schedule "A"; (B) file a copy thereof with the Court; and (C) post an electronic copy thereof on the Website. All Affected Creditors shall be deemed to consent thereto any and no Court Approval thereof will be required.
- (b) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the granting of the applicable Named Third Party Defendant Settlement Order; and (iii) 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. 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 certificate (the "Monitor's Named Third Party Settlement Certificate") stating that (i) each of the parties to such Named Third Party Defendant Settlement has confirmed that all conditions precedent thereto have been satisfied or waived; (ii) any settlement funds have been paid and received; and (iii) 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.
- (c) Notwithstanding anything to the contrary herein, 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: (i) 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 (ii) section 7.3 hereof 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

Court of Appeal File No.: M42S99  
Commercial Court File No.: CV-12-9667-00CL

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

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.  
Plaintiffs

Court of Appeal File No.: M42S99  
Superior Court File No.: CV-10-414302CP

-and- SINO-FOREST CORPORATION, et al.  
Defendants

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**FACTUM OF THE APPELLANTS**

**KIM ORR BARRISTERS P.C.**  
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Lawyers for the Appellants, Invesco Canada Ltd., Northwest &  
Ethical Investments L.P., Comité Syndical National de Reprise  
Bâtiments Inc., Matrix Asset Management Inc., Gestion Férique  
and Montrusco Bolton Investments Inc.

**Tab 11**

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ) TUESDAY, THE 25<sup>TH</sup> DAY  
JUSTICE PERELL ) OF SEPTEMBER, 2012

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*

**ORDER**

THIS MOTION made by the Plaintiffs for an Order i) certifying this action as a class proceeding for settlement purposes as against Pöyry (Beijing) Consulting Company Limited (the "Settling Defendant"); ii) approving the settlement agreement made as of March 20, 2012, between the plaintiffs and the Settling Defendant (the "Settlement Agreement"); iii) approving the form of notice to class members of the certification of this action and the approval of the

- 2 -

Settlement Agreement ("Long-Form Approval Notice") and the summary notice to class members of the certification of this action and the approval of the Settlement Agreement ("Short-Form Approval Notice") (together, the "Approval Notices"); iv) approving the form of notice to class members of the Approval Notices ("Notice Plan"); and v) dismissing the action as against the Settling Defendant, was heard on September 21, 2012, in Toronto, Ontario.

WHEREAS the Plaintiffs and the Settling Defendant have entered into the Settlement Agreement in respect of the Plaintiffs' claims against the Settling Defendant.

AND WHEREAS notice of the Settlement Approval Hearing in this proceeding was provided pursuant to the Order dated May 17, 2012.

AND WHEREAS the defendant Sino-Forest Corporation ("Sino-Forest") has delivered to counsel for the plaintiffs a list of holders of Sino-Forest's securities as of June 2, 2011 (the "June 2, 2011 Shareholder List");

AND ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "A", and on hearing submissions of counsel for the Plaintiffs, counsel for the Settling Defendant, and counsel for the Non-Settling Defendants (as defined in the Settlement Agreement):

1. THIS COURT ORDERS that the plaintiffs are granted leave to bring this motion.
2. THIS COURT DECLARES that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

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3. THIS COURT ORDERS that this proceeding be, and hereby is, certified as a class proceeding, for purposes of settlement only, pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6. ("CPA") sections 2 and 5.

4. THIS COURT ORDERS that the Settlement Class is defined as:

all persons and entities, wherever they may reside, who acquired Sino-Forest Corporation common shares, notes, or other securities, as defined in the *Ontario Securities Act*, during the period from and including March 19, 2007 to and including June 2, 2011

(a) by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter or

(b) who are residents of Canada or were residents of Canada at the time of acquisition and who acquired Sino-Forest Corporation's securities outside of Canada.

excluding the defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an individual defendant;

5. THIS COURT ORDERS AND DECLARES that 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 be and hereby are appointed as the representative plaintiffs for the Settlement Class.

6. THIS COURT ORDERS AND DECLARES that the claims asserted on behalf of the Settlement Class as against the Settling Defendant are: (a) negligence in connection with Sino-Forest's share and note offerings during the class period; (b) the statutory cause of action in section 130 of the *Securities Act*, R.S.O. 1990, c.S.5 ("OSA") for alleged



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misrepresentations in Sino-Forest's June 2009 and December 2009 prospectuses; and (c) the statutory cause of action in Part XXIII.1 of the *OSA* in connection with Sino-Forest's continuous disclosure documents;

7. THIS COURT ORDERS that, for the purposes of settlement, the Ontario Proceeding be and hereby is certified on the basis of the following common issue:

Did the Settling Defendant make misrepresentations as alleged in this Proceeding during the Class Period concerning the assets, business or transactions of Sino-Forest. If so, what damages, if any, did Settlement Class Members suffer?

8. THIS COURT ORDERS that NPT Ricepoint Class Action Services be and is hereby appointed as the Opt-Out Administrator for purposes of the proposed settlement and for carrying out the duties assigned to the Opt-Out Administrator under the Settlement Agreement.
9. THIS COURT ORDERS that any putative Settlement Class Member may opt out of the Settlement Class in accordance with section 4.1 of the Settlement Agreement.
10. THIS COURT ORDERS that any Settlement Class Member who validly opts out of the Settlement Agreement in accordance with paragraph 9 of this Order is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of the within action.
11. THIS COURT ORDERS that the Settlement Agreement, in its entirety (including the Recitals, the Definitions set out in Section 1, and the Schedules), forms part of this Order, shall be implemented in accordance with its terms subject to the terms of this Order, and is binding upon the Plaintiffs, the Settling Defendant, the Opt-Out Administrator and all

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Settlement Class Members, including those persons who are minors or mentally incapable, who did not validly opt out of the Settlement Class in accordance with the Settlement Agreement, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the within action. If there is any inconsistency between the terms of this Order and the Settlement Agreement, the terms of this Order govern.

12. **THIS COURT ORDERS AND DECLARES** that any Settlement Class Member who does not validly opt out of the Settlement Class in accordance with paragraph 9 of this Order shall be deemed to have elected to participate in the settlement and be bound by the terms of the Settlement Agreement and all related court Orders.
13. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who does not opt out of the Settlement Class in accordance with paragraph 9 of this Order shall consent and shall be deemed to have consented to the dismissal, without costs and with prejudice, of any other action the Settlement Class Member has commenced against the Releasees, or any of them, in relation to a Released Claim (an "Other Action").
14. **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by any Settlement Class Member who does not opt out of the Settlement Class in accordance with paragraph 9 of this Order is dismissed against the Releasees, without costs and with prejudice.
15. **THIS COURT DECLARES** that, subject to the terms of this Order, the settlement as set forth in the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class Members.

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16. THIS COURT ORDERS that, subject to the terms of this Order, the Settlement Agreement be and is hereby is approved pursuant to s. 29 of the *CPA* and that it shall be implemented in accordance with its terms.
17. THIS COURT ORDERS that the form and content of the Long-Form Approval Notice, the Short-Form Approval Notice, and the opt out forms attached hereto as Schedules "B", "C", and "D" respectively, be and are hereby approved and shall be published, subject to the right of the plaintiff and the Settling Defendant to make minor non-material amendments to such forms, by mutual agreement, as may be necessary or desirable, or for the purpose of creating an online opt out form at the Opt-Out Administrator's website.
18. THIS COURT ORDERS that the Approval Notices shall be disseminated as follows:
  - (a) A copy of the Long-Form Approval Notice will be provided by Koskie Minsky LLP, Siskinds LLP, and Siskinds Desmeules, senecl (together, "Class Counsel") and the Opt-Out Administrator to all individuals or entities that have contacted Class Counsel regarding this action, and to any person that requests it;
  - (b) Within 10 days of the Order of the Québec Court approving the Settlement Agreement (the "Québec Approval Order"), the Long-Form Approval Notice will be posted on the websites of Sino-Forest Corporation (on its main page), Class Counsel, and the Opt-Out Administrator;
  - (c) Within 20 days of the Québec Approval Order, the Long-Form Approval Notice will be sent directly to the addresses of class members listed on the June 2, 2011 Shareholder List;
  - (d) Within 20 days of the Québec Approval Order, the Long-Form Approval Notice will be sent to a list of all brokers known to the Opt-Out Administrator, with a cover letter containing the following statement:

Nominee purchasers are directed, within ten (10) days of the receipt of this Notice (a) to provide the Opt-Out Administrator with lists of names and addresses of beneficial owners; or (b) to request additional copies of the Notice from the Opt-Out Administrator, to mail the Notice to the beneficial owners. Nominee purchasers who elect to send the Notice to their beneficial owners shall send a statement to the Opt-Out Administrator that the mailing was completed as directed

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- (e) Within 30 days of the Québec Approval Order, the Short-Form Approval Notice will be published in the following print publications:
- (i) *The Globe and Mail*, in English, in one weekday publication;
  - (ii) *National Post*, in English, in one weekday publication;
  - (iii) *La Presse*, in French, in one weekday publication; and
  - (iv) *Le Soleil*, in French, in one weekday publication.
19. THIS COURT ORDERS that the cost of distributing the Approval Notices shall be borne solely by the Settling Defendant up to \$100,000 and equally between the plaintiffs and the Settling Defendant for any costs in excess of \$100,000, subject to review or readjustment by agreement between the plaintiffs and the Settling Defendant.
20. THIS COURT ORDERS that no Settlement Class Member may opt out of this class proceeding after the date which is sixty (60) days after the date on which the Approval Notices are first published (the "Opt-Out Deadline") except with leave of this court.
21. THIS COURT ORDERS that, within fifteen (15) days of the Opt-Out Deadline, the Opt-Out Administrator shall serve on the parties and file with the court an affidavit listing all persons or entities that have opted out.
22. THIS COURT ORDERS AND DECLARES that the Court shall retain jurisdiction over the Plaintiffs, the Opt-Out Administrator, the Settlement Class Members, the Pöyry Parties (as defined in paragraph 27 hereof), Pöyry PLC and Pöyry Finland OY for all matters relating to the within proceeding, including the administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and this Order and that all of these parties are hereby declared to have attorned to the jurisdiction of this Court in relation thereto.

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23. **THIS COURT ORDERS AND DECLARES** that approval of the Settlement Agreement is contingent upon the issuance by the Superior Court of Québec of an Order approving the Settlement Agreement. If such Order is not secured in Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS AND ADJUDGES** that upon the date the Settlement Agreement becomes final, the Releasors fully, finally, and forever release the Releasees from the Released Claims.
25. **THIS COURT ORDERS AND DECLARES** that, subject to paragraph 30 below, all claims for contribution, indemnity or other claims over, including, without limitation, potential third party claims, at common law, equity or pursuant to the *OSJ* or other statute, whether asserted, unasserted or asserted in a representative capacity or in any other capacity, inclusive of interest, costs, expenses, class administration expenses, penalties, legal fees and taxes, relating to the Released Claims, which were or could have been brought in the within proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the within proceedings or otherwise, by any Non-Settling Defendant or any Party or any Releasor against all or any of the Releasees are barred, prohibited, and enjoined in accordance with the terms of the Settlement Agreement and this Order (the "Bar Order").
26. **THIS COURT ORDERS AND DECLARES** that if the Court determines that there is a right of contribution and indemnity or other claims over, including, without limitation, potential third party claims, at common law, equity or pursuant to the *OSJ* or other

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statute, whether asserted, unasserted or asserted in a representative capacity or in any other capacity, inclusive of interest, costs, expenses, class administration expenses, penalties, legal fees and taxes, relating to the Released Claims:

- (a) the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and
- (b) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to this action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceedings.

27. THIS COURT ORDERS AND DECLARES that, after all appeals or times to appeal from the certification of this action against the Non-Settling Defendants have been exhausted, any Non-Settling Defendant is entitled to the following:

- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from any and all of the Settling Defendant, Pöyry (Beijing) Consulting Company Ltd. - Shanghai Branch, Pöyry Management Consulting (Singapore) Pte. Ltd., Pöyry Forest Industry Ltd., Pöyry Forest

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Industry Pte. Ltd., Pöyry Management Consulting (Australia) Pty. Ltd., Pöyry Management Consulting (NZ) Ltd., JP Management Consulting (Asia-Pacific) Ltd., and any successor entities (collectively, the "Pöyry Parties", each a "Pöyry Party");

- (b) oral discovery of a representative of any Pöyry Party in accordance with the *Rules of Civil Procedure*, the transcript of which may be read in at trial solely by the Non-Settling Defendants as part of their respective cases in defending the Plaintiffs' allegations concerning the Proportionate Liability of the Releasees and in connection with any potential claim by a Non-Settling Defendant against a Pöyry Party for contribution and indemnity that may arise out of an Order made under paragraph 30 below;
- (c) leave to serve a request to admit on any Pöyry Party in respect of factual matters and/or documents in accordance with the *Rules of Civil Procedure*;
- (d) the production of a representative of any Pöyry Party to testify at trial in accordance with the *Rules of Civil Procedure*, with such witness or witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants; and
- (e) leave to serve *Evidence Act* notices on any Pöyry Party.

The discovery set out in subparagraphs (a) and (b) above shall proceed pursuant to an agreement between the Non-Settling Defendants and the Pöyry Parties in respect of a discovery plan, or failing such agreement, a further Order of this Court in respect of a discovery plan.

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28. THIS COURT ORDERS AND DECLARES that the Pöyry Parties, Pöyry PLC and Pöyry Finland OY shall, on a best efforts basis, take steps to collect and preserve all documents relevant to the matters at issue in the within proceeding and any proceeding contemplated by paragraph 30, until such time as the within proceeding and any proceeding contemplated by paragraph 30 have been finally disposed of and all appeals or times to appeal from any Order finally disposing of the within proceeding and any proceeding contemplated by paragraph 30 have been exhausted.
29. THIS COURT ORDERS AND DECLARES that service on any Pöyry Party, Pöyry PLC and Pöyry Finland OY of any court documents relating to the within proceeding, including, but not limited to notices of examination, requests to inspect or admit, *Evidence Act* notices and summons, may be served on counsel for the Settling Defendant, John Pirie of Baker & McKenzie LLP, or such other counsel as may replace current counsel as counsel for the Settling Defendant in respect of this proceeding and that such service shall be deemed to be sufficient service under the *Rules of Civil Procedure*.
30. THIS COURT ORDERS AND DECLARES that if any Pöyry Party fails to satisfy its reasonable obligations arising under paragraph 27 above, a Non-Settling Defendant may make a motion to this Court on at least fifteen (15) days notice to compel reasonable compliance by the alleged non-compliant Pöyry Party or for such other alternative relief as the Court may consider just and appropriate. If such an Order is made, and not adhered to by the Pöyry Party at issue, a Non-Settling Defendant may then bring a motion on at least twenty (20) days notice to lift the Bar Order under paragraph 25 above with respect to the Pöyry Party at issue and to advance a claim for contribution, indemnity or other claims over against the Pöyry Party at issue.



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31. THIS COURT ORDERS AND DECLARES that any Pöyry Party affected or potentially affected by a motion brought under paragraph 30 above shall have the right to oppose any such motion.
32. THIS COURT ORDERS AND DECLARES that if an Order is made under paragraph 30 above permitting a claim to be advanced against a Pöyry Party by a Non-Settling Defendant:
- (a) any limitation period applicable to such a claim, whether in favour of a Pöyry Party or a Non-Settling Defendant, shall be deemed to have been tolled as of the date of this Order and shall continue as of the date of any Order permitting a claim to be advanced against any Pöyry Party pursuant to paragraph 30 above;
  - (b) any Pöyry Party that is subject to a claim permitted under paragraph 30 above shall have all procedural and substantive rights available to it at law to defend and challenge such a claim, including, *inter alia*, the right to bring a motion for summary judgment or to strike out a pleading on the ground that it discloses no reasonable cause of action; and
  - (c) no Pöyry Party shall advance or raise any *res judicata* or issue estoppel argument or defence with respect to any claim permitted under paragraph 30 above.
33. THIS COURT ORDERS AND DECLARES that nothing in this Order shall be taken as a waiver of any rights that a Pöyry Party may have, now or in the future, to challenge any claim or proceeding brought against a Pöyry Party by a Non-Settling Defendant.
34. THIS COURT ORDERS AND DECLARES that after all appeals or times to appeal from the certification of this action against the Non-Settling Defendants have been

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exhausted, any Non-Settling Defendant may bring a motion to this Court on at least twenty (20) days notice seeking a determination from the Court as to whether Pöyry PLC and or Pöyry Finland OY shall be subject to the Non-Settling Defendants' procedural entitlements set out in subparagraphs 27(a), (b), (c), (d) and (e) above. Pöyry PLC, Pöyry Finland OY and/or any Pöyry Party affected or potentially affected by a motion brought under this paragraph shall have the right to oppose any such motion.

35. **THIS COURT ORDERS AND DECLARES** that if an Order is made under paragraph 34 above requiring Pöyry PLC and/or Pöyry Finland OY to be subject to the Non-Settling Defendants' procedural entitlements set out in subparagraphs 27(a), (b), (c), (d) and (e), then Pöyry PLC and/or Pöyry Finland OY, as the case may be, shall be deemed to be a Pöyry Party and the relief set out in paragraphs 22, 27, 30, 31, 32 and 33 above shall apply to Pöyry PLC and/or Pöyry Finland OY as if each entity was a Pöyry Party.
36. **THIS COURT ORDERS AND DECLARES** that this Order and its terms are entirely without prejudice to the Non-Settling Defendants except as against the Releasees as provided herein, including without limiting the generality of the foregoing without prejudice to the Non-Settling Defendants' ability to challenge any aspect of any certification or other preliminary motions currently pending or that may be brought in the future in respect of the Non-Settling Defendants, including the factual, evidentiary and/or legal elements of the test for certification under the *Class Proceedings Act*, S.O. 1992, c. 6.

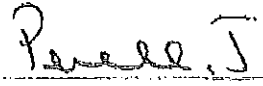
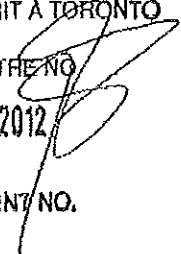
37. THIS COURT ORDERS AND ADJUDGES that, upon the Effective Date, the within proceeding is dismissed against the Settling Defendant without costs and with prejudice.

Date:

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.

OCT 30, 2012

AS DOCUMENT NO.:  
A TITRE DE DOCUMENT NO.  
PER / PAR:



THE HONOURABLE JUSTICE PERELL

# **Tab A**

Schedule A

**SINO-FOREST CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of March 20, 2012

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, ROBERT WONG and GUINING LIU

and

PÖYRY (BEIJING) CONSULTING COMPANY LIMITED

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NATIONAL SETTLEMENT AGREEMENT  
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**SINO-FOREST CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

- A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec which allege that the Settling Defendant made misrepresentations regarding the assets, business and transactions of Sino-Forest contrary to the *OSA*, the *QSA*, the civil law of Quebec and the common law of the rest of Canada;
- B. AND WHEREAS the Settling Defendant believes that it is not liable in respect of the claims as alleged in the Proceedings and the Settling Defendant believes that it has good and reasonable defences in respect of the merits in the Proceedings;
- C. AND WHEREAS the Settling Defendant asserts that it would actively pursue its defences in respect of the merits during the course of certification, during the course of discovery and at trial if the Plaintiffs continued the Proceedings against it;
- D. AND WHEREAS, despite the Settling Defendant's belief that it is not liable in respect of the claims as alleged in the Proceedings and its belief that it has good and reasonable defences in respect of the merits, the Settling Defendant has negotiated and entered into this Settlement Agreement to avoid further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Settling Defendant by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation;
- E. AND WHEREAS counsel for the Settling Defendant and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement;
- F. AND WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Plaintiffs and the Settling Defendant, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

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G. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the value of the cooperation the Settling Defendant has made and agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the jurisdictional issues relating to the Settling Defendant, the potential defences that may be asserted by the Settling Defendant and the challenges of enforcement against the Settling Defendant in a foreign jurisdiction;

H. AND WHEREAS the Plaintiffs recognize the benefits of the Settling Defendant's early cooperation in respect of the Proceedings;

I. AND WHEREAS the Settling Defendant does not admit through the execution of this Settlement Agreement any allegation of unlawful conduct alleged in the Proceedings;

J. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

K. AND WHEREAS the Plaintiffs, Class Counsel and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendant or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendant, which the Settling Defendant expressly denies;

L. AND WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against it by the Plaintiffs in the Proceedings or claims which could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

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M. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendant;

N. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification of the Ontario Proceeding and authorization of the Quebec Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings;

O. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of each of the Proceedings as against the Settling Defendant;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed with prejudice as to the Settling Defendant only, without costs as to the Plaintiffs, the classes they seek to represent or the Settling Defendant, subject to the approval of the Courts, on the following terms and conditions:

#### SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement (as hereinafter defined):

(1) *Affiliates* means, in respect of any Person, any other Person or group of Persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such Person first mentioned, and for the purposes of this definition, "control" means the power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

(2) *Approval Hearings* means the hearings to approve the motions brought by Ontario Counsel before the Ontario Court and Quebec Counsel before the Quebec Court, for such Courts' respective approval of the settlement provided for in this Settlement Agreement.

(3) *Auditors* means, collectively, Ernst & Young LLP and BDO Limited (formerly known as BDO McCabe Lo Limited).

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- (4) *Class Counsel* means, collectively, Ontario Counsel and Quebec Counsel.
- (5) *Class Period* means March 19, 2007 to June 2, 2011.
- (6) *Common Issue* in each of the Ontario Proceeding and Quebec Proceeding means: Did the Settling Defendant make misrepresentations as alleged in this Proceeding during the Class Period concerning the assets, business or transactions of Sino-Forest? If so, what damages, if any, did Settlement Class Members suffer?
- (7) *Courts* means, collectively, the Ontario Court and the Quebec Court.
- (8) *Defendants* means, collectively, the Persons named as defendants in the Proceedings as set out in Schedule A and any other Person who is added as a defendant in the Proceedings in the future.
- (9) *Effective Date* means the date when the Final Order has been received from the last of the Ontario Court and the Quebec Court to issue the Final Order.
- (10) *Excluded Person* means the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors successors and assigns, and any individual who is a member of the immediate family of an individual Defendant.
- (11) *Final Order* means a final judgment entered by the Ontario Court or the Quebec Court in respect of both: (i) the certification or authorization of the Ontario Proceeding or the Quebec Proceeding, respectively, as a class proceeding; and (ii) the approval of this Settlement Agreement; but only once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies or, once there has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement, upon a final disposition of all appeals therefrom.
- (12) *Non-Settling Defendant* means a Defendant that is not the Settling Defendant.
- (13) *Notice of Certification/Authorization and Approval Hearings* means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendant, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the certification of the

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Ontario Proceeding or authorization of the Quebec Proceeding solely for the purposes of this Settlement; (ii) the dates and locations of each of the Approval Hearings; (iii) the principal terms of this Settlement Agreement; (iv) the process by which Settlement Class Members can opt out of each of the Proceedings; and (v) the Opt Out Deadline in respect of each of the Proceedings.

- (14) *Ontario Proceeding* means Ontario Court File No. CV-11-431153-00CP (Toronto).
- (15) *Ontario Counsel* means Siskinds LLP and Koskie Minsky LLP.
- (16) *Ontario Court* means the Ontario Superior Court of Justice.
- (17) *Opt-Out Administrator* means the Person appointed by the Courts to receive and report on Opt Outs.
- (18) *Opt-Out Deadline* means the date which is sixty (60) days after the date on which the Notice of Certification/Authorization and Approval Hearings is first published.
- (19) *OSA* means the *Securities Act*, RSO 1990, c S.5.
- (20) *Other Actions* means, without limitation, actions, suits, proceedings or arbitration, civil, criminal, regulatory or otherwise, at law or in equity, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (21) *Parties* means, collectively, the Plaintiffs, Settlement Class Members and the Settling Defendant.
- (22) *Person* means an individual, corporation, partnership, limited partnership, limited liability company, association, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (23) *Plaintiffs* means the Persons named as plaintiffs in the Proceedings as set out in Schedule A, and any other Person who may in the future be added as plaintiff to either of the Proceedings.
- (24) *PRC* means the People's Republic of China.

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- (25) *Proceedings* means, collectively, the Ontario Proceeding and the Quebec Proceeding.
- (26) *Proportionate Liability* means that proportion of any judgment that, had they not settled, the Ontario Court would have apportioned to the Releasees.
- (27) *QSA* means the *Quebec Securities Act*, R.S.Q., c. V-1.1
- (28) *Quebec Class Members* means all natural persons, as well as all legal persons established for a private interest, partnerships and associations having no more than fifty (50) persons bound to it by contract of employment under its direction or control during the twelve (12) month period preceding the motion for authorization domiciled in Quebec (other than the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the families of the individual named defendants) who purchased or otherwise acquired, whether in the secondary market, or under a prospectus or other offering document in the primary market, equity, debt or other securities of or relating to Sino-Forest Corporation, from and including August 12, 2008 to and including June 2, 2011.
- (29) *Quebec Counsel* means Siskinds Desmeules s.e.n.c.r.l.
- (30) *Quebec Court* means the Superior Court of Quebec.
- (31) *Quebec Proceeding* means Quebec Court (District of Quebec) Court file No. 200-06-000132-111.
- (32) *Released Claims* means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages whenever incurred, obligations, liabilities of any nature whatsoever including, without limitation, interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel's fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, or in respect of any misrepresentations (including, without limitation, any verbal statements made or not made by the Settling Defendant's agents) directly or indirectly relating to Sino-Forest, its Subsidiaries

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(including, without limitation, Greenheart Group Limited) and other Affiliates and their respective assets, business and transactions, whether contained in or arising from valuations or reports prepared by the Settling Defendant or any Releasee for Sino-Forest, its Subsidiaries (including, without limitation, Greenheart Group Limited) and other Affiliates or elsewhere, or relating to any conduct alleged (or which could have been alleged or could in the future be alleged on the basis of the same events, actions and omissions) in the Proceedings including, without limitation, any such claims which have been asserted, could have been asserted, or could in the future be asserted on the basis of the same events, actions and omissions underlying the Proceedings, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the events discussed in the reports of Sino-Forest's Independent Committee and the June 2, 2011 report issued by Muddy Waters LLC in respect of Sino-Forest, its Subsidiaries (including, without limitation, Greenheart Group Limited) and other Affiliates;

(33) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendant, its past and present, direct and indirect, Subsidiaries and other Affiliates, and their respective divisions, partners, insurers (solely in respect of any insurance policy applicable to the acts or omissions of the Settling Defendant, its past and present, direct and indirect, Subsidiaries and other Affiliates), consultants, sub-consultants, attorneys, agents and all other Persons that are Affiliates of any of the foregoing, and all of their respective past, present and future officers, directors, employees, agents, partners, shareholders, attorneys, trustees, servants and representatives and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any of their respective current or former Subsidiaries and other Affiliates, officers, directors, executives, employees, shareholders, joint venturers and/or partners.

(34) *Releasers* means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective Subsidiaries and other Affiliates, and their respective divisions, partners, insurers, consultants, sub-consultants and all other Persons that are Affiliates of any of the foregoing, and all of their respective past, present and future officers, directors, employees, agents, partners, shareholders, attorneys, trustees, servants and representatives and the predecessors, successors, heirs, executors, administrators, representatives, insurers and assigns.

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- (35) *Settlement Agreement* means this agreement including the recitals and schedules.
- (36) *Settlement Class* means, in respect of each of the Ontario Proceeding and the Quebec Proceeding, the settlement class defined in Schedule A.
- (37) *Settlement Class Member* means a member of a Settlement Class who does not validly opt-out of that Settlement Class in accordance with section 4.1 and any orders of the Courts.
- (38) *Settling Defendant* means Pöyry (Beijing) Consulting Company Limited.
- (39) *Sino-Forest* means Sino-Forest Corporation.
- (40) *Subsidiary* has the meaning ascribed to it in the *Canada Business Corporations Act*.
- (41) *Underwriters* means 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 Banc of America Securities LLC, including, without limitation, their respective Subsidiaries and other Affiliates and their respective personnel.

## SECTION 2 - SETTLEMENT APPROVAL

### 2.1 Best Efforts

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings and without further recourse as against the Settling Defendant.

### 2.2 Motions for Approval

- (1) Each of the Ontario Plaintiffs and Quebec Plaintiffs shall promptly bring motions before the Ontario Court and the Quebec Court, respectively, for orders approving the notices described in section 10 herein, certifying the Ontario Proceeding and authorizing the Quebec Proceeding as a class proceeding for settlement purposes only and approving this Settlement Agreement.
- (2) The motions for approval of this Settlement Agreement referred to in section 2.2(1) shall not be returnable until the Opt Out Deadline has passed.



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(3) The Ontario order certifying the Ontario Proceeding referred to in section 2.2(1) shall be substantially in the form attached hereto as Schedule B-1. The Quebec order authorizing the Quebec Proceeding referred to in section 2.2(1) shall be substantially in the form attached hereto as Schedule B-2.

(4) The Ontario order approving the Settlement Agreement referred to in section 2.2(1) shall be substantially in the form attached hereto as Schedule C-1. The Quebec order approving the Settlement Agreement referred to in section 2.2(1) shall be substantially in the form attached hereto as Schedule C-2.

(5) The form and content of the orders approving the Settlement Agreement contemplated in this section 2.2 shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the orders substantially in the form contemplated herein and attached as schedules hereto shall constitute a Non-Approval of Settlement Agreement pursuant to section 5.1 of this Settlement Agreement.

### **2.3 Pre-Motion Confidentiality**

(1) Until the first of the motions required by section 2.2 is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including, without limitation, tax returns and financial statements) or as otherwise required by law, in which case the Party seeking to disclose shall provide at least fifteen (15) days written notice to the other Parties of the proposed disclosure and the basis for the proposed disclosure.

(2) Any disclosure of the terms of this Settlement Agreement, and any information or documents related thereto, contemplated in subsection 2.3(1) or otherwise shall be for the sole and exclusive purpose of seeking approval of this Settlement Agreement by the Courts and facilitating the settlement of the Proceedings and release of the Released Claims pursuant to the terms of this Settlement Agreement.

**SECTION 3 - SETTLEMENT BENEFITS****3.1 Cooperation – No Disclosure of Privileged Communications**

Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant to disclose or produce any documents or information prepared by or for counsel for the Settling Defendant, or to disclose or produce any document or information in breach of any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege.

**3.2 Cooperation – No Disclosure of Documents or Information Contrary to Privacy and State Secrets Protection Laws**

Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant to disclose or produce any documents or information, where production of such documents or information would potentially result, in the reasonable judgment of the Settling Defendant and its counsel, in a breach or violation of any federal, provincial, state or local privacy law, or any law of a foreign jurisdiction, including, without limitation, PRC privacy and state secrets protection laws.

**3.3 Cooperation – No Disclosure of Confidential Information**

Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant to disclose or produce any confidential documents or information that the Settling Defendant holds under commercial arrangements where such disclosure or production would potentially result, in the reasonable judgment of the Settling Defendant and its counsel, in a breach of contract.

**3.4 Cooperation**

(1) It is understood and agreed that all documents and information provided by the Settling Defendant or Releasees to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose. Plaintiffs and Class Counsel agree that they will not publicize the documents and information provided by the Settling Defendant beyond

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what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law.

(2) Within thirty (30) days of the Date of Execution or at a time mutually agreed upon by the Parties, the Settling Defendant shall provide, through a meeting between counsel for the Settling Defendant and Class Counsel, an evidentiary proffer, which will include verbal information relating to the allegations in the Proceedings including, without limitation, a summary of the Settling Defendant's material interactions and involvement with Sino-Forest, the Auditors and the Underwriters; the Settling Defendant's understanding of Sino-Forest's business model as it pertains to timber plantation, purchased forests and forestry management; and the Settling Defendant's knowledge and understanding of Sino-Forest's actual or purported revenues and/or assets during the Class Period.

(3) Within thirty (30) days of the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendant shall provide copies of the following categories of documents being within the possession, custody or control of the Settling Defendant and the Releasees:

- (a) documents relating to Sino-Forest, the Auditors or the Underwriters, or any of them, as well as the dates, locations, subject matter, and participants in any meetings with or about Sino-Forest, the Auditors or the Underwriters, or any of them;
- (b) documents provided by the Settling Defendant or any Releasee to any state, federal or international government or administrative agency, without geographic limitation, concerning the allegations raised in the Proceedings, excluding documents created for the purpose of being so provided; and
- (c) documents provided by the Settling Defendant or any Releasee to Sino-Forest's Independent Committee or the ad hoc committee of noteholders.

(4) The obligation to produce documents pursuant to this section 3.4 shall be a continuing obligation to the extent that material documents are identified following the initial productions. The Settling Defendant and Releasees make no representation that they have a complete set of documents within any of the categories of information or documents described herein.

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(5) To the extent that any document includes technical information within the expertise of the Settling Defendant, Class Counsel may request, and the Settling Defendant shall provide, an explanation sufficient for Class Counsel to understand the document; however, in no event will any liability or further obligation attach to such explanation.

(6) Following the Effective Date, the Settling Defendant and Releasees shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, at a mutually agreed upon location in North America, up to three (3) current or former employees of the Settling Defendant and Releasees who have knowledge of the allegations raised in the Proceedings to provide information regarding the allegations raised in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the presence of, and assisted by, counsel for the Settling Defendant, provided that none of the employee(s) or former employee(s) are required to travel to North America pursuant to this subsection 3.4(6) more than two (2) times each. Costs incurred by, and the expenses of, the employees of the Settling Defendant and Releasees in relation to such interviews shall be the responsibility of the Settling Defendant. If the employee(s) or former employee(s) contemplated in this subsection 3.4(6) refuse to provide information, or otherwise cooperate, the Settling Defendant shall use reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel as aforesaid. The failure of the employee(s) or former employee(s) contemplated in this subsection 3.4(6) to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs shall not constitute a breach or other violation of this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement, provided that the Settling Defendant has made reasonable efforts to cause such cooperation.

(7) Subject to the rules of evidence and the other provisions of this Settlement Agreement, the Settling Defendant agrees to use reasonable efforts to produce at trial and/or discovery or through affidavits acceptable to Class Counsel or other testimony, (i) a current representative as Class Counsel and the Settling Defendant, acting reasonably, agree would be qualified to establish for admission into evidence the Settling Defendant and Releasees' involvement with Sino-Forest, the Auditors and the Underwriters; and (ii) current representatives as Class Counsel and the Settling Defendant, acting reasonably, agree would be necessary to support the submission into evidence of any information and/or documents provided by the Settling

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Defendant or any Releasee in accordance with this Settlement Agreement that Class Counsel and the Settling Defendant, acting reasonably, agree might be reasonably necessary for the prosecution of the Proceedings, including, without limitation, for the purpose of any motion where such evidence is reasonably necessary.

(8) In connection with its provision of information, testimony and documents, the Settling Defendant and the Releasees shall have the right to assert solicitor-client privilege, litigation privilege and/or any other privilege, or to assert a right to refuse production on the basis of privacy law, state secrets law, contractual confidentiality obligations or other rule of law of this or any other jurisdiction. To the extent that Class Counsel requests particular documents, information or other materials from the Settling Defendant and the Settling Defendant does not produce the requested documents, information or other materials on the basis of this provision, or any other provision herein: (i) counsel for the Settling Defendant shall provide Class Counsel with a description of any such documents, information or other materials and a description of the basis on which the Settling Defendant is not prepared to produce said document, information or other material sufficient for Class Counsel to assess the nature of that basis and the document, information or other material, except where providing such descriptions would, in the reasonable judgment of counsel for the Settling Defendant, be contrary to privacy law, state secrets law, contractual confidentiality obligations or other rule of law of this or any other jurisdiction, in which case counsel for the Settling Defendant will so advise; and (ii) Class Counsel or counsel for the Settling Defendant may seek to resolve any dispute arising from this subsection 3.4(8) pursuant to the procedures set out in section 11.7 of this Settlement Agreement.

(9) The Settling Defendant and Releasees waive any and all privilege relating to any specific document that the Settling Defendant has agreed to produce in response to this section 3.4. Notwithstanding the foregoing, nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant or any Releasee to disclose or produce any documents or information prepared by or for counsel for the Settling Defendant during the course of any of the Proceedings.

(10) If any of the types of documents referenced in sections 3.1, 3.2 or 3.3 are accidentally or inadvertently produced, such documents shall be promptly returned to counsel for the Settling Defendant and the documents and the information contained therein shall not be disclosed or

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used directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(11) It is understood and agreed that the Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of the Settling Defendant and its counsel, directly or indirectly use any information or documents provided by the Settling Defendant or any Releasee, or received from the Settling Defendant or any Releasee in connection with this Settlement Agreement, for any purpose other than the prosecution of the claims in the Proceedings, nor disclose or share with any other Persons (including, without limitation, any regulator, agency or organization of this or any other jurisdiction), any information or documents obtained from the Settling Defendant in connection with this Settlement Agreement or any information conveyed by counsel for the Settling Defendant or any Releasee, except in the event that a court in Canada expressly orders such information or documents to be disclosed. In no circumstances, however, may the Plaintiffs, the Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly, upon becoming aware of an application or motion for such an order, Class Counsel shall immediately notify the Settling Defendant of the application or motion in order that the Settling Defendant may intervene in such proceedings. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available documents and information.

(12) The Settling Defendant and Releasees' obligations to cooperate as particularized in this section 3.4 shall not be affected by the release provisions contained in section 6 of this Settlement Agreement. The Settling Defendant and Releasees' obligations to cooperate shall cease at the date of final judgment or order in the Proceedings against all Defendants, including, without limitation, an order approving a settlement between the Plaintiffs and the Non-Settling Defendants and/or an order dismissing the Proceedings. In the event the Settling Defendant or any Releasee materially breaches this section 3.4, Class Counsel may move before the Courts to enforce the terms of this Settlement Agreement.

(13) The provisions set forth in this section 3.4 shall constitute the exclusive means by which the Plaintiffs, the Settlement Class Members and Class Counsel may obtain discovery from the Settling Defendant, its current and former directors, officers or employees and the Releasees, and

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the Plaintiffs, the Settlement Class Members and Class Counsel shall pursue no other means of discovery against the Settling Defendant, its current and former directors, officers or employees and the Releasees, whether under the laws or rules of any jurisdiction.

(14) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant and any Releasee and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendant or Releasees.

#### SECTION 4 - OPTING-OUT

##### 4.1 Procedure

(1) A Person may opt-out of the Proceedings by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax, or email to the Opt-Out Administrator at an address to be identified in the Notice of Certification/Authorization and Approval Hearings. Residents of Quebec must also send the written election to opt-out by pre-paid mail or courier to the Quebec Court at an address to be identified in the Notice of Certification/Authorization and Approval Hearings.

(2) An election to opt-out will only be effective if it is actually received by the Opt-Out Administrator on or before the Opt-Out Deadline.

(3) The written election to opt-out must contain the following information in order to be effective:

- (a) the Person's full name, current address and telephone number;
- (b) the name and number of Sino-Forest securities purchased during the Class Period and the date and price of each such transaction;
- (c) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
- (d) the reasons for opting out.

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(4) Quebec Class Members who have commenced proceedings or commence proceedings against any of the Defendants with respect to the matters at issue in the Quebec Proceeding and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out of the Quebec Proceeding. Quebec Counsel warrant and represent that, to the best of their knowledge, no such action has been commenced as of the date this Settlement Agreement was executed by it.

#### **4.2 Opt-Out Report**

Within fifteen (15) days of the Opt-Out Deadline, the Opt-Out Administrator shall provide to the Settling Defendant a report containing the following information in respect of each Person, if any, who has validly and timely opted out of the Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given; and
- (c) a copy of all information provided in the opt-out process by the Person electing to opt-out.

### **SECTION 5 - NON-APPROVAL OF SETTLEMENT AGREEMENT**

#### **5.1 Effect of Non-Approval of Settlement Agreement**

In the event of non-approval of the Settlement Agreement by either of the Ontario Court or the Quebec Court:

- (a) any order certifying or authorizing a Proceeding as a class action on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (b) to the extent that any Court is resistant to setting aside any order certifying or authorizing the Proceeding as a class action solely for settlement purposes, Class Counsel undertakes to, on a best efforts basis, assist the Settling Defendant in having such an order set aside and shall, if requested by the Settling Defendant, bring a



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motion on behalf of the Plaintiffs to set aside any order certifying or authorizing the Proceeding as a class action solely for settlement purposes;

- (c) any prior certification or authorization of a Proceeding as a class proceeding, including, without limitation, the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation;
- (d) within ten (10) days of such non-approval having occurred, Class Counsel shall destroy: (i) all documents and other materials provided by the Settling Defendant or any Releasee; and (ii) all documents and other materials containing or reflecting information derived from any documents or other materials provided by the Settling Defendant or any Releasee or conveyed by counsel for the Settling Defendant, through the evidentiary proffer process described in subsection 3.4(2) herein or otherwise.
- (e) To the extent Class Counsel or the Plaintiffs have disclosed any documents or other materials provided by the Settling Defendant or any Releasee to any other Person, Class Counsel shall, within ten (10) days, recover and destroy such documents and other materials and shall provide the Settling Defendant and Releasees with a written certification by Class Counsel of such destruction.
- (f) Nothing contained in this section 5.1 shall be construed to require Class Counsel to destroy any of their work product; and
- (g) subject to section 5.2 herein, all obligations pursuant to this Settlement Agreement shall cease immediately.

## **5.2 Survival of Provisions After Non-Approval of Settlement Agreement**

If this Settlement Agreement is not approved by the Courts, the provisions of sections 5, 8.1, and 8.2, and the definitions and Schedules applicable thereto shall survive the non-approval and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 5, 8.1, and 8.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement

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Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### 5.3 Reservation of Rights in the Event of Non-Approval of Settlement Agreement

Except as may be set forth in this Settlement Agreement, the Settling Defendant and Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement does not become effective or is not approved by the Courts and the Plaintiffs hereby expressly acknowledge that they will not, in any way whatsoever, use the fact or existence of this Settlement Agreement or related documents and information as any form of admission, whether of liability, process, wrongdoing, or otherwise, of the Settling Defendant.

## SECTION 6 - RELEASES AND DISMISSALS

### 6.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of the cooperation of the Settling Defendant and the Releasees pursuant to this Settlement Agreement, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.

(2) The Releasers are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters giving rise to the Released Claims. Nevertheless, it is the intention of each of the Releasers to fully, finally and forever settle and release the Released Claims. In furtherance of such intention, the release given herein shall be and remain in effect as a full and complete release of all Released Claims, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

### 6.2 Covenant Not To Sue

Notwithstanding section 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, upon the Effective Date, the Releasers do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

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### 6.3 No Further Claims

The Releasers shall not now or hereafter institute, continue, maintain or assert, or otherwise join, assist, aid or act in concert in any manner whatsoever, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, proceedings, arbitration, cause of action, claim or demand, whether civil, criminal, regulatory or otherwise, against any Releasee or any other Person who may claim contribution or indemnity from any Releasee arising from, in respect of or in connection with any of the matters giving rise to any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants.

### 6.4 Dismissal of the Proceedings

Upon the Effective Date, each of the Ontario Proceeding and the Quebec Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant.

### 6.5 Dismissal of Other Actions

(1) Upon the Effective Date, each Settlement Class Member shall be deemed to consent to the dismissal, without costs or further recourses and with prejudice, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions in each of the Courts' respective jurisdictions commenced by any Settlement Class Member shall be dismissed against the Releasees, without costs or further recourses and with prejudice.

## SECTION 7 - BAR ORDER AND OTHER CLAIMS

### 7.1 Ontario Bar Order

(1) The Plaintiffs in the Ontario Proceeding shall seek a bar order from the Ontario Court providing for the following:

- (a) All claims for contribution, indemnity or other claims over, including, without limitation, potential third party claims, at common law, equity or pursuant to the *OSA* or other statute, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, or could in the

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future be brought on the basis of the same events, actions and omissions underlying the Proceedings or otherwise, by any Non-Settling Defendant or any Party or other Releasor against a Releasee are barred, prohibited and enjoined in accordance with the terms of this section 7.1.

(b) If the Court determines that there is a right of contribution and indemnity or other claims over, whether in equity or in law, pursuant to the *OSA* or other statute, or otherwise:

- i. the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and
- ii. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to this action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in this action and shall not be binding on the Releasees in any other proceedings.

(c) After the Ontario Proceeding has been certified as a class action and all appeals or times to appeal from such certification have been exhausted, a Non-Settling Defendant may make a motion to the Court on at least twenty (20) days notice, and to be determined as if the Settling Defendant is party to this action, seeking orders for the following:

- i. documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, O.Reg. 194 from the Settling Defendant;
- ii. oral discovery of a representative of the Settling Defendant, the transcripts of which may be read in at trial;
- iii. leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
- iv. the production of a representative of the Settling Defendant to testify at trial, with such witness or witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants.

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- (d) The Settling Defendant retains all rights to oppose such motion(s) brought under subsection 7.1(1)(c).
- (e) A Non-Settling Defendant may effect service of the motion(s) referred to in subsection 7.1(1)(c) on the Settling Defendant by service on counsel of record for the Settling Defendant in the Ontario Proceeding.
- (f) To the extent that an order is granted pursuant to subsection 7.1(1)(c) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall promptly be provided by counsel for the Settling Defendant to Class Counsel on behalf of the Plaintiffs.

## 7.2 Quebec Bar Order

- (1) The Plaintiffs in the Quebec Proceeding shall seek a bar order from the Quebec Court providing for the following:
  - (a) the Plaintiffs and the Settlement Class Members in the Quebec Proceeding expressly waive the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds and omissions of the Settling Defendant;
  - (b) the Plaintiffs and the Settlement Class Members in the Quebec Proceeding shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of the Non-Settling Defendants;
  - (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendant or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
  - (d) the Quebec Court retains an ongoing supervisory role for the purposes of executing this section 7.2, as well as all procedural aspects of the Quebec Proceeding, and all issues regarding this section 7.2 or any other procedural issues shall be resolved under special case management and according to the *Quebec Code of Civil Procedure*, and the Settling Defendant shall acknowledge the jurisdiction of the Quebec Court for such purposes.

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### 7.3 Claims Against Other Persons Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Settling Defendant and the Releasees.

### 7.4 Material Term

The form and content of the bar orders contemplated in this section 7 shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall constitute a Non-Approval of Settlement Agreement pursuant to section 5.1 of this Settlement Agreement.

## SECTION 8 - EFFECT OF SETTLEMENT

### 8.1 No Admission of Liability

Whether or not this Settlement Agreement is approved by the Courts:

- (i) this Settlement Agreement and anything contained herein,
- (ii) any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and
- (iii) any action taken to carry out this Settlement Agreement,

shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendant or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

### 8.2 Agreement Not Evidence

The Parties agree that, whether or not approved by the Courts:

- (i) this Settlement Agreement and anything contained herein,
- (ii) any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and

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(iii) any action taken to carry out this Settlement Agreement,

shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

### 8.3 No Further Litigation

No Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

## SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

(1) The Parties agree that the Ontario Proceeding shall be certified, and the Quebec Proceeding shall be authorized, as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification of the Ontario Proceeding and for authorization of the Quebec Proceeding as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

## SECTION 10 - NOTICE TO SETTLEMENT CLASSES

### 10.1 Required Notice

The proposed Settlement Classes shall be given Notice of Certification/Authorization and Approval Hearings.

## 10.2 Form and Distribution of Notices

(1) The form of notice referred to in section 10.1 and the manner and extent of publication and distribution of the notice shall be as agreed to by the Plaintiffs and the Settling Defendant and approved by each of the Courts.

(2) The Settling Defendant shall pay the costs of the notice required in section 10.1 and the cost of the Opt-Out Administrator, provided that such costs shall not exceed \$100,000 CAD (exclusive of all applicable taxes). Any costs in excess of \$100,000 CAD (exclusive of all applicable taxes), shall be borne equally by the Settling Defendant and the Plaintiffs.

## SECTION 11 - MISCELLANEOUS

### 11.1 Motions for Directions

(1) Class Counsel or the Settling Defendant may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to the Quebec Proceeding shall be determined by the Ontario Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Settling Defendant, as appropriate.

### 11.2 Class Counsel to Advise Settling Defendant of Status of Proceedings

Class Counsel agrees to provide information as to the status of the Proceedings in response to reasonable requests made by the Settling Defendant from time to time as to the status of the Proceedings. Upon reasonable request, Class Counsel will promptly provide counsel for the Settling Defendant with electronic copies of all affidavit material and facts exchanged in the Proceedings, unless precluded from doing so by court order.

### 11.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;



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- (b) words in the singular include the plural and vice-versa and words in one gender include all genders; and
- (c) the terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

#### 11.4 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### 11.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, and over the Parties thereto.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) The Plaintiffs and the Non-Settling Defendant may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

#### 11.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario, save for matters relating exclusively to the

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Quebec Class Members, which matters shall be governed by and construed and interpreted in accordance with the Laws of the Province of Quebec shall apply.

#### **11.7 Disputes**

(1) Subject to subsection 11.7(2) herein, if there is a dispute regarding the applicability of any provision or term of this Settlement Agreement which cannot be resolved through reasonable discussions and negotiations as between Class Counsel and counsel for the Settling Defendant, such dispute(s) shall be submitted to the Ontario Court for resolution, save for dispute(s) relating exclusively to the Quebec Class Members, which dispute(s) shall be submitted to the Quebec Court for resolution. The costs of any such dispute shall be shared by the parties to the dispute according to the degree to which they do or do not prevail on their respective claims (i.e., with the losing party bearing the greater share), as determined by the Ontario Court or the Quebec Court, as the case may be. To the extent that any dispute contemplated in this subsection 11.7(1) involves or requires a determination as to whether any documents or other materials shall be required to be disclosed pursuant to this Settlement Agreement, Class Counsel and counsel for the Settling Defendant agree to seek, on a consent basis, a sealing order or other appropriate relief such as to ensure that any such documents or other materials shall remain confidential and shall not form part of the public Ontario Court record or the Quebec Court record, as the case may be.

(2) To the extent that any dispute contemplated in this section 11.7 involves or requires a determination as to whether any documents, information or other materials are prohibited from being disclosed by the Settling Defendant pursuant to any foreign privacy law, foreign state secrets law or other law of a foreign jurisdiction, Class Counsel and counsel for the Settling Defendant agree to seek, on a joint and reasonable efforts basis, the requisite approval for the disclosure or export of such documents or other materials from the relevant authorities of the applicable foreign jurisdiction.

#### **11.8 Joint and Severable / Indivisible**

All of the obligations of the Plaintiffs and the Releasers in this Settlement Agreement are joint and several (in Quebec, solidary) amongst them and are indivisible under the laws of Quebec. All of the obligations of the Settling Defendant and the Releasees in this Settlement

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delay for appeal from which shall have expired without any appeal having been lodged: (i) none of the Plaintiffs, the Releasors and Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement; and (ii) none of the Settling Defendant, the Releasees and their respective counsel that are party hereto shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

#### 11.13 No Assignment

None of the Plaintiffs and the Releasors has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands and causes of action disposed of by this Settlement Agreement including, without limitation, any of the Released Claims.

#### 11.14 Third Party Beneficiaries

The Plaintiffs acknowledge and agree, on their behalf and on behalf of all Releasors, that the Releasees other than the Settling Defendant are third party beneficiaries of this Settlement Agreement, and that the obligations and agreements of the Plaintiffs and the Releasors under this Settlement Agreement are expressly intended to benefit all Releasees despite not being signatories to this Settlement Agreement.

#### 11.15 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### 11.16 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

**11.17 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. If a French translation is made, the English version will have precedence.

**11.18 Transaction**

This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

**11.19 Recitals**

The recitals to this Settlement Agreement are true and form an integral part of the Settlement Agreement.

**11.20 Schedules**

The Schedules annexed hereto form an integral part of this Settlement Agreement.

**11.21 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understands the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

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**11.22 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**11.23 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs in the Ontario Proceedings and for Ontario Counsel:

Charles M. Wright

Kirk M. Baert

**Siskinds LLP**  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

**Koskie Minsky LLP**  
Barristers and Solicitors  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

Telephone: 519-660-7753  
Facsimile: 519-660-7754  
Email: charles.wright@siskinds.com

Tel: 416.595.2117  
Fax: 416.204.2889  
Email: kbaert@kmlaw.ca

For Plaintiffs in the Quebec Proceedings and for Quebec Counsel

Simon Hébert

**Siskinds Desmeules s.e.n.c.r.l.**  
Les promenades du Vieux-Quebec  
43 rue Buade, bureau 320  
Quebec City, QC G1R 4A2

Telephone: 418-694-2009  
Facsimile: 418-694-0281  
Email: simon.hebert@siskindsdesmeules.com

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For Settling Defendant  
in the Ontario Proceeding:

John J. Pirie

**Baker & McKenzie LLP**  
Barristers & Solicitors  
Brookfield Place  
Bay/Wellington Tower  
181 Bay Street, Suite 2100  
Toronto, Ontario M5J 2T3  
Canada

Telephone: 416.865.2325  
Fax: 416.863.6275  
Email: john.pirie@bakermckenzie.com

For Settling Defendant  
in the Quebec Proceeding

Bernard Gravel

**Lapointe Rosenstein Marchand Melançon,**  
LLP  
1250 René-Lévesque Blvd. West, Suite 1400  
Montreal, Quebec, H3B 5E9  
Canada

Telephone: 514.925.6382  
Fax: 514.925.5082  
Email: bernard.gravel@lrmm.com

11.24 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

By: [Signature]  
Name: Siskinds LLP  
Title: Ontario Counsel

By: [Signature]  
Name: Koskie Minsky LLP  
Title: Ontario Counsel

By: [Signature]  
Name: Siskinds Beaulieu s.e.n.c.r.l  
Title: Quebec Counsel

PÖYRY (BEIJING) CONSULTING  
COMPANY LIMITED

By: [Signature]  
Name: Baker & McKenzie LLP  
Title: Counsel for the Settling  
Defendant in Ontario

By: [Signature]  
Name: Lapointe Rosenstein Marchand  
Melançon, LLP  
Title: Counsel for the Settling  
Defendant in Quebec

## SCHEDULE A - PROCEEDINGS

Proceeding	Plaintiffs	Defendants	Settlement Class
Ontario Superior Court of Justice Court File No. CV-11-431153-00CP (the "Ontario Proceeding")	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	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 Banc Of America Securities LLC	All persons and entities, wherever they may reside who acquired Sino Forest's Securities during the Class Period by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter, and all persons and entities who acquired Sino Forest's Securities during the Class Period who are resident of Canada or were resident of Canada at the time of acquisition, except the Excluded Persons.
Superior Court of Quebec (District of Québec), File No. 200-06-000132-111 (the "Quebec Proceeding")	Guining Liu	Sino-Forest Corporation, Ernst & Young LLP, 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 and Pöyry (Beijing) Consulting Company Limited	All natural persons, as well as all legal persons established for a private interest, partnerships and associations having no more than fifty (50) persons bound to it by contract of employment under its direction or control during the twelve (12) month period preceding the motion for authorization domiciled in Quebec



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Proceeding	Plaintiffs	Defendants	Settlement Class
			(other than the Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the families of the individual named defendants) who purchased or otherwise acquired, whether in the secondary market, or under a prospectus or other offering document in the primary market, equity, debt or other securities of or relating to Sino-Forest Corporation, from and including August 12, 2008 to and including June 2, 2011.

# **Tab B**

## Schedule B

**SINO-FOREST CORPORATION CLASS ACTION  
TO CURRENT AND FORMER SINO-FOREST SHAREHOLDERS AND  
NOTEHOLDERS**

**Notice of Settlement with Pöyry (Beijing) Consulting Company Limited**

This notice is to everyone, including non-Canadians, who acquired Sino-Forest Corporation ("Sino-Forest") securities in Canada or in a Canadian market between March 19, 2007 and June 2, 2011.

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.  
YOU MAY NEED TO TAKE PROMPT ACTION.**

**IMPORTANT DEADLINE:**

**Opt-Out Deadline** (for individuals and entities that wish to exclude themselves from the Class Action. See page 3 for more details.):

*Opt-Out Forms will not be accepted after this deadline. As a result, it is necessary that you act without delay.*

**COURT APPROVAL OF THE CLASS ACTION SETTLEMENT**

In June and July of 2011, class actions were commenced in the Ontario Superior Court of Justice (the "Ontario Proceeding") and the Québec Superior Court (the "Québec Proceeding") (collectively, the "Proceedings") against Sino-Forest, its senior officers and directors, its auditors, its underwriters and a consulting company, Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"). The actions alleged that the public filings of Sino-Forest contained false and misleading statements about Sino-Forest's assets, business, and transactions.

Since that time, the litigation has been vigorously contested. On March 30, 2012, Sino-Forest obtained creditor protection under the *Companies' Creditors Arrangement Act* (the "CCAA"), which allowed an interim stay of proceedings against the company. Orders and other materials relevant to the CCAA proceeding can be found at the CCAA Monitor's website at <http://cfcanada.fticonsulting.com/sfc/>. Ten days before the stay of proceedings was ordered, on March 20, 2012, the plaintiffs entered into a settlement agreement with Pöyry (Beijing) that sought to settle the claims against this defendant alone in the Proceedings (the "Settlement Agreement"). The parties to the Proceedings agreed to, and the Courts have since ordered, a partial lifting of the stay of proceedings for, among other things, the purpose of allowing the Courts to consider the fairness of the Settlement Agreement.

The Settlement Agreement stipulates that Pöyry (Beijing) will cooperate with the plaintiffs through the provision of information, documents, and other evidence that the plaintiffs

believe will assist them in the continued litigation against the remaining defendants. Pöyry (Beijing) will not provide monetary compensation to the plaintiffs. In return, the Proceedings will be dismissed against Pöyry (Beijing) and future claims against Pöyry (Beijing) in relation to these Proceedings will be barred.

Pöyry (Beijing) does not admit to any wrongdoing or liability. The Settlement Agreement does not resolve any claims against Sino-Forest, its senior officers and directors, its auditors, or its underwriters. A complete copy of the Settlement Agreement is available at: [www.kmlaw.ca/sinoforestclassaction](http://www.kmlaw.ca/sinoforestclassaction) and [www.classaction.ca](http://www.classaction.ca).

On September 21, 2012, the Ontario Superior Court certified the Ontario Proceeding as a class action for settlement purposes and approved the Settlement Agreement. On October 31, 2012 the Québec Proceeding was authorized as a class action for settlement purposes and the Settlement Agreement was approved by the Québec Superior Court (the "Québec Court"). Both Courts declared that the Settlement Agreement is fair, reasonable, and in the best interest of those affected by it.

#### WHO IS INCLUDED IN THIS CLASS ACTION AND BOUND BY THE SETTLEMENT?

The Courts have certified the Proceedings and approved the Settlement Agreement on behalf of classes which encompass the following individuals and entities (the "Class" or "Class Members"):

All persons and entities, wherever they may reside, who acquired Sino-Forest Corporation common shares, notes, or other securities, as defined in the Ontario *Securities Act*, during the period from and including March 19, 2007 to and including June 2, 2011:

- a) by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter or
- b) who are resident of Canada or were resident of Canada at the time of acquisition and who acquired Sino-Forest Corporation's securities outside of Canada.

excluding the defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an individual defendant.

#### REQUESTING EXCLUSION FROM THE CLASS

All persons and entities that fall within the definition of the Class are Class Members unless and until they exclude themselves from the Class ("opt out"). Class Members that do not opt out of the Class will not be able to make or maintain any other claims or legal proceeding in

relation to the matters alleged in the Proceedings against Pöyry (Beijing) or any other person released by the Settlement Agreement.

If you are a Class Member and you do not want to be bound by the Settlement Agreement you must opt out. If you wish to opt out, you may do so by completing an "Opt-Out Form".

**IF YOU CHOOSE TO OPT OUT OF THE CLASS, YOU WILL BE OPTING OUT OF THE ENTIRE PROCEEDING. THIS MEANS THAT YOU WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGMENT REACHED WITH OR AGAINST THE REMAINING DEFENDANTS.**

In order to successfully opt out, you must include all of the information requested by the Opt-Out Form. Specifically, you must sign a written election that contains the following information:

- a) your full name, current address, and telephone number;
- b) the name and number of Sino-Forest securities purchased between March 19, 2007 and June 2, 2011 (the "Class Period"), and the date and price of each such transaction;
- c) a statement to the effect that you wish to be excluded from the Settlement Agreement; and
- d) your reasons for opting out.

If you wish to opt out, you must submit your fully complete Opt-Out form to the Opt-Out Administrator or the Québec Court (if you are a resident of Québec) at the applicable above-noted address, no later than ●.

#### **OPT-OUT ADMINISTRATOR**

The Court has appointed NPT Ricepoint Class Action Services as the Opt-Out Administrator for the Settlement Agreement. The Opt-Out Administrator will receive and process opt-out forms for Class Members **outside Québec**. The Opt-Out Administrator can be contacted at:

<b>Telephone:</b>	1-866-432-5534
<b>Mailing Address:</b>	Sino-Forest Class Action Claims Administrator PO Box 3355 London, ON N6A 4K3
<b>Email:</b>	sino@nptricepoint.com

The opt-out forms for Class Members that are **residents of Québec** will be received and processed by the Québec Court, which can be contacted at:

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**Mailing Address:**

Greffier de la Cour supérieure du Québec  
 300, boulevard Jean-Lesage, salle 1.24  
 Québec (Québec) G1K 8K6  
 No de dossier : 200-06-000132-111

**THE LAWYERS THAT REPRESENT THE CLASS MEMBERS**

The law firms of Koskie Minsky LLP, Siskinds LLP, and Siskinds Desmeules, sncrl ("Class Counsel") jointly represent the Class in the Proceedings. They can be reached by mail, email, or by telephone, as provided below:

**Koskie Minsky LLP**

20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3

Re: Sino-Forest Class Action

Tel: 1.866.474.1739

Email: [sinoforestclassaction@kmlaw.ca](mailto:sinoforestclassaction@kmlaw.ca)

**Siskinds LLP**

680 Waterloo Street, P.O. Box 2520 London, ON N6A 3V8

Re: Sino-Forest Class Action

Tel: 1.800.461.6166 x.2380

Email: [nicole.young@siskinds.com](mailto:nicole.young@siskinds.com)

**Siskinds Desmeules, sncrl**

43 Rue Buade, Bureau 320, Québec City, Québec, G1R 4A2

Re: Sino-Forest Class Action

Tel: (418) 694-2009

Email: [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com)

**INTERPRETATION**

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

Please do not direct inquiries about this notice to the Court. All inquiries should be directed to the Opt-Out Administrator or Class Counsel.

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO  
 SUPERIOR COURT OF JUSTICE AND THE QUEBEC SUPERIOR COURT

# Tab C

## Schedule C

### SINO-FOREST CORPORATION CLASS ACTION TO CURRENT AND FORMER SINO-FOREST SHAREHOLDERS AND NOTEHOLDERS

#### Notice of Settlement with Pöyry (Beijing) Consulting Company Limited

TO: Everyone, including non-Canadians, who acquired Sino-Forest Corporation (“Sino-Forest”) securities between March 19, 2007 and June 2, 2011 i) by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter; or ii) who are residents of Canada or were residents of Canada at the time of acquisition and who acquired Sino-Forest Corporation’s securities outside of Canada (the “Class” or “Class Members”)

#### COURT APPROVAL OF THE CLASS ACTION SETTLEMENT

In June and July of 2011, class actions were commenced in the Ontario Superior Court of Justice (the “Ontario Proceeding”) and the Québec Superior Court (the “Québec Proceeding”) (collectively, the “Proceedings”) against Sino-Forest, its senior officers and directors, its auditors, its underwriters and a consulting company, Pöyry (Beijing) Consulting Company Limited (“Pöyry (Beijing)”). The actions alleged that the public filings of Sino-Forest contained false and misleading statements about Sino-Forest’s assets, business, and transactions.

The plaintiffs have entered into a settlement agreement with Pöyry (Beijing) that settles the claims against this defendant alone in the Proceedings (the “Settlement Agreement”). The Settlement Agreement stipulates that Pöyry (Beijing) will cooperate with the plaintiffs in the continued litigation against the remaining defendants. Pöyry (Beijing) will not provide monetary compensation to the plaintiffs. In return, the Proceedings will be dismissed against Pöyry (Beijing) and future claims against Pöyry (Beijing) in relation to these Proceedings will be barred. More information regarding the settlement can be found in the Settlement Agreement and in the Notice of Certification and Settlement (“Long Form Notice”) which are available at [www.kmlaw.ca/sinoforestclassaction](http://www.kmlaw.ca/sinoforestclassaction) and [www.classaction.ca](http://www.classaction.ca), or by contacting the Opt-Out Administrator at the address below.

Pöyry (Beijing) does not admit to any wrongdoing or liability. The Settlement Agreement does not resolve any claims against Sino-Forest, its senior officers and directors, its auditors, or its underwriters. The courts of Ontario and Québec have certified/authorized the Proceedings as class actions for the purpose of settlement, and both courts have declared that the Settlement Agreement is fair, reasonable and in the best interest of those affected by it.

#### REQUESTING EXCLUSION FROM THE CLASS

All persons and entities that fall within the definition of the Class are Class Members unless and until they exclude themselves from the Class (“opt out”). If you are a Class Member and



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you do not want to be bound by the Settlement Agreement you must opt out. If you wish to opt out, you may do so by completing an "Opt-Out Form", which is attached to the Long-Form Notice, including the required information and supporting documents listed in the Long-Form Notice and mailing it to the Opt-Out Administrator, or the Québec Court (if you are a resident of Québec) at the addresses below, no later than ●. **Class Members that opt-out of the Proceedings will be unable to participate in any future settlement or judgment with or against any of the remaining defendants.**

#### WHERE TO MAIL THE OPT-OUT FORMS

NPT Ricepoint Class Action Services is the Opt-Out Administrator for the Settlement Agreement. The Opt-Out Administrator will receive and process opt-out forms for Class Members **outside Québec**. The Opt-Out Administrator can be contacted at: Sino-Forest Class Action, Claims Administrator, London, ON N6A 4K3,; Tel No. 1-866-432-5534; Email: sino@nptricepoint.com

The opt-out forms for Class Members that are **residents of Québec** will be received and processed by the Québec Court, which can be contacted at: Greffier de la Cour supérieure du Québec, 300, boulevard Jean-Lesage, salle 1.24, Québec (Québec) G1K 8K6, No de dossier : 200-06-000132-111

#### FOR MORE INFORMATION

The law firms of Koskie Minsky LLP, Siskinds LLP, and Siskinds Desmeules, sncrl ("Class Counsel") jointly represent the Class in the Proceedings. They can be reached by mail, email, or by telephone, as provided below:

##### **Koskie Minsky LLP**

20 Queen St. West, Suite 900, Box 52

Toronto, ON, M5H 3R3

Re: Sino-Forest Class Action

Tel: 1.866.474.1739

Email: sinoforestclassaction@kmlaw.ca

##### **Siskinds LLP**

680 Waterloo Street, P.O. Box 2520

London, ON N6A 3V8

Re: Sino-Forest Class Action

Tel: 1.800.461.6166 x.2380

Email: nicole.young@siskinds.com

##### **Siskinds Desmeules, sncrl**

43 Rue Buade, Bureau 320, Québec

City, Québec, G1R 4A2

Re: Sino-Forest Class Action

Tel: (418) 694-2009

Email:

simon.hebert@siskindsdesmeules.com

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO  
SUPERIOR COURT OF JUSTICE AND THE QUEBEC SUPERIOR COURT

# **Tab D**

Schedule D

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than \_\_\_\_\_, 2012

**THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.**

Last Name	First Name
<input type="text"/>	<input type="text"/>

Current Address


City	Prov/State	Postal Code/Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Social Insurance Number/Social Security Number/Unique Tax Identifier

Telephone Number (Work)	Telephone Number (Home)
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011):

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöry (Beijing) Consulting Company Limited ("Pöry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

**I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.**

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4X3



The Trustees of the Labourer's Pension Fund  
of Central and Eastern Canada, et al.  
Plaintiffs

Sino-Forest Corporation, et al.  
and

Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

**ORDER**

**KOSKIE MINSKY LLP**  
900-20 Queen Street West  
Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert (LSUC#: 309420)**  
Tel: 416.595.2117  
Fax: 416.204.2889  
**Jonathan Bida (LSUC#: 54211D)**  
Tel: 416.595.2072  
Fax: 416.204.2907

**SISKINDS LLP**  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Charles M. Wright (LSUC#: 36599Q)**  
Tel: 519.660.7753  
Fax: 519.660.7754

**A. Dimitri Lascaris (LSUC#: 50074A)**  
Tel: 519.660.7844  
Fax: 519.660.7845

Lawyers for the Plaintiffs

**Tab 12**

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

NOTICE OF APPEARANCE

The Respondents, Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc. intend to respond to this application.

December 6, 2012

**KIM ORR BARRISTERS P.C.**  
19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario  
M5V 1H2

Won J. Kim (LSUC #32918H)  
James C. Orr (LSUC #23180M)  
Michael C. Spencer (LSUC #59637F)  
Megan B. McPhee (LSUC #48351G)

Tel: (416) 596-1414  
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Lawyers for Invesco Canada Ltd., Northwest & Ethical  
Investments L.P., and Comité Syndical National de Retraite  
Bâtirente Inc.

TO: THE SERVICE 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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF APPEARANCE**

**KIM ORR BARRISTERS P.C.**

19 Mercer Street  
4<sup>th</sup> Floor

Toronto, Ontario M5V 1H2

**Won J. Kim (LSUC #32918H)**

**James C. Orr (LSUC #23180M)**

**Michael C. Spencer (LSUC #59637F)**

**Megan B. McPhee (LSUC #48351G)**

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Lawyers for Invesco Canada Ltd., Northwest &  
Ethical Investments L.P. and Comité Syndical  
National de Retraite Bâtirente Inc.

**Tab 13**



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*

**NOTICE OF APPEARANCE**

The Respondents, Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc. intend to respond to this application.

January 30, 2013

**KIM ORR BARRISTERS P.C.**  
19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario  
M5V 1H2

Won J. Kim (LSUC #32918H)  
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Ethical Investments L.P., Comité Syndical National  
de Retraite Bâtirente Inc., Matrix Asset  
Management Inc., Gestion Férique and Montrusco  
Bolton Investments Inc.

TO: THE SERVICE LIST

# Tab 14



Michael C. Spencer  
 Tel: (416) 349-6572  
 E-mail: mcs@kimorr.ca

VIA FACSIMILE AND E-MAIL

March 26, 2013

The Honourable Mr. Justice Morawetz  
 Commercial List Office  
 10th Floor, 393 University Avenue,  
 Toronto, ON  
 M5G 1E6

Your Honour:

Re: *Sino-Forest Corporation (Re) – CCAA Proceeding, Court File No. CV-12-9667-00CL*

*The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp., Court File No. CV-11-431153-00CP*

This letter is respectfully submitted on behalf of Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Monrusco Bolton Investments Inc. (the "Objectors" in the above proceedings) with respect to the proposed settlement with Ernst & Young LLP and related matters. This letter responds to the Court's request at this morning's conference for a specification in writing of our objections and alternative proposals for settling the Order with respect to the Court's Endorsement, dated March 20, 2013.

The Objectors maintain their opposition to the substance of the proposed settlement and related matters as previously argued to the Court. As stated at the conference, the Objectors respectfully raise three issues in connection with the form of order proposed by Class Counsel and E&Y (the "Proposed Order").

First, we note that the Endorsement states in numerous places that distribution of the Settlement Fund is an integral part of the CCAA Plan of Compromise of Sino-Forest ("Plan"). See, e.g., Endorsement paragraph 63 ("it is clear that Ernst & Young is contributing in a tangible way to the Plan, by its significant contribution of \$117 million."); see also paragraphs 36, 50, 54, 62, and 71. We also note that section 6(8) of the CCAA requires a plan of compromise or arrangement to provide "that all claims that are not equity claims are to be paid in full before [any] equity claim is to be paid." Similarly, Plan section 4.5 provides that, in light of the fact that non-equity creditors are not being paid in full, "Equity Claimants shall not receive any



consideration or distributions under the Plan ....” In the case of Sino-Forest, the non-equity creditors are the company’s noteholders as of the Distribution Record Date.

Paragraph 17 of the Proposed Order contemplates distribution of the Settlement Fund “to or for the benefit of the Securities Claimants for their claims against Ernst & Young.” Securities Claimants are defined in Appendix A of the Proposed Order as persons who acquired Sino-Forest securities, including shares and notes, at any time. This includes members of the class in the Class Action, i.e. Sino-Forest share purchasers and note purchasers during the class period, even if those persons subsequently have sold their shares or notes. “Securities Claimants” as a group thus include noteholders, but also note purchasers who no longer hold their notes, and also any share purchasers (who may or may not still be shareholders as well).

Some counsel at today’s conference indicated that the net Settlement Fund is intended to be paid to plaintiffs and class members in the Class Action – i.e., share and note purchasers during the class period. In our view, distribution of any settlement proceeds from E&Y to class members would be appropriate. However, since as currently configured the distribution of Settlement Fund amounts will occur as part of the Plan, as the Court found in its Endorsement, we are concerned that payments to share and note purchasers cannot be squared with *CCAA* section 6(8) and Plan section 4.5, as described above.

Although we acknowledge that the actual allocation of Settlement Fund amounts will be decided later, in our view the tension described above represents a fundamental problem stemming from using the *CCAA* to effectuate a third-party non-debtor settlement and releases in this situation, and we do not see any way to resolve that issue in the wording of the order. We understood Class Counsel to say that the Settlement Fund was intended to be “separate” from the Plan and thus not subject to section 6(8), and they may wish to clarify this in their proposed language for the order, although in our view that would not resolve the underlying problem.

Second, paragraph 4 of the Proposed Order appoints the Ontario Plaintiffs as “representatives on behalf of ... the ‘Securities Claimants’ ... in the Ontario Class Action, including for the purposes of and as contemplated by section 11.1 of the Plan, and more particularly the Ernst & Young Settlement and the Ernst & Young Release.” The Objectors continue to assert that their interests cannot be represented by the Ontario Plaintiffs for the reasons previously argued. In addition it seems clear that a conflict has developed between non-equity creditor noteholders and other securities claimants, as described in the section above, such that they cannot all be properly represented by the Ontario Plaintiffs and their counsel. Finally it is unclear whether the appointment is intended to cover representation of a certified class as against all remaining defendants in the class action; if the intent is more limited, as counsel seemed to indicate at the conference, in our view the word “including” could be removed in paragraph 4, so that the representation is expressly limited to section 11.1 of the Plan and more particularly the Ernst & Young Settlement and the Ernst & Young Release. While our clients object to that representation, at least the intended scope will be made clear.

Third, the Proposed Order does not deal with the status of the Objectors’ opt outs (mentioned at paragraph 80 of the Endorsement). The Objectors wish to opt out and believe they have, but we understand our friends’ position to be that the Releases are effective regardless. This could be clarified by inserting, in Paragraph 9 of the Proposed Order (describing the binding effect of the



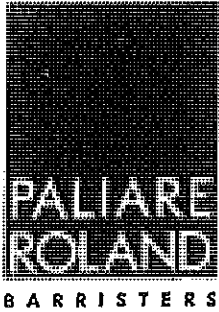
Release) after the word "disability," the phrase: "... notwithstanding any purported Class Action opt-outs submitted by the Objectors or any other Person,...". Again, while our clients object to that outcome, at least the intended scope will be made clear.

Respectfully,

Michael C. Spencer

cc: The Service List, as attached  
E. Adelson, Invesco Canada Ltd.  
J. Mountain, Northwest & Ethical Investments L.P.  
D. Simard, Comité Syndical National de Retraite Bâtirente Inc.  
D. Balsdon, Matrix Asset Management Inc.  
L. Lizotte, Gestion Férique  
M. Natal, Montrusco Bolton Investments Inc.

**Tab 15**



**Massimo (Max) Starnino**  
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March 27, 2013

File 80089

**HAND DELIVERED**

Superior Court of Justice  
 Commercial List  
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 Toronto, ON M5G 1R7

Chris G. Paliare  
 Ian J. Roland  
 Ken Rosenberg  
 Linda R. Rothstein  
 Richard P. Stephenson  
 Nick Coleman  
 Margaret L. Waddell  
 Donald K. Eady  
 Gordon D. Capern  
 Lily I. Harmer  
 Andrew Lokan  
 John Monger  
 Odette Soriano  
 Andrew C. Lewis  
 Megan E. Shortreed  
 Massimo Starnino  
 Karen Jones  
 Robert A. Centa  
 Nini Jones  
 Jeffrey Larry  
 Kristian Borg-Olivier  
 Emily Lawrence  
 Denise Sayer  
 Danny Kastner  
 Tina H. Lie  
 Jean-Claude Killey  
 Jodi Martin  
 Michael Fenrick  
 Nasho Nijhawan  
 Jessica Latimer  
 Debra Newell  
 Lindsay Scott  
 Alysha Shore  
 Gregory Ka

Dear Sirs/Mesdames:

**Re: Sino-Forest Corporation**  
**Court File No. CV-12-9667-00CL**

We write on behalf of the Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Purchasers") in connection with the referenced matter. Yesterday, we attended before Justice Morawetz to settle the terms of his order in this matter dated March 20, 2013. At that time and for the first time, Michael Spencer, on behalf of the Objectors to the Ernst & Young Settlement, expressed concerns with respect to the terms of the draft order. In response, His Honour asked the Objectors to provide detailed drafting comments in the form of a marked-up order and directed that we schedule any further attendance to settle the form of the order through your office.

Yesterday evening, Mr. Spencer sent a letter to His Honour detailing his concerns. Accordingly, we write to respond to those concerns, and to ask that you bring this letter to Justice Morawetz's attention and let us know whether he would like us to re-attend before him for the purpose of settling the order (and, if so, the first available date on which he is available), or if he prefers to deal with this matter on the basis of the correspondence, without any further attendance.

**Response to the Objectors' Concerns**

Mr. Spencer's letter purports to raise "concerns" regarding paragraphs 4, 9 and 17 of the draft settlement approval order and provides drafting comments for paragraphs 4 and 9. Mr. Spencer's other comments are argument and should have been raised on the motion before Justice Morawetz, upon which he has now rendered his decision. They were not.

HONORARY COUNSEL

Ian G. Scott, Q.C., O.C.  
 (1934 - 2006)



The Ad Hoc Purchasers do not oppose the suggested change to paragraph 4 to remove the word "including", on the terms set out below. Otherwise, it is respectfully submitted that the order, which was circulated in advance of the February 4, 2013 hearing and the form of which was unopposed by any party at the motion, should not change.

**Paragraph 4**

Paragraph 4 of the settlement approval order provides as follows:

THIS COURT ORDERS that Ontario Plaintiffs are hereby recognized and appointed as representatives on behalf of those Persons described in Appendix "A" hereto (collectively, the "Securities Claimants") in these insolvency proceedings in respect of the Applicant (the "CCAA Proceedings") and in the Ontario Class Action, including for the purposes of and as contemplated by section 11.1 of the Plan, and more particularly the Ernst & Young Settlement and the Ernst & Young Release.

The Ad Hoc Purchasers do not oppose changing paragraph 4 by deleting the word "including" as proposed by Mr. Spencer, so that it reads as follows:

THIS COURT ORDERS that Ontario Plaintiffs are hereby recognized and appointed as representatives on behalf of those Persons described in Appendix "A" hereto (collectively, the "Securities Claimants") in these insolvency proceedings in respect of the Applicant (the "CCAA Proceedings") and in the Ontario Class Action, for the purposes of and as contemplated by section 11.1 of the Plan, and more particularly the Ernst & Young Settlement and the Ernst & Young Release.

In agreeing to this change, the Ad Hoc Purchasers do not concede that any conflict has developed among the Securities Claimants, as defined, or that the order does any more or any less than as drafted.

**Paragraph 9**

Paragraph 9 of the settlement approval order provides as follows:

THIS COURT ORDERS that this Order, the Ernst & Young Settlement and the Ernst & Young Release are binding upon each and every Person or entity having an Ernst & Young Claim, including those Persons who are under disability, and any requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 are dispensed with in respect of the Ontario Class Action.

In Mr. Spencer's letter, the Objectors propose amending this paragraph to add after the word "disability" the phrase "... notwithstanding any purported Class Action opt-outs submitted by the Objectors or any other Person,..."

This addition is unnecessary and might be taken to suggest that opt out rights would otherwise apply and that this Court's order eliminated opt out rights.

There is no ambiguity in paragraph 9 that requires clarification.

**Paragraph 17**

Paragraph 17 of the settlement approval order provides as follows:

THIS COURT ORDERS that after payment of class counsel fees, disbursements and taxes (including, without limitation, notice and administration costs and payments to Claims Funding International) and upon the approval of a Claims and Distribution Protocol, defined below, the entire balance of the Settlement Fund shall, subject to paragraph 18 below, be distributed to or for the benefit of the Securities Claimants for their claims against Ernst & Young, in accordance with a process for allocation and distribution among Securities Claimants, such process to be established by CCAA Representative Counsel and approved by further order of this court (the "Claims and Distribution Protocol").

The Objectors seek no drafting amendments to this paragraph. Instead, their "concerns" are properly argument which should have been made at the motion, but were not.

The process of allocation is to be determined, and court approval will be sought. Engaging in argument subsequent to the settlement approval motion and prior to the allocation motion should not be encouraged.

However, should His Honour be inclined to engage on the merits, we have set out our position as follows.

The Objectors argue that payments to share and note purchasers "cannot be squared" with subsection 6(8) of the CCAA and article 4.5 of the Plan.

The Objectors are incorrect and their submissions do not accord with the explicit language of the Plan or the purpose of subsection 6(8) of the CCAA. Paragraph 17 of the order provides for payment by Ernst & Young for claims against Ernst & Young. Such claims are not Equity Claims and thus article 4.5 of the Plan and subsection 6(8) of the CCAA do not apply.

Article 4.5 of the Plan provides for the release of "All Equity Claims" and indicates that Equity Claimants shall not receive consideration or distributions under the Plan. Its operation is limited to affecting Equity Claims. In contrast, the Plan provides that claims against non-debtors, such as Ernst & Young, are not Equity Claims:

1. Equity Claim is defined as a Claim, which itself is defined as "any right or claim ... that may be asserted or made against SFC";

2. Further, article 7.5 of the Plan expressly provides that the claims against Ernst & Young are not Equity Claims: "any Class Action Claim against the Third Party Defendants that relates to the purchase, sale or ownership of Existing Shares or Equity Interests... (e) does not constitute an Equity Claim or an Affected Claim under this Plan." [Emphasis added].

Article 4.5 of the Plan thus does not apply to payments pursuant to the Ernst & Young Settlement in satisfaction of claims against Ernst & Young.

More generally, sub-section 6(8) of the CCAA also does not apply. The Court of Appeal, in the course of upholding this Court's Equity Claims Decision (*Re Sino-Forest Corp.*, 2012 ONCA 816), recently explained the purpose of subsection 6(8) of the CCAA:

In our view, in enacting s. 6(8) of the CCAA, Parliament intended that a monetary loss suffered by a shareholder (or other holder of an equity interest) in respect of his or her equity interest *not* diminish the assets of the debtor available to general creditors in a restructuring. If a shareholder sues auditors and underwriters in respect of his or her loss, in addition to the debtor, and the auditors or underwriters assert claims of contribution or indemnity against the debtor, the assets of the debtor available to general creditors would be diminished by the amount of the claims for contribution and indemnity. (2012 ONCA 816 at para. 56)

Accordingly, subsection 6(8) of the CCAA is concerned with ensuring that the proceeds or value of the assets of the debtor corporation are used first to pay creditors' claims in priority to equity claims against the debtor. It is not concerned with distributions from non-debtors for non-equity claims. The claims against Ernst & Young are not equity claims under the CCAA and thus subsection 6(8) of the CCAA does not apply. This is reflected in the Plan itself and in particular through the definition of Equity Claim and article 7.5 of the Plan, as explained above.

The Objectors' submissions also continue to blur the principle governing treatment of third party releases in a CCAA plan as set forth in the *ATB Financial* case, and fail to address the solid, and unchallenged, evidentiary record before the court, including the affidavits and their exhibits of Mike Dean and Judson Martin, cataloguing the extensive contributions to the Plan and the CCAA process that the Ernst & Young Settlement provided in addition to the monetary contribution, including:

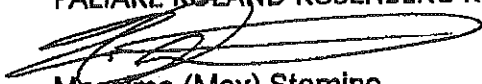
- (a) Ernst & Young agreed to support the Plan;
- (b) The Ernst & Young Settlement was a catalyst to other parties, including the Underwriters and BDO Limited, supporting the Plan;

- (c) Ernst & Young's support materially simplified and accelerated the Plan approval and implementation process;
- (d) Ernst & Young agreed that its claims against Sino-Forest and the Sino-Forest Subsidiaries are released, which claims were significant and material as stated above. In particular, the Proofs of Claim filed by Ernst & Young set out extensive claims that were asserted directly against the Sino-Forest Subsidiaries. None of these claims were addressed in the Equity Claims Order;
- (e) Ernst & Young has agreed to waive any leave to appeal to the Supreme Court of Canada in respect of the dismissal of its appeal by the Court of Appeal for Ontario of the Equity Claims Order;
- (f) By agreeing to release all these claims, Ernst & Young eliminated:
  - (i) Dilution of the Noteholders' recovery if Ernst & Young were ultimately to obtain judgments or settlements in respect of those claims;
  - (ii) The expense and management time otherwise to be incurred by Newco and the Subsidiaries in litigating these claims; and
  - (iii) What might otherwise have been a significant extension of the timelines to complete the restructuring of Sino-Forest;
- (g) Ernst & Young agreed not to receive any distributions of any kind under the Plan, as have the other Third Party Defendants. Without that agreement, the Unresolved Claims Reserve would have materially increased, with the potential for a corresponding dilution of consideration paid to the Affected Creditors;
- (h) Ernst & Young agreed not to pursue its objections generally to the Plan and its sanction, and agreed to not pursue all of its appeal rights in that regard.

The Ad Hoc Purchasers respectfully request the issuance of the settlement approval order, substantially in the form approved in this Court's reasons dated March 20, 2013, subject only to the additional change to paragraph 4 referenced above. Clean copies of the revised order are enclosed in the event that His Honour prefers to deal with this matter in writing.

We thank the Court for its attention to this matter.

Yours very truly,  
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Massimo (Max) Stamino

MS:mj

Encl.

c. Service List  
Clients

862862\_1.DOC

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY,	THE
	)		
MR. JUSTICE MORAWETZ	)		
		20TH DAY OF MARCH, 2013	

**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**

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

ORDER

**THIS MOTION** made by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("Sino-Forest" or the "Applicant") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively), in their own and proposed representative capacities, for an order giving effect to the Ernst & Young Release and the Ernst & Young Settlement (as defined in the Plan of Compromise and Reorganization of the Applicant under the *Companies' Creditors Arrangement Act* ("CCAA") dated December 3, 2012 (the "Plan") and as provided for in section 11.1 of the Plan, such Plan having been approved by this Honourable Court by Order dated December 10, 2012 (the "Sanction Order")), was heard on February 4, 2013 at the Court House, 330 University Avenue, Toronto, Ontario.

**WHEREAS** the Ontario Plaintiffs and Ernst & Young (as defined in the Plan) entered into Minutes of Settlement dated November 29, 2012.

**AND WHEREAS** this Honourable Court issued the Sanction Order approving the Plan containing the framework and providing for the implementation of the Ernst & Young Settlement and the Ernst & Young Release, upon further notice and approval;

**AND WHEREAS** the Supervising CCAA Judge in this proceeding, the Honourable Justice Morawetz, was designated on December 13, 2012 by Regional Senior Justice Then to hear this motion for settlement approval pursuant to both the CCAA and the *Class Proceedings Act, 1992*;

**AND WHEREAS** this Honourable Court approved the form of notice and the plan for distribution of the notice to any Person with an Ernst & Young Claim, as defined in the Plan, of this settlement approval motion by Order dated December 21, 2012 (the "Notice Order");

**AND ON READING** the Ontario Plaintiffs' Motion Record, including the affidavit and supplemental affidavit of Charles Wright, counsel to the plaintiffs, and the exhibits thereto, the affidavit of Joe Redshaw and the exhibits thereto, the affidavit of Frank C. Torchio and the exhibits thereto, the affidavit of Serge Kalloghlian and the exhibits thereto, the affidavit of Adam

Pritchard and the exhibits thereto, and on reading the affidavit of Mike P. Dean and the exhibits thereto, and on reading the affidavit of Judson Martin and the exhibits thereto and on reading the Responding Motion Record of the Objectors to this motion (Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc, Gestion Férique and Montrusco Bolton Investments) including the affidavits of Eric J. Adelson and the exhibits thereto, Daniel Simard and the exhibits thereto and Tanya J. Jemec, and the exhibits thereto, and on reading the Responding Motion Record of Poyry (Beijing) Consulting Company Limited including the affidavit of Christina Doria, and on reading the Fourteenth Report, the Supplement to the Fourteenth Report and the Fifteenth Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicant (in such capacity, the "Monitor") dated January 22 and 28, 2013 and February 1, 2013 including any notices of objection received, and on reading such other material, filed, and on hearing the submissions of counsel for the Ontario Plaintiffs, Ernst & Young LLP, the Ad Hoc Committee of Sino-Forest Noteholders, the Applicant, the Objectors to this motion, Derek Lam and Senith Vel Kanagaratnam, the Underwriters, (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)), BDO Limited, the Monitor and those other parties present, no one appearing for any other party although duly served and such other notice as required by the Notice Order,

#### **Sufficiency of Service and Definitions**

1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and the Motion Record and the Fourteenth Report, the Supplement to the Fourteenth Report and the Fifteenth Report of the Monitor on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable February 4, 2013 in both proceedings set out in the styles of cause hereof.



2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this order shall have the meanings attributed to those terms in the Plan.
3. **THIS COURT FINDS** that all applicable parties have adhered to, and acted in accordance with, the Notice Order and that the procedures provided in the Notice Order have provided good and sufficient notice of the hearing of this Motion, and that all Persons shall be and are hereby forever barred from objecting to the Ernst & Young Settlement or the Ernst & Young Release.

### **Representation**

4. **THIS COURT ORDERS** that Ontario Plaintiffs are hereby recognized and appointed as representatives on behalf of those Persons described in **Appendix "A"** hereto (collectively, the "Securities Claimants") in these insolvency proceedings in respect of the Applicant (the "CCAA Proceedings") and in the Ontario Class Action, for the purposes of and as contemplated by section 11.1 of the Plan, and more particularly the Ernst & Young Settlement and the Ernst & Young Release.
5. **THIS COURT ORDERS** that Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP are hereby recognized and appointed as counsel for the Securities Claimants for all purposes in these proceedings and as contemplated by section 11.1 of the Plan, and more particularly the Ernst & Young Settlement and the Ernst & Young Release ("CCAA Representative Counsel").
6. **THIS COURT ORDERS** that the steps taken by CCAA Representative Counsel pursuant to the Orders of this Court dated May 8, 2012 (the "Claims Procedure Order") and July 25, 2012 (the "Mediation Order") are hereby approved, authorized and validated as of the date thereof and that CCAA Representative Counsel is and was authorized to negotiate and support the Plan on behalf of the Securities Claimants, to negotiate the Ernst & Young Settlement, to bring this motion before this Honourable Court to approve the Ernst & Young Settlement and the Ernst & Young Release and to take any other necessary steps to effectuate and implement the Ernst & Young Settlement and the Ernst & Young Release,

including bringing any necessary motion before the court, and as contemplated by section 11.1 of the Plan.

#### **Approval of the Settlement & Release**

7. **THIS COURT DECLARES** that the Ernst & Young Settlement and the Ernst & Young Release are fair and reasonable in all the circumstances and for the purposes of both proceedings.
8. **THIS COURT ORDERS** that the Ernst & Young Settlement and the Ernst & Young Release be and hereby are approved for all purposes and as contemplated by s. 11.1 of the Plan and paragraph 40 of the Sanction Order and shall be implemented in accordance with their terms, this Order, the Plan and the Sanction Order.
9. **THIS COURT ORDERS** that this Order, the Ernst & Young Settlement and the Ernst & Young Release are binding upon each and every Person or entity having an Ernst & Young Claim, including those Persons who are under disability, and any requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 are dispensed with in respect of the Ontario Class Action.

#### **Payment, Release, Discharge and Channelling**

10. **THIS COURT ORDERS** that upon satisfaction of all the conditions specified in section 11.1(a) of the Plan, Ernst & Young shall pay CDN \$117,000,000 (the "Settlement Fund") into the Settlement Trust (as defined in paragraph 16 below) less any amounts paid in advance as set out in paragraph 15 of this order or the Notice Order.
11. **THIS COURT ORDERS** that upon receipt of a certificate from Ernst & Young confirming it has paid the Settlement Fund to the Settlement Trust in accordance with the Ernst & Young Settlement as contemplated by paragraph 10 of this Order and upon receipt of a certificate from the trustee of the Settlement Trust confirming receipt of such Settlement Fund, the Monitor shall deliver to Ernst & Young the Monitor's Ernst & Young Settlement Certificate (as defined in the Plan) substantially in the form attached hereto as **Appendix**

“B”. The Monitor shall thereafter file the Monitor’s Ernst & Young Settlement Certificate with the Court.

12. **THIS COURT ORDERS** that pursuant to the provisions of section 11.1(b) of the Plan,

- a. upon receipt by the Settlement Trust of the Settlement Fund, all Ernst & Young Claims, including but not limited to the claims of the Securities Claimants, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young in accordance with section 11.1(b) of the Plan;
- b. on the Ernst & Young Settlement Date, section 7.3 of the Plan shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis*;
- c. upon receipt by the Settlement Trust of the Settlement Fund, none of the plaintiffs in the Class Actions or any other actions in which the Ernst & Young Claims could have been asserted shall be permitted to claim from any of the other defendants that portion of any damages, restitutionary award or disgorgement of profits that corresponds with the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement (“Ernst & Young’s Proportionate Liability”);
- d. upon receipt by the Settlement Trust of the Settlement Fund, Ernst & Young shall have no obligation to participate in and shall not be compelled to participate in any disputes about the allocation of the Settlement Fund from the Settlement Trust and any and all Ernst & Young Claims shall be irrevocably channeled to the Settlement Fund held in the Settlement Trust in accordance with paragraphs 16 and 17 of this order and the Claims and Distribution Protocol defined below and forever discharged and released against Ernst & Young in accordance with paragraph 12(a) of this order, regardless of whether the Claims and Distribution Protocol is finalized as at the Ernst & Young Settlement Date;

- e. on the Ernst & Young Settlement Date, all Class Actions, as defined in the Plan, including the Ontario Class Action shall be permanently stayed as against Ernst & Young; and
- f. on the Ernst & Young Settlement Date, the Ontario Class Action shall be dismissed against Ernst & Young.

13. **THIS COURT ORDERS** that on the Ernst & Young Settlement Date, any and all claims which Ernst & Young may have had against any other current or former defendant, or any affiliate thereof, in the Ontario Class Action, or against any other current or former defendant, or any affiliate thereof, in any Class Actions in a jurisdiction in which this order has been recognized by a final order of a court of competent jurisdiction and not subject to further appeal, any other current or former defendant's insurers, or any affiliates thereof, or any other Persons who may claim over against the other current or former defendants, or any affiliate thereof, or the other current or former defendants' insurers, or any affiliate thereof, in respect of contribution, indemnity or other claims over which relate to the allegations made in the Class Actions, are hereby fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished.

14. **THIS COURT ORDERS** that nothing in this order shall fetter the discretion of any court to determine Ernst & Young's Proportionate Liability at the trial or other disposition of an action for the purposes of paragraph 12(c) above, whether or not Ernst & Young appears at the trial or other disposition (which, subject to further order of the Court, Ernst & Young has no obligation to do) and Ernst & Young's Proportionate Liability shall be determined as if Ernst & Young were a party to the action and any determination by the court in respect of Ernst & Young's Proportionate Liability shall only apply in that action to the proportionate liability of the remaining defendants in those proceedings and shall not be binding on Ernst & Young for any purpose whatsoever and shall not constitute a finding against Ernst & Young for any purpose in any other proceeding.

15. **THIS COURT ORDERS** that the Ontario Plaintiffs shall incur and pay notice and administration costs that are incurred in advance of the Ernst & Young Settlement Date, as a

result of an order of this Honourable Court, up to a maximum of the first \$200,000 thereof (the "Initial Plaintiffs' Costs"), which costs are to be immediately reimbursed from the Settlement Fund after the Ernst & Young Settlement Date. Ernst & Young shall incur and pay such notice and administration costs which are incurred in advance of the Ernst & Young Settlement Date, as a result of an order of this Honourable Court, over and above the Initial Plaintiffs' Costs up to a maximum of a further \$200,000 (the "Initial Ernst & Young Costs"). Should any costs in excess of the cumulative amount of the Initial Plaintiffs' Costs and the Initial Ernst & Young Costs, being a total of \$400,000, in respect of notice and administration as ordered by this Honourable Court be incurred prior to the Ernst & Young Settlement Date, such amounts are to be borne equally between the Ontario Plaintiffs and Ernst & Young. All amounts paid by the Ontario Plaintiffs and Ernst & Young as provided herein are to be deducted from or reimbursed from the Settlement Fund after the Ernst & Young Settlement Date. Should the settlement not proceed, the Ontario Plaintiffs and Ernst & Young shall each bear their respective costs paid to that time.

#### **Establishment of the Settlement Trust**

16. **THIS COURT ORDERS** that a trust (the "Settlement Trust") shall be established under which a claims administrator, to be appointed by CCAA Representative Counsel with the consent of the Monitor or with approval of the court, shall be the trustee for the purpose of holding and distributing the Settlement Fund and administering the Settlement Trust.
17. **THIS COURT ORDERS** that after payment of class counsel fees, disbursements and taxes (including, without limitation, notice and administration costs and payments to Claims Funding International) and upon the approval of a Claims and Distribution Protocol, defined below, the entire balance of the Settlement Fund shall, subject to paragraph 18 below, be distributed to or for the benefit of the Securities Claimants for their claims against Ernst & Young, in accordance with a process for allocation and distribution among Securities Claimants, such process to be established by CCAA Representative Counsel and approved by further order of this court (the "Claims and Distribution Protocol").
18. **THIS COURT ORDERS** that notwithstanding paragraph 17 above, the following Securities Claimants shall not be entitled to any allocation or distribution of the Settlement

Fund: any Person or entity that is as at the date of this order a named defendant to any of the Class Actions (as defined in the Plan) and their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of the following Persons: Allen T.Y, Chan a.k.a. Tak Yuen Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, James P. Boland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung. For greater certainty, the Ernst & Young Release shall apply to the Securities Claimants described above.

19. **THIS COURT ORDERS** that the fees and costs of the claims administrator and CCAA Representative Counsel shall be paid out of the Settlement Trust, and for such purpose, the claims administrator and the CCAA Representative Counsel may apply to the court to fix such fees and costs in accordance with the laws of Ontario governing the payment of counsel's fees and costs in class proceedings.

**Recognition, Enforcement and Further Assistance**

20. **THIS COURT ORDERS** that the Court in the CCAA proceedings shall retain an ongoing supervisory role for the purposes of implementing, administering and enforcing the Ernst & Young Settlement and the Ernst & Young Release and matters related to the Settlement Trust including any disputes about the allocation of the Settlement Fund from the Settlement Trust. Any disputes arising with respect to the performance or effect of, or any other aspect of, the Ernst & Young Settlement and the Ernst & Young Release shall be determined by the court, and that, except with leave of the court first obtained, no Person or party shall commence or continue any proceeding or enforcement process in any other court or tribunal, with respect to the performance or effect of, or any other aspect of the Ernst & Young Settlement and the Ernst & Young Release.
21. **THIS COURT ORDERS** that the Ontario Plaintiffs and Ernst & Young with the assistance of the Monitor, shall use all reasonable efforts to obtain all court approvals and orders necessary for the implementation of the Ernst & Young Settlement and the Ernst & Young Release and shall take such additional steps and execute such additional agreements and

documents as may be necessary or desirable for the completion of the transactions contemplated by the Ernst & Young Settlement, the Ernst & Young Release and this order.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States or elsewhere, to give effect to this order and to assist the Applicant, the Monitor, the CCAA Representative Counsel and Ernst & Young LLP and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant, the Monitor as an officer of this Court, the CCAA Representative Counsel and Ernst & Young LLP, as may be necessary or desirable to give effect to this order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant, the Monitor, the CCAA Representative Counsel and Ernst & Young LLP and their respective agents in carrying out the terms of this order.
23. **THIS COURT ORDERS** that each of the Applicant, the Monitor, CCAA Representative Counsel and Ernst & Young LLP be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this order, or any further order as may be required, and for assistance in carrying out the terms of such orders.
24. **THIS COURT ORDERS** that the running of time for the purposes of the Ernst & Young Claims asserted in the Ontario Class Action, including statutory claims for which the Ontario Plaintiffs have sought leave pursuant to Part XXIII.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S-5 and the concordant provisions of the securities legislation in all other provinces and territories of Canada, shall be suspended as of the date of this order until further order of this CCAA Court.
25. **THIS COURT ORDERS** that in the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Settlement and paragraphs 7-14 and 16-19 of this order shall become null and void and are without prejudice to the rights of the parties in the Ontario Class Action or in any proceedings and any agreement between the

parties incorporated into this order shall be deemed in the Ontario Class Action and in any proceedings to have been made without prejudice.

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Morawetz, J.



**APPENDIX "A" TO SETTLEMENT APPROVAL ORDER  
DEFINITION OF SECURITIES CLAIMANTS**

"Securities Claimants" are all Persons and entities, wherever they may reside, who acquired any securities of Sino-Forest Corporation including securities acquired in the primary, secondary and over-the-counter markets.

For the purpose of the foregoing,

"Securities" means common shares, notes or other securities defined in the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

**APPENDIX "B" TO SETTLEMENT APPROVAL ORDER  
MONITOR'S ERNST & YOUNG SETTLEMENT CERTIFICATE**

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**

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

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Court dated March 20, 2013 (the "Ernst & Young Settlement Approval Order") which, *inter alia*, approved the Ernst & Young Settlement and the Ernst & Young Release and established the Settlement Trust (as those terms are defined in the plan of compromise and reorganization dated December 3, 2012 (as the same may be amended, revised or supplemented in accordance with its terms, the "Plan") of Sino-Forest Corporation ("SFC"), as approved by the Court pursuant to an Order dated December 10, 2012).

Pursuant to section 11.1 of the Plan and paragraph 11 of the Ernst & Young Settlement Approval Order, FTI Consulting Canada Inc. (the "Monitor") in its capacity as Court-appointed Monitor of SFC delivers to Ernst & Young LLP this certificate and hereby certifies that:

1. Ernst & Young has confirmed that the settlement amount has been paid to the Settlement Trust in accordance with the Ernst & Young Settlement;
2. ■, being the trustee of the Settlement Trust has confirmed that such settlement amount has been received by the Settlement Trust; and
3. The Ernst & Young Release is in full force and effect in accordance with the Plan.

DATED at Toronto this \_\_\_ day of \_\_\_\_\_, 2013.

**FTI CONSULTING CANADA INC.** solely  
in its capacity as Monitor of Sino-Forest  
Corporation and not in its personal capacity

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Name:

Title:

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  
THE TRUSTEES OF THE LABOURERS' PENSION FUND OF SINO-FOREST CORPORATION, et al.  
CENTRAL AND EASTERN CANADA, et al.

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

Plaintiffs

Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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TEL: 519-660-7844 / FAX: 519-660-7845

**LAWYERS FOR AN AD HOC COMMITTEE OF  
PURCHASERS OF THE APPLICANT'S SECURITIES**

**Tab 16**

March 27, 2013

**HAND DELIVERED**

Peter Griffin  
Direct line: 416-865-2921  
Direct fax: 416-865-3558  
Email: [pgriffin@litigate.com](mailto:pgriffin@litigate.com)

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Superior Court of Justice  
Commercial List  
330 University Avenue  
Toronto, ON M5G 1R7

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Dear Sirs/Mesdames:

**Re: Sino-Forest Corporation  
Court File No. CV-12-9667-00CL**

We have read the letter of Massimo Starnino, counsel to the Ontario Plaintiffs, sent to the Court today. We agree with and support Mr. Starnino's response to the "concerns" raised by counsel to the Objectors on the Ernst & Young Settlement motion. We ask that this letter be brought to Justice Morawetz's attention.

The Ernst & Young Settlement was part of the complete package that led to the approval and sanction of the Plan and its implementation. The monetary contribution of Ernst & Young is but one part of the contributions by Ernst & Young to the Plan. That being said, it is worth noting that the definition of Securities Claimants includes the current noteholders as at the Plan sanction date, who are the non-equity creditors of Sino-Forest. The Ad Hoc Committee of Noteholders continues to support the Ernst & Young Settlement.

These "concerns" of the Objectors have been raised against the prospect of a leave to appeal motion and should properly have been raised as part of argument on the motion.

Sincerely,



Peter Griffin

cc. Service List

**Tab 17**

Court File Number: CV-12-9667-00CL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

SINO FOREST  
Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
Mr. M. Spencer	416 349 6572	416-598-0601
Mr. M. Starnino	416 646 7431	416 646 4301

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows): \_\_\_\_\_

I have reviewed written submissions from both Mr. Spencer and Mr. Starnino. I agree with the submissions of Mr. Starnino, concluding with, "The engagement in argument subsequent to the settlement approval motion and prior to the allocation motion should not be encouraged. In any event, on the merits, I am also persuaded by the position set out by Mr. Starnino. The order has been signed as presented by Mr. Starnino.

March 28, 2013  
Date

[Signature]  
Judge's Signature

Additional Pages \_\_\_\_\_



Court of Appeal File No.: C56961/M42453/M42404  
Superior Court File No.: CV-12-9667-00CL

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 of Appeal File No.: C56961/M42453/M42404  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.

SINO-FOREST CORPORATION, et al.

-and-

Plaintiffs

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

MOTION RECORD OF THE RESPONDENTS (APPELLANTS)

**KIM ORR BARRISTERS P.C.**

19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario M5V 1H2

**Michael C. Spencer** (LSUC #59637F)

**Won J. Kim** (LSUC #32918H)

**Megan B. McPhee** (LSUC #48351G)

Tel: (416) 596-1414

Fax: (416) 598-0601

Lawyers for the Respondents (Appellants), Invesco Canada Ltd.,  
Northwest & Ethical Investments L.P., Comité Syndical National  
de Retraite Bâirente Inc., Matrix Asset Management Inc.,  
Gestion Férique and Montrusco Bolton Investments Inc.