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

COMPENDIUM OF SFC LITIGATION TRUST
(Case Conference, Returnable July 24, 2015)

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Lawyers for the SFC Litigation Trust

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TAB 1

CITATION: The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation v., 2015 ONSC 4004
DATE: 2015-06-24

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 and Young LLP, BDO Limited (formerly known as BDO McCabe Lo Limited) Allen T.Y. Chan, W. Judson Martin, Kai Kat Poon, David J. Horsley, William E. Ardell, James P. Bowland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, 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

BEFORE: Regional Senior Justice G.B. Morawetz

COUNSEL: *Ken Rosenberg*, *Kirk Baert* and *A. Dimitri Lascaris*, for the Ad Hoc Committee of Purchasers of the Applicant Securities, including the Representative Plaintiffs in the Ontario Class Action

Robert Staley, Derek J. Bell and *Jonathan Bell,* for Sino-Forest Litigation Trust

Derrick Tay, for the Monitor

Bryan McLeese, for the US Plaintiffs

Brandon Barnes, for Mr. Kai Kit Poon

Jason Beitchman, for Allen T.Y. Chan

David Bish, John Fabello and *Rebecca Wise*, for the Dealers

Robert Wong, Self-Represented

Kenneth Dekker, for BDO Limited

HEARD: May 11, 2015

ENDORSEMENT

[1] Some roads lead to nowhere. Others are dead-end or circular. None of these can take you to your destination. In legal terms, no party obtains the desired outcome. That seems to be the case here.

[2] This motion is brought to approve a $32.5 million settlement with 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 and 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) (the "Dealers" and the "Dealers Settlement"), defendants in a class action concerning Sino-Forest Corporation ("Sino-Forest" or "SFC").

[3] Counsel to the Ad Hoc Committee of Purchasers of the Applicants' securities, including the Representative Plaintiffs in the Ontario Class Action (the "Class Action Plaintiffs"), submits that the settlement is the product of hard-fought and protracted negotiations which were conducted in the securities class actions and CCAA proceedings.

[4] Minutes of Settlement were entered into in late December 2014.

[5] The Dealers Settlement is to be implemented through Sino-Forest's Plan of Compromise and Reorganization (the "Plan"), which has received court sanction in the Sino-Forest proceeding under the *Companies' Creditors Arrangement Act*, RSC c, C-36, as Amended (the "CCAA"). The Plan requires that the Dealers Settlement be "acceptable" to the Litigation Trustee. The Litigation Trustee has not indicated that the Dealers Settlement is acceptable.

[6] The Class Action Plaintiffs request that the Court approve the settlement and the release without the consent of the Litigation Trustee. The Dealers support this position.

[7] The Litigation Trustee opposes the motion. The Litigation Trustee requests an order requiring the Dealers and Class Action Plaintiffs to comply with the consent requirements articulated in the Plan definition of Named Third Party Defendant Release prior to seeking approval of a third party release.

[8] The motion is also for an order:

(a) approving the proposed claims and distribution protocol setting out the process for the allocation and distribution of the net proceeds of the Settlement Funds; and

(b) appointing a Settlement Administrator.

[9] Argument on the return of the motion was limited to the threshold issue, namely, whether the Dealers Settlement could be approved over the objections of the Class Action Plaintiffs in relation to the consent requirements articulated in the definition of Named Third Party Defendant

Release. This threshold issue has to be determined before considering the merits of the Dealers Settlement. Accordingly, argument on the remaining issues was deferred.

[10] In order to analyze the positions of the Class Action Plaintiffs and the Litigation Trust, it is helpful to review a chronology of relevant events.

[11] At a creditors meeting held on December 3, 2012, an overwhelming majority of Sino-Forest's affected creditors approved the Plan.

[12] Pursuant to a Litigation Trust Agreement dated January 30, 2013 (the "Trust Agreement"), the Plan and the CCAA Plan Sanction Order, Mr. Cosimo Borrelli was appointed as the Litigation Trustee of the SFC Litigation Trust, the plaintiffs in this action. Under the Trust Agreement and the CCAA Plan Sanction Order, the Litigation Trust assets of SFC were transferred to the SFC Litigation Trust. The Litigation Trust Assets include the Litigation Trust Claims, the Litigation Funding Amount, and any other assets acquired by the SFC Litigation Trust on or after the effective date pursuant to the Trust Agreement or the CCAA Plan.

[13] The Litigation Trust Claims (as defined in the CCAA Plan) consist of any and all claims which have been or may be asserted by or on behalf of (a) SFC against any and all third parties; or (b) the Trustees (on behalf of the former Noteholders in SFC) against any and all persons in connection with the Notes issued by SFC, other than in either case "(i) any claim, right or cause of action against any Person that is released pursuant to Article 7 [of the Plan]; or (ii) any Excluded Litigation Trust Claim."

[14] Section 4.12(b) of the Plan reads:

> All causes of action against the Underwriters by (i) SFC or (ii) the Trustees (on behalf of the Noteholders) shall be deemed to be Excluded Litigation Trust Claims that are fully, finally, irrevocably and forever compromised, released, discharged, canceled and barred on the Plan implementation date in accordance with Article 7 hereof, provided that, unless otherwise agreed by SFC and the initial consenting Noteholders prior to the Plan implementation date in accordance with section 4.12(a) hereof, any such Causes of Action for fraud or criminal conduct shall not constitute Excluded Litigation Trust Claims and shall be transferred to the Litigation Trust in accordance with section 6.4(o) hereof.

[15] Pursuant to section 4.12(b), the cause of action of the Litigation Trust as against the Dealers was deemed to be an Excluded Litigation Trust Claim and thus, does not form part of the Litigation Trust Claims. This fact is not in dispute.

[16] Subsequent to the sanction of the Plan, the Class Action Plaintiffs agreed to Minutes of Settlement to resolve the claims advanced against the Dealers in the Ontario Class Action in exchange for $32,500,000. If the settlement is approved, the Class Action Plaintiffs seek to allocate 69.23% of the aggregate settlement funds available for distribution (after deducting Class Counsel fees and certain other amounts) to subordinated equity claim holders, with the remaining 30.769% being allocated to Noteholder claimants.

[17] As part of the proposed settlement, the Dealers also seek to obtain a CCAA Plan release.

[18] The CCAA Plan provides a mechanism by which "Named Third Party Defendants" in the class actions can take advantage of a prescribed settlement framework to obtain the benefit of a broad release of all claims under the terms of the Plan. Specifically, the Plan allows a "Named Third Party Defendant" to settle specified litigation in relation to Sino-Forest, and to obtain a "Named Third Party Defendant Release" (the "CCAA Release") subject to certain conditions.

[19] The term "Named Third Party Defendant Release" is defined at section 1.1 of the CCAA Plan, which reads:

> "Named Third Party Defendant Release" means a release of any applicable Named Third Party Defendant agreed to pursuant to a Named Third Party Settlement and approved pursuant to a Named Third Party Defendant Settlement Order, provided that such release 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 release shall not affect the plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.

[20] Mr. Borrelli, in his capacity as Litigation Trustee of the SFC Litigation Trust, submits that the overwhelming support for the CCAA Plan was the result of exhaustive negotiations between Sino-Forest, the Monitor, and various constituent groups. Mr. Borrelli also submits that the Plan was a heavily negotiated document in which both the Class Action Plaintiffs and the Dealers' counsel were directly involved. The Plan was sanctioned on December 10, 2012, more than two years before the Minutes of Settlement were concluded.

[21] This was the situation at the time when the Minutes of Settlement were entered into: the Plan had been sanctioned; the action against the Dealers was an Excluded Trust Litigation Claim; and the Dealers and the Class Action Plaintiffs were aware of the procedure required to obtain a CCAA Release.

[22] The Litigation Trust complains that not only have the Dealers failed to obtain its consent and that of the Monitor, they have deliberately excluded the Litigation Trustee and the Monitor from all negotiations giving rise to the settlement for which they now seek court approval.

[23] The Litigation Trust further complains that the Dealers only advised that they had entered into a settlement agreement that purportedly "entitled" them to a CCAA Release after they had executed minutes of settlement with the Class Action Plaintiffs. They further complain that neither the Litigation Trustee nor the Monitor was consulted regarding terms for their consent to a CCAA Release.

[24] Upon learning of the settlement, counsel to the Litigation Trustee reminded counsel to the Dealers that the Class Action Plaintiffs had been put on notice on several occasions (dating back to 2013) that they could not offer a CCAA Release without the prior consent of the Litigation Trustee and the Monitor.

[25] Counsel to the Litigation Trustee takes the position that, as a result of its exclusion from all negotiations, the Litigation Trustee was unfairly denied any opportunity to seek consideration

from the beneficiaries of the SFC Litigation Trust ("SFC Non-Subordinated Creditors"). That includes non-monetary forms of consideration, such as the cooperation provisions obtained in the settlement with Mr. David Horsley or those obtained in favour of the Class Action Plaintiffs in the proposed settlement with the Dealers.

[26] It seems clear to me that the Dealers were aware, at all times, that the Plan required any third party release provided to the Dealers to be acceptable to the Litigation Trust and the Monitor.

[27] The Class Action Plaintiffs, recognizing that the action as against the Dealers was an Excluded Litigation Trust Claim, decided to forge ahead and conclude the Minutes of Settlement without addressing the issue of whether or not the CCAA Release would be acceptable to the Litigation Trust.

[28] In effect, the Class Action Plaintiffs now seek the court's assistance to override the specific language of the Plan.

[29] The Class Action Plaintiffs submit that the Litigation Trust may not unreasonably withhold its acknowledgement of the CCAA Release as being "acceptable". They rely on statements that have been made in a number of cases, notably *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379 (at paras. 14 and 19-21), to the effect that the CCAA is a flexible statute. They submit that flexibility permits the court to grant the CCAA Release notwithstanding the Litigation Trust's refusal to confirm that it is "acceptable". Counsel submits that the CCAA gives the court broad jurisdiction to make orders and "fill in the gaps in legislation" so as to give effect to the objects of the statute.

[30] Counsel further submits that the Court may "deem" that the Litigation Trustee has provided its acceptance, or to approve the CCAA Release in the absence of the Litigation Trustee's consent. Counsel references *Playdium Entertainment Corp. (Re)* (2001) O.J. No. 4252 (Sup. Ct.) where the debtor Playdium sought an order permitting it to assign an asset. It required the consent of Famous Players, which consent, pursuant to a contract, could not be unreasonably withheld. Although Spence J. found that it was entirely reasonable for Famous Players to withhold its consent, he concluded that he had jurisdiction to approve the assignment.

[31] At paragraph 23 he stated:

> If there were no CCAA order in place and Playdium wished to assign it to the proposed assignees, it would not be able to do so, in view of Famous Players' withholding of its consent. The CCAA order affords a context in which the Court has the jurisdiction to make the order. For the order to be appropriate, it must be in keeping with the purposes and spirit of the regime created by CCAA...

[32] In my view, the *Playdium* case can be distinguished in these circumstances. In *Playdium*, the transaction involved assignment to the assignee, a new entity, of the material contracts of the business of *Playdium*. These contracts provided that they could not be assigned without the consent of Famous Players, which consent could not be unreasonably withheld. These contracts were entered into prior to the CCAA filing. Spence J. was of the view that the CCAA could be used in certain circumstances to override this consent right.

[33] In the case, the agreements came into effect after the CCAA filing. All parties acknowledge that the CCAA Plan was the product of extensive negotiations among Sino-Forest, the Monitor, and various constituent groups. As noted above, Mr. Borrelli stated that the Plan was a heavily negotiated document and both the Class Action Plaintiff and the Dealers counsel participated in its formation.

[34] In my view, this is an important distinction. In a post-filing CCAA environment, with each interested party carefully negotiating its position, the CCAA Plan and the subsequent Litigation Trust Agreement were drafted in a careful and comprehensive manner. Given that the Class Action Plaintiffs participated in the negotiation of the documents and the crafting of the defined terms referenced herein, there was never any doubt that the Class Action Plaintiffs were aware that the CCAA Release had to be acceptable to the Litigation Trust and the Monitor.

[35] In my view, the plain wording of the defined term "Named Third Party Defendant Release" leads to the inescapable conclusion that the Release must be in a form which is acceptable to the Litigation Trustee and the Monitor. The position of the Class Action Plaintiffs, which in effect, seeks to override this requirement, is flawed. In my view, it would not be appropriate, at this time, to override the consent rights of the Litigation Trustee and the Monitor.

[36] On the other side, the position of the Litigation Trust is also flawed. The Litigation Trust has no economic interest in this action. Indeed, the Class Action Plaintiffs characterize the Litigation Trust's opposition to the Dealers Settlement as a "stick-up". While the Litigation Trust takes the position that there are some ancillary issues involved that could possibly lead to a portion of the consideration being allocated to it, the action itself is an Excluded Litigation Trust Claim whose benefits should therefore accrue to the Class Action Plaintiffs.

[37] Each side, in effect, has tried to stymie the other. The Class Action Plaintiffs negotiated the Minutes of Settlement without regard to whether or not the CCAA Release would be acceptable to the SFC Litigation Trustee. They want the court's assistance in rewriting the contract. The Litigation Trust, in turn, recognizes that it has no economic value in the Dealers Action, but wants to obtain indirect compensation in exchange for providing the formal declaration that the CCAA Release is in an acceptable form. The result is a classic stalemate.

[38] The Class Action Plaintiffs do not wish to concede any part of the settlement proceeds to the Litigation Trust. The Litigation Trust has to be satisfied that the CCAA Release is acceptable. The Dealers Settlement cannot be consummated without the CCAA Release.

[39] The Class Action Plaintiffs want to consummate the Dealers Settlement. They cannot do so with the cooperation of the Litigation Trust. The Litigation Trust wants concessions from the Class Action Plaintiffs, but acknowledges that it has no economic interest in the action itself. The parties are at an impasse.

[40] The situation is not unlike disputes over a generation ago which involved a receiver and a trustee in bankruptcy in relation to proceeds arising from the assignment of a leasehold interest of a bankrupt.

[41] Some of the issues were referenced by Henry J. in *Re Karelia Ltd.*, [1980] 31 OR (2nd) 153, [1980] O.J. 3842. In the regime in existence at that time, only a trustee in bankruptcy had

the statutory right to effect an assignment of an unexpired portion of a lease of a bankrupt tenant to a fit and proper assignee. In many circumstances, the leasehold interest, with the exception of the last day of the lease, had been pledged as security to a secured creditor. Thus, the situation that confronted both the receiver and a trustee was that the secured creditor would have the economic interest in the proceeds arising from the assignment of any unexpired portion of a lease, but the receiver had no ability to compel the landlord agree to the assignment.

[42] As a result, in the absence of landlord consent, an assignment could only take place if the receiver was able to reach an accommodation with the trustee. The reality was that the trustee, with no economic interest in the proceeds arising from the assignment of a leasehold interest, was in a position to extract some consideration from the secured creditor.

[43] These forced negotiations, or negotiations by necessity, between the trustee and the receiver resemble the situation now facing the Litigation Trustee (Trustee in Bankruptcy) and the Class Action Plaintiffs (the Secured Creditor or Receiver). Each side requires a degree of cooperation from the other.

[44] All parties should be mindful of the guidance recently provided by the Supreme Court of Canada in *Bhasin* v. *Hrynew* 2014 SCC 71, [2014] 3 S.C.R. 494. At paragraph 63 the court held as follows:

> The first step is to recognize that there is an organizing principle of good faith that underlies and manifests itself in various more specific doctrines governing contractual performance. That organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily.

[45] The CCAA Plan is, in effect, a contract. Both sides should attempt to resolve this issue in good faith.

[46] The CCAA Release must be acceptable to the Litigation Trust and the Monitor. The Class Action Plaintiffs have to recognize that reality. In return, the Litigation Trust must acknowledge that it has no economic interest in the action itself and that its consent to a CCAA Release should not be arbitrarily withheld. To date, the Monitor has not taken a position.

[47] The threshold issue is resolved in favour of the Litigation Trust. The CCAA Release must be acceptable to the Litigation Trustee and the Monitor.

[48] However, the Litigation Trustee, having no economic interest in the Dealer Action, must perform its contractual duties honestly and reasonably and not capriciously or arbitrarily. On the other hand, the Class Action Plaintiffs must recognize that the Litigation Trustee does have certain rights.

[49] While the parties may already have had some discussions to resolve their difference, it seems to me that they should attempt to resolve this issue in accordance with the principles set forth in *Bhasin, supra*. Accordingly, I direct the parties to negotiate with each other to resolve this issue and to return to court at a 9:30 hearing on Friday, July 24, 2015, to report their progress to me.

[50] If the matter is not resolved on or prior to that date, the Class Action Plaintiffs can renew their motion for the requested relief and a date will be set for argument on the issue of whether the parties have indeed been negotiating in good faith in accordance with the principles set forth in *Bhasin, supra*. If necessary, I will then determine whether the relief requested by the Class Action Plaintiffs can be granted over the objections of the Litigation Trustee.

Morawetz RSJ.

Regional Senior Justice G.B. Morawetz

Date: June 24, 2015

TAB 2

Bennett Jones

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July 1, 2015

With Prejudice

By Email: dimitri.lascaris@siskinds.com and kbaert@kmlaw.ca

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Mr. Kirk M. Baert
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Dear Messrs. Lascaris and Baert:

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

We write on behalf of the SFC Litigation Trust (the "Litigation Trust") concerning the proposed settlement reached between the Dealers and the Canadian and United States class action plaintiffs, as represented by minutes of settlement executed on various dates in December 2014 and January 2015 (the "Minutes of Settlement").

As you know from our prior correspondence and discussions, the Plan of Compromise and Reorganization (the "Plan") of Sino-Forest Corporation ("Sino-Forest") created a structure under which a Named Third Party Defendant can settle specified litigation in relation to Sino-Forest, including the class actions in which the Dealers are defendants. The Plan allows Named Third Party Defendants, subject to certain conditions, to obtain a Named Third Party Defendant Release. Among the conditions specified in the Plan is the consent of the Monitor and, post-Plan implementation, the consent of the Litigation Trustee. The Named Third Party Defendant settlement structure in the Plan mirrors the structure under which Ernst & Young resolved its involvement with Sino-Forest and obtained a Plan release.

As is well understood, a Named Third Party Defendant Release offers settling parties protections substantially greater than those available if class actions are settled in the normal course under the *Class Proceedings Act* (Ontario) and similar statutes in other relevant jurisdictions, including protection against opt-outs. When the claims in the class actions against Ernst & Young were settled, evidence was filed with the court to support the proposition that these protections increased the consideration that Ernst & Young was prepared to pay to settle the litigation. The evidence before the CCAA court went so far as to suggest that Ernst & Young would not have settled *at all* without a Plan release. As counsel to Sino-Forest, we made submissions to the CCAA court in support of that proposition and in support of the settlement generally.

As you know, Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. retained counsel and actively opposed the approval of the Ernst & Young settlement. Had the CCAA court not agreed to grant Ernst & Young a Plan release, and instead approved a class action settlement in the ordinary course, Ernst & Young faced the very real likelihood that these institutional shareholders would have opted out of the settlement and pursued individual claims. The Dealers continue to be subject to the same risk, which presumably motivated the Dealers to require that their settlement include a Named Third Party Defendant Release.

As with Ernst & Young, the Litigation Trust believes that the significant benefit to the Dealers in obtaining a Named Third Party Defendant Release is reflected in the consideration that the Dealers are proposing to pay in settlement. The Dealers clearly sought finality, not opt-outs and years of further litigation at the instance of institutional and other shareholders. As with Ernst & Young, the Litigation Trust believes that the Dealers would have paid less, or there would be no settlement at all, if the claims in the class actions against the Dealers were settled in the ordinary course. Indeed, as drafted, the Minutes of Settlement provide that the Dealers can terminate the settlement if the plaintiffs are unable to deliver on a Named Third Party Defendant Release.

As you know, and as Justice Morawetz's June 24, 2015 endorsement confirms, a Named Third Party Defendant Release can be granted only with the consent of the Litigation Trust. The Litigation Trust is not prepared to consent to a settlement in which all of the incremental value to a settling party represented by the Named Third Party Defendant Release is arrogated solely by beneficiaries to the class actions, and none of that incremental value is paid to the Litigation Trust for the benefit of its beneficiaries. To be acceptable to the Litigation Trust, any settlement that includes a Named Third Party Defendant Release must provide for a fair allocation of the incremental value of the Named Third Party Defendant Release as between the Litigation Trust and the class action beneficiaries.

Under the Minutes of Settlement, the Dealers agreed to pay C$32.5 million. The class action plaintiffs covenanted that the Dealers' settlement would be a Named Third Party Defendant Settlement. It is clear from Justice Morawetz's June 24, 2015 endorsement that class action plaintiffs offered the Dealers a covenant that required the Litigation Trust's consent, knowing full well that the Litigation Trust would not grant its consent without the payment of reasonable consideration. It is also clear that a meaningful portion of the C$32.5 million settlement is attributable to the Named Third Party Defendant Release.

The negotiations giving rise to the Ernst & Young settlement speak to the relative importance of a Plan release to defendants seeking to extricate themselves from Sino-Forest-related litigation. As you know, the timing of the Ernst & Young settlement was motivated entirely by the availability of a Plan release, the structure of which was embedded into the Plan, to be available later to Named Third Party Defendants.

Taking all of these factors into account, the Litigation Trust believes that the Named Third Party Defendant Release represents at least 25%, and perhaps considerably more, of the value of the Dealers' settlement. As there would be no settlement at all without the Litigation Trust's consent, the Litigation Trust could fairly argue that *all* of the incremental value attributable to the Named Third Party Defendant Release should accrue to the Litigation Trust. Nevertheless, in an effort to bring these negotiations to a prompt conclusion, prior to our chambers attendance on July 24, 2015, the Litigation Trust is prepared to approve the Dealers' settlement so long as one-half of C$8.125 million is paid to the Litigation Trust.

Settling on the basis described above results in a windfall to the class action plaintiffs. Not only is it likely that no settlement with the Dealers would have been achieved absent a Named Third Party Defendant Release, under this proposal the class action parties will share equally with the Litigation Trust in the incremental value that is available only with the approval of the Litigation Trust.

Finally, to foreclose a possible response from the class action plaintiffs, the Litigation Trust is not prepared to link the Dealers' settlement to the possible resolution of other litigation. It will be easier for the court to assess whether the Litigation Trust has engaged in good faith negotiations if our discussions are confined to the Dealers' settlement and if our negotiations are transparent to the court.

Yours truly,

Robert W. Staley

cc: John Fabello, Torys LLP (by email: jfabello@torys.com)
cc: David Bish, Torys LLP (by email: dbish@torys.com)

RWS/nn

TAB 3

680 Waterloo Street, London, ON N6A 3V8

SISKINDS | THE LAW FIRM

EMAIL charles.wright@siskinds.com

With Prejudice

Delivered By Email

July 14, 2015

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

Dear Mr. Staley:

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

We write in response to your letter dated July 1, 2015. We decline the offer of the SFC Litigation Trust ("Litigation Trust") to approve the proposed settlement reached between the Dealers and the class action plaintiffs ("Settlement") in exchange for a payment of one-half of C$8.125 million.

Your letter indicates that "any settlement that includes a Named Third Party Defendant Release must provide for a fair allocation of the incremental value of the Named Third Party Defendant Release as between the Litigation Trust and the class action beneficiaries." We agree with this in principle. However, we disagree entirely with your assessment of the "incremental value" of the Named Third Party Defendant Release ("CCAA Release") as well as your view of what a "fair allocation" would entail.

In our view, the incremental value that your client is entitled to must take into account the reality that (as Regional Senior Justice Morawetz repeatedly stated in his June 24, 2015 decision) the Litigation Trust has "no economic interest" in the actions that are the subject of the Settlement.

To support attributing a value of 25% of the Settlement amount to the CCAA Release, your letter relies heavily on statements that Ernst & Young was willing to pay an increased amount to settle the litigation in order to obtain such a release. As you know, there are significant differences between the circumstances surrounding the Ernst & Young settlement and this proposed Settlement with the Dealers.

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First, as your letter indicates, Ernst & Young faced the prospect of opt-out litigation if it did not receive a CCAA Release. The opt-out period expired over two years ago, and any opt-out claims against the Dealers are now statute barred.

Second, Ernst & Young faced the prospect of viable claims by Sino-Forest Corporation ("Sino") and/or the Litigation Trust. The same is true of David Horsley, who made a payment to the Litigation Trust in connection with his settlement of the class action claims. The strength of Sino's claims against its auditor and Chief Financial Officer are in stark contrast to the present situation where, as your client has conceded, the Litigation Trust has no claim against the Dealers. Accordingly, much of the rationale supporting an increased payment for a CCAA Release is lost in the context of the Dealers Settlement.

The Litigation Trustee, "having no economic interest in the Dealer Action, must perform its contractual duties honestly and reasonably and not capriciously or arbitrarily."[1] In order to do so, it must act "in furtherance of the purpose of the Litigation Trust"[2] and any funds it demands must be tied to the objects and purposes of the Litigation Trust, which are to "(i) hold the assets of the Litigation Trust and (ii) oversee the efficient prosecution of the Litigation Trust Claims."[3] The Litigation Trust, by its own admission, has no claim against the Dealers. Accordingly, any incremental value ascribed to the CCAA Release in the proposed Settlement must be nominal and must reflect the fact that the Litigation Trust has "no economic interest" in the action.

In respect of what would constitute a "fair allocation" of this incremental value, we note that the Settlement will serve to provide direct compensation to certain Litigation Trust Beneficiaries as defined in the Litigation Trust Agreement. The Litigation Trust Agreement is established for "the benefit of [among others] the Noteholder Class Action Claimants entitled to receive Litigation Trust Interests under the Plan." Article 4.11 of the Plan allocates 25% of the Litigation Trust Interests to the Noteholder Class Action Claimants.

Under the proposed Claims and Distribution Protocol, any person that acquired Notes pursuant to an Offering and held them as of June 3, 2011 will be entitled to make a claim from the Class Settlement Fund. This will include certain Noteholder Class Action Claimants. Therefore, any Litigation Trust Beneficiary that has an economic interest in the action against the Dealer will benefit directly from the Settlement.

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1 Endorsement of Regional Senior Justice Morawetz, dated June 24, 2015 ("Endorsement") at para 48.

2 Article 3.11 of the Sino Forest Litigation Trust Agreement ("Litigation Trust Agreement")

3 Article 1.5(a) of the Litigation Trust Agreement

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Accordingly, any "fair allocation" of the Settlement amount between the Litigation Trust and the Class must reflect the fact that any of the Litigation Trust's beneficiaries that have an economic interest in the action against the Dealers will already be receiving an economic benefit from the Settlement.

We have corresponded with counsel to the Dealers in respect of what they are prepared to offer to secure the Litigation Trust's acceptance of the Settlement. The Dealers wish to make clear that they were aware of and sought to abide by the principles set out in Justice Morawetz's Endorsement, to act in good faith and seek your client's acceptance of the Settlement. The Dealers were aware that, unlike other parties who have been sued by the Litigation Trustee, no claim had been or will be asserted against them by the Trustee, something that the Trustee has itself confirmed on several occasions. The necessary implication of this was that the Trustee had no claim against the Dealers, and by extension the Trustee did not have the only kind of claim it could have asserted against the Dealers under the Plan (i.e. a claim for fraud or criminal conduct, as all other claims or potential claims against the Dealers were resolved pursuant to the Plan). At that time and now, the Dealers interpret the Plan's inclusion of the Trustee's right to find the Settlement "acceptable" to exist only to protect the Trustee's position and rights regarding any claims it may have. As His Honour stated and as the Trustee has admitted, the Trustee has no claim against the Dealers. Therefore, the Dealers were and are of the view that there is no good faith or reasonable basis for the Trustee to withhold its acceptance of the Settlement.

Moreover, not only does the Litigation Trustee have no "economic interest in (the class action)" (apart from the interests of Noteholder Class Action Claimants who, as indicated, may benefit directly from the Settlement), it has no interest, right or action against the Dealers. As a result, the Dealers continue to be of the view that the only good faith and reasonable response from the Trustee is, as put forth in Torys' January 8, 2015, letter to Trustee's counsel, to find the Dealers' Settlement acceptable with no economic consideration, whether from the Dealers or class action plaintiffs, flowing to the Trustee.

We are advised by the Dealers that without prejudice to their position, as a sign of good faith, based on the Dealers' interpretation of Justice Morawetz's Endorsement that, if anything, the Trustee may be entitled to non-economic consideration for its non-economic interest, and in exchange for the Trustee's acceptance to the Settlement, the Dealers offer to provide the Litigation Trustee with the same discovery and production rights that will be accorded to the non-settling defendants, as set out in the draft order and production protocol, for the sole purpose of allowing the Trustee to use such information to effect its mandate under the Trust indenture.

680 Waterloo Street, London, ON N6A 3V8

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Similarly, in exchange for the Trustee's acceptance of the Settlement, class counsel offer to cooperate with the Litigation Trust to the fullest extent permitted in the prosecution of its remaining claims.

Yours truly,

Siskinds LLP

Per:
for: Charles M. Wright

cc: A. Dimitri Lascaris (Siskinds LLP)
Kirk M. Baert (Koskie Minsky LLP)
John Fabello (Torys LLP)
David Bish (Torys LLP)

CMW/sk

TAB 4

Bennett Jones

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

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

July 22, 2015

With Prejudice

By Email: charles.wright@siskinds.com

Mr. Charles M. Wright
Siskinds LLP
680 Waterloo Street
London, Ontario
N6A 3V8

Dear Mr. Wright:

Re: The Trustees of the Labourer's Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al.

We acknowledge receipt of your letter dated July 14, 2015.

We do not propose to respond in detail to the arguments in your letter, with which we disagree. The Litigation Trust's positions are set out in our July 1, 2015 letter.

We can advise you that the possible non-monetary consideration identified in your letter is of no interest or value to the Litigation Trust.

As we have previously indicated, absent monetary consideration, the Litigation Trust will not consent to the proposed settlement reached between class action parties and the Dealers. The monetary consideration must represent a fair sharing of the incremental value in the settlement attributable to the Named Third Party Defendant Settlement Release.

The Litigation Trust has made an offer to settle in the sum of C$4.0625 million, which is 12.5% of the total settlement proceeds. Our July 1, 2015 letter advances a principled rationale for the offer made.

The class action parties have not offered *any* monetary consideration in return for the consent of the Litigation Trust, and persist in that position. While we can discuss quantum, the class action plaintiffs cannot reasonably expect to obtain the Litigation Trust's consent to the proposed settlement without offering *any* monetary consideration to the Litigation Trust.

By having dialogue on the record, our exchange of correspondence has helpfully laid bare the unreasonableness of the position of the class action plaintiffs. As your July 14, 2015 letter makes clear, by failing to offer *any* monetary consideration, the class action plaintiffs are negotiating in bad faith, contrary to the court's express direction.

We look forward to addressing this matter further when we appear before Regional Senior Justice Morawetz.

Yours truly,

Robert W. Staley

RWS/bp

cc: Derrick Tay (Gowlings)
Jennifer Stam (Gowlings)
A. Dimitri Lascaris (Siskinds LLP)
Kirk M. Baert (Koskie Minsky LLP)
John Fabello (Torys LLP)
David Bish (Torys LLP)
Derek Bell (Bennett Jones LLP)
Jon Bell (Bennett Jones LLP)

TAB 5

680 Waterloo Street, London, ON N6A 3V8

SISKINDS | THE LAW FIRM

EMAIL charles.wright@siskinds.com

With Prejudice

Delivered By Email

July 22, 2015

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

Dear Mr. Staley:

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

Thank you for your letter dated July 22, 2015.

Counsel to the class action plaintiffs and counsel to the Dealers are prepared to meet with you to explore a potential resolution of this issue. We suggest tomorrow, July 23rd at 2:00 p.m. at the offices of Torys LLP. Please advise if you are available.

Yours truly,

Siskinds LLP

Per:
for! Charles M. Wright

cc: A. Dimitri Lascaris (Siskinds LLP)
Kirk M. Baert (Koskie Minsky LLP)
John Fabello (Torys LLP)
David Bish (Torys LLP)
Derek Bell (Bennett Jones LLP)
Jon Bell (Bennett Jones LLP)
Derrick Tay (Gowlings LLP)
Jennifer Stam (Gowlings LLP)

TAB 6

Bennett Jones

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

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

July 22, 2015

With Prejudice

By Email: charles.wright@siskinds.com

Mr. Charles M. Wright
Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

Dear Mr. Wright:

Re: The Trustees of the Labourer's Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al.

I acknowledge receipt of your letter dated July 22, 2015.

I am in cross-examinations tomorrow, and am therefore not available for a meeting at 2 p.m. tomorrow as proposed. I may, however, be available for a meeting tomorrow end of day or early evening. Please let me know how you wish to proceed.

Yours truly,

Robert W. Staley

RWS/bp

cc: A. Dimitri Lascaris (Siskinds LLP)
Kirk M. Baert (Koskie Minsky LLP)
John Fabello (Torys LLP)
David Bish (Torys LLP)
Derrick Tay (Gowlings LLP)
Jennifer Stam (Gowlings LLP)
Derek Bell (Bennett Jones LLP)
Jon Bell (Bennett Jones LLP)

TAB 7

From: Rob Staley
Sent: 22 July 2015 8:16 PM
To: 'Fabello, John'; Charles M. Wright; Bernadett Penzes
Cc: jennifer.stam@gowlings.com; derrick.tay@gowlings.com; kbaert@kmlaw.ca; Bish, David; A. Dimitri Lascaris; Derek Bell; Jonathan Bell; Wise, Rebecca; Wong, Stephanie
Subject: RE: The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al

I should be ok by 5:30 pm tomorrow. We can make a room available and see everyone at that time.

Robert W. Staley
Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
P. 416 777 4857 | F. 416 863 1716 | C. 416 357 4857
E. staleyr@bennettjones.com

From: Fabello, John [mailto:jfabello@torys.com]
Sent: 22 July 2015 6:38 PM
To: Charles M. Wright; Bernadett Penzes
Cc: jennifer.stam@gowlings.com; derrick.tay@gowlings.com; kbaert@kmlaw.ca; Bish, David; A. Dimitri Lascaris; Derek Bell; Jonathan Bell; Rob Staley; Wise, Rebecca; Wong, Stephanie
Subject: Re: The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al

We can make that time frame work.

John Fabello

P. 416.865.8228 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

Original Message
From: Charles M. Wright
Sent: Wednesday, July 22, 2015 17:42
To: Bernadett Penzes
Cc: jennifer.stam@gowlings.com; derrick.tay@gowlings.com; kbaert@kmlaw.ca; Fabello, John; Bish, David; A. Dimitri Lascaris; Derek Bell; Jonathan Bell; Rob Staley
Subject: Re: The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al

I can be available up to 630pm. Please advise and others can indicate their availability

Charles Wright
Partner
Siskinds LLP
Mobile: 519 868 6134
Charles.Wright@siskinds.com<mailto:Charles.Wright@siskinds.com>

On Jul 22, 2015, at 4:54 PM, Bernadett Penzes
<PenzesB@bennettjones.com<mailto:PenzesB@bennettjones.com>> wrote:

Good afternoon:

Please see the attached correspondence from Robert Staley of today's date.

Regards,

[Bennett Jones]

Bernadett Penzes

Assistant to Robert W. Staley, Bennett Jones SLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
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Plug into Bennett Jones<http://www.bennettjones.com>

<Letter to C. Wright, July 22, 2015.pdf>

Charles M. Wright

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Facebook: www.facebook.com/siskinds

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA et al v. SINO-FOREST CORPORATION et al.

CV-11-431153-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

COMPENDIUM OF SFC LITIGATION TRUST
(Case Conference, Returnable July 24, 2015)

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Lawyers for the SFC Litigation Trust