

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 BANCO  
AMERICA SECURITIES LLC

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**AFFIDAVIT OF CAROL-ANN TJON-PIAN-GI**

I, Carol-Ann Tjon-Pian-Gi, of the city of Paramaribo, in the country of Suriname, MAKE  
OATH AND SAY:

1. I am an independent lawyer and sworn translator residing in Suriname.
2. I swear this affidavit in support of the Plaintiffs' motion seeking an order granting leave  
to the Plaintiffs to pursue the causes of action available under Part XXIII.1 of the Ontario

- 2 -

*Securities Act*, RSO 1990, c S 5, and, if necessary, under the equivalent provisions of the Securities Acts of the other Canadian Provinces. I swear this affidavit for no improper purpose.

### I. INTRODUCTION AND SUMMARY OF OPINIONS

3. I have been retained by Siskinds LLP and Koskie Minsky LLP, co-counsel for the Plaintiffs herein ("Class Counsel"), to provide advice and assistance as to matters of Suriname law in relations to certain allegations made in the above-captioned litigation against Sino-Forest Corporation ("Sino-Forest") and certain others.
4. Class Counsel have requested that I provide an opinion with respect to the question set forth below.

### II. MY QUALIFICATIONS AND COMPENSATION

5. I was awarded a Master's Degree in Law from the University of Suriname in 2005 and thereafter completed a mandatory internship of two years. I was admitted to the Bar of Suriname in December 2008 to practice civil and criminal law in Suriname, and I am a member in good standing of the Bar of Suriname.
6. I was awarded a Bachelor's Degree in English from the Advanced Teacher Training College in 1995 and was sworn in as a translator English-Dutch/Dutch-English in December 2008.
7. Attached hereto and marked as Exhibit "A" is a copy of my curriculum vitae.
8. My compensation in this matter is based on the number of hours spent in the course of my retainer. My hourly rate is \$ 150.

### III. MATERIALS REVIEWED

9. Prior to rendering the opinions below, I reviewed the following materials:
- Act of 18 September 1992, containing provisions with regard to forest management as well as forest exploitation and the primary lumber processing industry (Forest Management Act), S.B. 1992, no. 80, with explanatory memorandum.

### IV. QUESTION POSED AND OPINION

10. Class Counsel have asked me to render an opinion in relation to the following question:

*Do the laws of Suriname impose an upper limit on the size of the forestry concession(s) that may be granted to a company or an affiliated group of companies? If so, what is that limit?*

11. Article 26 of the *Forest Management Act* (S.B. 1992 no. 80) of the Republic of Suriname ("Article 26") stipulates a maximum allowable concession size. That article states:

The total surface of a concession, and the total joint surface of various concessions, granted to a natural person or legal entity or to various legal entities in which a natural person or a legal entity has a majority interest, shall be no more than 150,000 hectares.

12. The explanatory memorandum to the *Forest Management Act* states:

Exceeding the maximum surface stated in article 26 shall only be possible by law in certain special cases.

13. I have researched whether any law, rule or regulation of the Republic of Suriname, or of any regulatory body thereof having jurisdiction over forestry concessions in Suriname, creates any exception to the maximum allowable concession size under Article 26 that would permit Greenheart Group Limited and its subsidiaries to exceed the limited imposed by Article 26, but I have identified no such law, rule, regulation or exception.

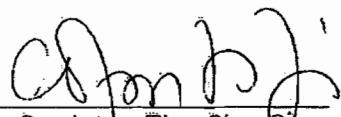
V. CONCLUSION

14. It is my understanding that discovery has not yet commenced in this action and, accordingly, my opinions are subject to amendment or revision based upon the development of additional evidence.

15. I certify that, to the best of my knowledge and belief:

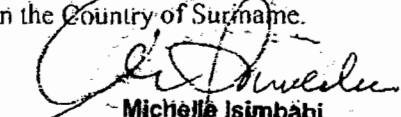
- the statements of fact contained in this Affidavit are true and correct;
- the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions;
- I have reviewed Rule 4.1 of the Ontario *Rules of Civil Procedure*, and I have prepared this Affidavit having regard to the duty described therein;
- I have no present or prospective interest in the parties to this case, and I have no personal interest or bias with respect to the parties involved; and
- my compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this Affidavit.

03/01/2012  
Date

  
Carol-Ann Tjon-Pian

Produced Identification: Surinamese Passport #: R1195995  
Personally Known to Me: N/A

Sworn to me this 1st day of  
March, 2012, at the City of Paramaribo  
in the Country of Suriname.

  
Michelle Isimbabi  
Vice Consul of the  
United States of America

Republic of Suriname )  
District of Paramaribo )  
City of Paramaribo ) SS  
Embassy of the United )  
States of America )

at the pleasure of the President

Notary Public

My Commission Expires

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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

Defendants

Proceeding under the *Class Proceedings Act, 1992***FRESH AS AMENDED STATEMENT OF CLAIM****(NOTICE OF ACTION ISSUED JULY 20, 2011)**

**TO: Sino-Forest Corporation**  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: David Horsley**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: Allen Chan**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: William Ardell**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: James Bowland**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: James Hyde**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: Edmund Mak**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: W. Judson Martin**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

**AND TO: Simon Murray**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3

- AND TO: Kai Kit Poon**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3
- AND TO: Peter Wang**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3
- AND TO: Garry West**  
Sino-Forest Corporation  
1208-90 Burnhamthorpe Rd W  
Mississauga, ON L5B 3C3
- AND TO: Ernst & Young LLP**  
222 Bay Street  
Toronto, ON M5K 1J7
- AND TO: BDO Limited**  
25th Floor, Wing On Centre  
111 Connaught Road Central  
Hong Kong, China
- AND TO: Pöyry (Beijing) Consulting Company Limited**  
2208-2210 Cloud 9 Plaza  
No. 1118 West Yan'an Road  
Shanghai 200052  
PR CHINA
- AND TO: Credit Suisse Securities (Canada), Inc.**  
1 First Canadian Place  
100 King Street West, Suite 2900  
Toronto, Ontario M5X 1C9
- AND TO: TD Securities Inc.**  
66 Wellington Street West  
P.O. Box 1, TD Bank Tower  
Toronto, Ontario M5K 1A2
- AND TO: Dundee Securities Corporation**  
1 Adelaide Street East  
Toronto, ON M5C 2V9

- AND TO: RBC Dominion Securities Inc.**  
155 Wellington Street West, 17<sup>th</sup> Floor  
Toronto, Ontario M5V 3K7
- AND TO: Scotia Capital Inc.**  
40 King Street West, Scotia Plaza  
P.O. Box 4085, Station A  
Toronto, Ontario M5W 2X6
- AND TO: CIBC World Markets Inc.**  
161 Bay Street, Brookfield Place  
P.O. Box 500  
Toronto, Ontario M5J 2S8
- AND TO: Merrill Lynch Canada Inc.**  
BCE Place, Wellington Tower  
181 Bay Street, 4<sup>th</sup> and 5<sup>th</sup> Floors  
Toronto, Ontario M5J 2V8
- AND TO: Canaccord Financial Ltd.**  
161 Bay Street, Suite 2900  
P.O. Box 516  
Toronto, Ontario M5J 2S1
- AND TO: Maison Placements Canada Inc.**  
130 Adelaide Street West, Suite 906  
Toronto, Ontario M5H 3P5
- AND TO: Credit Suisse Securities (USA) LLC**  
Eleven Madison Avenue  
New York, NY 10010
- AND TO: Banc of America Securities LLC**  
100 N. Tryon St., Ste. 220  
Charlotte, NC 28255



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## I. DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) “AI” means Authorized Intermediary;

- (b) “**AIF**” means Annual Information Form;
- (c) “**Ardell**” means the defendant William E. Ardell;
- (d) “**Banc of America**” means the defendant Banc of America Securities LLC;
- (e) “**BDO**” means the defendant BDO Limited;
- (f) “**Bowland**” means the defendant James P. Bowland;
- (g) “**BVI**” means British Virgin Islands;
- (h) “**Canaccord**” means the defendant Canaccord Financial Ltd.;
- (i) “**CBCA**” means the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended;
- (j) “**Chan**” means the defendant Allen T.Y. Chan also known as “Tak Yuen Chan”;
- (k) “**CIBC**” means the defendant CIBC World Markets Inc.;
- (l) “**CJA**” means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (m) “**Class**” and “**Class Members**” all persons and entities, wherever they may reside who acquired **Sino’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’s Securities** during the **Class Period** who are resident of Canada or were resident of Canada at the time of acquisition and who acquired **Sino’s Securities** outside of Canada, except the **Excluded Persons**;
- (n) “**Class Period**” means the period from and including March 19, 2007 to and including June 2, 2011;
- (o) “**Code**” means **Sino’s** Code of Business Conduct;

- (p) “*CPA*” means the Ontario *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (q) “**Credit Suisse**” means the defendant Credit Suisse Securities (Canada), Inc.;
- (r) “**Credit Suisse USA**” means the defendant Credit Suisse Securities (USA) LLC;
- (s) “**Defendants**” means **Sino**, the **Individual Defendants**, **Pöyry**, **BDO**, **E&Y** and the **Underwriters**;
- (t) “**December 2009 Offering Memorandum**” means Sino’s Final Offering Memorandum, dated December 10, 2009, relating to the distribution of Sino’s 4.25% Convertible Senior Notes due 2016 which **Sino** filed on **SEDAR** on December 11, 2009;
- (u) “**December 2009 Prospectus**” means **Sino**’s Final Short Form Prospectus, dated December 10, 2009, which **Sino** filed on **SEDAR** on December 11, 2009;
- (v) “**Dundee**” means the defendant Dundee Securities Corporation;
- (w) “**E&Y**” means the defendant, Ernst and Young LLP;
- (x) “**Excluded Persons**” 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**;
- (y) “**Final Report**” means the report of the IC, as that term is defined in paragraph 10 hereof;
- (z) “**GAAP**” means Canadian generally accepted accounting principles;
- (aa) “**GAAS**” means Canadian generally accepted auditing standards;
- (bb) “**Horsley**” means the defendant David J. Horsley;
- (cc) “**Hyde**” means the defendant James M.E. Hyde;

- (dd) **"Impugned Documents"** mean the 2005 Annual Consolidated Financial Statements (filed on **SEDAR** on March 31, 2006), Q1 2006 Financial Statements (filed on **SEDAR** on May 11, 2006), the 2006 Annual Consolidated Financial Statements (filed on **SEDAR** on March 19, 2007), 2006 **AIF** (filed on **SEDAR** on March 30, 2007), 2006 Annual **MD&A** (filed on **SEDAR** on March 19, 2007), Management Information Circular dated April 27, 2007 (filed on **SEDAR** on May 4, 2007), Q1 2007 **MD&A** (filed on **SEDAR** on May 14, 2007), Q1 2007 Financial Statements (filed on **SEDAR** on May 14, 2007), **June 2007 Prospectus**, Q2 2007 **MD&A** (filed on **SEDAR** on August 13, 2007), Q2 2007 Financial Statements (filed on **SEDAR** on August 13, 2007), Q3 2007 **MD&A** (filed on **SEDAR** on November 12, 2007), Q3 2007 Financial Statements (filed on **SEDAR** on November 12, 2007), 2007 Annual Consolidated Financial Statements (filed on **SEDAR** on March 18, 2008), 2007 **AIF** (filed on **SEDAR** on March 28, 2008), 2007 Annual **MD&A** (filed on **SEDAR** on March 18, 2008), Amended 2007 Annual **MD&A** (filed on **SEDAR** on March 28, 2008), Management Information Circular dated April 28, 2008 (filed on **SEDAR** on May 6, 2008), Q1 2008 **MD&A** (filed on **SEDAR** on May 13, 2008), Q1 2008 Financial Statements (filed on **SEDAR** on May 13, 2008), **July 2008 Offering Memorandum**, Q2 2008 **MD&A** (filed on **SEDAR** on August 12, 2008), Q2 2008 Financial Statements (filed on **SEDAR** on August 12, 2008), Q3 2008 **MD&A** (filed on **SEDAR** on November 13, 2008), Q3 2008 Financial Statements (filed on **SEDAR** on November 13, 2008), 2008 Annual Consolidated Financial Statements (filed on **SEDAR** on March 16, 2009), 2008 Annual **MD&A** (filed on **SEDAR** on March 16, 2009), Amended 2008 Annual **MD&A** (filed on **SEDAR** on March 17, 2009), 2008 **AIF** (filed on **SEDAR** on March 31, 2009), Management Information Circular dated April 28, 2009 (filed on **SEDAR** on May 4, 2009), Q1 2009 **MD&A** (filed on **SEDAR** on May 11, 2009), Q1 2009 Financial Statements (filed on **SEDAR** on May 11, 2009), **June 2009 Prospectus**, **June 2009 Offering Memorandum**, Q2 2009 **MD&A** (filed on **SEDAR** on August 10, 2009), Q2 2009 Financial Statements (filed on **SEDAR** on August 10, 2009), Q3 2009 **MD&A** (filed on **SEDAR** on November 12, 2009),

Q3 2009 Financial Statements (filed on **SEDAR** on November 12, 2009), **December 2009 Prospectus, December 2009 Offering Memorandum**, 2009 Annual **MD&A** (filed on **SEDAR** on March 16, 2010), 2009 Audited Annual Financial Statements (filed on **SEDAR** on March 16, 2010), 2009 **AIF** (filed on **SEDAR** on March 31, 2010), Management Information Circular dated May 4, 2010 (filed on **SEDAR** on May 11, 2010), Q1 2010 **MD&A** (filed on **SEDAR** on May 12, 2010), Q1 2010 Financial Statements (filed on **SEDAR** on May 12, 2010), Q2 2010 **MD&A** (filed on **SEDAR** on August 10, 2010), Q2 2010 Financial Statements (filed on **SEDAR** on August 10, 2010), **October 2010 Offering Memorandum**, Q3 2010 **MD&A** (filed on **SEDAR** on November 10, 2010), Q3 2010 Financial Statements (filed on **SEDAR** on November 10, 2010), 2010 Annual **MD&A** (March 15, 2011), 2010 Audited Annual Financial Statements (filed on **SEDAR** on March 15, 2011), 2010 **AIF** (filed on **SEDAR** on March 31, 2011), and Management Information Circular dated May 2, 2011 (filed on **SEDAR** on May 10, 2011);

- (ee) **“Individual Defendants”** means **Chan, Martin, Poon, Horsley, Ardell, Bowland, Hyde, Mak, Murray, Wang, and West**, collectively;
- (ff) **“July 2008 Offering Memorandum”** means the Final Offering Memorandum dated July 17, 2008, relating to the distribution of Sino’s 5% Convertible Senior Notes due 2013 which **Sino** filed on **SEDAR** as a schedule to a material change report on July 25, 2008;
- (gg) **“June 2007 Prospectus”** means **Sino’s** Short Form Prospectus, dated June 5, 2007, which **Sino** filed on **SEDAR** on June 5, 2007;
- (hh) **“June 2009 Offering Memorandum”** means **Sino’s** Exchange Offer Memorandum dated June 24, 2009, relating to an offer to exchange Sino’s Guaranteed Senior Notes due 2011 for new 10.25% Guaranteed Senior Notes due 2014 which **Sino** filed on **SEDAR** as a schedule to a material change report on June 25, 2009;

- (ii) “**June 2009 Prospectus**” means Sino’s Final Short Form Prospectus, dated June 1, 2009, which Sino filed on SEDAR on June 1, 2009;
- (jj) “**Maison**” means the defendant Maison Placements Canada Inc.;
- (kk) “**Martin**” means the defendant W. Judson Martin;
- (ll) “**Mak**” means the defendant Edmund Mak;
- (mm) “**MD&A**” means Management’s Discussion and Analysis;
- (nn) “**Merrill**” means the defendant Merrill Lynch Canada Inc.;
- (oo) “**Muddy Waters**” means Muddy Waters LLC;
- (pp) “**Murray**” means the defendant Simon Murray;
- (qq) “**October 2010 Offering Memorandum**” means the Final Offering Memorandum dated October 14, 2010, relating to the distribution of Sino’s 6.25% Guaranteed Senior Notes due 2017;
- (rr) “**Offering**” or “**Offerings**” means the primary distributions in Canada of Sino’s **Securities** that occurred during the **Class Period** including the public offerings of Sino’s common shares pursuant to the **June 2007, June 2009 and December 2009 Prospectuses**, as well as the offerings of Sino’s notes pursuant to the **July 2008, June 2009, December 2009, and October 2010 Offering Memoranda**, collectively;
- (ss) “**OSA**” means the *Securities Act*, RSO 1990 c S.5, as amended;
- (tt) “**OSC**” means the Ontario Securities Commission;
- (uu) “**Plaintiffs**” means the plaintiffs, the Trustees of the Labourers’ Pension Fund of Central and Eastern Canada (“**Labourers**”), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in



Ontario (“**Operating Engineers**”), Sjunde AP-Fonden (“**AP7**”), David C. Grant (“**Grant**”), and Robert Wong (“**Wong**”), collectively;

- (vv) “**Poon**” means the defendant Kai Kit Poon;
- (ww) “**Pöyry**” means the defendant, Pöyry (Beijing) Consulting Company Limited;
- (xx) “**PRC**” means the People’s Republic of China;
- (yy) “**Representation**” means the statement that Sino’s financial statements complied with **GAAP**;
- (zz) “**RBC**” means the defendant RBC Dominion Securities Inc.;
- (aaa) “**Scotia**” means the defendant Scotia Capital Inc.;
- (bbb) “**Second Report**” means the Second Interim Report of the IC, as that term is defined in paragraph 10 hereof;
- (ccc) “**Securities**” means Sino’s common shares, notes or other securities, as defined in the *OSA*;
- (ddd) “**Securities Legislation**” means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (eee) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;

- (fff) “**Sino**” means, as the context requires, either the defendant Sino-Forest Corporation, or Sino-Forest Corporation and its affiliates and subsidiaries, collectively;
- (ggg) “**TD**” means the defendant TD Securities Inc.;
- (hhh) “**TSX**” means the Toronto Stock Exchange;
- (iii) “**Underwriters**” means **Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD**, collectively;
- (jjj) “**Wang**” means the defendant Peter Wang;
- (kkk) “**West**” means the defendant Garry J. West; and
- (lll) “**WFOE**” means wholly foreign owned enterprise or an enterprise established in China in accordance with the relevant PRC laws, with capital provided solely by foreign investors.

## II. CLAIM

### 2. The Plaintiffs claim:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class, or such other class as may be certified by the Court;
- (b) A declaration that the Impugned Documents contained, either explicitly or implicitly, the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;
- (c) A declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;
- (d) A declaration that Sino is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors and employees;
- (e) A declaration that the Underwriters, E&Y, BDO and Pöyry are each vicariously liable for the acts and/or omissions of their respective officers, directors, partners and employees;
- (f) On behalf of all of the Class Members who purchased Sino's Securities in the secondary market during the Class Period, and as against all of the Defendants other than the Underwriters, general damages in the sum of \$6.5 billion;
- (g) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2007 Prospectus related, and as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray, Hyde, Pöyry, BDO, Dundee, CIBC, Merrill and Credit Suisse general damages in the sum of \$175,835,000;
- (h) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the June 2009 Prospectus related, and as against Sino, Chan,

Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, E&Y, Dundee, Merrill, Credit Suisse, Scotia and TD, general damages in the sum of \$330,000,000;

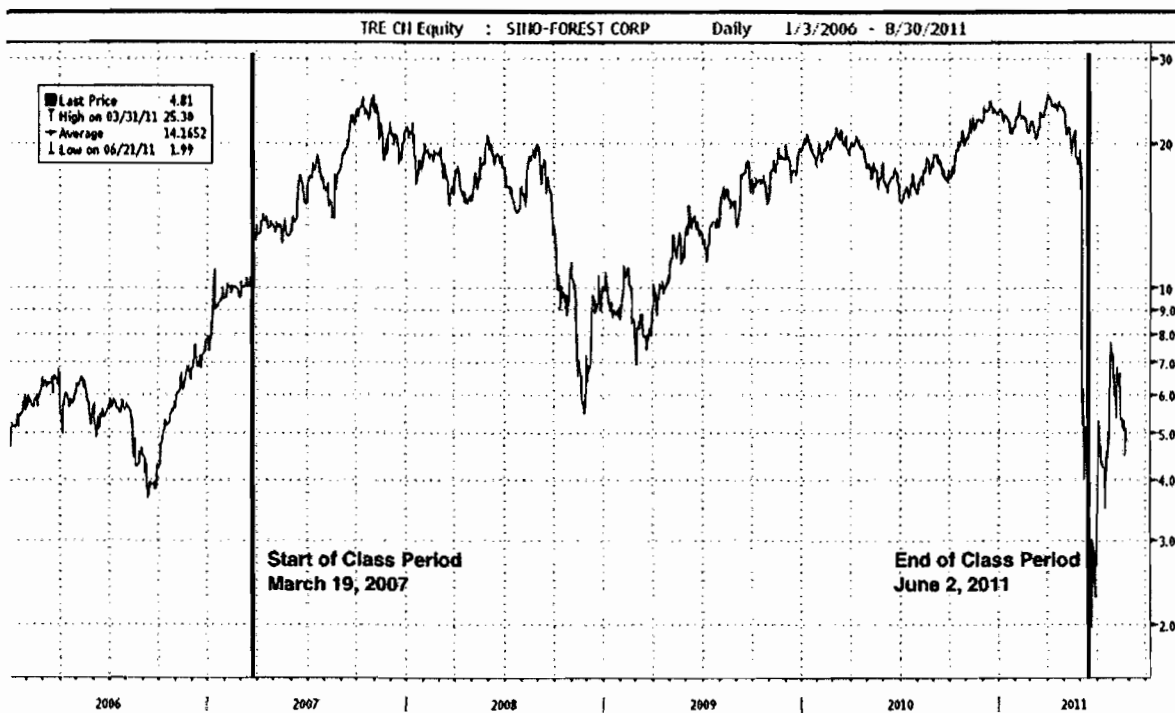
- (i) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which the December 2009 Prospectus related, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, general damages in the sum of \$319,200,000;
- (j) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to the July 2008 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$345 million;
- (k) On behalf of all the Class Members who purchased Sino's 10.25% Guaranteed Senior Notes due 2014 pursuant to the June 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y and Credit Suisse USA, general damages in the sum of US\$400 million;
- (l) On behalf of all the Class Members who purchased Sino's 4.25% Convertible Senior Notes due 2016 pursuant to the December 2009 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Credit Suisse USA and TD, general damages in the sum of US\$460 million;
- (m) On behalf of all the Class Members who purchased Sino's 6.25% Guaranteed Senior Notes due 2017 pursuant to the October 2010 Offering Memorandum, and as against Sino, Chan, Poon, Horsley, Wang, Mak, Murray, Hyde, Ardell, Pöyry, E&Y, Credit Suisse USA and Banc of America, general damages in the sum of US\$600 million;

- (n) On behalf of all of the Class Members, and as against Sino, Chan, Poon and Horsley, punitive damages, in respect of the conspiracy pled below, in the sum of \$50 million;
- (o) A declaration that Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters were unjustly enriched;
- (p) A constructive trust, accounting or such other equitable remedy as may be available as against Sino, Chan, Poon, Horsley, Martin, Mak, Murray and the Underwriters;
- (q) A declaration that the acts and omissions of Sino have effected a result, the business or affairs of Sino have been carried on or conducted in a manner, or the powers of the directors of Sino have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Plaintiffs and the Class Members, pursuant to s. 241 of the *CBCA*;
- (r) An order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (s) Prejudgment and post judgment interest;
- (t) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (u) Such further and other relief as to this Honourable Court may seem just.

### III. OVERVIEW

3. From the time of its establishment in 1994, Sino has claimed to be a legitimate business operating in the commercial forestry industry in the PRC and elsewhere. Throughout that period, Sino has also claimed to have experienced breathtaking growth.

4. Beguiled by Sino's reported results, and by Sino's constant refrain that China constituted an extraordinary growth opportunity, investors drove Sino's stock price dramatically higher, as appears from the following chart:



5. The Defendants profited handsomely from the market's appetite for Sino's securities. Certain of the Individual Defendants sold Sino shares at lofty prices, and thereby reaped millions of dollars of gains. Sino's senior management also used Sino's illusory success to justify their lavish salaries, bonuses and other perks. For certain of the Individual Defendants, these outsized gains were not enough. Sino stock options granted to Chan, Horsley and other insiders were backdated or otherwise mispriced, prior to and during the Class Period, in violation of the TSX Rules, GAAP and the Securities Legislation.

6. Sino itself raised in excess of \$2.7 billion<sup>1</sup> in the capital markets during this period. Meanwhile, the Underwriters were paid lucrative underwriting commissions, and BDO, E&Y and Pöyry garnered millions of dollars in fees to bless Sino's reported results and assets. To their great detriment, the Class Members relied upon these supposed gatekeepers.

7. As a reporting issuer in Ontario and elsewhere, Sino was required at all material times to comply with GAAP. Indeed, Sino, BDO and E&Y, Sino's auditors during the Class Period and previously, repeatedly misrepresented that Sino's financial statements complied with GAAP. This was false.

8. On June 2, 2011, Muddy Waters, a short seller and research firm with extensive PRC experience, issued its first research report in relation to Sino, and unveiled the scale of the deception that had been worked upon the Class Members. Muddy Waters' initial report effectively revealed, among other things, that Sino had materially misstated its financial results, had falsely claimed to have acquired trees that it did not own, had reported sales that had not been made, or that had been made in a manner that did not permit Sino to book those sales as revenue under GAAP, and had concealed numerous related party transactions. These revelations had a catastrophic effect on Sino's stock price.

9. On June 1, 2011, prior to the publication of Muddy Waters' report, Sino's common shares closed at \$18.21. After the Muddy Waters report became public, Sino shares fell to \$14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

10. On June 3, 2011, Sino announced that, in response to the allegations of Muddy Waters, its board had formed a committee, which Sino then falsely characterized as "independent" (the

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<sup>1</sup> Dollar figures are in Canadian dollars (unless otherwise indicated) and are rounded for convenience.

“Independent Committee” or “IC”), to examine and review the allegations contained in the Muddy Waters’ report of June 2, 2011. The initial members of the IC were the Defendants Ardell, Bowland and Hyde. The IC subsequently retained legal, accounting and other advisers to assist it in the fulfillment of its mandate.

11. On August 26, 2011, the OSC issued a cease-trade order in respect of Sino’s securities, alleging that Sino appeared to have engaged in significant non-arm’s length transactions which may have been contrary to Ontario securities laws and the public interest, that Sino and certain of its officers and directors appeared to have misrepresented some of Sino’s revenue and/or exaggerated some of its timber holdings, and that Sino and certain of its officers and directors, including Chan, appeared to be engaging or participating in acts, practices or a course of conduct related to Sino’s securities which they (or any of them) knew or ought reasonably know would perpetuate a fraud.

12. On November 13, 2011, the IC released the Second Report. Therein, the IC revealed, *inter alia*, that: (1) Sino’s management had failed to cooperate in numerous important respects with the IC’s investigation; (2) “there is a risk” that certain of Sino’s operations “taken as a whole” were in violation of PRC law; (3) Sino adopted processes that “avoid[] Chinese foreign exchange controls which must be complied with in a normal cross-border sale and purchase transaction, and [which] could present an obstacle to future repatriation of sales proceeds, and could have tax implications as well”; (4) the IC “has not been able to verify that any relevant income taxes and VAT have been paid by or on behalf of the BVIs in China”; (5) Sino lacked proof of title to the vast majority of its purported holdings of standing timber; (6) Sino’s “transaction volumes with a number of AI and Suppliers do not match the revenue reported by such Suppliers in their SAIC filing”; (7) “[n]one of the BVI timber purchase contracts have as



attachments either (i) Plantation Rights Certificates from either the Counterparty or original owner or (ii) villager resolutions, both of which are contemplated as attachments by the standard form of BVI timber purchase contract employed by the Company; and (8) “[t]here are indications in emails and in interviews with Suppliers that gifts or cash payments are made to forestry bureaus and forestry bureau officials.”

13. On January 31, 2012, the IC released its Final Report. Therein, the IC effectively revealed that, despite having conducted an investigation over nearly eight months, and despite the expenditure of US\$50 million on that investigation, it had failed to refute, or even to provide plausible answers to, key allegations made by Muddy Waters:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC’s conclusions regarding its examination and review. The IC’s activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company’s Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.

[...]

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. The IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions

14. Sino failed to meet the standards required of a public company in Canada. Aided by its auditors and the Underwriters, Sino raised billions of dollars from investors on the false premise that they were investing in a well managed, ethical and GAAP-compliant corporation. They

were not. Accordingly, this action is brought to recover the Class Members' losses from those who caused them: the Defendants.

#### IV. THE PARTIES

##### A. *The Plaintiffs*

15. Labourers are the trustees of the Labourers' Pension Fund of Central and Eastern Canada, a multi-employer pension plan providing benefits for employees working in the construction industry. The fund is a union-negotiated, collectively-bargained defined benefit pension plan established on February 23, 1972 and currently has approximately \$2 billion in assets, over 39,000 members and over 13,000 pensioners and beneficiaries and approximately 2,000 participating employers. A board of trustees representing members of the plan governs the fund. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Labourers purchased Sino's common shares over the TSX during the Class Period and continued to hold shares at the end of the Class Period. In addition, Labourers purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related.

16. Operating Engineers are the trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The pension plan is a union-negotiated, collectively-bargained defined benefit pension plan established on November 1, 1973 and currently has approximately \$1.5 billion in assets, over 9,000 members and pensioners and beneficiaries. The fund is governed by a board of trustees representing members of the plan. The plan is registered under the *Pension Benefits Act*, RSO 1990, c P.8 and the *Income Tax Act*, RSC 1985, 5th Supp, c.1. Operating Engineers purchased Sino's common shares over the TSX during the Class Period, and continued to hold shares at the end of the Class Period.

17. AP7 is the Swedish National Pension Fund. As of June 30, 2011, AP7 had approximately \$15.3 billion in assets under management. Funds managed by AP7 purchased Sino's common shares over the TSX during the Class Period and continued to hold those common shares at the end of the Class Period.

18. Grant is an individual residing in Calgary, Alberta. He purchased 100 of the Sino 6.25% Guaranteed Senior Notes due 2017 that were offered by the October 2010 Offering Memorandum and in the distribution to which that Offering Memorandum related. Grant continued to hold those Notes at the end of the Class Period.

19. Wong is an individual residing in Kincardine, Ontario. During the Class Period, Wong purchased Sino's common shares over the TSX and continued to hold some or all of such shares at the end of the Class Period. In addition, Wong purchased Sino common shares offered by the December 2009 Prospectus and in the distribution to which that Prospectus related, and continued to own those shares at the end of the Class Period.

**B. *The Defendants***

20. Sino purports to be a commercial forest plantation operator in the PRC and elsewhere. Sino is a corporation formed under the *CBCA*.

21. At the material times, Sino was a reporting issuer in all provinces of Canada, and had its registered office located in Mississauga, Ontario. At the material times, Sino's shares were listed for trading on the TSX under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the over-the-counter market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH." Sino securities are also listed on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. Sino's shares also traded over-

the-counter in the United States. Sino has various debt instruments, derivatives and other securities that are traded in Canada and elsewhere.

22. As a reporting issuer in Ontario, Sino was required throughout the Class Period to issue and file with SEDAR:

- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, a MD&A of each of the above financial statements; and
- (d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development.

23. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

24. AIFs are an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically.

25. Sino controlled the contents of its MD&As, financial statements, AIFs and the other documents particularized herein and the misrepresentations made therein were made by Sino.

26. Chan is a co-founder of Sino, and was the Chairman, Chief Executive Officer and a director of the company from 1994 until his resignation from those positions on or about August 25, 2011. As Sino's CEO, Chan signed and certified the company's disclosure documents during the Class Period. Chan, along with Hyde, signed each of the 2006-2010 Audited Annual Financial Statements on behalf of Sino's board. Chan resides in Hong Kong, China.

27. Chan certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Chan signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As a director and officer, he caused Sino to make the misrepresentations particularized below.

28. Since Sino was established, Chan has received lavish compensation from Sino. For example, for 2006 to 2010, Chan's total compensation (other than share-based compensation) was, respectively, US\$3.0 million, US\$3.8 million, US\$5.0 million, US\$7.6 million and US\$9.3 million.

29. As at May 1, 1995, shortly after Sino became a reporting issuer, Chan held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he held 2.7% of Sino's common shares (the company no longer has preference shares outstanding). Chan has made in excess of \$10 million through the sale of Sino shares.

30. Horsley is Sino's Chief Financial Officer, and has held this position since October 2005. In his position as Sino's CFO, Horsley has signed and certified the company's disclosure documents during the Class Period. Horsley resides in Ontario. Horsley has made in excess of \$11 million through the sale of Sino shares.

31. Horsley certified each of Sino's Class Period annual and quarterly MD&As and financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. Horsley signed each of Sino's Class Period annual financial statements, each of which is an Impugned Document. In so doing, he adopted as his own the false statements such documents contained, as particularized below. As an officer, he caused Sino to make the misrepresentations particularized below.

32. Since becoming Sino's CFO, Horsley has also received lavish compensation from Sino. For 2006 to 2010, Horsley's total compensation (other than share-based compensation) was, respectively, US\$1.1 million, US\$1.4 million, US\$1.7 million, US\$2.5 million, and US\$3.1 million.

33. Poon is a co-founder of Sino, and has been the President of the company since 1994. He was a director of Sino from 1994 to May 2009, and he continues to serve as Sino's President. Poon resides in Hong Kong, China. While he was a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. While he was a board member, he caused Sino to make the misrepresentations particularized below.

34. As at May 1, 1995, shortly after Sino became a reporting issuer, Poon held 18.3% of Sino's outstanding common shares and 37.5% of its preference shares. As of April 29, 2011 he

held 0.42% of Sino's common shares. Poon has made in excess of \$34.4 million through the sale of Sino shares.

35. Poon rarely attended board meetings while he was on Sino's board. From the beginning of 2006 until his resignation from the Board in 2009, he attended 5 of the 39 board meetings, or less than 13% of all board meetings held during that period.

36. Wang is a director of Sino, and has held this position since August 2007. Wang resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

37. Martin has been a director of Sino since 2006, and was appointed vice-chairman in 2010. On or about August 25, 2011, Martin replaced Chan as Chief Executive Officer of Sino. Martin was a member of Sino's audit committee prior to early 2011. Martin has made in excess of \$474,000 through the sale of Sino shares. He resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized herein.

38. Mak is a director of Sino, and has held this position since 1994. Mak was a member of Sino's audit committee prior to early 2011. Mak and persons connected with Mak have made in excess of \$6.4 million through sales of Sino shares. Mak resides in British Columbia. As a board member, he adopted as his own the false statements made in each of Sino's annual

financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

39. Murray is a director of Sino, and has held this position since 1999. Murray has made in excess of \$9.9 million through sales of Sino shares. Murray resides in Hong Kong, China. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

40. Since becoming a director, Murray has rarely attended board and board committee meetings. From the beginning of 2006 to the close of 2010, Murray attended 14 of 64 board meetings, or less than 22% of board meetings held during that period. During that same period, Murray attended 2 out of 13, or 15%, of the meetings held by the Board's Compensation and Nominating Committee, and attended *none* of the 11 meetings of that Committee held from the beginning of 2007 to the close of 2010.

41. Hyde is a director of Sino, and has held this position since 2004. Hyde was previously a partner of E&Y. Hyde is the chairman of Sino's Audit Committee. Hyde, along with Chan, signed each of the 2007-2010 Annual Consolidated Financial Statements on behalf of Sino's board. Hyde is also member of the Compensation and Nominating Committee. Hyde has made in excess of \$2.4 million through the sale of Sino shares. Hyde resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements, particularized below, when he signed such statements or when they were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.



42. Ardell is a director of Sino, and has held this position since January 2010. Ardell is a member of Sino's audit committee. Ardell resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

43. Bowland was a director of Sino from February 2011 until his resignation from the Board of Sino in November 2011. While on Sino's Board, Bowland was a member of Sino's Audit Committee. He was formerly an employee of a predecessor to E&Y. Bowland resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

44. West is a director of Sino, and has held this position since February 2011. West was previously a partner at E&Y. West is a member of Sino's Audit Committee. West resides in Ontario. As a board member, he adopted as his own the false statements made in each of Sino's annual financial statements released while he was a board member, particularized below, when such statements were signed on his behalf. As a board member, he caused Sino to make the misrepresentations particularized below.

45. As officer and/or directors of Sino, the Individual Defendants were fiduciaries of Sino, and they made the misrepresentations alleged herein, adopted such misrepresentations, and/or caused Sino to make such misrepresentations while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties. In addition, Chan, Poon, Horsley, Martin,

Mak and Murray were unjustly enriched in the manner and to the extent particularized below while they were acting in their capacity as fiduciaries, and in violation of their fiduciary duties.

46. At all material times, Sino maintained the Code, which governed Sino's employees, officers and directors, including the Individual Defendants. The Code stated that the members of senior management "are expected to lead according to high standards of ethical conduct, in both words and actions..." The Code further required that Sino representatives act in the best interests of shareholders, corporate opportunities not be used for personal gain, no one trade in Sino securities based on undisclosed knowledge stemming from their position or employment with Sino, the company's books and records be honest and accurate, conflicts of interest be avoided, and any violations or suspected violations of the Code, and any concerns regarding accounting, financial statement disclosure, internal accounting or disclosure controls or auditing matters, be reported.

47. E&Y has been engaged as Sino's auditor since August 13, 2007. E&Y was also engaged as Sino's auditor from Sino's creation through February 19, 1999, when E&Y abruptly resigned during audit season and was replaced by the now-defunct Arthur Andersen LLP. E&Y was also Sino's auditor from 2000 to 2004, when it was replaced by BDO. E&Y is an expert of Sino within the meaning of the Securities Legislation.

48. E&Y, in providing what it purported to be "audit" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, E&Y was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on E&Y's statements relating to Sino, which they did to their detriment.

49. E&Y consented to the inclusion in the June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for various years, as alleged more particularly below.

50. BDO is the successor of BDO McCabe Lo Limited, the Hong Kong, China based auditing firm that was engaged as Sino's auditor during the period of March 21, 2005 through August 12, 2007, when they resigned at Sino's request, and were replaced by E&Y. BDO is an expert of Sino within the meaning of the Securities Legislation.

51. During the term of its service as Sino's auditor, BDO provided what it purported to be "audit" services to Sino, and in the course thereof made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, BDO was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons rely on BDO's statements relating to Sino, which they did to their detriment.

52. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for 2005 and 2006.

53. E&Y and BDO's annual Auditors' Report was made "to the shareholders of Sino-Forest corporation," which included the Class Members. Indeed, s. 1000.11 of the Handbook of the Canadian Institute of Chartered Accountants states that "the objective of financial statements for profit-oriented enterprises focuses primarily on the information needs of *investors and creditors*" [emphasis added].

54. Sino's shareholders, including numerous Class Members, appointed E&Y as auditors of Sino-Forest by shareholder resolutions passed on various dates, including on June 21, 2004, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011.

55. Sino's shareholders, including numerous Class Members, appointed BDO as auditors of Sino-Forest by resolutions passed on May 16, 2005, June 5, 2006 and May 28, 2007.

56. During the Class Period, with the knowledge and consent of BDO or E&Y (as the case may be), Sino's audited annual financial statements for the years ended December 31, 2006, 2007, 2008, 2009 and 2010, together with the report of BDO or E&Y thereon (as the case may be), were presented to the shareholders of Sino (including numerous Class Members) at annual meetings of such shareholders held in Toronto, Canada on, respectively, May 28, 2007, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011. As alleged elsewhere herein, all such financial statements constituted Impugned Documents.

57. Pöyry is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino. Pöyry is an expert of Sino within the meaning of the Securities Legislation.

58. Pöyry, in providing what it purported to be "forestry consulting" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, Pöyry was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on Pöyry's statements relating to Sino, which they did to their detriment.

59. Pöyry consented to the inclusion in the June 2007, June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its various reports, as detailed below in paragraph ●.

60. The Underwriters are various financial institutions who served as underwriters in one or more of the Offerings.

61. In connection with the distributions conducted pursuant to the June 2007, June 2009 and December 2009 Prospectuses, the Underwriters who underwrote those distributions were paid, respectively, an aggregate of approximately \$7.5 million, \$14.0 million and \$14.4 million in underwriting commissions. In connection with the offerings of Sino's notes in July 2008, December 2009, and October 2010, the Underwriters who underwrote those offerings were paid, respectively, an aggregate of approximately US\$2.2 million, US\$8.5 million and \$US6 million. Those commissions were paid in substantial part as consideration for the Underwriters' purported due diligence examination of Sino's business and affairs.

62. None of the Underwriters conducted a reasonable investigation into Sino in connection with any of the Offerings. None of the Underwriters had reasonable grounds to believe that there was no misrepresentation in any of the Impugned Documents. In the circumstances of this case, including the facts that Sino operated in an emerging economy, Sino had entered Canada's capital markets by means of a reverse merger, and Sino had reported extraordinary results over an extended period of time that far surpassed those reported by Sino's peers, the Underwriters all ought to have exercised heightened vigilance and caution in the course of discharging their duties to investors, which they did not do. Had they done so, they would have uncovered Sino's true nature, and the Class Members to whom they owed their duties would not have sustained the losses that they sustained on their Sino investments.

## V. THE OFFERINGS

63. Through the Offerings, Sino raised in aggregate in excess of \$2.7 billion from investors during the Class Period. In particular:

- (a) On June 5, 2007, Sino issued and filed with SEDAR the June 2007 Prospectus pursuant to which Sino distributed to the public 15,900,000 common shares at a price of \$12.65 per share for gross proceeds of \$201,135,000. The June 2007 Prospectus incorporated by reference Sino's: (1) 2006 AIF; (2) 2006 Audited Annual Financial Statements; (3) 2006 Annual MD&A; (4) Management Information Circular dated April 27, 2007; (5) Q1 2007 Financial Statements; and (6) Q1 2007 MD&A;
- (b) On July 17, 2008, Sino issued the July 2008 Offering Memorandum pursuant to which Sino sold through private placement US\$345 million in aggregate principal amount of convertible senior notes due 2013. The July 2008 Offering Memorandum included: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006 and 2007; (2) Sino's unaudited interim financial statements for the three-month periods ended March 31, 2007 and 2008; (3) the section of the 2007 AIF entitled "Audit Committee" and the charter of the Audit Committee attached as an appendix to the 2007 AIF; and (4) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets Report as at 31 December 2007" dated March 14, 2008;
- (c) On June 1, 2009, Sino issued and filed with SEDAR the June 2009 Prospectus pursuant to which Sino distributed to the public 34,500,000 common shares at a price of \$11.00 per share for gross proceeds of \$379,500,000. The June 2009 Prospectus incorporated by reference Sino's: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q1 2009 MD&A; (5) Q1 2008 and 2009 Financial Statements; (6) Q1 2009 MD&A; (7) Management Information Circular dated April 28, 2009; and (8) the Pöyry report titled "Valuation of China Forest Corp Assets As at 31 December 2008" dated April 1, 2009;

- (d) On June 24, 2009, Sino issued the June 2009 Offering Memorandum for exchange of certain of its then outstanding senior notes due 2011 with new notes, pursuant to which Sino issued US\$212,330,000 in aggregate principal amount of 10.25% Guaranteed Senior Notes due 2014. The June 2009 Offering Memorandum incorporated by reference: (1) Sino's 2005, 2006 and 2007 Consolidated Annual Financial Statements; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Consolidated Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007 except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached as an appendix to the 2008 AIF; and (6) the unaudited interim financial statements for the three-month periods ended March 31, 2008 and 2009;
- (e) On December 10, 2009, Sino issued the December 2009 Offering Memorandum pursuant to which Sino sold through private placement US\$460,000,000 in aggregate principal amount of 4.25% convertible senior notes due 2016. This Offering Memorandum incorporated by reference: (1) Sino's Consolidated Annual Financial Statements for 2005, 2006, 2007; (2) the auditors' report of BDO dated March 19, 2007 with respect to Sino's Annual Financial Statements for 2005 and 2006; (3) the auditors' report of E&Y dated March 12, 2008 with respect to Sino's Consolidated Annual Financial Statements for 2007, except as to notes 2, 18 and 23; (4) Sino's Consolidated Annual Financial Statements for 2007 and 2008 and the auditors' report of E&Y dated March 13, 2009; (5) the unaudited interim consolidated financial statements for the nine-month periods ended September 30, 2008 and 2009; (6) the section entitled "Audit Committee" in the 2008 AIF, and the charter of the Audit Committee attached to the 2008 AIF; (7) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Assets as at 31 December 2007"; and (8) the Pöyry report entitled "Sino-Forest Corporation Valuation of China Forest Corp Assets as at 31 December 2008" dated April 1, 2009;

- (f) On December 10, 2009, Sino issued and filed with SEDAR the December 2009 Prospectus (together with the June 2007 Prospectus and the June 2009 Prospectus, the “**Prospectuses**”) pursuant to which Sino distributed to the public 21,850,000 common shares at a price of \$16.80 per share for gross proceeds of \$367,080,000. The December 2009 Prospectus incorporated by reference Sino’s: (1) 2008 AIF; (2) 2007 and 2008 Annual Consolidated Financial Statements; (3) Amended 2008 Annual MD&A; (4) Q3 2008 and 2009 Financial Statements; (5) Q3 2009 MD&A; (6) Management Information Circular dated April 28, 2009; and (7) the Pöyry report titled “Valuation of China Forest Corp Assets As at 31 December 2008” dated April 1, 2009;
- (g) On February 8, 2010, Sino closed the acquisition of substantially all of the outstanding common shares of Mandra Forestry Holdings Limited. Concurrent with this acquisition, Sino completed an exchange with holders of 99.7% of the USD\$195 million notes issued by Mandra Forestry Finance Limited and 96.7% of the warrants issued by Mandra Forestry Holdings Limited, for new 10.25% guaranteed senior notes issued by Sino in the aggregate principal amount of USD\$187,177,375 with a maturity date of July 28, 2014. On February 11, 2010, Sino exchanged the new 2014 Senior Notes for an additional issue of USD\$187,187,000 in aggregate principal amount of Sino’s existing 2014 Senior Notes, issued pursuant to the June 2009 Offering Memorandum; and
- (h) On October 14, 2010, Sino issued the October 2010 Offering Memorandum pursuant to which Sino sold through private placement US\$600,000,000 in aggregate principal amount of 6.25% guaranteed senior notes due 2017. The October 2010 Offering Memorandum incorporated by reference: (1) Sino’s Consolidated Annual Financial Statements for 2007, 2008 and 2009; (2) the auditors’ report of E&Y dated March 15, 2010 with respect to Sino’s Annual Financial Statements for 2008 and 2009; and (3) Sino’s unaudited interim financial statements for the six-month periods ended June 30, 2009 and 2010.



64. The offering documents referenced in the preceding paragraph included, or incorporated other documents by reference that included, the Representation and the other misrepresentations in such documents that are particularized elsewhere herein. Had the truth in regard to Sino's management, business and affairs been timely disclosed, securities regulators likely would not have receipted the Prospectuses, nor would any of the Offerings have occurred.

65. Each of Chan, Horsley, Martin and Hyde signed the June 2007 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, CIBC, Merrill and Credit Suisse also signed the June 2007 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

66. Each of Chan, Horsley, Martin and Hyde signed the June 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia and TD also signed the June 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

67. Each of Chan, Horsley, Martin and Hyde signed the December 2009 Prospectus, and therein falsely certified that that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities

offered thereby. Each of Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD also signed the December 2009 Prospectus, and therein falsely certified that, to the best of its knowledge, information and belief, that prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby.

68. E&Y consented to the inclusion in: (1) the June 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (2) the December 2009 Prospectus, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; (3) the July 2008 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007, and its adjustments to Sino's Audited Annual Financial Statements for 2005 and 2006; (4) the December 2009 Offering Memorandum, of its audit reports on Sino's Audited Annual Financial Statements for 2007 and 2008; and (5) the October 2010 Offering Memoranda, of its audit reports on Sino's Audited Annual Financial Statements for 2008 and 2009.

69. BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda of its audit reports on Sino's Audited Annual Financial Statements for 2006 and 2005.

## VI. THE MISREPRESENTATIONS

70. During the Class Period, Sino made the misrepresentations particularized below. These misrepresentations related to:

- A. Sino's history and fraudulent origins;
- B. Sino's forestry assets;
- C. Sino's related party transactions;

- D. Sino's relationships with forestry bureaus and its purported title to forestry assets in the PRC;
  - E. Sino's relationships with its "Authorized Intermediaries;"
  - F. Sino's cash flows;
  - G. Certain risks to which Sino was exposed; and
  - H. Sino's compliance with GAAP and the Auditors' compliance with GAAS.
- A. *Misrepresentations relating to Sino's History and Fraudulent Origins*
- (i) *Sino Overstates the Value of, and the Revenues Generated by, the Leizhou Joint Venture*

71. At the time of its founding by way of reverse merger in 1994, Sino's business was conducted primarily through an equity joint venture between Sino's Hong Kong subsidiary, Sino-Wood Partners, Limited ("Sino-Wood"), and the Leizhou Forestry Bureau, which was situated in Guangdong Province in the south of the PRC. The name of the venture was Zhanjiang Leizhou Eucalyptus Resources Development Co. Ltd. ("**Leizhou**"). The stated purpose of Leizhou, established in 1994, was:

Managing forests, wood processing, the production of wood products and wood chemical products, and establishing a production facility with an annual production capacity of 50,000 m<sup>3</sup> of Micro Density Fiber Board (MDF), managing a base of 120,000 mu (8,000 ha) of which the forest annual utilization would be 8,000 m<sup>3</sup>.

72. There are two types of joint ventures in the PRC relevant to Sino: equity joint ventures ("EJV") and cooperating joint ventures ("CJV"). In an EJV, profits and assets are distributed in proportion to the parties' equity holdings upon winding up. In a CJV, the parties may contract to divide profits and assets disproportionately to their equity interests.

73. According to a Sino prospectus issued in January 1997, Leizhou, an EJV, was responsible for 20,000 hectares of the 30,000 hectares that Sino claimed to have "phased-in." Leizhou was the key driver of Sino's purported early growth.

74. Sino claimed to hold 53% of the equity in Leizhou, which was to total US\$10 million, and Sino further claimed that the Leizhou Forestry Bureau was to contribute 20,000 ha of forestry land. In reality, however, the terms of the EJV required the Leizhou Forestry Bureau to contribute a mere 3,533 ha.

75. What was also unknown to investors was that Leizhou did not generate the sales claimed by Sino. More particularly, in 1994, 1995 and 1996, respectively, Sino claimed to have generated US\$11.3 million, US\$23.9 million and US\$23.1 million in sales from Leizhou. In reality, however, these sales did not occur, or were materially overstated.

76. Indeed, in an undisclosed letter from Leizhou Forestry Bureau to Zhanjiang City Foreign and Economic Relations and Trade Commission, dated February 27, 1998, the Bureau complained:

To: Zhanjiang Municipal Foreign Economic Relations & Trade Commission

Through mutual consultation between Leizhou Forestry Administration (hereinafter referred to as *our side*) and Sino-Wood Partners Limited (hereinafter referred to as the *foreign party*), and, with the approval document ZJMPZ No.021 [1994] issued by your commission on 28<sup>th</sup> January 1994 for approving the contracts and articles of association entered into by both parties, and, with the approval certificate WJMZHZZZ No.065 [1994] issued by your commission, both parties jointly established Zhanjiang Eucalyptus Resources Development Co. Ltd. (hereinafter referred to as the Joint Venture) whose incorporate number is 162622-0012 and duly registered the same with Zhanjiang Administration for Industry and Commerce and obtained the business license GSQHYZ No.00604 on 29<sup>th</sup> January in the same year. It has been 4 years since the registration and we set out the situation as follows:

I. Information of the investment of both sides

- A. The investment of our side: according to the contract and articles of association signed by both sides and approved by your commission, our side has paid in RMB95,481,503.29 (equivalent to USD11,640,000.00) to the Joint Venture on 20<sup>th</sup> June 1995 through an in-kind contribution. The payment was made in accordance with the prescribed procedures and confirmed by signatures of the legal representatives of both parties. According to the Capital Verification Report from Yuexi (粤西) Accounting Firm, this payment accounts for 99.1% of the agreed capital contribution from our side, which is USD11,750,000, and accounts for 46.56% of the total investment.
- B. The investment of the foreign party: the foreign party has paid in USD1,000,000 on 16<sup>th</sup> March 1994, which was in the starting period of the Joint Venture. According to the Capital Verification Report from Yuexi (粤西) Accounting Firm, this payment only accounts for 7.55% of the agreed capital contribution from the foreign party totaling USD13,250,000, and accounts for 4% of the total investment. Then, in the prescribed investment period, the foreign party did not further pay capital into the Joint Venture. In view of this, your commission sent a "Notice on Time for Capital Contribution" to the foreign party on 30<sup>th</sup> January 1996. In accordance with the notice, the foreign party then on 10<sup>th</sup> April sent a letter to your commission, requesting for postponing the deadline for capital contribution to 20<sup>th</sup> December the same year. On 14<sup>th</sup> May 1996, your commission replied to Allen Chan (陈德源), the Chairman of the Joint Venture, stating that "postponement of the deadline for capital contribution is subject to the consent of our side and requires amendment of the term on the capital contribution time in the original contract, and both parties shall sign a bilateral supplementary contract; after the application has been approved, the postponed deadline will become effective.". Based on the spirit of the letter dated 14<sup>th</sup> May from your commission and for the purpose of achieving mutual communication and dealing with the issues of the Joint Venture actively and appropriately, on 11<sup>th</sup> June 1996, Chan Shixing (陈识兴) and two other Directors from our side sent a joint letter to Allen Chan (陈德源), the Chairman of the Joint Venture, to propose a meeting of the board to be convened before 30<sup>th</sup> June 1996 in Zhanjiang, in order to discuss how to deal with the issues of the Joint Venture in accordance with the relevant State provisions. Unfortunately, the foreign party neither had discussion with our side pursuant to your commission's letter, nor replied to the proposal of our side, and furthermore failed to make payment to the Joint Venture. Now, it has been two years beyond the deadline for capital contribution (29<sup>th</sup> January 1996), and more than one year beyond the date prescribed by the Notice on Time for Capital Contribution issued by your commission (30<sup>th</sup> April 1996). However, the foreign party has been evading the discussion of the capital contribution issue, and moreover has taken no further action.

II. *The Joint Venture is not capable of attaining substantial operation*

According to the contract and articles of association, the main purposes of setting up the Joint Venture are, on the one hand, to invest and construct a project producing 50,000 cubic meter Medium Density Fiberboard (MDF) a year; and on the other hand, to create a forest base of 120,000 mu, with which to produce 80,000 cubic meter of timber as raw material for the production of medium density fiberboard. The contract and articles of association also prescribed that the whole funding required for the MDF board project should be paid by the foreign party in cash; our side should pay in-kind the proportion of the fund prescribed by the contract. *After contributing capital of USD1,000,000 in the early stage, the foreign party not only failed to make subsequent capital contributions, but also in their own name successively withdrew a total amount of RMB4,141,045.02, from the funds they contributed, of which USD270,000 was paid to Huadu Baixing Wood Products Factory (花都市百兴木制品厂), which has no business relationship with the Joint Venture. This amount of money equals 47.6% of [the foreign party's] paid in capital. Although our side has almost paid off the agreed capital contribution (only short 0.9% of the total committed), due to the limited contribution from the foreign party and the fact that they withdrew a huge amount of money from those funds originally contributed by them, it is impossible for the Joint Venture to construct or set up production projects and to commence production operation while the funds have been insufficient and the foreign party did not pay in the majority of the subscribed capital. In fact, the Joint Venture therefore is merely a shell, existing in name only.*

*Additionally, after the establishment of the Joint Venture, its internal operations have been extremely abnormal, for example, annual board meetings have not been held as scheduled; annual reports on the status and the results of the annual financial audit are missing; the withdrawal of the huge amount of funds by the foreign party was not discussed in the board meetings, etc. It is hard to list all here.*

In light of the present state of contributions by both sides and the status of the Joint Venture from its establishment till now, our side now applies to your commission for:

1. The cancellation of the approval certificate for "Zhanjiang Eucalyptus Resources Development Co. Ltd.", i.e. WJMZHZZZ No. 065[1994], based on the relevant provisions of Certain Regulations on the Subscription of Capital by the Parties to Sino-Foreign Joint Equity Enterprises,

2. Direct the Joint Venture to complete the deregistration procedures for "Zhanjiang Eucalyptus Resources Development Co. Ltd." at the local Administration for Industry and Commerce, and for the return of its business license.
3. Coordination with both parties to resolve the relevant remaining issues.

Please let us have your reply on whether the above is in order.

The Seal of the Leizhou Forestry Bureau

1998, February 27

[Translation; emphasis added.]

77. In its 1996 Annual Financial Statements, Sino stated:

The \$14,992,000 due from the LFB represents cash collected from the sale of wood chips on behalf of the Leizhou EJV. As originally agreed to by Sino-Wood, the cash was being retained by the LFB to fund the ongoing plantation costs of the Leizhou EJV incurred by the LFB. Sino-Wood and LFB have agreed that the amount due to the Leizhou EJV, after reduction for plantation costs incurred, will be settled in 1997 concurrent with the settlement of capital contributions due to the Leizhou EJV by Sino-Wood.

78. These statements were false, inasmuch as Leizhou never generated such sales. Leizhou was wound-up in 1998.

79. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to Leizhou, and knowingly misrepresented the true status of Leizhou, as well as its true revenues and profits.

(ii) *Sino's Fictitious Investment in SJXT*

80. In Sino's audited financial statements for the year ended December 31, 1997, filed on SEDAR on May 20, 1998 (the "1997 Financial Statements"), Sino stated that, in order to establish strategic partnerships with key local wood product suppliers and to build a strong distribution for the wood-based product and contract supply businesses, it had acquired a 20% equity interest in "Shanghai Jin Xiang Timber Ltd." ("SJXT"). Sino then described SJXT as an

EJV that had been formed in 1997 by the Ministry of Forestry in China, and declared that its function was to organize and manage the first and only official market for timber and log trading in Eastern China. It further stated that the investment in SJXT was expected to provide the Company with good accessibility to a large base of potential customers and companies in the timber and log businesses in Eastern China.

81. There is, in fact, no entity known as "Shanghai Jin Xiang Timber Ltd." While an entity called "Shanghai Jin Xiang Timber Wholesale Market" does exist, Sino did not have, as claimed in its disclosure documents, an equity stake in that venture.

82. According to the 1997 Audited Annual Financial Statements, the total investment of SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately US\$1.9 million for a 20% equity interest. The 1997 Audited Annual Financial Statements stated that, as at December 31, 1997, Sino had made capital contributions to SJXT in the amount of US\$1.0 million. In Sino's balance sheet as at December 31, 1997, the SJXT investment was shown as an asset of \$1.0 million.

83. In October 1998, Sino announced an Agency Agreement with SJXT. At that time, Sino stated that it would provide 130,000 m<sup>3</sup> of various wood products to SJXT over an 18 month period, and that, based on then-current market prices, it expected this contract to generate "significant revenue" for Sino-Forest amounting to approximately \$40 million. The revenues that were purportedly anticipated from the SJXT contract were highly material to Sino. Indeed, Sino's total reported revenues in 1998 were \$92.7 million.

84. In Sino's Audited Annual Financial Statements for the year ended December 31, 1998, which statements were filed on SEDAR on May 18, 1999 (the "1998 Financial Statements"), Sino again stated that, in 1997, it had acquired a 20% equity interest in SJXT, that the total



investment in SJXT was estimated to be US\$9.7 million, of which Sino would be required to contribute approximately \$1.9 million, representing 20% of the registered capital, and that, as at December 31, 1997 and 1998, Sino had made contributions in the amount of US\$1.0 million to SJXT. In Sino's balance sheet as at December 31, 1998, the SJXT investment was again shown as an asset of US\$1.0 million.

85. Sino also stated in the 1998 Audited Annual Financial Statements that, during 1998, the sale of logs and lumber to SJXT amounted to approximately US\$537,000. These sales were identified in the notes to the 1998 Financial Statements as related party transactions.

86. In Sino's Annual Report for 1998, Chan stated that lumber and wood products trading constituted a "promising new opportunity." Chan explained that:

*SJXT represents a very significant development for our lumber and wood products trading business. The market is prospering and continues to look very promising.* Phase I, consisting of 100 shops, is completed. Phases II and III are expected to be completed by the year 2000. This expansion would triple the size of the Shanghai Timber Market.

*The Shanghai Timber Market is important to Sino-Forest as a generator of significant new revenue. In addition to supplying various forest products to the market from our own operations, our direct participation in SJXT increases our activities in sourcing a wide range of other wood products both from inside China and internationally.*

*The Shanghai Timber Market is also very beneficial to the development of the forest products industry in China because it is the first forest products national sub-market in the eastern region of the country.*

[...]

*The market also greatly facilitates Sino-Forest's networking activities, enabling us to build new industry relationships and add to our market intelligence, all of which increasingly leverage our ability to act as principal in our dealings.*

[Emphasis added.]

87. Chan also stated in the 1998 Annual Report that the “Agency Agreement with SJXT [is] expected to generate approximately \$40 million over 18 months.”

88. In Sino’s Annual Report for 1999, Sino stated:

*There are also promising growth opportunities as Sino-Forest’s investment in Shanghai Jin Xiang Timber Ltd. (SJXT or the Shanghai Timber Market), develops.* The Company also continues to explore opportunities to establish and reinforce ties with other international forestry companies and to bring our e-commerce technology into operation.

Sino-Forest’s investment in the Shanghai Timber Market — the first national forest products submarket in eastern China — has provided a strong foundation for the Company’s lumber and wood products trading business.

[Emphasis added.]

89. In Sino’s MD&A for the year ended December 31, 1999, Sino also stated that:

*Sales from lumber and wood products trading increased 264% to \$34.2 million compared to \$9.4 million in 1998. The increase in lumber and wood products trading is attributable largely to the increase in new business generated from our investment in Shanghai Jin Xiang Timber Ltd. (SJXT) and a larger sales force in 1999.* Lumber and wood products trading on an agency basis has increased 35% from \$2.3 million in 1998 to \$3.1 million in 1999. The increase in commission income on lumber and wood products trading is attributable to approximately \$1.8 million of fees earned from a new customer.

[Emphasis added.]

90. That same MD&A, however, also states that “The investment in SJXT has contributed to the significant growth of the lumber and wood products trading business, *which has recorded an increase in sales of 219% from \$11.7 million in 1998 to \$37.2 million in 1999*” (emphasis added).

91. In Sino’s Audited Annual Financial Statements for the year ended December 31, 1999, which statements were filed on SEDAR on May 18, 2000 (the “1999 Financial Statements”), Sino stated:

During the year, Shanghai Jin Xiang Timber Ltd. ["SJXT"] applied to increase *the original total capital contributions of \$868,000* [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to *make an additional contribution of \$278,000* as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 *increasing its equity interest in SJXT from 27.8% to 34.4%*. The principal activity of SJXT is to organize trading of timber and logs in the PRC market.

[Emphasis added.]

92. The statements made in the 1999 Financial Statements contradicted Sino's prior representations in relation to SJXT. Among other things, Sino previously claimed to have made a capital contribution of \$1,037,000 for a 20% equity interest in SJXT.

93. In addition, note 2(b) to the 1999 Financial Statements stated that, "[a]s at December 31, 1999, \$796,000...advances to SJXT remained outstanding. The advances to SJXT were unsecured, non-interest bearing and without a fixed repayment date." Thus, assuming that Sino's contributions to SJXT were actually made, then Sino's prior statements in relation to SJXT were materially misleading, and violated GAAP, inasmuch as those statements failed to disclose that Sino had made to SJXT, a related party, a non-interest bearing loan of \$796,000.

94. In Sino's Audited Annual Financial Statements for the year ended December 31, 2000, which statements were filed on SEDAR on May 18, 2000 (the "**2000 Financial Statements**"), Sino stated:

In 1999, Shanghai Jin Xiang Timber Ltd. ("SJXT") applied to increase the original total capital contributions of \$868,000 [Chinese renminbi 7.2 million] to \$1,509,000 [Chinese renminbi 12.5 million]. Sino-Wood is required to make an additional contribution of \$278,000 as a result of the increase in total capital contributions. The additional capital contribution of \$278,000 was made in 1999 increasing its equity interest in SJXT from 27.8% to 34.4%. The principal activity of SJXT is to organize the trading of timber and logs in the PRC market. During the year, advances to SJXT of \$796,000 were repaid.

95. In Sino's balance sheet as at December 31, 2000, the SJXT investment was shown as an asset of \$519,000, being the sum of Sino's purported SJXT investment of \$1,315,000 as at December 31, 1999, and the \$796,000 of "advances" purportedly repaid to Sino by SJXT during the year ended December 31, 2000.

96. In Sino's Annual Reports (including the audited annual financial statements contained therein) for the years 2001 and beyond, there is no discussion whatsoever of SJXT. Indeed, Sino's "promising" and "very significant" investment in SJXT simply evaporated, without explanation, from Sino's disclosure documents. In fact, and unbeknownst to the public, Sino never invested in a company called "Shanghai Jin Xiang Timber Ltd." Chan and Poon knew, or were reckless in not knowing of, that fact.

97. At all material times, Sino's founders, Chan and Poon, were fully aware of the reality relating to SJXT, and knowingly misrepresented the true status of SJXT and Sino's interest therein.

*(iii) Sino's Materially Deficient and Misleading Class Period Disclosures regarding Sino's History*

98. During the Class Period, the Sino disclosure documents identified below purported to provide investors with an overview of Sino's history. However, those disclosure documents, and indeed all of the Impugned Documents, failed to disclose the material fact that, from its very founding, Sino was a fraud, inasmuch as its purportedly key investments in Leizhou and SJXT were either grossly inflated or fictitious.

99. Accordingly, the statements particularized in paragraphs 100 to 104 below were misrepresentations. The misleading nature of such statements was exacerbated by the fact that, throughout the Class Period, Sino's senior management and Board purported to be governed by

the Code, which touted the “high standards of ethical conduct, in both words and actions”, of Sino’s senior management and Board.

100. In the Prospectuses, Sino described its history, but did not disclose that the SJXT investment was fictitious, or that the revenues generated by Leizhou were non-existent or grossly overstated.

101. In particular, the June 2007 Prospectus stated merely that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge Minerals Inc. and 1028412 Ontario Inc. pursuant to articles of amalgamation dated March 14, 1994. The articles of amalgamation were amended by articles of amendment filed on July 20, 1995 and May 20, 1999 to effect certain changes in the provisions attaching to the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation filed articles of amendment whereby its class A subordinate-voting shares were reclassified as Common Shares and its class B multiple-voting shares were eliminated.

102. Similarly, the June 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge Minerals Inc. and 1028412 Ontario Inc. pursuant to articles of amalgamation dated March 14, 1994. The articles of amalgamation were amended by articles of amendment filed on July 20, 1995 and May 20, 1999 to effect certain changes in the provisions attaching to the Corporation’s class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act*. On June 22, 2004, the Corporation filed articles of amendment whereby its class A subordinate-voting shares were reclassified as Common Shares and its class B multiple-voting shares were eliminated.

103. Finally, the December 2009 Prospectus stated only that:

The Corporation was formed under the *Business Corporations Act* (Ontario) upon the amalgamation of Mt. Kearsarge Minerals Inc. and 1028412 Ontario Inc. pursuant to articles of amalgamation dated March 14, 1994. The articles of amalgamation were amended by articles of amendment filed on July 20, 1995 and May 20, 1999 to effect certain changes in the provisions attaching to the

Corporation's class A subordinate-voting shares and class B multiple-voting shares. On June 25, 2002, the Corporation filed articles of continuance to continue under the *Canada Business Corporations Act* (the "CBCA"). On June 22, 2004, the Corporation filed articles of amendment whereby its class A subordinate-voting shares were reclassified as Common Shares and its class B multiple-voting shares were eliminated.

104. The failure to disclose the true nature of, and/or Sino's revenues and profits from, SJXT and Leizhou in the historical narrative in the Prospectuses rendered those Prospectuses materially false and misleading. Those historical facts would have alerted persons who purchased Sino shares under the Prospectuses, and/or in the secondary markets, to the highly elevated risk of investing in a company that continued to be controlled by Chan and Poon, both of whom were founders of Sino, and both of whom had knowingly misrepresented the true nature of Leizhou and SJXT from the time of Sino's creation. Thus, Sino was required to disclose those historical facts to the Class Members during the Class Period, but failed to do so, either in the Prospectuses or in any other Impugned Document.

**B. *Misrepresentations relating to Sino's Forestry Assets***

*(i) Sino Overstates its Yunnan Forestry Assets*

105. In a press release issued by Sino and filed on SEDAR on March 23, 2007, Sino announced that it had entered into an agreement to sell 26 million shares to several institutional investors for gross proceeds of US\$200 million, and that the proceeds would be used for the acquisition of standing timber, including pursuant to a new agreement to purchase standing timber in Yunnan Province. It further stated in that press release that Sino-Panel (Asia) Inc. ("**Sino-Panel**"), a wholly-owned subsidiary of Sino, had entered on that same day into an agreement with Gengma Dai and Wa Tribes Autonomous Region Forestry Company Ltd., ("**Gengma Forestry**") established in Lincang City, Yunnan Province in the PRC, and that, under that Agreement, Sino-Panel would acquire approximately 200,000 hectares of non-state owned

commercial standing timber in Lincang City and surrounding cities in Yunnan for US\$700 million to US\$1.4 billion over a 10-year period.

106. These same terms of Sino's Agreement with Gengma Forestry were disclosed in Sino's Q1 2007 MD&A. Moreover, throughout the Class Period, Sino discussed its purported Yunnan acquisitions in the Impugned Documents, and Pöyry repeatedly made statements regarding said holdings, as particularized below.

107. The reported acquisitions did not take place. Sino overstated to a material degree the size and value of its forestry holdings in Yunnan Province. It simply does not own all of the trees it claims to own in Yunnan. Sino's overstatement of the Yunnan forestry assets violated GAAP.

108. The misrepresentations about Sino's acquisition and holdings of the Yunnan forestry assets were made in all of the Impugned Documents that were MD&As, financial statements, AIFs, Prospectuses and Offering Memoranda, except for the 2005 Audited Annual Financial Statements, the Q1 2006 interim financial statements, the 2006 Audited Annual Financial Statements, the 2006 Annual MD&A.

(ii) *Sino Overstates its Suriname Forestry Assets; Alternatively, Sino fails to Disclose the Material Fact that its Suriname Forestry Assets are contrary to the Laws of Suriname*

109. In mid-2010, Sino became a majority shareholder of Greenheart Group Ltd., a Bermuda corporation having its headquarters in Hong Kong, China and a listing on the Hong Kong Stock Exchange ("**Greenheart**").

110. In August 2010, Greenheart issued an aggregate principal amount of US\$25,000,000 convertible notes for gross proceeds of US\$24,750,000. The sole subscriber of these convertible notes was Greater Sino Holdings Limited, an entity in which Murray has an indirect interest. In

addition, Chan and Murray then became members of Greenheart's Board, Chan became the Board's Chairman, and Martin became the CEO of Greenheart and a member of its Board.

111. On August 24, 2010 and December 28, 2010, Greenheart granted to Chan, Martin and Murray options to purchase, respectively, approximately 6.8 million, 6.8 million and 1.1 million Greenheart shares. The options are exercisable for a five-year term.

112. As at March 31, 2011, General Enterprise Management Services International Limited, a company in which Murray has an indirect interest, held 7,000,000 shares of Greenheart, being 0.9% of the total issued and outstanding shares of Greenheart.

113. As a result of the aforesaid transactions and interests, Sino, Chan, Martin and Murray stood to profit handsomely from any inflation in the market price of Greenheart's shares.

114. At all material times, Greenheart purported to have forestry assets in New Zealand and Suriname. On March 1, 2011, Greenheart issued a press release in which it announced that:

**Greenheart acquires certain rights to additional 128,000 hectare concession in Suriname**

\*\*\*\*\*

**312,000 hectares now under Greenheart management**

Hong Kong, March 1, 2011 – Greenheart Group Limited (“Greenheart” or “the Company”) (HKSE: 00094), an investment holding company with forestry assets in Suriname and New Zealand (subject to certain closing conditions) today announced that *the Company has acquired 60% of Vista Marine Services N.V. (“Vista”), a private company based in Suriname, South America that controls certain harvesting rights to a 128,000 hectares hardwood concession. Vista will be rebranded as part of the Greenheart Group. This transaction will increase Greenheart’s concessions under management in Suriname to approximately 312,000 hectares.* The cost of this acquisition is not material to the Company as a whole but the Company is optimistic about the prospects of Vista and the positive impact that it will bring. *The concession is located in the Sipalawini district of Suriname, South America, bordering Lake Brokopondo and has an estimated annual allowable cut of approximately 100,000 cubic meters.*



Mr. Judson Martin, Chief Executive Officer of Greenheart and Vice-Chairman of Sino-Forest Corporation, the Company's controlling shareholder said, "This acquisition is in line with our growth strategy to expand our footprint in Suriname. In addition to increased harvestable area, this acquisition will bring synergies in sales, marketing, administration, financial reporting and control, logistics and overall management. I am pleased to welcome Mr. Ty Wilkinson to Greenheart as our minority partner. Mr. Wilkinson shares our respect for the people of Suriname and the land and will be appointed Chief Executive Officer of this joint venture and be responsible for operating in a sustainable and responsible manner. This acquisition further advances Greenheart's strategy of becoming a global agri-forestry company. We will continue to actively seek well-priced and sustainable concessions in Suriname and neighboring regions in the coming months."

[Emphasis added.]

115. In its 2010 AIF, filed on SEDAR on March 31, 2011, Sino stated:

We hold a majority interest in Greenheart Group which, together with its subsidiaries, owns certain rights and *manages approximately 312,000 hectares of hardwood forest concessions in the Republic of Suriname, South America* ("Suriname") and 11,000 hectares of a radiata pine plantation on 13,000 hectares of freehold land in New Zealand as at March 31, 2011. *We believe that our ownership in Greenheart Group will strengthen our global sourcing network in supplying wood fibre for China in a sustainable and responsible manner.*

[Emphasis added.]

116. The statements reproduced in the preceding paragraph were false and/or materially misleading when made. Under the Suriname *Forest Management Act*, it is prohibited for one company or a group of companies in which one person or company has a majority interest to control more than 150,000 hectares of land under concession. Therefore, either Greenheart's concessions under management in Suriname did not exceed 150,000 hectares, or Greenheart's concessions under management in Suriname violated the laws of Suriname, which was a material fact not disclosed in any of the Impugned Documents.

117. In each of the October 2010 Offering Memorandum, the 2010 Annual MD&A, the 2010 AIF, Sino represented that Greenheart had well in excess of 150,000 hectares of concession

under management in Suriname without however disclosing that Suriname law imposed a limit of 150,000 hectares on Greenheart and its subsidiaries.

118. Finally, Vista's forestry concessions are located in a region of Suriname populated by the Saramaka, an indigenous people. Pursuant to the American Convention on Human Rights and a decision of the Inter-American Court of Human Rights, the Saramaka people must have effective control over their land, including the management of their reserves, and must be effectively consulted by the State of Suriname. Sino has not disclosed in any of the Impugned Documents where it has discussed Greenheart and/or Suriname assets that Vista's purported concessions in Suriname, if they exist at all, are impaired due to the unfulfilled rights of the indigenous people of Suriname, in violation of GAAP. The Impugned Documents that omitted that disclosure were the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

(iii) *Sino overstates its Jiangxi Forestry Assets*

119. On June 11, 2009, Sino issued a press release in which it stated:

Sino-Forest Corporation (TSX: TRE), a leading commercial forest plantation operator in China, announced today that its wholly-owned subsidiary, Sino-Panel (China) Investments Limited ("Sino-Panel"), has entered into a Master Agreement for the Purchase of Pine and Chinese Fir Plantation Forests (the "Jiangxi Master Agreement") with Jiangxi Zhonggan Industrial Development Company Limited ("Jiangxi Zhonggan"), which will act as the authorized agent for the original plantation rights holders.

Under the Jiangxi Master Agreement, Sino-Panel will, through PRC subsidiaries of Sino-Forest, acquire between 15 million and 18 million cubic metres (m<sup>3</sup>) of wood fibre located in plantations in Jiangxi Province over a three-year period with a price not to exceed RMB300 per m<sup>3</sup>, to the extent permitted under the relevant PRC laws and regulations. ***The plantations in which such amount of wood fibre to acquire is between 150,000 and 300,000 hectares*** to achieve an estimated average wood fibre yield of approximately 100 m<sup>3</sup> per hectare, and include tree species such as pine, Chinese fir and others. Jiangxi Zhonggan will ensure plantation forests sold to Sino-Panel and its PRC subsidiaries are non-state-owned, non-natural, commercial plantation forest trees.

In addition to securing the maximum tree acquisition price, Sino-Panel has pre-emptive rights to lease the underlying plantation land at a price, permitted under the relevant PRC laws and regulations, not to exceed RMB450 per hectare per annum for 30 years from the

time of harvest. The land lease can also be extended to 50 years as permitted under PRC laws and regulations. The specific terms and conditions of purchasing or leasing are to be determined upon the execution of definitive agreements between the PRC subsidiaries of Sino-Panel and Jiangxi Zhonggan upon the authorisation of original plantation rights holders, and subject to the requisite governmental approval and in compliance with the relevant PRC laws and regulations.

*Sino-Forest Chairman and CEO Allen Chan said, "We are fortunate to have been able to capture and support investment opportunities in China's developing forestry sector by locking up a large amount of fibre at competitive prices. The Jiangxi Master Agreement is Sino-Forest's fifth, long-term, fibre purchase agreement during the past two years. These five agreements cover a total plantation area of over one million hectares in five of China's most densely forested provinces."*

[Emphasis added.]

120. According to Sino's 2010 Annual MD&A, as of December 31, 2010, Sino had acquired 59,700 ha of plantation trees from Jiangxi Zhonggan Industrial Development Company Limited ("**Zhonggan**") for US\$269.1 million under the terms of the master agreement. (In its interim report for the second quarter of 2011, which was issued after the Class Period, Sino claims that, as at June 30, 2011, this number had increased to 69,100 ha, for a purchase price of US\$309.6 million).

121. However, as was known to Sino, Chan, Poon and Horsley, and as ought to have been known to the remaining Individual Defendants, BDO, E&Y and Pöyry, Sino's plantation acquisitions through Zhonggan are materially smaller than Sino has claimed.

*(iv) Poyry makes Misrepresentations in relation to Sino's Forestry Assets*

122. As particularized above, Sino overstated its forestry assets in Yunnan and Jiangxi Provinces in the PRC and in Suriname. Accordingly, Sino's total assets are overstated to a material degree in all of the Impugned Documents, in violation of GAAP, and each such statement of Sino's total assets constitutes a misrepresentation.

123. In addition, during the Class Period, Pöyry and entities affiliated with it made statements that are misrepresentations in regard to Sino's Yunnan Province "assets," namely:

- (a) In a report dated March 14, 2008, filed on SEDAR on March 31, 2008 (the "2008 Valuations"), Pöyry: (a) stated that it had determined the valuation of the Sino forest assets to be US\$3.2 billion as at 31 December 2007; (b) provided tables and figures regarding Yunnan; (c) stated that "Stands in Yunnan range from 20 ha to 1000 ha," that "In 2007 Sino-Forest purchased an area of mixed broadleaf forest in Yunnan Province," that "Broadleaf forests already acquired in Yunnan are all mature," and that "Sino-Forest is embarking on a series of forest acquisitions/expansion efforts in Hunan, Yunnan and Guangxi;" and (d) provided a detailed discussion of Sino's Yunnan "holdings" at Appendixes 3 and 5. Pöyry's 2008 Valuations were incorporated in Sino's 2007 Annual MD&A, amended 2007 Annual MD&A, 2007 AIF, each of the Q1, Q2, and Q3 2008 MD&As, Annual 2008 MD&A, amended Annual 2008 MD&A, each of the Q1, Q2 and Q3 2009, annual 2009 MD&A, and July 2008 and December 2009 Offering Memoranda;
- (b) In a report dated April 1, 2009 and filed on SEDAR on April 2, 2009 (the "2009 Valuations"), Pöyry stated that "[t]he area of forest owned in Yunnan has quadrupled from around 10 000 ha to almost 40 000 ha over the past year," provided figures and tables regarding Yunnan, and stated that "Sino-Forest has increased its holding of broadleaf crops in Yunnan during 2008, with this province containing nearly 99% of its broadleaf resource." Pöyry's 2009 Valuations were incorporated in Sino's 2008 AIF, each of the Q1, Q2, Q3 2009 MD&As, Annual 2009 MD&A, June 2009 Offering Memorandum, and June 2009 and December 2009 Prospectuses;
- (c) In a "Final Report" dated April 23, 2010, filed on SEDAR on April 30, 2010 (the "2010 Valuations"), Pöyry stated that "Guangxi, Hunan and Yunnan are the three largest provinces in terms of Sino-Forest's holdings. The largest change in area by province, both in absolute and relative terms [sic] has been Yunnan, where the

area of forest owned has almost tripled, from around 39 000 ha to almost 106 000 ha over the past year,” provided figures and tables regarding Yunnan, stated that “Yunnan contains 106 000 ha, including 85 000 ha or 99% of the total broadleaf forest,” stated that “the three provinces of Guangxi, Hunan and Yunnan together contain 391 000 ha or about 80% of the total forest area of 491 000 ha” and that “[a]lmost 97% of the broadleaf forest is in Yunnan,” and provided a detailed discussion of Sino’s Yunnan “holdings” at Appendixes 3 and 4. Pöyry’s 2010 Valuations were incorporated in Sino’s 2009 AIF, the annual 2009 MD&A, each of the Q1, Q2 and Q3 2010 MD&As, and the October 2010 Offering Memorandum;

- (d) In a “Summary Valuation Report” regarding “Valuation of Purchased Forest Crops as at 31 December 2010” and dated May 27, 2011, Pöyry provided tables and figures regarding Yunnan, stated that “[t]he major changes in area by species from December 2009 to 2010 has been in Yunnan pine, with acquisitions in Yunnan and Sichuan provinces” and that “[a]nalysis of [Sino’s] inventory data for broadleaf forest in Yunnan, and comparisons with an inventory that Pöyry undertook there in 2008 supported the upwards revision of prices applied to the Yunnan broadleaf large size log,” and stated that “[t]he yield table for Yunnan pine in Yunnan and Sichuan provinces was derived from data collected in this species in these provinces by Pöyry during other work;” and
- (e) In a press release titled “Summary of Sino-Forest’s China Forest Asset 2010 Valuation Reports” and which was “jointly prepared by Sino-Forest and Pöyry to highlight key findings and outcomes from the 2010 valuation reports,” Pöyry reported on Sino’s “holdings” and estimated the market value of Sino’s forest assets on the 754,816 ha to be approximately US\$3.1 billion as at December 31, 2010.

C. *Misrepresentations relating to Sino's Related Party Transactions*

(i) *Related Party Transactions Generally*

124. Under GAAP and GAAS, a "related party" exists "when one party has the ability to exercise directly or indirectly, control, joint control or significant influence over the other." (CICA Handbook 3840.03) Examples include a parent-subsidary relationship or an entity that is economically dependent upon another.

125. Related parties raise the concern that transactions may not be conducted at arm's length, and pricing or other terms may not be determined at fair market values. For example, when a subsidiary "sells" an asset to its parent at a given price, it may not be appropriate that that asset be reported on the balance sheet or charged against the earnings of the parent at that price. Where transactions are conducted between arm's length parties, this concern is generally not present.

126. The existence of related party transactions is important to investors irrespective of the reported dollar values of the transactions because the transactions may be controlled, manipulated and/or concealed by management (for example, for corporate purposes or because fraudulent activity is involved), and because such transactions may be used to benefit management or persons close to management at the expense of the company, and therefore its shareholders.

(ii) *Sino fails to disclose that Zhonggan was a Related Party*

127. Irrespective of the true extent of Zhonggan's transactions in Jiangxi forestry plantations, Sino failed to disclose, in violation of GAAP, that Zhonggan was a related party of Sino. More particularly, according to AIC records, the legal representative of Zhonggan is Lam Hong Chiu, who is an executive vice president of Sino. Lam Hong Chiu is also a director and a 50%

shareholder of China Square Industrial Limited, a BVI corporation which, according to AIC records, owns 80% of the equity of Zhonggan.

128. The Impugned Documents that omitted that disclosure were the Q2 2009 MD&A, the Q2 2009 interim financial statements, the Q3 2009 MD&A, the Q3 2009 interim financial statements, the December 2009 Prospectus, the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

*(iii) Sino fails to disclose that Homix was a Related Party*

129. On January 12, 2010, Sino issued a press release in which it announced the acquisition by one of its wholly-owned subsidiaries of Homix Limited (“**Homix**”), which it described as a company engaged in research and development and manufacturing of engineered-wood products in China, for an aggregate amount of US\$7.1 million. That press release stated:

HOMIX has an R&D laboratory and two engineered-wood production operations based in Guangzhou and Jiangsu Provinces, covering eastern and southern China wood product markets. The company has developed a number of new technologies with patent rights, specifically suitable for domestic plantation logs including poplar and eucalyptus species. HOMIX specializes in curing, drying and dyeing methods for engineered wood and has the know-how to produce recomposed wood products and laminated veneer lumber. Recomposed wood technology is considered to be environment-friendly and versatile as it uses fibre from forest plantations, recycled wood and/or wood residue. This reduces the traditional use of large-diameter trees from natural forests. There is growing demand for recomposed wood technology as it reduces cost for raw material while increases the utilization and sustainable use of plantation fibre for the production of furniture and interior/exterior building materials.

[...]

Mr. Allen Chan, Sino-Forest’s Chairman & CEO, said, “As we continue to ramp up our replanting programme with improved eucalyptus species, it is important for Sino-Forest to continue investing in the research and development that maximizes all aspects of the

forest product supply chain. Modernization and improved productivity of the wood processing industry in China is also necessary given the country's chronic wood fibre deficit. Increased use of technology improves operation efficiency, and maximizes and broadens the use of domestic plantation wood, which reduces the need for logging domestic natural forests and for importing logs from strained tropical forests. HOMIX has significant technological capabilities in engineered-wood processing."

Mr. Chan added, "By acquiring HOMIX, we intend to use six-year eucalyptus fibre instead of 30-year tree fibre from other species to produce quality lumber using recomposed technology. We believe that this will help preserve natural forests as well as improve the demand for and pricing of our planted eucalyptus trees."

130. Sino's 2009 Audited Annual Financial Statements, Q1/2010 Unaudited Interim Financial Statements, 2010 Audited Annual Financial Statements, the MD&As related to each of the aforementioned financial statements, and Sino's AIFs for 2009 and 2010, each discussed the acquisition of Homix, but nowhere disclosed that Homix was in fact a related party of Sino.

131. More particularly, Hua Chen, a Senior Vice President, Administration & Finance, of Sino in the PRC, and who joined Sino in 2002, is a 30% shareholder of an operating subsidiary of Homix, Jiangsu Dayang Wood Co., Ltd. ("**Jiangsu**")

132. In order to persuade current and prospective Sino shareholders that there was a commercial justification for the Homix acquisition, Sino misrepresented Homix's patent designs registered with the PRC State Intellectual Property Office. In particular, in its 2009 Annual Report, Sino stated:

#### HOMIX acquisition

In accordance with our strategy to focus on research and development and to improve the end-use of our wood fibre, we acquired HOMIX Ltd. in January 2010 for \$7.1 million. This corporate acquisition is small but strategically important *adding valuable intellectual property rights* and two engineered-wood processing facilities located in Guangdong and Jiangsu Provinces to our operations. *Homix has developed environment-friendly technology, an efficient process using recomposed technology to convert small-diameter plantation logs into building materials and furniture.* Since we plan to grow high volumes of eucalypt and other FGHY species, this acquisition will help us achieve our long-term objectives of maximizing the use of our fibre, supplying a



variety of downstream customers and enhancing economic rural development. [Emphasis added]

133. However, Homix itself then had no patent designs registered with the PRC State Intellectual Property Office. At that time, Homix had two subsidiaries, Jiangsu and Guangzhou Pany Dacheng Wood Co. The latter then had no patent designs registered with the PRC State Intellectual Property Office, while Jiangsu had two patent designs. However, each such design was for wood dyeing, and not for the conversion of small-diameter plantation logs into building materials and furniture.

*(iv) Sino fails to disclose that Yunnan Shunxuan was a Related Party*

134. In addition, during the Class Period, Sino purportedly purchased approximately 1,600 hectares of timber in Yunnan province from Yunnan Shunxuan Forestry Co. Ltd. Yunnan Shunxuan was part of Sino, acting under a separate label. Accordingly, it was considered a related party for the purposes of the GAAP disclosure requirements, a fact that Sino failed to disclose.

135. The Impugned Documents that omitted that disclosure were the 2009 Annual MD&A, the 2009 Audited Annual Financial Statements, the 2009 AIF, the Q1 2010 MD&A, the Q1 2010 interim financial statements, the Q2 2010 MD&A, the Q2 2010 interim financial statements, the Q3 2010 MD&A, the Q3 2010 interim financial statements, the 2010 Annual MD&A, the 2010 Audited Annual Financial Statements, and the 2010 AIF.

136. Sino's failure to disclose that Yunnan Shunxuan was a related party was a violation of GAAP, and a misrepresentation.

*(v) Sino fails to disclose that Yuda Wood was a Related Party*

137. Huaihua City Yuda Wood Co. Ltd., based in Huaihua City, Hunan Province ("Yuda Wood"), was a major supplier of Sino at material times. Yuda Wood was founded in April 2006

and, from 2007 until 2010, its business with Sino totalled approximately 152,164 Ha and RMB 4.94 billion.

138. During that period, Yuda Wood was a related party of Sino. Indeed, in the Second Report, the IC acknowledged that *“there is evidence suggesting close cooperation [between Sino and Yuda Wood] (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood’s RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)”* [emphasis added.]

139. The fact that Yuda Wood was a related party of Sino during the Class Period was a material fact and was required to be disclosed under GAAP, but, during the Class Period, that fact was not disclosed by Sino in any of the Impugned Documents, or otherwise.

*(vi) Sino fails to Disclose that Major Suppliers were Related Parties*

140. At material times, Sino had at least thirteen suppliers where former Sino employees, consultants or secondees are or were directors, officers and/or shareholders of one or more such suppliers. Due to these and other connections between these suppliers and Sino, some or all of such suppliers were in fact undisclosed related parties of Sino.

141. Including Yuda Wood, the thirteen suppliers referenced above accounted for 43% of Sino’s purported plantation purchases between 2006 and the first quarter of 2011.

142. In none of the Impugned Documents did Sino disclose that any of these suppliers were related parties, nor did it disclose sufficient particulars of its relations with such suppliers as would have enabled the investing public to ascertain that those suppliers were related parties.

**D. *Misrepresentations relating to Sino's Relations with Forestry Bureaus and its Purported Title to Forestry Assets in the PRC***

143. In at least two instances during the Class Period, PRC forestry bureau officials were either concurrently or subsequently employees of, or consultants to, Sino. One forestry bureau assigned employees to Sino and other companies to assist in the development of the forestry industry in its jurisdiction.

144. In addition, a vice-chief of the forestry bureau was assigned to work closely with Sino, and while that vice chief still drew a basic salary from the forestry bureau, he also acted as a consultant to Sino in the conduct of Sino's business. This arrangement was in place for several years. That vice-chief appeared on Sino's payroll from January 2007 with a monthly payment of RMB 15,000, which was significant compared with his forestry bureau salary.

145. In addition, at material times, Sino and/or its subsidiaries and/or its suppliers made cash payments and gave "gifts" to forestry bureau officials, which potentially constituted a serious criminal offence under the laws of the PRC. At least some of these payments and gifts were made or given in order to induce the recipients to issue "confirmation letters" in relation to Sino's purported holdings in the PRC of standing timber. These practices utterly compromised the integrity of the process whereby those "confirmation letters" were obtained.

146. Further, a chief of a forestry bureau who had authorized the issuance of confirmations to Sino was arrested due to corruption charges. That forestry bureau had issued confirmations only to Sino and to no other companies. Subsequent to the termination of that forestry bureau chief, that forestry bureau did not issue confirmations to any company.

147. The foregoing facts were material because: (1) they undermined the reliability (if any) of the documentation upon which Sino relied and continues to rely to establish its ownership of

standing timber; and (2) the corruption in which Sino was engaged exposed Sino to potential criminal penalties, including substantial fines, as well as a risk of severe reputational damage in Sino's most important market, the PRC.

148. However, none of these facts was disclosed in any of the Impugned Documents. On the contrary, Sino only made the following disclosure regarding former government officials in its 2007 Annual Report (and in no other Impugned Document), which was materially incomplete, and a misrepresentation:

To ensure successful growth, we have trained and promoted staff from within our organization, and hired knowledgeable people with relevant working experience and industry expertise – some joined us from forestry bureaus in various regions and provinces and/or state-owned tree farms. [...] 4. Based in Heyuan, Guangdong, Deputy GM responsible for Heyuan plantations, previously with forestry bureau; studied at Yangdongxian Dangxiao [Mr. Liang] 5. Based in Hunan, Plantation controller, graduated from Hunan Agricultural University, previously Assistant Manager of state-owned farm trees in Hunan [Mr. Xie].

149. In respect of Sino's purported title to standing timber in the PRC, Sino possessed Plantation Rights Certificates, or registered title, only in respect of 18% of its purported holdings of standing timber as at December 31, 2010, a fact nowhere disclosed by Sino during the Class Period. This fact was highly material to Sino, inasmuch as standing timber comprised a large proportion of Sino's assets throughout the Class Period, and in the absence of Plantation Rights Certificates, Sino could not establish its title to that standing timber.

150. Rather than disclose this highly material fact, Sino made the following misrepresentations in the following Impugned Documents:

- (a) In the 2008 AIF: "*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased tree plantations and planted tree plantations currently under our management, and we are in the process of applying for the plantation rights*

certificates for those plantations for which we have not obtained such certificates” [emphasis added];

- (b) In the 2009 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added]; and
- (c) In the 2010 AIF: “*We have obtained the plantation rights certificates or requisite approvals for acquiring the relevant plantation rights for most of the purchased plantations and planted plantations currently under our management*, and we are in the process of applying for the plantation rights certificates for those plantations for which we have not obtained such certificates” [emphasis added].

151. In the absence of Plantation Rights Certificates, Sino relies principally on the purchase contracts entered into by its BVI subsidiaries (“BVIs”) in order to demonstrate its ownership of standing timber.

152. However, under PRC law, those contracts are void and unenforceable.

153. In the alternative, if those contracts are valid and enforceable, they are enforceable only as against the counterparties through which Sino purported to acquire the standing timber, and not against the party who has registered title (if any) to the standing timber. Because some or all of those counterparties were or became insolvent, corporate shells or thinly capitalized, then any claims that Sino would have against those counterparties under PRC law, whether for unjust enrichment or otherwise, were of little to no value, and certainly constituted no substitute for registered title to the standing timber which Sino purported to own.

154. Sino never disclosed these material facts during the Class Period, whether in the Impugned Documents or otherwise. On the contrary, Sino made the following misrepresentations in relation to its purported title to standing timber:

- (a) In the July 2008 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (b) In the June 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (c) In the October 2010 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations”;
- (d) In the 2006 AIF, Sino stated “Based on the supplemental purchase contracts and the plantation rights certificates issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (e) In the 2007 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry departments, we have the legal right to own our purchased tree plantations”;
- (f) In the 2008 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased tree plantations”;

- (g) In the 2009 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”;
- (h) In the December 2009 Offering Memorandum, Sino stated “Based on the relevant purchase contracts and the approvals issued by the local forestry bureaus, we legally own our purchased plantations”; and
- (i) In the 2010 AIF, Sino stated “Based on the relevant purchase contracts and the approvals issued by the relevant forestry bureaus, we legally own our purchased plantations.”

155. In addition, during the Class Period, Sino never disclosed the material fact, belatedly revealed in the Second Report, that *“in practice it is not able to obtain Plantation Rights Certificates for standing timber purchases when no land transfer rights are transferred”* [emphasis added].

156. On the contrary, during the Class Period, Sino made the following misrepresentation in each of the 2006 and 2007 AIFs:

Since 2000, the PRC has been improving its system of registering plantation land ownership, plantation land use rights and plantation ownership rights and its system of issuing certificates to the persons having plantation land use rights, to owners owning the plantation trees and to owners of the plantation land. In April 2000, the PRC State Forestry Bureau announced the “Notice on the Implementation of Nationwide Uniform Plantation Right Certificates” (Lin Zi Fa [2000] No. 159) on April 19, 2000 (the “Notice”). Under the Notice, a new uniform form of plantation rights certificate is to be used commencing from the date of the Notice. *The same type of new form plantation rights certificate will be issued to the persons having the right to use the plantation land, to persons who own the plantation land and plantation trees, and to persons having the right to use plantation trees.*

[Emphasis added]

157. Under PRC law, county and provincial forestry bureaus have no authority to issue confirmation letters. Such letters cannot be relied upon in a court of law to resolve a dispute and are not a guarantee of title. Notwithstanding this, during the Class Period, Sino made the following misrepresentations:

- (a) In the 2006 AIF: “In addition, for the purchased tree plantations, *we have obtained confirmations from the relevant forestry bureaus that we have the legal right to own the purchased tree plantations for which we have not received certificates*” [emphasis added]; and
- (b) In the 2007 AIF: “For our Purchased Tree Plantations, we have applied for the relevant Plantation Rights Certificates with the competent local forestry departments. As the relevant locations where we purchased our Purchased Tree Plantations have not fully implemented the new form Plantation Rights Certificate, we are not able to obtain all the corresponding Plantation Rights Certificates for our Purchased Tree Plantations. *In this connection, we obtained confirmation on our ownership of our Purchased Tree Plantations from the relevant forestry departments.*” [emphasis added]



*E. Misrepresentations relating to Sino's Relationships with its AIs*

158. In addition to the misrepresentations alleged above in relation to Sino's AIs, including those alleged in Section VI.C hereof (*Misrepresentations relating to Sino's Related Party Transactions*), Sino made the following misrepresentations during the Class Period in relation to its relationships with its AIs.

*(i) Sino Misrepresents the Degree of its Reliance on its AIs*

159. On March 30, 2007, Sino issued and filed on SEDAR its 2006 AIF. In that AIF, Sino stated:

...PRC laws and regulations require foreign companies to obtain licenses to engage in any business activities in the PRC. As a result of these requirements, we currently engage in our trading activities through PRC authorized intermediaries that have the requisite business licenses. There is no assurance that the PRC government will not take action to restrict our ability to engage in trading activities through our authorized intermediaries. ***In order to reduce our reliance on the authorized intermediaries, we intend to use a WFOE in the PRC to enter into contracts directly with suppliers of raw timber, and then process the raw timber, or engage others to process raw timber on its behalf, and sell logs, wood chips and wood-based products to customers, although it would not be able to engage in pure trading activities.***

[Emphasis added.]

160. In its 2007 AIF, which Sino filed on March 28, 2008, Sino again declared its intention to reduce its reliance upon AIs.

161. These statements were false and/or materially misleading when made, inasmuch as Sino had no intention to reduce materially its reliance on AIs, because its AIs were critical to Sino's ability to inflate its revenue and net income. Rather, these statements had the effect of mitigating any investor concern arising from Sino's extensive reliance upon AIs.

162. Throughout the Class Period, Sino continued to depend heavily upon AIs for its purported sales of standing timber. In fact, contrary to Sino's purported intention to reduce its reliance on its AIs, Sino's reliance on its AIs in fact *increased* during the Class Period.

(ii) *Sino Misrepresents the Tax-related Risks Arising from its use of AIs*

163. Throughout the Class Period, Sino materially understated the tax-related risks arising from its use of AIs.

164. Tax evasion penalties in the PRC are severe. Depending on whether the PRC authorities seek recovery of unpaid taxes by means of a civil or criminal proceeding, its claims for unpaid tax are subject to either a five- or ten-year limitation period. The unintentional failure to pay taxes is subject to a 0.05% per day interest penalty, while an intentional failure to pay taxes is punishable with fines of up to five times the unpaid taxes, and confiscation of part or all of the criminal's personal properties maybe also imposed.

165. Therefore, because Sino professed to be unable to determine whether its AIs have paid required taxes, the tax-related risks arising from Sino's use of AIs were potentially devastating. Sino failed, however, to disclose these aspects of the PRC tax regime in its Class Period disclosure documents, as alleged more particularly below.

166. Based upon Sino's reported results, Sino's tax accruals in all of its Impugned Documents that were interim and annual financial statements were materially deficient. For example, depending on whether the PRC tax authorities would assess interest at the rate of 18.75% per annum, or would assess no interest, on the unpaid income taxes of Sino's BVI subsidiaries, and depending also on whether one assumes that Sino's AIs have paid no income taxes or have paid 50% of the income taxes due to the PRC, then Sino's tax accruals in its 2007, 2008, 2009 and 2010 Audited Annual Financial Statements were understated by, respectively, US\$10 million to US\$150 million, US\$50 million to US\$260 million, US\$81 million to US\$371 million, and US\$83 million to US\$493 million. Importantly, were one to consider the impact of unpaid taxes other than unpaid income taxes (for example, unpaid value-added taxes), then the amounts by

which Sino's tax accruals were understated in these financial statements would be substantially larger.

167. The aforementioned estimates of the amounts by which Sino's tax accruals were understated also assume that the PRC tax authorities only impose interest charges on Sino's BVI Subsidiaries and impose no other penalties for unpaid taxes, and assume further that the PRC authorities seek back taxes only for the preceding five years. As indicated above, each of these assumptions is likely to be unduly optimistic. In any case, Sino's inadequate tax accruals violated GAAP, and constituted misrepresentations.

168. Sino also violated GAAP in its 2009 Audited Annual Financial Statements by failing to apply to its 2009 financial results the PRC tax guidance that was issued in February 2010. Although that guidance was issued after year-end 2009, GAAP required that Sino apply that guidance to its 2009 financial results, because that guidance was issued in the subsequent events period.

169. Based upon Sino's reported profit margins on its dealings with AIs, which margins are extraordinary both in relation to the profit margins of Sino's peers, and in relation to the limited risks that Sino purports to assume in its transactions with its AIs, Sino's AIs are not satisfying their tax obligations, a fact that was either known to the Defendants or ought to have been known. If Sino's extraordinary profit margins are real, then Sino and its AIs must be dividing the gains from non-payment of taxes to the PRC.

170. During the Class Period, Sino never disclosed the true nature of the tax-related risks to which it was exposed. This omission, in violation of GAAP, rendered each of the following statements a misrepresentation:

- (a) In the 2006 Annual Financial Statements, note 11 [b] "Provision for tax related liabilities" and associated text;
- (b) In the 2006 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (c) In the AIF dated March 30, 2007, the section "Estimation of the Company's provision for income and related taxes," and associated text;
- (d) In the Q1 and Q2 2007 Financial Statements, note 5 "Provision for Tax Related Liabilities," and associated text;
- (e) In the Q3 2007 Financial Statements, note 6 "Provision for Tax Related Liabilities," and associated text;
- (f) In the 2007 Annual Financial Statements, note 13 [b] "Provision for tax related liabilities," and associated text;
- (g) In the 2007 Annual MD&A and Amended 2007 Annual MD&A, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (h) In the AIF dated March 28, 2008, the section "Estimation of the Corporation's provision for income and related taxes," and associated text;
- (i) In the Q1, Q2 and Q3 2008 Financial Statements, note 12 "Provision for Tax Related Liabilities," and associated text;
- (j) In the Q1, Q2 and Q3 2008 MD&As, the subsection "Provision for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (k) In the July 2008 Offering Memorandum, the subsection "Taxation" in the section "Management's Discussion and Analysis of Financial Condition and Results of Operations," and associated text;

- (l) In the 2008 Annual Financial Statements, note 13 [d] “Provision for tax related liabilities,” and associated text;
- (m) In the 2008 Annual MD&A and Amended 2008 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (n) In the AIF dated March 31, 2009, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (o) In the Q1, Q2 and Q3 2009 Financial Statements, note 13 “Provision for Tax Related Liabilities,” and associated text;
- (p) In the Q1, Q2 and Q3 2009 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (q) In the 2009 Annual Financial Statements, note 15 [d] “Provision for tax related liabilities,” and associated text;
- (r) In the 2009 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (s) In the AIF dated March 31, 2010, the section “We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned,” and associated text;
- (t) In the Q1 and Q2 2010 Financial Statements, note 14 “Provision for Tax Related Liabilities,” and associated text;
- (u) In the Q1 and Q2 2010 MD&As, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;

- (v) In the Q3 2010 Financial Statements, note 14 "Provision and Contingencies for Tax Related Liabilities," and associated text; and
- (w) In the Q3 2010 MD&As, the subsection "Provision and Contingencies for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text;
- (x) In the October 2010 Offering Memorandum, the subsection "Taxation" in the section "Selected Financial Information," and associated text;
- (y) In the 2010 Annual Financial Statements, note 18 "Provision and Contingencies for Tax Related Liabilities," and associated text;
- (z) In the 2010 Annual MD&A, the subsection "Provision and Contingencies for Tax Related Liabilities" in the section "Critical Accounting Estimates," and associated text; and
- (aa) In the AIF dated March 31, 2011, the section "We may be liable for income and related taxes to our business and operations, particularly our BVI Subsidiaries, in amounts greater than the amounts we have estimated and for which we have provisioned," and associated text.

171. In every Impugned Document that is a financial statement, the line item "Accounts payable and accrued liabilities" and associated figures on the Consolidated Balance Sheets fails to properly account for Sino's tax accruals and is a misrepresentation, and a violation of GAAP.

172. During the Class Period, Sino also failed to disclose in any of the Impugned Documents that were AIFs, MD&As, financial statements, Prospectuses or Offering Memoranda, the risks relating to the repatriation of its earnings from the PRC. In 2010, Sino added two new sections to its AIF regarding the risk that it would not be able to repatriate earnings from its BVI subsidiaries (which deal with the AIs). The amount of retained earnings that may not be able to be repatriated is stated therein to be US\$1.4 billion. Notwithstanding this disclosure, Sino did not

disclose in these Impugned Documents that it would be unable to repatriate *any* earnings absent proof of payment of PRC taxes, which it has admitted that it lacks.

(iii) *Sino Misrepresents its Accounting Treatment of its AIs*

173. In addition, there are material discrepancies in Sino's descriptions of its accounting treatment of its AIs. Beginning in the 2003 AIF, Sino described its AIs as follows:

Because of the provisions in the Operational Procedures that specify when we and the authorized intermediary assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the authorized intermediary. Title then passes to the authorized intermediary once the timber is processed into wood chips. ***Accordingly, we treat the authorized intermediaries for accounting purposes as being both our suppliers and customers in these transactions.***

[Emphasis added.]

174. Sino's disclosures were consistent in that regard up to and including Sino's first AIF issued in the Class Period (the 2006 AIF), which states:

Because of the provisions in the Operational Procedures that specify when we and the AI assume the risks and obligations relating to the raw timber or wood chips, as the case may be, we treat these transactions for accounting purposes as providing that we take title to the raw timber when it is delivered to the AI. Title then passes to the AI once the timber is processed into wood chips. ***Accordingly, we treat the AI for accounting purposes as being both our supplier and customer in these transactions.***

[Emphasis added.]

175. In subsequent AIFs, Sino ceased without explanation to disclose whether it treated AIs for accounting purposes as being both the supplier and the customer.

176. Following the issuance of Muddy Waters' report on the last day of the Class Period, however, Sino declared publicly that Muddy Waters was "wrong" in its assertion that, for accounting purposes, Sino treated its AIs as being both supplier and customer in transactions. This claim by Sino implies either that Sino misrepresented its accounting treatment of AIs in its

2006 AIF (and in its AIFs for prior years), or that Sino changed its accounting treatment of its AIs after the issuance of its 2006 AIF. If the latter is true, then Sino was obliged by GAAP to disclose its change in its accounting treatment of its AIs. It failed to do so.

**F. *Misrepresentations relating to Sino's Cash Flow Statements***

177. Given the nature of Sino's operations, that of a frequent trader of standing timber, Sino improperly accounted for its purchases of timber assets as "Investments" in its Consolidated Statements Of Cash Flow. In fact, such purchases are "Inventory" within the meaning of GAAP, given the nature of Sino's business.

178. Additionally, Sino violated the GAAP 'matching' principle in treating timber asset purchases as "Investments" and the sale of timber assets as "Inventory": cash flow that came into the company was treated as cash flow from operations, but cash flow that was spent by Sino was treated as cash flow for investments. As a result, "Additions to timber holding" was improperly treated as a "Cash Flows Used In Investing Activities" instead of "Cash Flows From Operating Activities" and the item "Depletion of timber holdings included in cost of sales" should not be included in "Cash Flows From Operating Activities," because it is not a cash item.

179. The effect of these misstatements is that Sino's Cash Flows From Operating Activities were materially overstated throughout the Class Period, which created the impression that Sino was a far more successful cash generator than it was. Such mismatching and misclassification is a violation of GAAP.

180. Cash Flows From Operating Activities are one of the crucial metrics used by the financial analysts who followed Sino's performance. These misstatements were designed to, and did, have the effect of causing such analysts to materially overstate the value of Sino. This material



overstatement was incorporated into various research reports made available to the Class Members, the market and the public at large.

181. Matching is a foundational requirement of GAAP reporting. E&Y and BDO were aware, at all material times, that Sino was required to adhere to the matching principle. If E&Y and BDO had conducted GAAS-complaint audits, they would have been aware that Sino's reporting was not GAAP compliant with regard to the matching principle. Accordingly, if they had conducted GAAS-compliant audits, the statements by E&Y and BDO that Sino's reporting was GAAP-compliant were not only false, but were made, at a minimum, recklessly.

182. Further, at all material times, E&Y and BDO were aware that misstatements in Cash Flows From Operating Activities would materially impact the market's valuation of Sino.

183. Accordingly, in every Impugned Document that is a financial statement, the Consolidated Statements Of Cash Flow are a misrepresentation and, particularly, the Cash Flows From Operating Activities item and associated figures is materially overstated, the "additions to timber holdings" item and figures is required to be listed as Cash Flows From Operating Activities, and the "depletion of timber holdings included in cost of sales" item and figures should not have been included.

**G. Misrepresentations relating to Certain Risks to which Sino was exposed**

*(i) Sino is conducting "business activities" in China*

184. At material times, PRC law required foreign entities engaging in "business activities" in the PRC to register to obtain and maintain a license. Violation of this requirement could have resulted in both administrative sanctions and criminal punishment, including banning the unlicensed business activities, confiscating illegal income and properties used exclusively therefor, and/or an administrative fines of no more than RMB 500,000. Possible criminal punishment included a criminal fine from 1 to 5 times the amount of the profits gained.

185. Consequently, were Sino's BVI subsidiaries to have been engaged in unlicensed in "business activities" in the PRC during the Class Period, they would have been exposed to risks that were highly material to Sino.

186. Under PRC law, the term "business activities" generally encompasses any for-profit activities, and Sino's BVI subsidiaries were in fact engaged in unlicensed "business activities" in the PRC during the Class Period. However, Sino did not disclose this fact in any of the Impugned Documents, including in its AIFs for 2008-2010, which purported to make full disclosure of the material risks to which Sino was then exposed.

*(ii) Sino fails to disclose that no proceeds were paid to it by its AIs*

187. In the Second Report, Sino belatedly revealed that:

In practice, proceeds from the Entrusted Sale Agreements are not paid to SF but are held by the AIs as instructed by SF and subsequently used to pay for further purchases of standing timber by the same or other BVIs. The AIs will continue to hold these proceeds until the Company instructs the AIs to use these proceeds to pay for new BVI standing timber purchases. ***No proceeds are directly paid to the Company, either onshore or offshore.***

[Emphasis added]

188. This material fact was never disclosed in any of the Impugned Documents during the Class Period. On the contrary, Sino made the following statements during the Class Period in relation to the proceeds paid to it by its AIs, each of which was materially misleading and therefore a misrepresentation:

- (a) In the 2005 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other PRC liabilities” [emphasis added];
- (b) In the 2006 Annual MD&A, the subsection “Provision for Tax Related Liabilities” in the section “Critical Accounting Estimates,” and associated text;
- (c) In the 2006 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of wood chips and standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (d) In the 2007 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi;”
- (e) In the 2008 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added];
- (f) In the 2009 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added]; and

- (g) In the 2010 financial statements, Sino stated: “As a result, *the majority* of the accounts receivable arising from sales of standing timber are realized through instructing the debtors to settle the amounts payable on standing timber and other liabilities denominated in Renminbi” [emphasis added].

**H. *Misrepresentations relating to Sino’s GAAP Compliance and the Auditors’ GAAS Compliance***

*(i) Sino, Chan and Horsley misrepresent that Sino complied with GAAP*

189. In each of its Class Period financial statements, Sino represented that its financial reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

190. In particular, Sino misrepresented in those financial statements that it was GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007, at Note 1: “These consolidated financial statements Sino-Forest Corporation (the “Company”) have been prepared in United States dollars in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008, at Note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”;

- (d) In the annual financial statements filed on March 16, 2010, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011, at note 1: “The consolidated financial statements of Sino-Forest Corporation (the “Company”) have been prepared in United States dollars and in accordance with Canadian generally accepted accounting principles”.

191. In each of its Class Period MD&As, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

192. In particular, Sino misrepresented in those MD&As that it was GAAP-compliant as follows:

- (a) In the annual MD&A filed on March 19, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)”;
- (b) In the quarterly MD&A filed on May 14, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (c) In the quarterly MD&A filed on August 13, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;
- (d) In the quarterly MD&A filed on November 12, 2007: “Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (“GAAP”)”;

- (e) In the annual MD&A filed on March 18, 2008: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";
- (f) In the amended annual MD&A filed on March 28, 2008: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";
- (g) In the quarterly MD&A filed on May 13, 2008: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles ("GAAP")";
- (h) In the quarterly MD&A filed on August 12, 2008: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles ("GAAP")";
- (i) In the quarterly MD&A filed on November 13, 2008: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles ("GAAP")";
- (j) In the annual MD&A filed on March 16, 2009: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";
- (k) In the amended annual MD&A filed on March 17, 2009: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";
- (l) In the quarterly MD&A filed on May 11, 2009: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";
- (m) In the quarterly MD&A filed on August 10, 2009: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian generally accepted accounting principles (GAAP)";

- (n) In the quarterly MD&A filed on November 12, 2009: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP");"
- (o) In the annual MD&A files on March 16, 2010: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP");"
- (p) In the quarterly MD&A filed on May 12, 2010: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP");"
- (q) In the quarterly MD&A filed on August 10, 2010: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP");"
- (r) In the quarterly MD&A filed on November 10, 2010: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP"); and"
- (s) In the annual MD&A filed on March 15, 2011: "Except where otherwise indicated, all financial information reflected herein is determined on the basis of Canadian Generally Accepted Accounting Principles ("GAAP")."

193. In the Offerings, Sino represented that its reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

194. In particular, Sino misrepresented in the Offerings that it was GAAP-compliant as follows:

- (a) In the July 2008 Offering Memorandum: "We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada ("Canadian GAAP") [...]," "Our auditors conduct their audit of our

financial statements in accordance with auditing standards generally accepted in Canada” and “Each of the foregoing reports or financial statements will be prepared in accordance with Canadian generally accepted accounting principles other than for reports prepared for financial periods commencing on or after January 1, 2011 [...]”;

- (b) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2006, 2007 and 2008 and our unaudited interim consolidated financial statements for the three-month periods ended March 31, 2008 and 2009 have been prepared in accordance with Canadian GAAP”;
- (c) In the June 2009 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada” and “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP”; and
- (d) In the October 2010 Offering Memorandum: “We prepare our financial statements on a consolidated basis in accordance with accounting principles generally accepted in Canada (“Canadian GAAP”)[...],” “Our auditors conduct their audit of our financial statements in accordance with auditing standards generally accepted in Canada,” “The audited and unaudited consolidated financial statements were prepared in accordance with Canadian GAAP,” “Our audited and consolidated financial statements for the years ended December 31, 2007, 2008 and 2009 and our unaudited interim consolidated financial statements for the six-



month periods ended June 30, 2009 and 2010 have been prepared in accordance with Canadian GAAP.”

195. In the Class Period Management’s Reports, Chan and Horsley represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein.

196. In particular, Chan and Horsley misrepresented in those Management’s Reports that Sino’s financial statements were GAAP-compliant as follows:

- (a) In the annual statements filed on March 19, 2007 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (b) In the annual financial statements filed on March 18, 2008 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (c) In the annual financial statements filed on March 16, 2009 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”;
- (d) In the annual financial statements filed on March 16, 2010 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report have been prepared by management in accordance with Canadian generally accepted accounting principles”; and
- (e) In the annual financial statements filed on March 15, 2011 Chan and Horsley stated: “The consolidated financial statements contained in this Annual Report

have been prepared by management in accordance with Canadian generally accepted accounting principles.”

(ii) *E&Y and BDO misrepresent that Sino complied with GAAP and that they complied with GAAS*

197. In each of Sino’s Class Period annual financial statements, E&Y or BDO, as the case may be, represented that Sino’s reporting was GAAP-compliant, which was a misrepresentation for the reasons set out elsewhere herein. In addition, in each such annual financial statement, E&Y and BDO, as the case may be, represented that they had conducted their audit in compliance with GAAS, which was a misrepresentation because they did not in fact conduct their audits in accordance with GAAS.

198. In particular, E&Y and BDO misrepresented that Sino’s financial statements were GAAP-compliant and that they had conducted their audits in compliance with GAAS as follows:

- (a) In Sino’s annual financial statements filed on March 19, 2007, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (b) In the June 2007 Prospectus, BDO stated: “We have complied with Canadian generally accepted standards for an auditor’s involvement with offering documents”;
- (c) In Sino’s annual financial statements filed on March 18, 2008, E&Y stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at

December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles. The financial statements as at December 31, 2006 and for the year then ended were audited by other auditors who expressed an opinion without reservation on those statements in their report dated March 19, 2007”;

- (d) In the July 2008 Offering Memorandum, BDO stated: “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2006 and 2005 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles” and E&Y stated “We conducted our audit in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles”;
- (e) In Sino’s annual financial statements filed on March 16, 2009, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2008 and 2007 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles”;
- (f) In Sino’s annual financial statements filed on March 16, 2010, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards” and “In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2009 and 2008 and the results of its operations and its cash flows

for the years then ended in accordance with Canadian generally accepted accounting principles”; and

- (g) In Sino’s annual financial statements filed on March 15, 2011, E&Y stated: “We conducted our audits in accordance with Canadian generally accepted auditing standards.” and “In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Sino-Forest corporation as at December 31, 2010 and 2009 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.”

(iii) *The Market Relied on Sino’s Purported GAAP-compliance and E&Y’s and BDO’s purported GAAS-compliance in Sino’s Financial Reporting*

199. As a public company, Sino communicated the results it claimed to have achieved to the Class Members via quarterly and annual financial results, among other disclosure documents. Sino’s auditors, E&Y and BDO, as the case may be, were instrumental in the communication of Sino’s financial information to the Class Members. The auditors certified that the financial statements were compliant with GAAP and that they had performed their audits in compliance with GAAS. Neither was true.

200. The Class Members invested in Sino’s securities on the critical premise that Sino’s financial statements were in fact GAAP-compliant, and that Sino’s auditors had in fact conducted their audits in compliance with GAAS. Sino’s reported financial results were also followed by analysts at numerous financial institutions. These analysts promptly reported to the market at large when Sino made earnings announcements, and incorporated into their Sino-related analyses and reports Sino’s purportedly GAAP-compliant financial results. These analyses and reports, in turn, significantly affected the market price for Sino’s securities.

201. The market, including the Class Members, would not have relied on Sino's financial reporting had the auditors disclosed that Sino's financial statements were not reliable or that they had not followed the processes that would have amply revealed that those statements were reliable.

#### **VII. CHAN'S AND HORSLEY'S FALSE CERTIFICATIONS**

202. Pursuant to National Instrument 52-109, the defendants Chan, as CEO, and Horsley, as CFO, were required at the material times to certify Sino's annual and quarterly MD&As and Financial Statements as well as the AIFs (and all documents incorporated into the AIFs). Such certifications included statements that the filings "do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made" and that the reports "fairly present in all material respects the financial condition, results of operations and cash flows of the issuer."

203. As particularized elsewhere herein, however, the Impugned Documents contained the Representation, which was false, as well as the other misrepresentations alleged above. Accordingly, the certifications given by Chan and Horsley were false and were themselves misrepresentations. Chan and Horsley made such false certifications knowingly or, at a minimum, recklessly.

#### **VIII. THE TRUTH IS REVEALED**

204. On June 2, 2011, Muddy Waters issued its initial report on Sino, and stated in part therein:

Sino-Forest Corp (TSE: TRE) is the granddaddy of China RTO frauds. It has always been a fraud – reporting excellent results from one of its early joint ventures – even though, because of TRE’s default on its investment obligations, the JV never went into operation. TRE just lied.

The foundation of TRE’s fraud is a convoluted structure whereby it claims to run most of its revenues through “authorized intermediaries” (“AI”). AIs are supposedly timber trader customers who purportedly pay much of TRE’s value added and income taxes. At the same time, these AIs allow TRE a gross margin of 55% on standing timber merely for TRE having speculated on trees.

The sole purpose of this structure is to fabricate sales transactions while having an excuse for not having the VAT invoices that are the mainstay of China audit work. If TRE really were processing over one billion dollars in sales through AIs, TRE and the AIs would be in serious legal trouble. No legitimate public company would take such risks – particularly because this structure has zero upside.

[...]

On the other side of the books, TRE massively exaggerates its assets. TRE significantly falsifies its investments in plantation fiber (trees). It purports to have purchased \$2.891 billion in standing timber under master agreements since 2006 [...]

[...]

#### Valuation

Because TRE has \$2.1 billion in debt outstanding, which we believe exceeds the potential recovery, we value its equity at less than \$1.00 per share.

205. Muddy Waters’ report also disclosed that (a) Sino’s business is a fraudulent scheme; (b) Sino systemically overstated the value of its assets; (c) Sino failed to disclose various related party transactions; (d) Sino misstated that it had enforced high standards of governance; (e) Sino misstated that its reliance on the AIs had decreased; (f) Sino misrepresented the tax risk associated with the use of AIs; and (g) Sino failed to disclose the risks relating to repatriation of earnings from PRC.

206. After Muddy Waters’ initial report became public, Sino shares fell to \$14.46, at which point trading was halted (a decline of 20.6% from the pre-disclosure close of \$18.21). When

trading was allowed to resume the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).

207. On November 13, 2011 Sino released the Second Report in redacted form. Therein, the Committee summarized its findings:

#### B. Overview of Principal Findings

The following sets out a very high level overview of the IC's principal findings and should be read in conjunction with the balance of this report.

##### Timber Ownership

[...]

***The Company does not obtain registered title to BVI purchased plantations.*** In the case of the BVIs' plantations, the IC has visited forestry bureaus, Suppliers and AIs to seek independent evidence to establish a chain of title or payment transactions to verify such acquisitions. The purchase contracts, set-off arrangement documentation and forestry bureau confirmations constitute the documentary evidence as to the Company's contractual or other rights. ***The IC has been advised that the Company's rights to such plantations could be open to challenge. However, Management has advised that, to date, it is unaware of any such challenges that have not been resolved*** with the Suppliers in a manner satisfactory to the Company.

##### Forestry Bureau Confirmations and Plantation Rights Certificates

Registered title, through Plantation Rights Certificates is not available in the jurisdictions (i.e. cities and counties) examined by the IC Advisors for standing timber that is held without land use/lease rights. ***Therefore the Company was not able to obtain Plantation Rights Certificates for its BVIs standing timber assets in those areas.*** In these circumstances, the Company sought confirmations from the relevant local forestry bureau acknowledging its rights to the standing timber.

The IC Advisors reviewed forestry bureau confirmations for virtually all BVIs assets and non-Mandra WFOE purchased plantations held as at December 31, 2010. The IC Advisors, in meetings organized by Management, met with a sample of forestry bureaus with a view to obtaining verification of the Company's rights to standing timber in those jurisdictions. The result of such meetings to date have concluded with the forestry bureaus or related entities having issued new confirmations as to the Company's contractual rights to the Company in respect of 111,177 Ha. as of December 31, 2010 and 133,040 Ha. as of March 31, 2011, and have acknowledged the issuance of existing confirmations issued to the

Company as to certain rights, among other things, in respect of 113,058 Ha. as of December 31, 2010.

***Forestry bureau confirmations are not officially recognized documents and are not issued pursuant to a legislative mandate or, to the knowledge of the IC, a published policy. It appears they were issued at the request of the Company or its Suppliers.*** The confirmations are not title documents, in the Western sense of that term, although the IC believes they should be viewed as comfort indicating the relevant forestry bureau does not dispute SF's claims to the standing timber to which they relate and might provide comfort in case of disputes. The purchase contracts are the primary evidence of the Company's interest in timber assets.

***In the meetings with forestry bureaus, the IC Advisors did not obtain significant insight into the internal authorization or diligence processes undertaken by the forestry bureaus in issuing confirmations and, as reflected elsewhere in this report, the IC did not have visibility into or complete comfort regarding the methods by which those confirmations were obtained.*** It should be noted that several Suppliers observed that SF was more demanding than other buyers in requiring forestry bureau confirmations.

#### Book Value of Timber

Based on its review to date, the IC is satisfied that the book value of the BVIs timber assets of \$2.476 billion reflected on its 2010 Financial Statements and of SP WFOE standing timber assets of \$298.6 million reflected in its 2010 Financial Statements reflects the purchase prices for such assets as set out in the BVIs and WFOE standing timber purchase contracts reviewed by the IC Advisors. Further, the purchase prices for such BVIs timber assets have been reconciled to the Company's financial statements based on set-off documentation relating to such contracts that were reviewed by the IC. However, ***these comments are also subject to the conclusions set out above under "Timber Ownership" on title and other rights to plantation assets.***

The IC Advisors reviewed documentation acknowledging the execution of the set-off arrangements between Suppliers, the Company and AIs for the 2006-2010 period. ***However, the IC Advisors were unable to review any documentation of AIs or Suppliers which independently verified movements of cash in connection with such set-off arrangements between Suppliers, the Company and the AIs used to settle purchase prices paid to Suppliers by AIs on behalf of SF.*** We note also that the independent valuation referred to in Part VIII below has not yet been completed.

#### Revenue Reconciliation

As reported in its First Interim Report, the IC has reconciled reported 2010 total revenue to the sales prices in BVIs timber sales contracts, together with macro customer level data from other businesses. However, ***the IC was unable to review any documentation of AIs or Suppliers which independently verified movements***



*of cash in connection with set-off arrangements used to settle purchase prices paid, or sale proceeds received by, or on behalf of SF.*

#### Relationships

• Yuda Wood: The IC is satisfied that Mr. Huang Ran is not currently an employee of the Company and that Yuda Wood is not a subsidiary of the Company. However, *there is evidence suggesting close cooperation (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood's RMB bank accounts and the numerous emails indicating coordination of funding and other business activities)*. Management has explained these arrangements were mechanisms that allowed the Company to monitor its interest in the timber transactions. Further, *Huang Ran (a Yuda Wood employee) has an ownership and/or directorship in a number of Suppliers* (See Section VI.B). The IC Advisors have been introduced to persons identified as influential backers of Yuda Wood but were unable to determine the relationships, if any, of such persons with Yuda Wood, the Company or other Suppliers or AIs. *Management explanations of a number of Yuda Wood-related emails and answers to E&Y's questions are being reviewed by the IC and may not be capable of independent verification.*

• Other: The IC's review has identified other situations which require further review. *These situations suggest that the Company may have close relationships with certain Suppliers, and certain Suppliers and AIs may have cross-ownership and other relationships with each other.* The IC notes that in the interviews conducted by the IC with selected AIs and Suppliers, all such parties represented that they were independent of SF. Management has very recently provided information and analysis intended to explain these situations. The IC is reviewing this material from Management and intends to report its findings in this regard in its final report to the Board. Some of such information and explanations may not be capable of independent verification.

• Accounting Considerations: *To the extent that any of SF's purchase and sale transactions are with related parties for accounting purposes, the value of these transactions as recorded on the books and records of the Company may be impacted.*

[...]

#### BVI Structure

The BVI structure used by SF to purchase and sell standing timber assets could be challenged by the relevant Chinese authorities as the undertaking of "business activities" within China by foreign companies, which may only be undertaken by entities established within China with the requisite approvals. However, there is no clear definition of what constitutes "business activities" under Chinese law and there are different views among the IC's Chinese counsel and the Company's Chinese counsel as to whether the purchase and sale of timber in China as

undertaken by the BVIs could be considered to constitute “business activities” within China. In the event that the relevant Chinese authorities consider the BVIs to be undertaking “business activities” within China, they may be required to cease such activities and could be subject to other regulatory action. As regularization of foreign businesses in China is an ongoing process, the government has in the past tended to allow foreign companies time to restructure their operations in accordance with regulatory requirements (the cost of which is uncertain), rather than enforcing the laws strictly and imposing penalties without notice. See Section II.B.2

### C. Challenges

Throughout its process, the IC has encountered numerous challenges in its attempts to implement a robust independent process which would yield reliable results. Among those challenges are the following:

#### (a) Chinese Legal Regime for Forestry:

- national laws and policies appear not yet to be implemented at all local levels;
- in practice, none of the local jurisdictions tested in which BVIs hold standing timber appears to have instituted a government registry and documentation system for the ownership of standing timber as distinct from a government registry system for the ownership of plantation land use rights;
- the registration of plantation land use rights, the issue of Plantation Rights Certificates and the establishment of registries, is incomplete in some jurisdictions based on the information available to the IC;
- as a result, *title to standing timber, when not held in conjunction with a land use right, cannot be definitively proven by reference to a government maintained register*; and
- Sino-Forest has requested confirmations from forestry bureaus of its acquisition of timber holdings (excluding land leases) as additional evidence of ownership. Certain forestry bureaus and Suppliers have indicated the confirmation was beyond the typical diligence practice in China for acquisition of timber holdings.

(b) Obtaining Information from Third Parties: For a variety of reasons, all of them outside the control of the IC, it is very difficult to obtain information from third parties in China. These reasons include the following:

- *many of the third parties from whom the IC wanted information (e.g., AIs, Suppliers and forestry bureaus) are not compellable by the Company or Canadian legal processes*;
- third parties appeared to have concerns relating to disclosure of information regarding their operations that could become public or fall into the hands of

Chinese government authorities: *many third parties explained their reluctance to provide requested documentation and information as being "for tax reasons" but declined to elaborate*; and

- awareness of MW allegations, investigations and information gathering by the OSC and other parties, and court proceedings; while not often explicitly articulated, third parties had an awareness of the controversy surrounding SF and a reluctance to be associated with any of these allegations or drawn into any of these processes.

[...]

(e) Corporate Governance/Operational Weaknesses: *Management has asserted that business in China is based upon relationships*. The IC and the IC Advisors have observed this through their efforts to obtain meetings with forestry bureaus, Suppliers and AIs and their other experience in China. The importance of relationships appears to have resulted in dependence on a relatively small group of Management who are integral to maintaining customer relationships, negotiating and finalizing the purchase and sale of plantation fibre contracts and the settlement of accounts receivable and accounts payable associated with plantation fibre contracts. This concentration of authority or lack of segregation of duties has been previously disclosed by the Company as a control weakness. As a result and as disclosed in the 2010 MD&A, senior Management in their ongoing evaluation of disclosure controls and procedures and internal controls over financial reporting, recognizing the disclosed weakness, determined that the design and controls were ineffective. The Chairman and Chief Financial Officer provided annual and quarterly certifications of their regulatory filings. Related to this weakness the following challenges presented themselves in the examination by the IC and the IC Advisors:

- operational and administration systems that are generally not sophisticated having regard to the size and complexity of the Company's business and in relation to North American practices; including:
  - *incomplete or inadequate record creation and retention practices;*
  - contracts not maintained in a central location;
  - significant volumes of data maintained across multiple locations on decentralized servers;
  - *data on some servers in China appearing to have been deleted on an irregular basis, and there is no back-up system;*
  - no integrated accounting system: accounting data is not maintained on a single, consolidated application, which can require extensive manual procedures to produce reports; and

- a treasury function that was centralized for certain major financial accounts, but was not actively involved in the control or management of numerous local operations bank accounts;
- *no internal audit function* although there is evidence the Company has undertaken and continues to assess its disclosure controls and procedures and internal controls over financial reporting using senior Management and independent control consultants;
- *SF employees conduct Company affairs from time to time using personal devices and non-corporate email addresses* which have been observed to be shared across groups of staff and changed on a periodic and organized basis; this complicated and delayed the examination of email data by the IC Advisors; and
- lack of full cooperation/openness in the ICs examination from certain members of Management.

(f) Complexity, Lack of Visibility into, and Limitations of BVIs Model: *The use of AIs and Suppliers as an essential feature of the BVIs standing timber business model contributes to the lack of visibility into title documentation, cash movements and tax liability since cash settlement in respect of the BVIs standing timber transactions takes place outside of the Company's books.*

(g) Cooperation and openness of the Company's executives throughout the process: From the outset, the IC Advisors sought the full cooperation and support of Allen Chan and the executive management team. Initially, the executive management team appeared ill-prepared to address the IC's concerns in an organized fashion and there was perhaps a degree of culture shock as Management adjusted to the IC Advisors' examination. *In any event, significant amounts of material information, particularly with respect to the relationship with Yuda Wood, interrelationships between AIs and/or Suppliers, were not provided to the IC Advisors as requested.* In late August 2011 on the instructions of the IC, interviews of Management were conducted by the IC Advisors in which documents evidencing these connections were put to the Management for explanation. As a result of these interviews (which were also attended by BJ) the Company placed certain members of Management on administrative leave upon the advice of Company counsel. At the same time the OSC made allegations in the CTO of Management misconduct.

[...]

(h) Independence of the IC Process: *The cooperation and collaboration of the IC with Management (operating under the direction of the new Chief Executive Officer) and with Company counsel in completing certain aspects of the IC's mandate has been noted by the OSC and by E&Y. Both have questioned the degree of independence of the IC from Management as a result of this interaction.* The IC has explained the practical impediments to its work in the context of the distinct business culture (and associated issues of privacy) in the

forestry sector in China in which the Company operates. Cooperation of third parties in Hong Kong and China, including employees, depends heavily on relationships and trust. As noted above, the Company's placing certain members of Management on administrative leave, as well as the OSC's allegations in the CTO, further hampered the IC's ability to conduct its process. As a result, the work of the IC was frequently done with the assistance of, or in reliance on, the new Chief Executive Officer and his Management team and Company counsel. Given that Mr. Martin was, in effect, selected by the IC and BJ was appointed in late June 2011, the IC concluded that, while not ideal, this was a practical and appropriate way to proceed in the circumstances. As evidenced by the increased number of scheduled meetings with forestry bureaus, Suppliers and AIs, and, very recently, the delivery to the IC of information regarding AIs and Suppliers and relationships among the Company and such parties, it is acknowledged that Mr. Martin's involvement in the process has been beneficial. It is also acknowledged that in executing his role and assisting the IC he has had to rely on certain of the members of Management who had been placed on administrative leave.

[Emphasis added]

208. On January 31, 2012, Sino released the Final Report. In material part, it read:

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC's conclusions regarding its examination and review. The IC's activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company's Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. *The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.*

In December 2011, the Company defaulted under the indentures relating to its outstanding bonds with the result that its resources are now more focused on dealing with its bondholders. This process is being overseen by the Restructuring Committee appointed by the Board. Pursuant to the Waiver Agreement dated January 18, 2012 between the Company and the holders of a majority of the principal amount of its 2014 Notes, the Company agreed, among other things, that the final report of the IC to the Board would be made public by January 31, 2012.

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. The IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The

IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions.

[...]

## II. RELATIONSHIPS

The objectives of the IC's examination of the Company's relationships with its AIs and Suppliers were to determine, in light of the MW allegations, if such relationships are arm's length and to obtain, if possible, independent verification of the cash flows underlying the set-off transactions described in Section II.A of the Second Interim Report. *That the Company's relationships with its AIs and Suppliers be arm's length is relevant to SF's ability under GAAP to:*

- *book its timber assets at cost in its 2011 and prior years' financial statements, both audited and unaudited*
- *recognize revenue from standing timber sales as currently reflected in its 2011 and prior years' financial statements, both audited and unaudited.*

### A. Yuda Wood

Yuda Wood was founded in April 2006 and was until 2010 a Supplier of SF. Its business with SF from 2007 to 2010 totalled approximately 152,164 Ha and RMB 4.94 billion. Section VI.A and Schedule VI.A.2(a) of the Second Interim Report described the MW allegations relating to Yuda Wood, the review conducted by the IC and its findings to date. The IC concluded that Huang Ran is not currently an employee, and that Yuda Wood is not a subsidiary, of the Company. *However, there is evidence suggesting a close cooperation between SF and Yuda Wood which the IC had asked Management to explain.* At the time the Second Interim Report was issued, the IC was continuing to review Management's explanations of a number of Yuda Wood-related emails and certain questions arising therefrom.

Subsequent to the issuance of its Second Interim Report in mid-November, the IC, with the assistance of the IC Advisors, has reviewed the Management responses provided to date relating to Yuda Wood and has sought further explanations and documentary support for such explanations. This was supplementary to the activities of the Audit Committee of SF and its advisors who have had during this period primary carriage of examining Management's responses on the interactions of SF and Yuda Wood. *While many answers and explanations have been obtained, the IC believes that they are not yet sufficient to allow it to fully understand the nature and scope of the relationship between SF and Yuda Wood. Accordingly, based on the information it has obtained, the IC is still unable to independently verify that the relationship of Yuda Wood is at arm's length to SF.* It is to be noted that Management is of the view that Yuda Wood is unrelated to SF for accounting purposes. The IC remains satisfied that Yuda is not a subsidiary of SF. Management continues to undertake work related to Yuda

Wood, including seeking documentation from third parties and responding to e-mails where the responses are not yet complete or prepared. Management has provided certain banking records to the Audit Committee that the Audit Committee advises support Management's position that SF did not capitalize Yuda Wood (but that review is not yet completed). The IC anticipates that Management will continue to work with the Audit Committee, Company counsel and E&Y on these issues.

#### B. Other Relationships

Section VI.B.1 of the Second Interim Report described certain other relationships which had been identified in the course of the IC's preparation for certain interviews with AIs and Suppliers. *These relationships include (i) thirteen Suppliers where former SF employees, consultants or secondees are or have been directors, officers and/or shareholders (including Yuda Wood); (ii) an AI with a former SF employee in a senior position; (iii) potential relationships between AIs and Suppliers; (iv) set-off payments for BVI standing timber purchases being made by companies that are not AIs and other setoff arrangements involving non-AI entities; (v) payments by AIs to potentially connected Suppliers; and (vi) sale of standing timber to an AI potentially connected to a Supplier of that timber. Unless expressly addressed herein, the IC has no further update of a material nature on the items raised above.*

On the instructions of the IC, the IC Advisors gave the details of these possible relationships to Management for further follow up and explanation. Just prior to the Second Interim Report, Management provided information regarding AIs and Suppliers relationships among the Company and such parties.

This information was in the form of a report dated November 10, 2011, subsequently updated on November 21, 2011 and January 20, 2012 (the latest version being the "Kaitong Report") prepared by Kaitong Law Firm ("Kaitong"), a Chinese law firm which advises the Company. The Kaitong Report has been separately delivered to the Board. *Kaitong has advised that much of the information in the Kaitong Report was provided by Management and has not been independently verified by such law firm or the IC.*

[...]

The Kaitong Report generally describes certain relationships amongst AIs and Suppliers and certain relationships between their personnel and Sino-Forest, either identified by Management or through SAIC and other searches. The Kaitong Report also specifically addresses certain relationships identified in the Second Interim Report. The four main areas of information in the Kaitong Report are as follows and are discussed in more detail below:

(i) Backers to Suppliers and AIs: The Kaitong Report explains the concept of "backers" to both Suppliers and AIs. The Kaitong Report suggests that backers are individuals with considerable influence in political, social or business circles,

or all three. The Kaitong Report also states that such backers or their identified main business entities do not generally appear in SAIC filings by the Suppliers or AIs as shareholders thereof and, in most instances, in any other capacity.

(ii) *Suppliers and AIs with Former SF Personnel: The appendices to the Kaitong Report list certain Suppliers that have former SF personnel as current shareholders.*

(iii) Common Shareholders Between Suppliers and AIs: The Kaitong Report states that there are 5 Suppliers and 3 AIs with current common shareholders but there is no cross majority ownership positions between Suppliers and AIs.

(iv) Transactions Involving Suppliers and AIs that have Shareholders in common: The Kaitong Report states that, where SF has had transactions with Suppliers and AIs that have certain current shareholders in common as noted above, the subject timber in those transactions is not the same; that is, the timber which SF buys from such Suppliers and the timber which SF sells to such AIs are located in different counties or provinces.

The IC Advisors have reviewed the Kaitong Report on behalf of the IC. The IC Advisors liaised with Kaitong and met with Kaitong and current and former Management. A description of the Kaitong Report and the IC's findings and comments are summarized below. By way of summary, the Kaitong Report provides considerable information regarding relationships among Suppliers and AIs, and between them and SF, but much of this information related to the relationship of each backer with the associated Suppliers and AIs is not supported by any documentary or other independent evidence. *As such, some of the information provided is unverified and, particularly as it relates to the nature of the relationships with the backers, is viewed by the IC to be likely unverifiable by it.*

#### 1. Backers to Suppliers and AIs

[...]

Given the general lack of information on the backers or the nature and scope of the relationships between the Suppliers or AIs and their respective backers and the absence of any documentary support or independent evidence of such relationships, the IC has been unable to reach any conclusion as to the existence, nature or importance of such relationships. *As a result, the IC is unable to assess the implications, if any, of these backers with respect to SF's relationships with its Suppliers or AIs. Based on its experience to date, including interviews with Suppliers and AIs involving persons who have now been identified as backers in the Kaitong Report, the IC believes that it would be very difficult for the IC Advisors to arrange interviews with either the AIs or Suppliers or their respective backers and, if arranged, that such interviews would yield very little, if any, verifiable information to such advisors.* The IC understands Management is continuing to seek meetings with its AIs and Suppliers with the objective of



obtaining information, to the extent such is available, that will provide further background to the relationships to the Audit Committee.

[...]

## 2. Suppliers and AIs with Former SF Personnel

The Appendices to the Kaitong Report list the Suppliers with former SF personnel as current shareholders. According to the information previously obtained by the IC Advisors, the identification of former SF personnel indicated in the Kaitong Report to be current shareholders of past or current Suppliers is correct.

### (a) Suppliers with former SF personnel

The Kaitong Report, which is limited to examining Suppliers where ex-SF employees are current shareholders as shown in SAIC filings, does not provide material new information concerning Suppliers where former SF employees were identified by the IC in the Second Interim Report as having various past or present connections to current or former Suppliers except that the Kaitong Report provides an explanation of two transactions identified in the Second Interim Report. These involved purchases of standing timber by SF from Suppliers controlled by persons who were employees of SF at the time of these transactions. Neither of the Suppliers have been related to an identified backer in the Kaitong Report. The explanations are similar indicating that neither of the SF employees was an officer in charge of plantation purchases or one of SF's senior management at the time of the transactions. The employees in question were Shareholder #14 in relation to a RMB 49 million purchase from Supplier #18 in December 2007 (shown in SAIC filings to be 100% owned by him) and Shareholder #20 in relation to a RMB 3.3 million purchase from Supplier #23 (shown in SAIC filings to be 70% owned by him) in October 2007. ***The Kaitong Report indicates Shareholder #20 is a current employee of SF who then had responsibilities in SF's wood board production business.***

The IC is not aware that the employees' ownership positions were brought to the attention of the Board at the time of the transactions or, subsequently, until the publication of the Second Interim Report and understands the Audit Committee will consider such information.

### (b) AIs with former SF personnel

The Kaitong Report indicates that no SF employees are listed in SAIC filing reports as current shareholders of AIs. Except as noted herein, the IC agrees with this statement. The Kaitong Report does not address the apparent role of an ex-employee Officer #3 who was introduced to the IC as the person in charge of AI #2 by Backer #5 of AI Conglomerate #1. Backer #5 is identified in the Kaitong Report as a backer of two AIs, including AI#2. (The Kaitong Report properly does not include AI #14. as an AI for this purpose, whose 100% shareholder is former SF employee Officer #3. However, the IC is satisfied that the activities of

this entity primarily relate to certain onshoring transactions that facilitated the transfer of SF BVI timber assets to SF WFOE subsidiaries.)

There was one other instance where a past shareholding relationship has been identified between an AI #10 and persons who were previously or are still shown on the SF human resources records, Shareholder #26 and Shareholder #27. Management has explained that such entity sold wood board processing and other assets to SF and that the persons associated with that company consulted with SF after such sale in relation to the purchased wood board processing assets. *Such entity subsequently also undertook material timber purchases as an AI of SF in 2007-2008 over a time period in which such persons are shown as shareholders of such AI in the SAIC filing reviewed (as to 47.5% for Shareholder #26 and as to 52.5% for Shareholder #27). That time period also intersects the time that Shareholder #26 is shown in such human resources records and partially intersects the time that Shareholder #27 is shown on such records. Management has also explained that Shareholder #26 subsequent to the time of such AI sales became an employee of a SF wood board processing subsidiary. Management has provided certain documentary evidence of its explanations. The IC understands that the Audit Committee will consider this matter.*

### 3. Common Shareholders between Supplier and AIs

The Kaitong Report states that there are 5 Suppliers and 3 AIs that respectively have certain common current shareholders but also states that there is no cross control by those current shareholders of such Suppliers or AIs based on SAIC filings. The Kaitong Report correctly addresses current cross shareholdings in Suppliers and AIs based on SAIC filings but does not address certain other shareholdings. With the exception of one situation of cross control in the past, the IC has not identified a circumstance in the SAIC filings reviewed where the same person controlled a Supplier at the time it controlled a different AI. *The one exception is that from April 2002 to February 2006, AI #13 is shown in SAIC filings as the 90% shareholder of Supplier/AI #14. AI #13 did business with SF BVIs from 2005 through 2007 and Supplier/AI #14 supplied SF BVIs from 2004 through 2006. However, the IC to date has only identified one contract involving timber bought from Supplier/AI #14 that was subsequently sold to AI #13. It involved a parcel of 2,379 Ha. timber sold to AI #13 in December 2005 that originated from a larger timber purchase contract with Supplier/AI #14 earlier that year. Management has provided an explanation for this transaction. The IC understands that the Audit Committee will consider this matter.*

### 4. Transactions involving Suppliers and AIs with Current Shareholders in Common

The Kaitong Report states that where SF has had transactions with 5 Suppliers and 3 AIs that have current shareholders in common (but no one controlling shareholder) as shown in SAIC filings, the subject timber in the transactions they

each undertook with SF is not the same; that is, the timber which SF buys from the Suppliers and the timber which SF sells to the AIs where the Supplier and AI have a current common shareholder were located in different areas and do not involve the same plots of timber. The Kaitong Report further states that where SF has had transactions with 5 Suppliers and 3 AIs with current shareholders in common as shown in SAIC filings, SF had transactions with those AIs prior to having transactions with those Suppliers, thus SF was not overstating its transactions by buying and selling to the same counterparties.

[...]

The Kaitong Report does not specifically address historical situations involving common shareholders and potential other interconnections between AIs and Suppliers that may appear as a result of the identification of backers. There is generally no ownership connection shown in SAIC filings between backers and the Suppliers and AIs associated with such backers in the Kaitong Report.

[...]

#### VI. OUTSTANDING MATTERS

As noted in Section I above, the IC understands that with the delivery of this report, its examination and review activities are terminated. The IC would expect its next steps may include only:

- (a) assisting in responses to regulators and RCMP as required; and
- (b) such other specific activities as it may deem advisable or the Board may instruct.

[Emphasis added]

#### IX. SINO REWARDS ITS EXPERTS

209. Bowland, Hyde and West are former E&Y partners and employees. They served on Sino's Audit Committee but purported to exercise oversight of their former E&Y colleagues. In addition, Sino's Vice-President, Finance (Corporate), Thomas M. Maradin, is a former E&Y employee.

210. The charter of Sino's Audit Committee required that Ardell, Bowland, Hyde and West "review and take action to eliminate all factors that might impair, or be perceived to impair, the independence of the Auditor." Sino's practice of appointing E&Y personnel to its board – and paying them handsomely (for example, Hyde was paid \$163,623 by Sino in 2010, \$115,962 in 2009, \$57,000 in 2008 and \$55,875 in 2007, plus options and other compensation) – undermined the Audit Committee's oversight of E&Y.

211. E&Y's independence was impaired by the significant non-audit fees it was paid during 2008-2010, which total \$712,000 in 2008, \$1,225,000 in 2009 and \$992,000 in 2010.

212. Further, Andrew Fyfe, the former Asia-Pacific President for Pöyry Forestry Industry Ltd, was appointed Chief Operating Officer of Greenheart, and is the director of several Sino subsidiaries. Fyfe signed the Pöyry valuation report dated June 30, 2004, March 22, 2005, March 23, 2006, March 14, 2008 and April 1, 2009.

213. George Ho, Sino's Vice President, Finance (China), is a former Senior Manager of the BDO.

#### **X. THE DEFENDANTS' RELATIONSHIP TO THE CLASS**

214. By virtue of their purported accounting, financial and/or managerial acumen and qualifications, and by virtue of their having assumed, voluntarily and for profit, the role of gatekeepers, the Defendants had a duty at common law, informed by the Securities Legislation and/or the *CBCA*, to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

215. Sino is a reporting issuer and had an obligation to make timely, full, true and accurate disclosure of material facts and changes with respect to its business and affairs.

216. The Individual Defendants, by virtue of their positions as senior officers and/or directors of Sino, owed a duty to the Class Members to ensure that public statements on behalf of Sino were not untrue, inaccurate or misleading. The continuous disclosure requirements in Canadian securities law mandated that Sino provide the Impugned Documents, including quarterly and annual financial statements. These documents were meant to be read by Class Members who acquired Sino's Securities in the secondary market and to be relied on by them in making investment decisions. This public disclosure was prepared to attract investment, and Sino and the Individual Defendants intended that Class Members would rely on public disclosure for that purpose. With respect to Prospectuses and Offering Memoranda, these documents were prepared for primary market purchasers. They include detailed content as mandated under Canadian securities legislation, national instruments and OSC rules. They were meant to be read by the Class Members who acquired Sino's Securities in the primary market, and to be relied on by them in making decisions about whether to purchase the shares or notes under the Offerings to which these Prospectuses and Offering Memoranda related.

217. Chan and Horsley had statutory obligations under Canadian securities law to ensure the accuracy of disclosure documents and provided certifications in respect of the annual reports, financial statements and Prospectuses during the Class Period. The other Individual Defendants were directors of Sino during the Class Period and each had a statutory obligation as a director under the *CBCA* to manage or supervise the management of the business and affairs of Sino. These Individual Defendants also owed a statutory duty of care to shareholders under section 122 of the *CBCA*. In addition, Poon, along with Chan, co-founded Sino and has been its president since 1994. He is intimately aware of Sino's operations and as a long-standing senior officer, he

had an obligation to ensure proper disclosure. Poon authorized, permitted or acquiesced in the release of the Impugned Documents.

218. BDO and E&Y acted as Sino's auditors and provided audit reports in Sino's annual financial statements that were directed to shareholders. These audit reports specified that BDO and E&Y had conducted an audit in accordance with GAAS, which was untrue, and included their opinions that the financial statements presented fairly, in all material respects, the financial position of Sino, the results of operations and Sino's cash flows, in accordance with GAAP. BDO and E&Y knew and intended that Class Members would rely on the audit reports and assurances about the material accuracy of the financial statements.

219. Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD each signed one or more of the Prospectuses and certified that, to the best of its knowledge, information and belief, the particular prospectus, together with the documents incorporated therein by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. These defendants knew that the Class Members who acquired Sino's Securities in the primary market would rely on these assurances and the trustworthiness that would be credited to the Prospectuses because of their involvement. Further, those Class Members that purchased shares under these Prospectuses purchased their shares from these defendants as principals.

220. Credit Suisse USA, TD and Banc of America acted as initial purchasers or dealer managers for one or more of the note Offerings. These defendants knew that persons purchasing these notes would rely on the trustworthiness that would be credited to the Offering Memoranda because of their involvement.

## XI. THE PLAINTIFFS' CAUSES OF ACTION

### A. *Negligent Misrepresentation*

221. As against all Defendants except Pöyry and the Underwriters, and on behalf of all Class Members who acquired Sino's Securities in the secondary market, the Plaintiffs plead negligent misrepresentation for all of the Impugned Documents except the Offering Memoranda.

222. Labourers and Wong, on behalf of Class Members who purchased Sino Securities in one of the distributions to which a Prospectus related, plead negligent misrepresentation as against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD for the Prospectuses.

223. Grant, on behalf of Class Members who purchased Sino Securities in one of the distributions to which an Offering Memorandum related, pleads negligent misrepresentation as against Sino, BDO and E&Y for the Offering Memoranda.

224. In support of these claims, the sole misrepresentation that the Plaintiffs plead is the Representation. The Representation is contained in the language relating to GAAP particularized above, and was untrue for the reasons particularized elsewhere herein.

225. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Sino securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon such documents in making the decision to purchase Sino securities.

226. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Sino's publicly traded securities

such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.

227. As set out elsewhere herein, the Defendants, other than Pöyry, Credit Suisse USA and Banc of America, had a duty at common law to exercise care and diligence to ensure that the Impugned Documents fairly and accurately disclosed Sino's financial condition and performance in accordance with GAAP.

228. These Defendants breached that duty by making the Representation as particularized above.

229. The Plaintiffs and the other Class Members directly or indirectly relied upon the Representation in making a decision to purchase the securities of Sino, and suffered damages when the falsity of the Representation was revealed on June 2, 2011.

230. Alternatively, the Plaintiffs and the other Class Members relied upon the Representation by the act of purchasing Sino securities in an efficient market that promptly incorporated into the price of those securities all publicly available material information regarding the securities of Sino. As a result, the repeated publication of the Representation in these Impugned Documents caused the price of Sino's shares to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiffs and Class Members.

**B. *Statutory Claims, Negligence, Oppression, Unjust Enrichment and Conspiracy***

*(i) Statutory Liability— Secondary Market under the Securities Legislation*

231. The Plaintiffs plead the claim found in Part XXIII.1 of the *OSA*, and, if required, the equivalent sections of the Securities Legislation other than the *OSA*, against all Defendants except the Underwriters.



232. Each of the Impugned Documents except for the December 2009 and October 2010 Offering Memoranda is a “Core Document” within the meaning of the Securities Legislation.

233. Each of these Impugned Documents contained one or more misrepresentations as particularized above. Such misrepresentations and the Representation are misrepresentations for the purposes of the Securities Legislation.

234. Each of the Individual Defendants was an officer and/or director of Sino at material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

235. Sino is a reporting issuer within the meaning of the Securities Legislation.

236. E&Y is an expert within the meaning of the Securities Legislation. E&Y consented to the use of its statements particularized above in these Impugned Documents.

237. BDO is an expert within the meaning of the Securities Legislation. BDO consented to the use of its statements particularize above in these Impugned Documents.

238. Pöyry is an expert within the meaning of the Securities Legislation. Pöyry consented to the use of its statements particularized above in these Impugned Documents.

239. At all material times, each of Sino, Chan, Poon and Horsley, BDO and E&Y knew or, in the alternative, was wilfully blind to the fact, that the Impugned Documents contained the Representation and that the Representation was false, and that the Impugned Documents contained other of the misrepresentations that are alleged above to have been contained therein.

(ii) *Statutory Liability – Primary Market for Sino’s Shares under the Securities Legislation*

240. As against Sino, Chan, Horsley, Wang, Martin, Mak, Murray, Hyde, Pöyry, BDO, E&Y, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on behalf

of those Class Members who purchased Sino shares in one of the distributions to which the June 2009 or December 2009 Prospectuses related, Labourers and Wong assert the cause of action set forth in s. 130 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

241. Sino issued the June 2009 and December 2009 Prospectuses, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Prospectuses or in the Sino disclosure documents incorporated therein by reference.

(iii) *Statutory Liability – Primary Market for Sino’s Notes under the Securities Legislation*

242. As against Sino, and on behalf of those Class Members who purchased or otherwise acquired Sino’s notes in one of the offerings to which the July 2008, June 2009, December 2009, and October 2010 Offering Memoranda related, Grant asserts the cause of action set forth in s. 130.1 of the *OSA* and, if necessary, the equivalent provisions of the Securities Legislation other than the *OSA*.

243. Sino issued the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, which contained the Representation and the other misrepresentations that are alleged above to have been contained in those Offering Memoranda or in the Sino disclosure documents incorporated therein by reference.

(iv) *Negligence Simpliciter – Primary Market for Sino’s Securities*

244. Sino, Chan, Poon, Horsley, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry and the Underwriters (collectively, the “**Primary Market Defendants**”) acted negligently in connection with one or more of the Offerings.

245. As against Sino, Chan, Horsley, Poon, Wang, Martin, Mak, Murray, Hyde, BDO, E&Y, Pöyry, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD, and on

behalf of those Class Members who purchased Sino's Securities in one of the distributions to which those Prospectuses related, Labourers and Wong assert negligence simpliciter.

246. As against Sino, BDO, E&Y, Pöyry, Credit Suisse USA, Banc of America and TD, and on behalf of those Class Members who purchased Sino's Securities in one of the distributions to which the Offering Memoranda related, Grant asserts negligence simpliciter.

247. The Primary Market Defendants owed a duty of care to ensure that the Prospectuses and/or the Offering Memoranda they issued, or authorized to be issued, or in respect of which they acted as an underwriter, initial purchaser or dealer manager, made full, true and plain disclosure of all material facts relating to the Securities offered thereby, or to ensure that their opinions or reports contained in such Prospectuses and Offering Memoranda did not contain a misrepresentation.

248. At all times material to the matters complained of herein, the Primary Market Defendants ought to have known that such Prospectuses or Offering Memoranda and the documents incorporated therein by reference were materially misleading in that they contained the Representation and the other misrepresentations particularized above.

249. Chan, Poon, Horsley, Wang, Martin, Mak, Murray and Hyde were senior officers and/or directors at the time the Offerings to which the Prospectuses related. These Prospectuses were created for the purposes of obtaining financing for Sino's operations. Chan, Horsley, Martin and Hyde signed each of the Prospectuses and certified that they made full, true and plain disclosure of all material facts relating to the shares offered. Wang, Mak and Murray were directors during one or more of these Offerings and each had a statutory obligation to manage or supervise the management of the business and affairs of Sino. Poon was a director for the June 2007 share Offering and was president of Sino at the time of the June 2009 and December 2009 Offering.

Poon, along with Chan, co-founded Sino and has been the president since 1994. He is intimately aware of Sino's business and affairs.

250. The Underwriters acted as underwriters, initial purchasers or dealer managers for the Offerings to which the Prospectuses and Offering Memoranda related. They had an obligation to conduct due diligence in respect of those Offerings and ensure that those Securities were offering at a price that reflected their true value or that such distributions did not proceed if inappropriate. In addition, Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord and TD signed one or more of the Prospectuses and certified that to the best of their knowledge, information and belief, the Prospectuses constituted full, true and plain disclosure of all material facts relating to the shares offered.

251. E&Y and BDO acted as Sino's auditors and had a duty to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

252. Pöyry had a duty to ensure that its opinions and reports reflected the true nature and value of Sino's assets. Pöyry, at the time it produced each of the 2008 Valuations, 2009 Valuations, and 2010 Valuations, specifically consented to the inclusion of those valuations or a summary at any time that Sino or its subsidiaries filed any documents on SEDAR or issued any documents pursuant to which any securities of Sino or any subsidiary were offered for sale.

253. The Primary Market Defendants have violated their duties to those Class Members who purchased Sino's Securities in the distributions to which a Prospectus or an Offering Memorandum related.

254. The reasonable standard of care expected in the circumstances required the Primary Market Defendants to prevent the distributions to which the Prospectuses or the Offering Memoranda related from occurring prior to the correction of the Representation and the other misrepresentations alleged above to have been contained in the Prospectuses or the Offering Memoranda, or in the documents incorporated therein by reference. Those Defendants failed to meet the standard of care required by causing the Offerings to occur before the correction of such misrepresentations.

255. In addition, by failing to attend and participate in Sino board and board committee meetings to a reasonable degree, Murray and Poon effectively abdicated their duties to the Class Members and as directors of Sino.

256. Sino, E&Y, BDO and the Individual Defendants further breached their duty of care as they failed to maintain or to ensure that Sino maintained appropriate internal controls to ensure that Sino's disclosure documents adequately and fairly presented the business and affairs of Sino on a timely basis.

257. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Prospectuses related, then securities regulators likely would not have issued a receipt for any of the Prospectuses, and those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's shares.

258. Had the Primary Market Defendants exercised reasonable care and diligence in connection with the distributions to which the Offering Memoranda related, then those distributions would not have occurred, or would have occurred at prices that reflected the true value of Sino's notes.

259. The Primary Market Defendants' negligence in relation to the Prospectuses and the Offering Memoranda resulted in damage to Labourers, Grant and Wong, and to the other Class Members who purchased Sino's Securities in the related distributions. Had those Defendants satisfied their duty of care to such Class Members, then those Class Members would not have purchased the Securities that they acquired under the Prospectuses or the Offering Memoranda, or they would have purchased them at a much lower price that reflected their true value.

(v) *Unjust Enrichment of Chan, Martin, Poon, Horsley, Mak and Murray*

260. As a result of the Representation and the other misrepresentations particularized above, Sino's shares traded, and were sold by Chan, Martin, Poon, Horsley, Mak and Murray, at artificially inflated prices during the Class Period.

261. Chan, Martin, Poon, Horsley, Mak and Murray were enriched by their wrongful acts and omissions during the Class Period, and the Class Members who purchased Sino shares from such Defendants suffered a corresponding deprivation.

262. There was no juristic reason for the resulting enrichment of Chan, Martin, Poon, Horsley, Mak and Murray.

263. The Class Members who purchased Sino shares from Chan, Martin, Poon, Horsley, Mak and Murray during the Class Period are entitled to the difference between the price they paid to such Defendants for such shares, and the price that they would have paid had the Defendants not made the Representation and the other misrepresentations particularized above, and had not committed the wrongful acts and omissions particularized above.

(vi) *Unjust Enrichment of Sino*

264. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via various documents, particularized above, that contained the Representation and the misrepresentations particularized above.

265. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the others misrepresentations particularized above.

266. Sino was enriched by, and those Class Members who purchased the Securities via the Offerings were deprived of, an amount equivalent to the difference between the amount for which the Securities offered were actually sold, and the amount for which such securities would have been sold had the Offerings not included the Representation and the misrepresentations particularized above.

267. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of Sino.

(vi) *Unjust Enrichment of the Underwriters*

268. Throughout the Class Period, Sino made the Offerings. Such Offerings were made via the Prospectuses and the Offering Memoranda, which contained the Representation and the other misrepresentations particularized above. Each of the Underwriters underwrote one or more of the Offerings.

269. The Securities sold by Sino via the Offerings were sold at artificially inflated prices as a result of the Representation and the other misrepresentations particularized above. The Underwriters earned fees from the Class, whether directly or indirectly, for work that they never

performed, or that they performed with gross negligence, in connection with the Offerings, or some of them.

270. The Underwriters were enriched by, and those Class Members who purchased securities via the Offerings were deprived of, an amount equivalent to the fees the Underwriters earned in connection with the Offerings.

271. The Offerings violated Sino's disclosure obligations under the Securities Legislation and the various instruments promulgated by the securities regulators of the Provinces in which such Offerings were made. There was no juristic reason for the enrichment of the Underwriters.

272. In addition, some or all of the Underwriters also acted as brokers in secondary market transactions relating to Sino securities, and earned trading commissions from the Class Members in those secondary market transactions in Sino's Securities. Those Underwriters were enriched by, and those Class Members who purchased Sino securities through those Underwriters in their capacity as brokers were deprived of, an amount equivalent to the commissions the Underwriters earned on such secondary market trades.

273. Had those Underwriters who also acted as brokers in secondary market transactions exercised reasonable diligence in connection with the Offerings in which they acted as Underwriters, then Sino's securities likely would not have traded at all in the secondary market, and the Underwriters would not have been paid the aforesaid trading commissions by the Class Members. There was no juristic reason for that enrichment of those Underwriters through their receipt of trading commissions from the Class Members.

*(vii) Oppression*

274. The Plaintiffs and the other Class Members had a reasonable and legitimate expectation that Sino and the Individual Defendants would use their powers to direct the company for Sino's



best interests and, in turn, in the interests of its security holders. More specifically, the Plaintiffs and the other Class Members had a reasonable expectation that:

- (a) Sino and the Individual Defendants would comply with GAAP, and/or cause Sino to comply with GAAP;
- (b) Sino and the Individual Defendants would take reasonable steps to ensure that the Class Members were made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino and the Individual Defendants would implement adequate corporate governance procedures and internal controls to ensure that Sino disclosed material facts and material changes in the company's business and affairs on a timely basis;
- (d) Sino and the Individual Defendants would not make the misrepresentations particularized above;
- (e) Sino stock options would not be backdated or otherwise mispriced; and
- (f) the Individual Defendants would adhere to the Code.

275. Such reasonable expectations were not met as:

- (a) Sino did not comply with GAAP;
- (b) the Class Members were not made aware on a timely basis of material developments in Sino's business and affairs;
- (c) Sino's corporate governance procedures and internal controls were inadequate;
- (d) the misrepresentations particularized above were made;
- (e) stock options were backdated and/or otherwise mispriced; and
- (f) the Individual Defendants did not adhere to the Code.

276. Sino's and the Individual Defendants' conduct was oppressive and unfairly prejudicial to the Plaintiffs and the other Class Members and unfairly disregarded their interests. These defendants were charged with the operation of Sino for the benefit of all of its shareholders.

The value of the shareholders' investments was based on, among other things:

- (a) the profitability of Sino;
- (b) the integrity of Sino's management and its ability to run the company in the interests of all shareholders;
- (c) Sino's compliance with its disclosure obligations;
- (d) Sino's ongoing representation that its corporate governance procedures met with reasonable standards, and that the business of the company was subjected to reasonable scrutiny; and
- (e) Sino's ongoing representation that its affairs and financial reporting were being conducted in accordance with GAAP.

277. This oppressive conduct impaired the ability of the Plaintiffs and other Class Members to make informed investment decisions about Sino's securities. But for that conduct, the Plaintiffs and the other Class Members would not have suffered the damages alleged herein.

*(viii) Conspiracy*

278. Sino, Chan, Poon and Horsley conspired with each other and with persons unknown (collectively, the "Conspirators") to inflate the price of Sino's securities. During the Class Period, the Conspirators unlawfully, maliciously and lacking bona fides, agreed together to, among other things, make the Representation and other misrepresentations particularized above, and to profit from such misrepresentations by, among other things, issuing stock options in respect of which the strike price was impermissibly low.

279. The Conspirators' predominant purposes in so conspiring were to:

- (a) inflate the price of Sino's securities, or alternatively, maintain an artificially high trading price for Sino's securities;
- (b) artificially increase the value of the securities they held; and
- (c) inflate the portion of their compensation that was dependent in whole or in part upon the performance of Sino and its securities.

280. In furtherance of the conspiracy, the following are some, but not all, of the acts carried out or caused to be carried out by the Conspirators:

- (a) they agreed to, and did, make the Representation, which they knew was false;
- (b) they agreed to, and did, make the other misrepresentations particularized above, which they knew were false;
- (c) they caused Sino to issue the Impugned Documents which they knew to be materially misleading;
- (d) as alleged more particularly below, they caused to be issued stock options in respect of which the strike price was impermissibly low; and
- (e) they authorized the sale of securities pursuant to Prospectuses and Offering Memoranda that they knew to be materially false and misleading.

281. Stock options are a form of compensation used by companies to incentivize the performance of directors, officers and employees. Options are granted on a certain date (the 'grant date') at a certain price (the 'exercise' or 'strike' price). At some point in the future, typically following a vesting period, an options-holder may, by paying the strike price, exercise the option and convert the option into a share in the company. The option-holder will make money as long as the option's strike price is lower than the market price of the security at the

moment that the option is exercised. This enhances the incentive of the option recipient to work to raise the stock price of the company.

282. There are three types of option grants:

- (a) 'in-the-money' grants are options granted where the strike price is lower than the market price of the security on the date of the grant; such options are not permissible under the TSX Rules and have been prohibited by the TSX Rules at all material times;
- (b) 'at-the-money' grants are options granted where the strike price is equal to the market price of the security on the date of the grant or the closing price the day prior to the grant; and
- (c) 'out-of-the-money' grants are options granted where the strike price is higher than the market price of the security on the date of the grant.

283. Both at-the-money and out-of-the-money options are permissible under the TSX Rules and have been at all material times.

284. The purpose of both at-the-money and out-of-the-money options is to create incentives for option recipients to work to raise the share price of the company. Such options have limited value at the time of the grant, because they entitle the recipient to acquire the company's shares at or above the price at which the recipient could acquire the company's shares in the open market. Options that are in-the-money, however, have substantial value at the time of the grant irrespective of whether the company's stock price rises subsequent to the grant date.

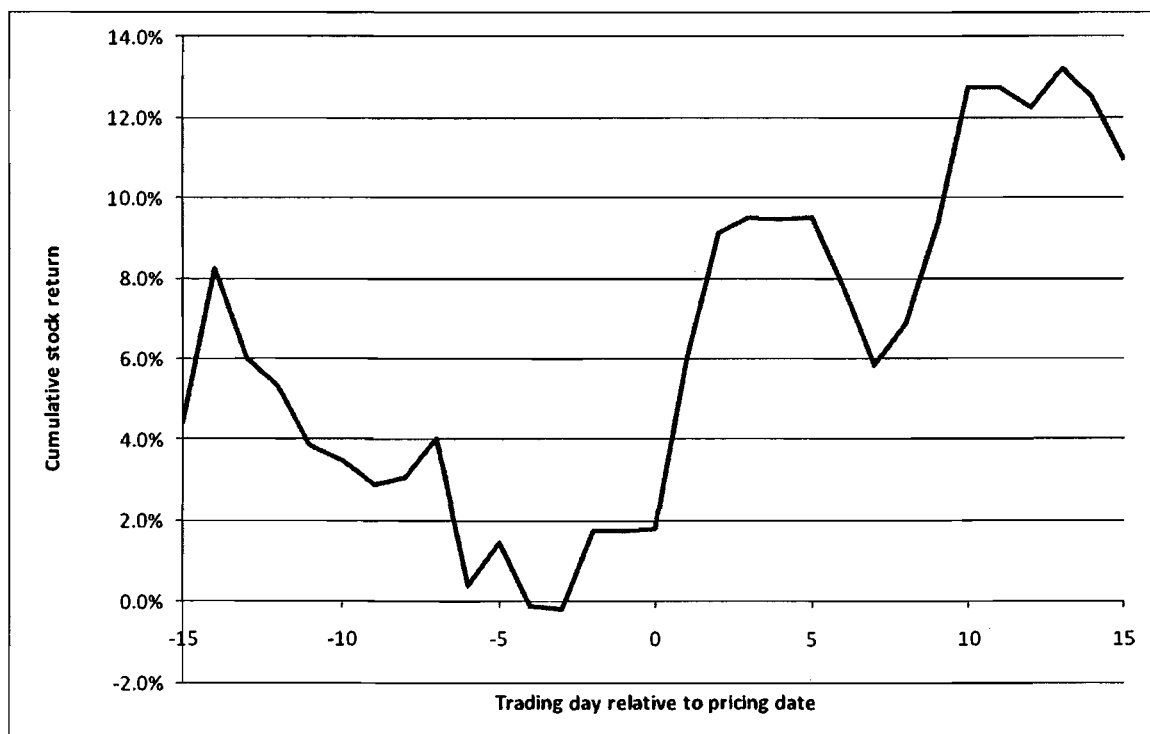
285. At all material times, the Sino Option Plan (the "**Plan**") prohibited in-the-money options.

286. The Conspirators backdated and/or otherwise mispriced Sino stock options, or caused the backdating and/or mispricing of Sino stock options, in violation of, inter alia: (a) the *OSA* and the rules and regulations promulgated thereunder; (b) the Plan; (c) GAAP; (d) the Code; (e) the TSX

Rules; and (f) the Conspirators' statutory, common law and contractual fiduciary duties and duties of care to Sino and its shareholders, including the Class Members.

287. The Sino stock options that were backdated or otherwise mispriced included those issued on June 26, 1996 to Chan, January 21, 2005 to Horsley, September 14, 2005 to Horsley, June 4, 2007 to Horsley and Chan, August 21, 2007 to Sino insiders other than the Conspirators, November 23, 2007 to George Ho and other Sino insiders, and March 31, 2009 to Sino insiders other than the Conspirators.

288. The graph below shows the average stock price returns for fifteen trading days prior and subsequent to the dates as of which Sino priced its stock options to its insiders. As appears therefrom, on average the dates as of which Sino's stock options were priced were preceded by a substantial decline in Sino's stock price, and were followed by a dramatic increase in Sino's stock price. This pattern could not plausibly be the result of chance.



289. The conspiracy was unlawful because the Conspirators knowingly and intentionally committed the foregoing acts when they knew such conduct was in violation of, *inter alia*, the OSA, the Securities Legislation other than the OSA, the Code, the rules and requirements of the TSX (the “TSX Rules”) and the CBCA. The Conspirators intended to, and did, harm the Class by causing artificial inflation in the price of Sino’s securities.

290. The Conspirators directed the conspiracy toward the Plaintiffs and the other Class Members. The Conspirators knew in the circumstances that the conspiracy would, and did, cause loss to the Plaintiffs and the other Class Members. The Plaintiffs and the Class Members suffered damages when the falsity of the Representation and other misrepresentations were revealed on June 2, 2011.

## **XII. THE RELATIONSHIP BETWEEN SINO’S DISCLOSURES AND THE PRICE OF SINO’S SECURITIES**

291. The price of Sino’s securities was directly affected during the Class Period by the issuance of the Impugned Documents. The Defendants were aware at all material times of the effect of Sino’s disclosure documents upon the price of its Sino’s securities.

292. The Impugned Documents were filed, among other places, with SEDAR and the TSX, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

293. Sino routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Sino securities. Sino provided either copies of the above referenced documents or links thereto on its website.

294. Sino regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Sino communicated that new material information about Sino financial results to the public the price of Sino securities was directly affected.

295. Sino was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Sino securities in such reports during the Class Period were based, in whole or in part, upon that information.

296. Sino's securities were and are traded, among other places, on the TSX, which is an efficient and automated market. The price at which Sino's securities traded promptly incorporated material information from Sino's disclosure documents about Sino's business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by Sino, as well as by other means.

### **XIII. VICARIOUS LIABILITY**

#### **A. *Sino and the Individual Defendants***

297. Sino is vicariously liable for the acts and omissions of the Individual Defendants particularized in this Claim.

298. The acts or omissions particularized and alleged in this Claim to have been done by Sino were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Sino, while engaged in the management, direction, control and transaction of the business and affairs of Sino. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Sino.

299. At all material times, the Individual Defendants were officers and/or directors of Sino. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiffs and the other Class Members.

**B. E&Y**

300. E&Y is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

301. The acts or omissions particularized and alleged in this Claim to have been done by E&Y were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of E&Y. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of E&Y.

**C. BDO**

302. BDO is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.

303. The acts or omissions particularized and alleged in this Claim to have been done by BDO were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of BDO. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of BDO.

**D. Pöyry**

304. Pöyry is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out above.



305. The acts or omissions particularized and alleged in this Claim to have been done by Pöyry were authorized, ordered and done by its officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs of Pöyry. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of Pöyry.

**E. *The Underwriters***

306. The Underwriters are vicariously liable for the acts and omissions of each of their respective officers, directors, partners, agents and employees as set out above.

307. The acts or omissions particularized and alleged in this Claim to have been done by the Underwriters were authorized, ordered and done by each of their respective officers, directors, partners, agents and employees, while engaged in the management, direction, control and transaction of the business and affairs such Underwriters. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of the respective Underwriters.

**XIV. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO**

308. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other thing:

- (a) Sino is a reporting issuer in Ontario;
- (b) Sino's shares trade on the TSX which is located in Toronto, Ontario;
- (c) Sino's registered office and principal business office is in Mississauga, Ontario;
- (d) the Sino disclosure documents referred to herein were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;

- (f) Sino carries on business in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

#### **XV. SERVICE OUTSIDE OF ONTARIO**

309. The Plaintiffs may serve the Notice of Action and Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the Rules of Civil Procedure, because this claim is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (para 17.02(o)); and
- (e) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

#### **XVI. RELEVANT LEGISLATION, PLACE OF TRIAL, JURY TRIAL AND HEADINGS**

310. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the Securities Legislation and *CBCA*, all as amended.

311. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

312. The Plaintiffs will serve a jury notice.

313. The headings contained in this Statement of Claim are for convenience only. This Statement of Claim is intended to be read as an integrated whole, and not as a series of unrelated components.

January 26, 2012

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Lawyers for the Plaintiffs

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**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM  
(NOTICE OF ACTION ISSUED JULY 20, 2011)**

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Lawyers for the Plaintiffs

This is Exhibit "D" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.



---

A Commissioner, etc.  
Serge Kalloghlian  
(LSUC #55557F)

**CITATION:** Smith v Sino-Forest Corporation, 2012 ONSC24  
**COURT FILE NO.:** 11-CV-428238CP  
**COURT FILE NO.:** 11-CV-431153CP  
**COURT FILE NO.:** 11-CV-435826CP  
**DATE:** January 6, 2012

**ONTARIO  
 SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Douglas Smith and Zhongjun Goa**

Plaintiffs

- and -

**Sino-Forest Corporation, Allen T.Y. Chan, James M.E. Hyde, Edmund Mak, W. Judson Martin, Simon Murray, Peter D.H. Wang, David J. Horsley, Ernst & Young LLP, BDO 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., and Maison Placements Canada Inc.**

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**AND BETWEEN:**

**The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario**

Plaintiffs

- and -

**Sino-Forest Corporation, Ernst & Young LLP, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, Kai Kit Poon, David J. Horsley, 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., and Maison Placements Canada Inc.**

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**AND BETWEEN:**

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

Plaintiffs

- and -

**Sino-Forest Corporation, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon,  
David J. Horsley, Hua Chen, Wei Mao Zhao, Alfred C.T. Hung, Albert Ip, George  
Ho, Thomas M. Maradin, William E. Ardell, James M.E. Hyde, Simon Murray,  
Garry J. West, James P. Bowland, Edmund Mak, Peter Wang, Kee Y. Wong, The  
Estate of John Lawrence, Simon Yeung, Ernst & Young LLP, BDO Limited,  
Pöyry Forest Industry PTE Limited, Pöyry (Beijing) Consulting Company  
Limited, JP Management Consulting (Asia-Pacific) PTE Ltd., Dundee Securities  
Corporation, UBS Securities Canada Inc., Haywood Securities Inc., Credit Suisse  
Securities (Canada), Inc., TD Securities Inc., RBC Dominion Securities Inc., Scotia  
Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc. Canaccord  
Financial Ltd., Maison Placements Canada Inc., Morgan Stanley & Co.  
Incorporated, Credit Suisse Securities (USA), LLC, Merrill Lynch, Pierce, Fenner  
& Smith, Inc.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**COUNSEL:**

- J.P. Rochon, J. Archibald, and S. Tambakos for the Plaintiffs in 11-CV-428238CP
- K.M. Baert, J. Bida, and C.M. Wright for the Plaintiffs in 11-CV-431153CP
- J.C. Orr, V. Paris, N. Mizobuchi, and A. Erfan for the Plaintiffs in 11-CV-435826CP
- M. Eizenga for the defendant Sino-Forest Corporation
- P. Osborne and S. Roy for the defendant Ernst & Young LLP
- E. Cole for the defendant Allen T.Y. Chan
- J. Fabello for the defendant underwriters

**HEARING DATES:** December 20 and 21, 2011

**PERELL, J.**

**REASONS FOR DECISION****A. INTRODUCTION**

[1] This is a carriage motion under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. In this particular carriage motion, four law firms are rivals for the carriage of a class action against Sino-Forest Corporation. There are currently four proposed Ontario class

actions against Sino-Forest to recover losses alleged to be in the billions of dollars arising from the spectacular crash in value of its shares and notes.

[2] Practically speaking, carriage motions involve two steps. First, the rival law firms that are seeking carriage of a class action extoll their own merits as class counsel and the merits of their client as the representative plaintiff. During this step, the law firms explain their tactical and strategic plans for the class action, and, thus, a carriage motion has aspects of being a casting call or rehearsal for the certification motion.

[3] Second, the rival law firms submit that with their talent and their litigation plan, their class action is the better way to serve the best interests of the class members, and, thus, the court should choose their action as the one to go forward. No doubt to the delight of the defendants and the defendants' lawyers, which have a watching brief, the second step also involves the rivals hardheartedly and toughly reviewing and criticizing each other's work and pointing out flaws, disadvantages, and weaknesses in their rivals' plans for suing the defendants.

[4] The law firms seeking carriage are: Rochon Genova LLP; Koskie Minsky LLP; Siskinds LLP; and Kim Orr Barristers P.C., all competent, experienced, and veteran class action law firms.

[5] For the purposes of deciding the carriage motions, I will assume that all of the rivals have delivered their Statements of Claim as they propose to amend them.

[6] Koskie Minsky and Siskinds propose to act as co-counsel and to consolidate two of the actions. Thus, the competition for carriage is between three proposed class actions; namely:

- *Smith v. Sino-Forest Corp.* (11-CV-428238CP) ("*Smith v. Sino-Forest*") with Rochon Genova as Class Counsel
- *The Trustees of Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.* (11-CV-431153CP) ("*Labourers v. Sino-Forest*") with Koskie Minsky and Siskinds as Class Counsel (This action would be consolidated with "*Grant v. Sino-Forest*" (CV-11-439400-00CP))
- *Northwest & Ethical Investments L.P. v. Sino-Forest Corp.* (11-CV-435826CP) ("*Northwest v. Sino-Forest*") with Kim Orr as Class Counsel.

[7] It has been a very difficult decision to reach, but for the reasons that follow, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I grant carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*.

[8] I also grant leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim, which may include the joinder of the plaintiffs and the causes of action set out in *Grant v. Sino-Forest*, *Smith v. Sino-Forest*, and *Northwest v. Sino-Forest*, as the plaintiffs may be advised.

[9] This order is without prejudice to the rights of the Defendants to challenge the Fresh as Amended Statement of Claim as they may be advised. In any event, nothing in



these reasons is intended to make findings of fact or law binding on the Defendants or to be a pre-determination of the certification motion.

### **B. METHODOLOGY**

[10] To explain my reasons, first, I will describe the jurisprudence about carriage motions. Second, I will describe the evidentiary record for the carriage motions. Third, I will describe the factual background to the claims against Sino-Forest, which is the principal but not the only target of the various class actions. Fourth, deferring my ultimate conclusions, I will analyze the rival actions that are competing for carriage under twelve headings and describe the positions and competing arguments of the law firms competing for carriage. Fifth, I will culminate the analysis of the competing actions by explaining the carriage order decision. Sixth and finally, I will finish with a concluding section.

[11] Thus, the organization of these Reasons for Decision is as follows:

- Introduction
- Methodology
- Carriage Orders Jurisprudence
- Evidentiary Background
- Factual Background to the Claims against Sino-Forest
- Analysis of the Competing Class Actions
  - The Attributes of Class Counsel
  - Retainer, Legal and Forensic Resources, and Investigations
  - Proposed Representative Plaintiffs
  - Funding
  - Conflicts of Interest
  - Definition of Class Membership
  - Definition of Class Period
  - Theory of the Case against the Defendants
  - Joinder of Defendants
  - Causes of Action
  - The Plaintiff and the Defendant Correlation
  - Prospects of Certification
- Carriage Order
  - Introduction
  - Neutral or Non-Determinative Factors
  - Determinative Factors
- Conclusion

### **C. CARRIAGE ORDERS JURISPRUDENCE**

[12] There should not be two or more class actions that proceed in respect of the same putative class asserting the same cause(s) of action, and one action must be selected: *Vitapharm Canada Ltd. v. F. Hoffman-Laroche Ltd.*, [2000] O.J. No. 4594

(S.C.J.) at para. 14. See also *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2001] O.J. No. 3682 (S.C.J.), aff'd [2002] O.J. No. 2010 (C.A.). When counsel have not agreed to consolidate and coordinate their actions, the court will usually select one and stay all other actions: *Lau v. Bayview Landmark*, [2004] O.J. No. 2788 (S.C.J.) at para. 19.

[13] Where two or more class proceedings are brought with respect to the same subject matter, a proposed representative plaintiff in one action may bring a carriage motion to stay all other present or future class proceedings relating to the same subject matter: *Settingington v. Merck Frosst Canada Ltd.*, [2006] O.J. No. 376 (S.C.J.) at paras. 9-11; *Ricardo v. Air Transat A.T. Inc.*, [2002] O.J. No. 1090 (S.C.J.), leave to appeal dismissed [2002] O.J. No. 2122 (S.C.J.).

[14] The *Class Proceedings Act, 1992*, confers upon the court a broad discretion to manage the proceedings. Section 13 of the Act authorizes the court to “stay any proceeding related to the class proceeding,” and s. 12 authorizes the court to “make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination.” Section 138 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 directs that “as far as possible, multiplicity of legal proceedings shall be avoided.” See: *Settingington v. Merck Frosst Canada Ltd.*, *supra*, at paras. 9-11.

[15] The court also has its normal jurisdiction under the *Rules of Civil Procedure*. Section 35 of the *Class Proceedings Act, 1992*, provides that the rules of court apply to class proceedings. Among the rules that are available is Rule 6, the rule that empowers the court to consolidate two or more proceedings or to order that they be heard together.

[16] In determining carriage of a class proceeding, the court’s objective is to make the selection that is in the best interests of class members, while at the same time being fair to the defendants and being consistent with the objectives of the *Class Proceedings Act, 1992*: *Vitapharm Canada Ltd. v. F. Hoffman-La Roche Ltd.*, [2000] O.J. No. 4594 (S.C.J.) at para. 48; *Settingington v. Merck Frosst Canada Ltd.*, *supra*, at para. 13 (S.C.J.); *Sharma v. Timminco Ltd.* (2009), 99 O.R. (3d) 260 (S.C.J.) at para. 14. The objectives of a class proceeding are access to justice, behaviour modification, and judicial economy for the parties and for the administration of justice.

[17] Courts generally consider seven non-exhaustive factors in determining which action should proceed: (1) the nature and scope of the causes of action advanced; (2) the theories advanced by counsel as being supportive of the claims advanced; (3) the state of each class action, including preparation; (4) the number, size and extent of involvement of the proposed representative plaintiffs; (5) the relative priority of the commencement of the class actions; (6) the resources and experience of counsel; and (7) the presence of any conflicts of interest: *Sharma v. Timminco Ltd.*, *supra* at para. 17.

[18] In these reasons, I will examine the above factors under somewhat differently-named headings and in a different order and combination. And, I will add several more factors that the parties made relevant to the circumstances of the competing actions in the cases at bar, including: (a) funding; (b) definition of class membership; (c) definition of class period; (d) joinder of defendants; (e) the plaintiff and defendant correlation; and, (f) prospects of certification.

[19] In addition to identifying relevant factors, the carriage motion jurisprudence provides guidance about how the court should determine carriage. Although the determination of a carriage motion will decide which counsel will represent the plaintiff, the task of the court is not to choose between different counsel according to their relative resources and expertise; rather, it is to determine which of the competing actions is more, or most, likely to advance the interests of the class: *Tiboni v. Merck Frosst Canada Ltd.*, [2008] O.J. No. 2996 (S.C.J.), sub. nom *Mignacca v. Merck Frosst Canada Ltd.*, leave to appeal granted [2008] O.J. No. 4731 (S.C.J.), aff'd [2009] O.J. No. 821 (Div. Ct.), application for leave to appeal to C.A. ref'd May 15, 2009, application for leave to appeal to S.C.C. ref'd [2009] S.C.C.A. No. 261.

[20] On a carriage motion, it is inappropriate for the court to embark upon an analysis as to which claim is most likely to succeed unless one is "fanciful or frivolous": *Settingington v. Merck Frosst Canada Ltd.*, *supra*, at para. 19.

[21] In analysing whether the prohibition against a multiplicity of proceedings would be offended, it is not necessary that the multiple proceedings be identical or mirror each other in every respect; rather, the court will look at the essence of the proceedings and their similarities: *Settingington v. Merck Frosst Canada Ltd.*, *supra*, at para. 11.

[22] Where there is a competition for carriage of a class proceeding, the circumstance that one competitor joins more defendants is not determinative; rather, what is important is the rationale for the joinder and whether or not it is advantageous for the class to join the additional defendants: *Joel v Menu Foods Gen-Par Limited*, [2007] B.C.J. No. 2159 (B.C.S.C.); *Genier v. CCI Capital Canada Ltd.*, [2005] O.J. No. 1135 (S.C.J.); *Settingington v. Merck Frosst Canada Ltd.*, *supra*.

[23] In determining which firm should be granted carriage of a class action, the court may consider whether there is any potential conflict of interest if carriage is given to one counsel as opposed to others: *Joel v Menu Foods Gen-Par Limited*, *supra* at para. 16; *Vitapharm Canada Ltd. v. F. Hoffman-Laroche Ltd.*, [2000] O.J. No. 4594 (S.C.J.) and [2001] O.J. No. 3673 (S.C.J.).

#### D. EVIDENTIARY BACKGROUND

##### *Smith v. Sino-Forest*

[24] In support of its carriage motion in *Smith v. Sino-Forest*, Rochon Genova delivered affidavits from:

- Ken Froese, who is Senior Managing Director of Froese Forensic Partners Ltd., a forensic accounting firm
- Vincent Genova, who is the managing partner of Rochon Genova
- Douglas Smith, the proposed representative plaintiff

##### *Labourers v. Sino-Forest*

[25] In support of their carriage motion in *Labourers v. Sino-Forest*, Koskie Minsky and Siskinds delivered affidavits from:

- Dimitri Lascaris, who is a partner at Siskinds and the leader of its class action team
- Michael Gallagher, who is the Chair of the Board of Trustees of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario (“Operating Engineers Fund”), a proposed representative plaintiff
- David Grant, a proposed representative plaintiff
- Richard Grottheim, who is the Chief Executive Officer of Sjunde AP-Fonden, a proposed representative plaintiff
- Joseph Mancinelli, who is the Chair of the Board of Trustees of The Trustees of the Labourers’ Pension Fund of Central and Eastern Canada (“Labourers’ Fund”), a proposed representative plaintiff. He also holds senior positions with the Labourers International Union of North America, which has more than 80,000 members in Canada
- Ronald Queck, who is Director of Investments of the Healthcare Employee Benefits Plans of Manitoba (“Healthcare Manitoba”), which would be a prominent class member in the proposed class action
- Frank Torchio, who is a chartered financial analyst and an expert in finance and economics who was retained to opine, among other things, about the damages suffered under various proposed class periods by Sino-Forest shareholders and noteholders under s. 138.5 of the *Ontario Securities Act*
- Robert Wong, who is a proposed representative plaintiff
- Mark Zigler, who is the managing partner of Koskie Minsky

Northwest v. Sino-Forest

[26] In support of its carriage motion in *Northwest v. Sino-Forest*, Kim Orr delivered affidavits from:

- Megan B. McPhee, a principal of the firm
- John Mountain, who is the Senior Vice President, Legal and Human Resources, the Chief Compliance Officer and Corporate Secretary of Northwest Ethical Investments L.P. (“Northwest”), a proposed representative plaintiff
- Zachary Nye, a financial economist who was retained to respond to Mr. Torchio’s opinion
- Daniel Simard, who is General Co-Ordinator and a non-voting ex-officio member of the Board of Directors and Committees of Comité syndical national de retraite Bâtirente inc. (“Bâtirente”), a proposed representative plaintiff
- Michael C. Spencer, a lawyer qualified to practice in New York, California, and Ontario, who is counsel to Kim Orr and a partner and member of the executive committee at the American law firm of Milberg LLP

- Brian Thomson, who is Vice-President, Equity Investments for British Columbia Investment Management Corporation ("BC Investment"), a proposed representative plaintiff

**E. FACTUAL BACKGROUND TO THE CLAIMS AGAINST SINO-FOREST**

[27] The following factual background is largely an amalgam made from the unproven allegations in the Statements of Claim in the three proposed class actions and unproven allegations in the motion material delivered by the parties.

[28] The Defendant, Sino-Forest is a Canadian public company incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 with its registered office in Mississauga, Ontario, and its head office in Hong Kong. Its shares have traded on the Toronto Stock Exchange ("TSX") since 1995. It is a forestry plantation company with operations centered in the People's Republic of China. Its trading of securities is subject to the regulation of the *Ontario Securities Act*, R.S.O. 1990, c. S.5, under which it is a "reporting issuer" subject to the continuous disclosure provisions of Part XVIII of the Act and a "responsible issuer" subject to civil liability for secondary market misrepresentation under Part XXIII.1 of the Act.

[29] The Defendant, Ernst & Young LLP ("E&Y") has been Sino-Forest's auditor from 1994 to date, except for 1999, when the now-defunct Arthur Andersen LLP did the audit, and 2005 and 2006, when the predecessor of what is now the Defendant, BDO Limited ("BDO") was Sino-Forest's auditor. BDO is the Hong Kong member of BDO International Ltd., a global accounting and audit firm.

[30] E&Y and BDO are "experts" within the meaning of s. 138.1 of the *Ontario Securities Act*.

[31] From 1996 to 2010, in its financial statements, Sino-Forest reported only profits, and it appeared to be an enormously successful enterprise that substantially outperformed its competitors in the forestry industry. Sino-Forest's 2010 Annual Report issued in May 2011 reported that Sino-Forest had net income of \$395 million and assets of \$5.7 billion. Its year-end market capitalization was \$5.7 billion with approximately 246 million common shares outstanding.

[32] It is alleged that Sino-Forest and its auditors E&Y and BDO repeatedly misrepresented that Sino-Forest's financial statements complied with GAAP ("generally accepted accounting principles").

[33] It is alleged that Sino-Forest and its officers and directors made other misrepresentations about the assets, liabilities, and performance of Sino-Forest in various filings required under the *Ontario Securities Act*. It is alleged that these misrepresentations appeared in the documents used for the offerings of shares and bonds in the primary market and again in what are known as Core Documents under securities legislation, which documents are available to provide information to purchasers of shares and bonds in the secondary market. It is also alleged that misrepresentations were made in oral statements and in Non-Core Documents.

[34] The Defendant, Allen T.Y. Chan was Sino-Forest's co-founder, its CEO, and a director until August 2011. He resides in Hong Kong.

[35] The Defendant, Kai Kit Poon, was Sino-Forest's co-founder, a director from 1994 until 2009, and Sino-Forest's President. He resides in Hong Kong.

[36] The Defendant, David J. Horsley was a Sino-Forest director (from 2004 to 2006) and was its CFO. He resides in Ontario.

[37] The Defendants, William E. Ardell (resident of Ontario, director since 2010), James P. Bowland (resident of Ontario, director since 2011), James M.E. Hyde (resident of Ontario, director since 2004), John Lawrence (resident of Ontario, deceased, director 1997 to 2006), Edmund Mak (resident of British Columbia, director since 1994), W. Judson Martin (resident of Hong Kong, director since 2006, CEO since August 2011), Simon Murray (resident of Hong Kong, director since 1999), Peter Wang (resident of Hong Kong, director since 2007) and Garry J. West (resident of Ontario, director since 2011) were members of Sino-Forest's Board of Directors.

[38] The Defendants, Hua Chen (resident of Ontario), George Ho (resident of China), Alfred C.T. Hung (resident of China), Alfred Ip (resident of China), Thomas M. Maradin (resident of Ontario), Simon Yeung (resident of China) and Wei Mao Zhao (resident of Ontario) are vice presidents of Sino-Forest. The defendant Kee Y. Wong was CFO from 1999 to 2005.

[39] Sino-Forest's forestry assets were valued by the Defendant, Pöyry (Beijing) Consulting Company Limited, ("Pöyry"), a consulting firm based in Shanghai, China. Associated with Pöyry are the Defendants, Pöyry Forest Industry PTE Limited ("Pöyry-Forest") and JP Management Consulting (Asia-Pacific) PTE Ltd. ("JP Management"). Each Pöyry Defendant is an expert as defined by s. 138.1 of the *Ontario Securities Act*.

[40] Pöyry prepared technical reports dated March 8, 2006, March 15, 2007, March 14, 2008, April 1, 2009, and April 23, 2010 that were filed with SEDAR (the System of Electronic Document Analysis and Retrieval) and made available on Sino-Forest's website. The reports contained a disclaimer and a limited liability exculpatory provision purporting to protect Pöyry from liability.

[41] In China, the state owns the forests, but the Chinese government grants forestry rights to local farmers, who may sell their lumber rights to forestry companies, like Sino-Forest. Under Chinese law, Sino-Forest was obliged to maintain a 1:1 ratio between lands for forest harvesting and lands for forest replantation.

[42] Sino-Forest's business model involved numerous subsidiaries and the use of authorized intermediaries or "AIs" to assemble forestry rights from local farmers. Sino-Forest also used authorized intermediaries to purchase forestry products. There were numerous AIs, and by 2010, Sino-Forest had over 150 subsidiaries, 58 of which were formed in the British Virgin Islands and at least 40 of which were incorporated in China.

[43] It is alleged that from at least March 2003, Sino-Forest used its business model and non-arm's length AIs to falsify revenues and to facilitate the misappropriation of Sino-Forest's assets.

[44] It is alleged that from at least March 2004, Sino-Forest made false statements about the nature of its business, assets, revenue, profitability, future prospects, and compliance with the laws of Canada and China. It is alleged that Sino-Forest and other Defendants misrepresented that Sino-Forest's financial statements complied with GAPP ("generally accepted accounting principles"). It is alleged that Sino-Forest misrepresented that it was an honest and reputable corporate citizen. It is alleged that Sino-Forest misrepresented and greatly exaggerated the nature and extent of its forestry rights and its compliance with Chinese forestry regulations. It is alleged that Sino-Forest inflated its revenue, had questionable accounting practices, and failed to pay a substantial VAT liability. It is alleged that Sino-Forest and other Defendants misrepresented the role of the AIs and greatly understated the risks of Sino-Forest utilizing them. It is alleged that Sino-Forest materially understated the tax-related risks from the use of AIs in China, where tax evasion penalties are severe and potentially devastating.

[45] Starting in 2004, Sino-Forest began a program of debt and equity financing. It amassed over \$2.1 billion from note offerings and over \$906 million from share issues.

[46] On May 17, 2004, Sino-Forest filed its Annual Information Form for the 2003 year. It is alleged in *Smith v. Sino-Forest* that the 2003 AIF contains the first misrepresentation in respect of the nature and role of the authorized intermediaries, which allegedly played a foundational role in the misappropriation of Sino-Forest's assets.

[47] In August 2004, Sino-Forest issued an offering memorandum for the distribution of 9.125% guaranteed senior notes (\$300 million (U.S.)). The Defendant, Morgan Stanley & Co. Incorporated ("Morgan") was a note distributor that managed the note offering in 2004 and purchased and resold notes.

[48] Under the Sino-Forest note instruments, in the event of default, the trustee may sue to collect payment of the notes. A noteholder, however, may not pursue any remedy with respect to the notes unless, among other things, written notice is given to the trustee by holders of 25% of the outstanding principal asking the trustee to pursue the remedy and the trustee does not comply with the request. The notes provide that no noteholder shall obtain a preference or priority over another noteholder. The notes contain a waiver and release of Sino-Forest's directors, officers, and shareholders from all liability "for the payment of the principal of, or interest on, or other amounts in respect of the notes or for any claim based thereon or otherwise in respect thereof." The notes are all governed by New York law and include non-exclusive attornment clauses to the jurisdiction of New York State and United States federal courts.

[49] On March 19, 2007, Sino-Forest announced its 2006 financial results. The appearance of positive results caused a substantial increase in its share price which moved from \$10.10 per share to \$13.42 per share ten days later, a 33% increase.

[50] In May 2007, Sino-Forest filed a Management Information Circular that represented that it maintained a high standard of corporate governance. It indicated that its Board of Directors made compliance with high governance standards a top priority.

[51] In June 2007, Sino-Forest made a share prospectus offering of 15.9 million common shares at \$12.65 per share (\$201 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were the Defendants, CIBC World Markets Inc. ("CIBC"), Credit Suisse Securities Canada (Inc.) ("Credit Suisse"), Dundee Securities Corporation ("Dundee"), Haywood Securities Inc. ("Haywood"), Merrill Lynch Canada, Inc. ("Merrill") and UBS Securities Canada Inc. ("UBS").

[52] In July 2008, Sino-Forest issued a final offering memorandum for the distribution of 5% convertible notes (\$345 million (U.S)) due 2013. The Defendants, Credit Suisse Securities (USA), LLC ("Credit Suisse (USA)"), and Merrill Lynch, Fenner & Smith Inc. ("Merrill-Fenner") were note distributors.

[53] In June 2009, Sino-Forest made a share prospectus offering of 34.5 million common shares at \$11.00 per share (\$380 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were Credit Suisse, Dundee, Merrill, the Defendant, Scotia Capital Inc. ("Scotia"), and the Defendant, TD Securities Inc. ("TD").

[54] In June 2009, Sino-Forest issued a final offering memorandum for the exchange of senior notes for new guaranteed senior 10.25% notes (\$212 million (U.S.) offering) due 2014. Credit Suisse (USA) was the note distributor.

[55] In December 2009, Sino-Forest made a share prospectus offering of 22 million common shares at \$16.80 per share (\$367 million offering). Chan, Horsley, Martin, and Hyde signed the prospectus. The underwriters (as defined by s. 1. (1) of the *Ontario Securities Act*) were Credit Suisse, the Defendant, Canaccord Financial Ltd. ("Canaccord"), CIBC, Dundee, the Defendant, Maison Placements Canada Inc. ("Maison"), Merrill, the Defendant, RBC Dominion Securities Inc. ("RBC"), Scotia, and TD.

[56] In December 2009, Sino-Forest issued an offering memorandum for 4.25% convertible senior notes (\$460 million (U.S.) offering) due 2016. The note distributors were Credit Suisse (USA), Merrill-Fenner, and TD.

[57] In October 2010, Sino-Forest issued an offering memorandum for 6.25% guaranteed senior notes (\$600 million (U.S.) offering) due 2017. The note distributors were Banc of America Securities LLC ("Banc of America") and Credit Suisse USA.

[58] Sino-Forest's per-share market price reached a high of \$25.30 on March 31, 2011.

[59] It is alleged that all the financial statements, prospectuses, offering memoranda, MD&As (Management Discussion and Analysis), AIFs (Annual Information Forms) contained misrepresentations and failures to fully, fairly, and plainly disclose all



material facts relating to the securities of Sino-Forest, including misrepresentations about Sino-Forest's assets, its revenues, its business activities, and its liabilities.

[60] On June 2, 2011, Muddy Waters Research, a Hong Kong investment firm that researches Chinese businesses, released a research report about Sino-Forest. Muddy Waters is operated by Carson Block, its sole full-time employee. Mr. Block was a short-seller of Sino-Forest stock. His Report alleged that Sino-Forest massively exaggerates its assets and that it had engaged in extensive related-party transactions since the company's TSX listing in 1995. The Report asserted, among other allegations, that a company-reported sale of \$231 million in timber in Yunnan Province was largely fabricated. It asserted that Sino-Forest had overstated its standing timber purchases in Yunnan Province by over \$800 million.

[61] The revelations in the Muddy Waters Report had a catastrophic effect on Sino-Forest's share price. Within two days, \$3 billion of market capitalization was gone and the market value of Sino-Forest's notes plummeted.

[62] Following the release of the Muddy Waters Report, Sino-Forest and certain of its officers and directors released documents and press releases and made public oral statements in an effort to refute the allegations in the Report. Sino-Forest promised to produce documentation to counter the allegations of misrepresentations. It appointed an Independent Committee of Messrs. Ardell, Bowland and Hyde to investigate the allegations contained in the Muddy Waters Report. After these assurances, Sino-Forest's share price rebounded, trading as high as 60% of its previous day's close, eventually closing on June 6, 2011 at \$6.16, approximately 18% higher from its previous close.

[63] On June 7, the Independent Committee announced that it had appointed PricewaterhouseCoopers ("PWC") to assist with the investigation. Several law firms were also hired to assist in the investigation.

[64] However, bad news followed. Reporters from the *Globe and Mail* travelled to China, and on June 18 and 20, 2011, the newspaper published articles that reported that Yunnan Province forestry officials had stated that their records contradicted Sino-Forest's claim that it controlled almost 200,000 hectares in Yunnan Province.

[65] On August 26, 2011, the Ontario Securities Commission ("OSC") issued an order suspending trading in Sino-Forest's securities and stated that: (a) Sino-Forest appears to have engaged in significant non-arm's length transactions that may have been contrary to Ontario securities laws and the public interest; (b) Sino-Forest and certain of its officers and directors appear to have misrepresented in a material respect, some of its revenue and/or exaggerated some of its timber holdings in public filings under the securities laws; and (c) Sino-Forest and certain of its officers and directors, including its CEO, appear to be engaging or participating in acts, practices or a course of conduct related to its securities which it and/or they know or reasonably ought to know perpetuate a fraud.

[66] The OSC named Chan, Ho, Hung, Ip, and Yeung as respondents in the proceedings before the Commission. Sino-Forest placed Messrs. Hung, Ho and Yeung on administrative leave. Mr. Ip may only act on the instructions of the CEO.

[67] Having already downgraded its credit rating for Sino-Forest's securities, Standard & Poor withdrew its rating entirely, and Moody's reduced its rating to "junk" indicating a very high credit risk.

[68] On September 8, 2011, after a hearing, the OSC continued its cease-trading order until January 25, 2012, and the OSC noted the presence of evidence of conduct that may be harmful to investors and the public interest.

[69] On November 10, 2011, articles in the *Globe and Mail* and the *National Post* reported that the RCMP had commenced a criminal investigation into whether executives of Sino-Forest had defrauded Canadian investors.

[70] On November 13, 2011, at a cost of \$35 million, Sino-Forest's Independent Committee released its Second Interim Report, which included the work of the committee members, PWC, and three law firms. The Report refuted some of the allegations made in the Muddy Waters Report but indicated that evidence could not be obtained to refute other allegations. The Committee reported that it did not detect widespread fraud, and noted that due to challenges it faced, including resistance from some company insiders, it was not able to reach firm conclusions on many issues.

[71] On December 12, 2011, Sino-Forest announced that it would not file its third-quarter earnings' figures and would default on an upcoming interest payment on outstanding notes. This default may lead to the bankruptcy of Sino-Forest.

[72] The chart attached as Schedule "A" to this judgment shows Sino-Forest's stock price on the TSX from January 1, 2004, to the date that its shares were cease-traded on August 26, 2011.

## **F. ANALYSIS OF THE COMPETING CLASS ACTIONS**

### **1. The Attributes of Class Counsel**

#### **Smith v. Sino-Forest**

[73] Rochon Genova is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It is currently class counsel in the CIDC subprime litigation, which seeks billions in damages on behalf of CIBC shareholders for the bank's alleged non-disclosure of its exposure to the U.S. subprime residential mortgage market. It is currently the lawyer of record in *Fischer v. IG Investment Management Ltd* and *Frank v. Farlie Turner*, both securities cases, and it is acting for aggrieved investors in litigation involving two multi-million dollar Ponzi schemes. It acted on behalf of Canadian shareholders in relation to the Nortel securities litigation, as well as, large scale products liability class actions involving Baycol, Prepulsid, and Maple Leaf Foods, among many other cases.

[74] Rochon Genova has a working arrangement with Lieff Cabrasser Heimann & Bernstein, one of the United States' leading class action firms.

[75] Lead lawyers for *Smith v. Sino-Forest* are Joel Rochon and Peter Jervis, both senior lawyers with considerable experience and proficiency in class actions and securities litigation.

*Labourers v. Sino-Forest*

[76] Koskie Minsky is a Toronto law firm of 43 lawyers with a diverse practice including bankruptcy and insolvency, commercial litigation, corporate and securities, taxation, employment, labour, pension and benefits, professional negligence and insurance litigation.

[77] Koskie Minsky has a well-established and prominent class actions practice, having been counsel in every sort of class proceeding, several of them being landmark cases, including *Hollick v Toronto (City)*, *Cloud v The Attorney General of Canada*, and *Caputo v Imperial Tobacco*. It is currently representative counsel on behalf of all former Canadian employees in the multi-billion dollar Nortel insolvency.

[78] Siskinds is a London and Toronto law firm of 70 lawyers with a diverse practice including bankruptcy and insolvency, business law, and commercial litigation. It has an association with the Québec law firm Siskinds, Desmeules, avocats.

[79] At its London office, Siskinds has a team of 14 lawyers that focus their practice on class actions, in some instances exclusively. The firm has a long and distinguished history at the class actions bar, being class counsel in the first action certified as a class action, *Bendall v. McGhan Medical Corp.* (1993), 14 O.R. (3d) 734, and it has almost a monopoly on securities class actions, having filed approximately 40 of this species of class actions, including 24 that advance claims under Part XXX.1 of the *Ontario Securities Act*.

[80] As mentioned again later, for the purposes of *Labourers' Fund v. Sino-Forest*, Koskie Minsky and Siskinds have a co-operative arrangement with the U.S. law firm, Kessler Topaz Meltzer & Check LLP ("Kessler Topaz"), which is a 113-lawyer law firm specializing in complex litigation with a very high profile and excellent reputation as counsel in securities class action lawsuits in the United States.

[81] Lead lawyers for *Labourers' v. Sino-Forest* are Kirk M. Baert, Jonathan Ptak, Mark Ziegler, and Michael Mazzuca of Koskie Minsky and A. Dimitri Lascaris of Siskinds, all senior lawyers with considerable experience and proficiency in class actions and securities litigation.

*Northwest v. Sino-Forest*

[82] Kim Orr is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It also has considerable experience on the defence side of defending securities cases.

[83] As I described in *Sharma v. Timminco Ltd.*, *supra*, where I choose Kim Orr in a carriage competition with Siskinds in a securities class action, Kim Orr has a fine pedigree as a class action firm and its senior lawyers have considerable experience and proficiency in all types of class actions. It was comparatively modest in its self-promotional material for the carriage motion, but I am aware that it is currently class

counsel in substantial class actions involving claims of a similar nature to those in the case at bar.

[84] Kim Orr has an association with Milberg, LLP, a prominent class action law firm in the United States. It has 75 attorneys, most of whom devote their practice to representing plaintiffs in complex litigations, including class and derivative actions. It has a large support staff, including investigators, a forensic accountant, financial analysts, legal assistants, litigation support analysts, shareholder services personnel, and information technology specialists.

[85] Michael Spencer, who is a partner at Milberg and called to the bar in Ontario, offers counsel to Kim Orr.

[86] Lead lawyers for *Northwest v. Sino-Forest* are James Orr, Won Kim, and Mr. Spencer.

## 2. Retainer, Legal and Forensic Resources, and Investigations

### Smith v. Sino-Forest

[87] Following the release of the Muddy Waters Report, on June 6, 2011, Mr. Smith contacted Rochon Genova. Mr. Smith, who lost much of his investment fortune, was one of the victims of the wrongs allegedly committed by Sino-Forest. Rochon Genova accepted the retainer, and two days later, a notice of action was issued. The Statement of Claim in *Smith v. Sino-Forest* followed on July 8, 2011.

[88] Following their retainer by Mr. Smith, Rochon Genova hired Mr. X (his name was not disclosed), as a consultant. Mr. X, who has an accounting background, can fluently read, write, and speak English, Cantonese, and Mandarin. He travelled to China from June 19 to July 3, 2011 and again from October 31 to November 18, 2011. The purpose of the trips was to gather information about Sino-Forest's subsidiaries, its customers, and its suppliers. While in China, Mr. X secured approximately 20,000 pages of filings by Sino-Forest with the provincial branches of China's State Administration for Industry and Commerce (the "SAIC Files").

[89] In August 2011, Rochon Genova retained Froese Forensic Partners Ltd., a Toronto-based forensic accounting firm, to analyze the SAIC files.

[90] Rochon Genova also retained HAIBU Attorneys at Law, a full service law firm based in Shenzhen, Guangdong Province, China, to provide a preliminary opinion about Sino-Forest's alleged violations of Chinese accounting and taxation laws.

[91] Exclusive of the carriage motion, Rochon Genova has already incurred approximately \$350,000 in time and disbursements for the proposed class action.

### Labourers v. Sino-Forest

[92] On June 3, 2011, the day after the release of the Muddy Waters Report, Siskinds retained the Dacheng Law Firm in China to begin an investigation of the allegations contained in the report. Dacheng is the largest law firm in China with offices throughout China and Hong Kong and also offices in Los Angeles, New York, Paris, Singapore, and Taiwan.

[93] On June 9, 2011, Guining Liu, a Sino-Forest shareholder, commenced an action in the Québec Superior Court on behalf of persons or entities domiciled in Québec who purchased shares and notes. Siskinds' Québec affiliate office, Siskinds, Desmeules, avocats, is acting as class counsel in that action.

[94] On June 20, 2011, Koskie Minsky, which had a long standing lawyer-client relationship with the Labourers' Fund, was retained by it to recover its losses associated with the plummet in value of its holdings in Sino-Forest shares. Koskie Minsky issued a notice of action in a proposed class action with Labourers' Fund as the proposed representative plaintiffs.

[95] The June action, however, is not being pursued, and in July 2011, Labourers' Fund was advised that Operating Engineers Fund, another pension fund, also had very significant losses, and the two funds decided to retain Koskie Minsky and Siskinds to commence a new action, which followed on July 20, 2011, by notice of action. The Statement of Claim in *Labourers v. Sino-Forest* was served in August, 2011.

[96] Before commencing the new action, Koskie Minsky and Siskinds retained private investigators in Southeast Asia and received reports from them, along with information received from the Dacheng Law Firm. Koskie Minsky and Siskinds also received information from an unnamed expert in Suriname about the operations of Sino-Forest in Suriname and the role of Greenheart Group Ltd., which is a significant aspect of its Statement of Claim in *Labourers v. Sino-Forest*.

[97] On November 4, 2011, Koskie Minsky and Siskinds served the Defendants in *Labourers v. Sino-Forest* with the notice of motion for an order granting leave to assert the causes of action under Part XXIII.1 of the *Ontario Securities Act*.

[98] On October 26, 2011, Robert Wong, who had lost a very large personal investment in Sino-Forest shares, retained Koskie Minsky and Siskinds to sue Sino-Forest for his losses, and the firms decided that he would become another representative plaintiff.

[99] On November 14, 2011, Koskie Minsky and Siskinds commenced *Grant v. Sino-Forest Corp.*, which, as already noted above, they intend to consolidate with *Labourers v. Sino-Forest*.

[100] *Grant v. Sino-Forest* names the same defendants as in *Labourers v. Sino-Forest*, except for the additional joinder of Messrs. Bowland, Poon, and West, and it also joins as defendants, BDO, and two additional underwriters, Banc of America and Credit Suisse Securities (USA).

[101] Koskie Minsky and Siskinds state that *Grant v. Sino-Forest* was commenced out of an abundance of caution to ensure that certain prospectus and offering memorandum claims under the *Ontario Securities Act*, and under the equivalent legislation of the other Provinces, will not expire as being statute-barred.

[102] Exclusive of the carriage motion, Koskie Minsky has already incurred approximately \$350,000 in time and disbursements for the proposed class action, and

exclusive of the carriage motion, Siskinds has already incurred approximately \$440,000 in time and disbursements for the proposed class action.

Northwest v. Sino-Forest

[103] Immediately following the release of the Muddy Waters Report, Kim Orr and Milberg together began an investigation to determine whether an investor class action would be warranted. A joint press release on June 7, 2011, announced the investigation.

[104] For the purposes of the carriage motion, apart from saying that their investigation included reviewing all the documents on SEDAR and the System for Electronic Disclosure for Insiders (SEDI), communicating with contacts in the financial industry, and looking into Sino-Forest's officers, directors, auditors, underwriters and valuation experts, Kim Orr did not disclose the details of its investigation. It did indicate that it had hired a Chinese forensic investigator and financial analyst, a market and damage consulting firm, Canadian forensic accountants, and an investment and market analyst and that its investigations discovered valuable information.

[105] Meanwhile, lawyers at Milberg contacted Bâtirente, which was one of its clients and also a Sino-Forest shareholder, and Won Kim of Kim Orr contacted Northwest, another Sino-Forest shareholder. Bâtirente already had a retainer with Milberg to monitor its investment portfolio on an ongoing basis to detect losses due to possible securities violations.

[106] Northwest and Bâtirente agreed to retain Kim Orr to commence a class action, and on September 26, 2011, Kim Orr commenced *Northwest v. Sino-Forest*.

[107] In October 2011, BC Investments contacted Kim Orr about the possibility of it becoming a plaintiff in the class proceeding commenced by Northwest and Bâtirente, and BC Investments decided to retain the firm and the plan is that BC Investments is to become another representative plaintiff.

[108] Exclusive of the carriage motion, Kim Orr and Milberg have already incurred approximately \$1,070,000 in time and disbursement for the proposed class action.

**3. Proposed Representative Plaintiffs**

Smith v. Sino-Forest

[109] In *Smith v. Sino-Forest*, the proposed representative plaintiffs are Douglas Smith and Frederick Collins.

[110] Douglas Smith is a resident of Ontario, who acquired approximately 9,000 shares of Sino-Forest during the proposed class period. He is married, 48 years of age, and employed as a director of sales. He describes himself as a moderately sophisticated investor that invested in Sino-Forest based on his review of the publicly available information, including public reports and filings, press releases, and statements released by or on behalf of Sino-Forest. He lost \$75,345, which was half of his investment fortune.

[111] Frederick Collins is a resident of Nanaimo, British Columbia. He purchased shares in the primary market. His willingness to act as a representative plaintiff was

announced during the reply argument of the second day of the carriage motion, and nothing was discussed about his background other than he is similar to Mr. Smith in being an individual investor. He was introduced to address a possible *Ragoonanan* problem in *Smith v. Sino-Forest*; namely, the absence of a plaintiff who purchased in the primary market, of which alleged problem I will have more to say about below.

*Labourers v. Sino-Forest*

[112] In *Labourers v. Sino-Forest*, the proposed representative plaintiffs are: David Grant, Robert Wong, The Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers' Fund"), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario ("Operating Engineers Fund"), and Sjunde AP-Fonden.

[113] David Grant is a resident of Alberta. On October 21, 2010, he purchased 100 Guaranteed Senior Notes of Sino-Forest at a price of \$101.50 (\$U.S.), which he continues to hold.

[114] Robert Wong, a resident of Ontario, is an electrical engineer. He was born in China, and in addition to speaking English, he speaks fluent Cantonese. He was a substantial shareholder of Sino-Forest from July 2002 to June 2011. Before making his investment, he reviewed Sino-Forest's Core Documents, and he also made his own investigations, including visiting Sino-Forest's plantations in China in 2005, where he met a Sino-Forest vice-president.

[115] Mr. Wong's investment in Sino-Forest comprised much of his net worth. In September 2008, he owned 1.4 million Sino-Forest shares with a value of approximately \$26.1 million. He purchased more shares in the December 2009 prospectus offering. Around the end of May 2011, he owned 518,700 shares, which, after the publication of the Muddy Waters Report, he sold on June 3, 2011 and June 10, 2011, for \$2.8 million.

[116] The Labourers' Fund is a multi-employer pension fund for employees in the construction industry. It is registered with the Financial Services Commission in Ontario and has 52,100 members in Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. It is a long-time client of Koskie Minsky.

[117] Labourers' Fund manages more than \$2.5 billion in assets. It has a fiduciary and statutory responsibility to invest pension monies on behalf of thousands of employees and pensioners in Ontario and in other provinces.

[118] Labourer's Fund acted as representative plaintiff in a U.S. class actions against Fortis, Pitney Bowes Inc., Synovus Financial Corp., and Medea Health Solutions, Inc. Those actions involved allegations of misrepresentation in the statements and filings of public issuers.

[119] The Labourers' Fund purchased Sino-Forest shares on the TSX during the class period, including 32,300 shares in a trade placed by Credit Suisse under a prospectus. Most of its purchases of Sino-Forest shares were made in the secondary market.

[120] On June 1, 2011, the Labourers' Fund held a total of 128,700 Sino-Forest shares with a market value of \$2.3 million, and it also had an interest in pooled funds that had \$1.4 million invested in Sino-Forest shares. On June 2 and 3, 2011, the Labourers' Fund sold its holdings in Sino-Forest for a net recovery of \$695,993.96. By June 30, 2011, the value of the Sino-Forest shares in the pooled funds was \$291,811.

[121] The Operating Engineers Fund is a multi-employer pension fund for employed operating engineers and apprentices in the construction industry. It is registered with the Financial Services Commission in Ontario, and it has 20,867 members. It is a long-time client of Koskie Minsky.

[122] The Operating Engineers Fund manages \$1.5 billion in assets. It has a fiduciary and statutory responsibility to invest pension monies on behalf of thousands of employees and pensions in Ontario and in other provinces.

[123] The Operating Engineers Fund acquired shares of Sino-Forest on the TSX during the class period. The Operating Engineers Fund invested in Sino-Forest shares through four asset managers of a segregated fund. One of the managers purchased 42,000 Sino-Forest shares between February 1, 2011, and May 24, 2011, which had a market value of \$764,820 at the close of trading on June 1, 2011. These shares were sold on June 21, 2011 for net \$77,170.80. Another manager purchased 181,700 Sino-Forest shares between January 20, 2011 and June 1, 2011, which had a market value of \$3.3 million at the close of trading on June 1, 2011. These shares were sold and the Operating Engineers Fund recovered \$1.5 million. Another asset manager purchased 100,400 Sino-Forest shares between July 5, 2007 and May 26, 2011, which had a market value of \$1.8 million at the close of trading on June 1, 2011. Many of these shares were sold in July and August, 2011, but the Operating Engineers Fund continues to hold approximately 37,350 shares. Between June 15, 2007 and June 9, 2011, the Operating Engineers Fund also purchased units of a pooled fund managed by TD that held Sino-Forest shares, and it continues to hold these units. The Operating Engineers Fund has incurred losses in excess of \$5 million with respect to its investment in Sino-Forest shares.

[124] Sjunde AP-Fonden is the Swedish Nation Pension Fund, and part of Sweden's national pension system. It manages \$15.3 billion in assets. It has acted as lead plaintiff in a large securities class action and a large stockholder class action in the United States.

[125] In addition to retaining Koskie Minsky and Siskinds, Sjunde AP-Fonden also retained the American law firm Kessler Topaz to provide assistance, if necessary, to Koskie Minsky and Siskinds.

[126] Sjunde AP-Fonden purchased Sino-Forest shares on the TSX from outside Canada between April 2010 and January 2011. It was holding 139,398 shares with a value of \$2.5 million at the close of trading on June 1, 2011. It sold 43,095 shares for \$188,829.36 in August 2011 and holds 93,303 shares.

[127] Sjunde AP-Fonden is prepared to be representative plaintiff for a sub-class of non-Canadian purchasers of Sino-Forest shares who purchased shares in Canada from outside of Canada.



[128] Messrs. Mancinelli, Gallagher, and Grottheim each deposed that Labourers' Fund, the Operating Engineers Fund, and Sjunde AP-Fonden respectively sued because of their losses and because of their concerns that public markets remain healthy and transparent.

[129] Although it does not seek to be a representative plaintiff, the Healthcare Employee Benefits Plans of Manitoba ("Healthcare Manitoba") is a major class member that supports carriage being granted to Koskie Minsky and Siskinds, and its presence should also be mentioned here because it actively supports the appointment of the proposed representative plaintiffs in *Labourers v. Sino-Forest*.

[130] Healthcare Manitoba provides pensions and other benefits to eligible healthcare employees and their families throughout Manitoba. It has 65,000 members. It is a long-time client of Koskie Minsky. It manages more than \$3.9 billion in assets.

[131] Healthcare Manitoba, invested in Sino-Forest shares that were purchased by one of its asset managers in the TSX secondary market. Between February and May, 2011, it purchased 305,200 shares with a book value of \$6.7 million. On June 24, 2011, the shares were sold for net proceeds of \$560,775.48.

*Northwest v. Sino-Forest*

[132] In *Northwest v. Sino-Forest*, the proposed representative plaintiffs are: British Columbia Investment Management Corporation ("BC Investment"); Comité syndical national de retraite Bâtirente inc. ("Bâtirente") and Northwest & Ethical Investments L.P. ("Northwest").

[133] BC Investment, which is incorporated under the British Columbia *Public Sector Pension Plans Act*, is owned by and is an agent of the Government of British Columbia. It manages \$86.9 billion in assets. Its investment activities help to finance the retirement benefits of more than 475,000 residents of British Columbia, including public service employees, healthcare workers, university teachers, and staff. Its investment activities also help to finance the WorkSafeBC insurance fund that covers approximately 2.3 million workers and over 200,000 employers in B.C., as well as, insurance funds for public service long term disability and credit union deposits.

[134] BC Investment, through the funds it managed, owned 334,900 shares of Sino-Forest at the start of the Class Period, purchased 6.6 million shares during the Class Period, including 50,200 shares in the June 2009 offering and 54,800 shares in the December 2009 offering; sold 5 million shares during the Class Period; disposed of 371,628 shares after the end of the Class Period; and presently holds 1.5 million shares.

[135] Bâtirente is a non-profit financial services firm initiated by the Confederation of National Trade Unions to establish and promote a workplace retirement system for affiliated unions and other organizations. It is registered as a financial services firm regulated in Quebec by the Autorité des marchés financiers under *the Act Respecting the Distribution of Financial Products and Services*, R.S.Q., chapter D-9.2. It has assets of about \$850 million.

[136] Bâtirente, through the funds it managed, did not own any shares of Sino-Forest before the class period, purchased 69,500 shares during the class period, sold 57,625 shares during the class period, and disposed of the rest of its shares after the end of the class period.

[137] Northwest is an Ontario limited partnership, owned 50% by the Provincial Credit Unions Central and 50% by Federation des caisses Desjardin du Québec. It is registered with the British Columbia Securities Commission as a portfolio manager, and it is registered with the OSC as a portfolio manager and as an investment funds manager. It manages about \$5 billion in assets.

[138] Northwest, through the funds it managed, did not own any shares of Sino-Forest before the class period, purchased 714,075 shares during the class period, including 245,400 shares in the December 2009 offering, sold 207,600 shares during the class period, and disposed of the rest of its shares after the end of the class period.

[139] Kim Orr touts BC Investment, Bâtirente, and Northwest as candidates for representative plaintiff because they are sophisticated “activist shareholders” that are committed to ethical investing. There is evidence that they have all raised governance issues with Sino-Forest as well as other companies. Mr. Mountain of Northwest and Mr. Simard of Bâtirente are eager to be actively involved in the litigation against Sino-Forest.

#### 4. Funding

[140] Koskie Minsky and Siskinds have approached Claims Funding International, and subject to court approval, Claims Funding International has agreed to indemnify the plaintiffs for an adverse costs award in return for a percentage of any recovery from the class action.

[141] Koskie Minsky and Siskinds state that if the funding arrangement with Claims Funding International is refused, they will, in any event, proceed with the litigation and will indemnify the plaintiffs for any adverse costs award.

[142] Similarly, Kim Orr has approached Bridgepoint Financial Services, which subject to court approval, has agreed to indemnify the plaintiffs for an adverse costs award in return for a percentage of any recovery in the class action. If this arrangement is not approved, Kim Orr intends to apply to the Class Proceedings Fund, which would be a more expensive approach to financing the class action.

[143] Kim Orr states that if these funding arrangements are refused, it will, in any event, proceed with the litigation and it will indemnify the plaintiffs for any adverse costs award.

[144] Rochon Genova did not mention in its factum whether it intends to apply to the Class Proceedings Fund on behalf of Messrs. Smith and Collins, but for the purposes of the discussion later about the carriage order, I will assume that this may be the case. I will also assume that Rochon Genova has agreed to indemnify Messrs. Smith and Collins for any adverse costs award should funding not be granted by the Fund.

### 5. Conflicts of Interest

[145] One of the qualifications for being a representative plaintiff is that the candidate does not have a conflict of interest in representing the class members and in bringing an action on their behalf. All of the candidates for representative plaintiff in the competing class actions depose that they have no conflicts of interest. Their opponents disagree.

[146] Rochon Genova submits that there are inherent conflicts of interests in both *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* because the representative plaintiffs bring actions on behalf of both shareholders and noteholders. Rochon Genova submits that these conflicts are exacerbated by the prospect of a Sino-Forest bankruptcy.

[147] Relying on *Casurina Ltd. Partnership v. Rio Algom Ltd.* [2004] O.J. No. 177 (C.A.) at paras. 35-36, aff'g [2002] O.J. No. 3229 (S.C.J.), leave to appeal to the S.C.C. denied, [2004] S.C.C.A. No. 105 and *Amaranth LLC v. Counsel Corp.*, [2003] O.J. No. 4674 (S.C.J.), Rochon Genova submits that a class action by the bondholders is precluded by the pre-conditions in the bond instruments, but if it were to proceed, it might not be in the best interests of the bondholders, who might prefer to have Sino-Forest capable of carrying on business. Further still, Rochon Genova submits that, in any event, an action by the bondholders' trustee may be the preferable way for the noteholders to sue on their notes. Further, Rochon Genova submits that if there is a bankruptcy, the bondholders may prefer to settle their claims in the context of the bankruptcy rather than being connected in a class action to the shareholder's claims over which they would have priority in a bankruptcy.

[148] Further still, Rochon Genova submits that a bankruptcy would bring another conflict of interest between bondholders and shareholders because under s. 50(14) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and 5.1(2) of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 the claims of creditors against directors that are based on misrepresentation or oppression may not be compromised through a plan or proposal. In contrast, *Allen-Vanguard Corp., Re*, 2011 ONSC 5017 (S.C.J.) at paras. 48-52 is authority that shareholders are not similarly protected, and, therefore, Rochon Genova submits that the noteholders would have a great deal more leverage in resolving claims against directors than would the shareholder members of the class in a class action.

[149] Kim Orr denies that there is a conflict in the representative plaintiffs acting on behalf of both shareholders and bondholders. It submits that while bondholders may have an additional claim in contract against Sino-Forest for repayment of the debt outside of the class action, both shareholders and bondholders share a misrepresentation claim against Sino-Forest and there is no conflict in advancing the misrepresentation claim independent of the debt repayment claim.

[150] Koskie Minsky and Siskinds also deny that there is any conflict in advancing claims by both bondholders and shareholders. They say that the class members are on common ground in advancing misrepresentation, tort, and the various statutory causes of action. Koskie Minsky and Siskinds add that if there was a conflict, then it is manageable because they have a representative plaintiff who was a bondholder, which is not the case for the representative plaintiffs in *Northwest v. Sino-Forest*. It submits

that, if necessary, subclasses can be established to manage any conflicts of interest among class members.

[151] Leaving the submitted shareholder and bondholder conflicts of interest, Rochon Genova submits that Labourers' Fund has a conflict of interest because BDO Canada is its auditor. Rochon Genova submits that Koskie Minsky also has a conflict of interest because it and BDO Canada have worked together on a committee providing liaison between multi-employer pension plans and the Financial Services Commission of Ontario and have respectively provided services as auditor and legal counsel to the Union Benefits Alliance of Construction Trade Unions. Rochon Genova submits that it is telling that these conflicts were not disclosed and that BDO, which is an entity that is an international associate with BDO Canada was a late arrival as a defendant in *Labourers v. Sino-Forest*, although this can be explained by changes in the duration of the class period.

[152] For their part, Koskie Minsky and Siskinds raise a different set of conflicts of interest. They submit that Northwest, Bâtirente, and BC Investments have a conflict of interest with the other class members who purchased Sino-Forest securities because of their role as investment managers.

[153] Koskie Minsky and Siskinds' argument is that as third party financial service providers, BC Investment, Bâtirente, and Northwest did not suffer losses themselves but rather passed the losses on to their clients. Further, Koskie Minsky and Siskinds submit that, in contrast to BC Investment, Bâtirente, and Northwest, their clients, Labourers' Fund and Operating Engineers Fund, are acting as fiduciaries to recover losses that will affect their members' retirements. This arguably makes Koskie Minsky and Siskinds better representative plaintiffs.

[154] Further still, Koskie Minsky and Siskinds submit that the class members in *Northwest v. Sino-Forest* may question whether Northwest, Bâtirente, and BC Investments failed to properly evaluate the risks of investing in Sino-Forest. Koskie Minsky and Siskinds point out that the Superior Court of Québec in *Comité syndical national de retraite Bâtirente inc. c. Société financière Mamuvie*, 2011 QCCS 3446 at paras. 111-119 disqualified Bâtirente as a representative plaintiff because there might be an issue about Bâtirente's investment decisions. Thus, Koskie, Minsky and Siskinds attempt to change Northwest, Bâtirente, and BC Investments' involvement in encouraging good corporate governance at Sino-Forest from a positive attribute into the failure to be aware of ongoing wrongdoing at Sino-Forest and a negative attribute for a proposed representative plaintiff.

## 6. Definition of Class Membership

### *Smith v. Sino-Forest*

[155] In *Smith v. Sino-Forest*, the proposed class action is: (a) on behalf of all persons who purchased shares of Sino-Forest from May 17, 2004 to August 26, 2011 on the TSX or other secondary market; and (b) on behalf of all persons who acquired shares of Sino-Forest during the offering distribution period relating to Sino-Forest's share prospectus offerings on June 1, 2009 and December 10, 2009 excluding the Defendants,

members of the immediate families of the Individual Defendants, or the directors, officers, subsidiaries and affiliates of the corporate Defendants.

[156] Both Koskie Minsky and Siskinds and Kim Orr challenge this class membership as inadequate for failing to include the bondholders who were allegedly harmed by the same misconduct that harmed the shareholders.

*Labourers v. Sino-Forest*

[157] In *Labourers v. Sino-Forest*, the proposed class action is on behalf of all persons and entities wherever they may reside who acquired securities of Sino-Forest during the period from and including March 19, 2007 to and including June 2, 2011 either by primary distribution in Canada or an acquisition on the TSX or other secondary markets in Canada, 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 family of an individual defendant.

[158] The class membership definition in *Labourers v. Sino-Forest* includes non-Canadians who purchased shares or notes in Canada but excludes non-Canadians who purchased in a foreign marketplace.

[159] Challenging this definition, Kim Orr submits that it is wrong in principle to exclude persons whose claims will involve the same facts as other class members and for whom it is arguable that Canadian courts may exercise jurisdiction and provide access to justice.

*Northwest v. Sino-Forest*

[160] In *Northwest v. Sino-Forest*, the proposed class action is on behalf of purchasers of shares or notes of Sino-Forest during the period from August 17, 2004 through June 2, 2011, except: Sino-Forest's past and present subsidiaries and affiliates; the past and present officers and directors of Sino-Forest and its subsidiaries and affiliates; members of the immediate family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had a controlling interest.

[161] Challenging this definition, Koskie Minsky and Siskinds submit that the proposed class in *Northwest* has no geographical limits and, therefore, will face jurisdictional and choice of law challenges that do not withstand a cost benefit analysis. It submits that Sino-Forest predominantly raised capital in Canadian capital markets and the vast majority of its securities were either acquired in Canada or on a Canadian market, and, in this context, including in the class non-residents who purchased securities outside of Canada risks undermining and delaying the claims of the great majority of proposed class members whose claims do not face such jurisdictional obstacles.

## 7. Definition of Class Period

### Smith v. Sino-Forest

[162] In *Smith v. Sino-Forest*, the class period is May 17, 2004 to August 26, 2011. This class period starts with the release of Sino-Forest's release of its 2003 Annual Information Form, which indicated the use of authorized intermediaries, and it ends on the day of the OSC's cease-trade order.

[163] For comparison purposes, it should be noted that this class period has the earliest start date and the latest finish date. *Labourers v. Sino-Smith* and *Northwest v. Sino-Forest* both use the end date of the release of the Muddy Waters Report.

[164] In making comparisons, it is helpful to look at the chart found at Schedule A of this judgment.

[165] Rochon Genova justifies its extended end date based on the argument that the Muddy Waters Report was a revelation of Sino-Forest's misrepresentation but not a corrective statement that would end the causation of injuries because Sino-Forest and its officers denied the truth of the Muddy Waters Report.

[166] Kim Orr's criticizes the class definition in *Smith v. Sino-Forest* and submits that purchasers of shares or notes after the Muddy Waters Report was published do not have viable claims and ought not be included as class members.

[167] Koskie Minsky and Siskinds' submission is similar, and they regard the extended end date as problematic in raising the issues of whether there were corrective disclosures and of how Part XXIII.1 of the *Ontario Securities Act* should be interpreted.

### Labourers v. Sino-Forest

[168] In *Labourers v. Sino-Forest*, the class period is March 19, 2007 to June 2, 2011.

[169] This class period starts with the date Sino-Forest's 2006 financial results were announced, and it ends on the date of the publication of the Muddy Waters Report.

[170] The March 19, 2007, commencement date was determined using a complex mathematical formula known as the "multi-trader trading model." Using this model, Mr. Torchio estimates that 99.5% of Sino-Forest's shares retained after June 2, 2011, had been purchased after the March 19, 2007 commencement date. Thus, practically speaking, there is almost nothing to be gained by an earlier start date for the class period.

[171] The proposed class period covers two share offerings (June 2009 and December 2009). This class period does not include time before the coming into force of Part XXIII.1 of the *Ontario Securities Act* (December 31, 2005), and, thus, Koskie Minsky and Siskinds submit that this aspect of their definition avoids problems about the retroactive application, if any, of Part XXIII.1 of the Act.

[172] For comparison purposes, the *Labourers* class period has the latest start date and shares the finish date used in the *Northwest v. Sino-Forest* action, which is sooner than the later date used in *Smith v. Sino-Forest*. It is the most compressed of the three definitions of a class period.

[173] Based on Mr. Torchio's opinion, Koskie Minsky and Siskinds submit that there are likely no damages arising from purchases made during a substantial portion of the class periods in *Smith v. Sino-Forest* and in *Northwest v. Sino-Forest*. Koskie Minsky and Siskinds submit that given that the average price of Sino's shares was approximately \$4.49 in the ten trading days after the Muddy Waters report, it is likely that any shareholder that acquired Sino-Forest shares for less than \$4.49 suffered no damages, particularly under Part XXIII.1 of the *Ontario Securities Act*.

[174] In part as a matter of principle, Kim Orr submits that Koskie Minsky and Siskinds' approach to defining the class period is unsound because it excludes class members who, despite the mathematical modelling, may have genuine claims and are being denied any opportunity for access to justice. Kim Orr submits it is wrong in principle to abandon these potential class members.

[175] Rochon Genova also submits that Koskie Minsky and Siskinds' approach to defining the class period is wrong. It argues that Koskie Minsky and Siskinds' reliance on a complex mathematical model to define class membership is arbitrary and unfair to share purchasers with similar claims to those claimants to be included as class members. Rochon Genova criticizes Koskie Minsky and Siskinds' approach as being the condemned merits based approach to class definitions and for being the sin of excluding class members because they may ultimately not succeed after a successful common issues trial.

[176] Relying on what I wrote in *Fischer v. IG Investment Management Ltd.*, 2010 ONSC 296 at para. 157, Rochon Genova submits that the possible failure of an individual class member to establish an individual element of his or her claim such as causation or damages is not a reason to initially exclude him or her as a class member. Rochon Genova submits that the end date employed in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* is wrong.

*Northwest v. Sino-Forest*

[177] In *Northwest v. Sino-Forest*, the class period is August 17, 2004 to June 2, 2011.

[178] This class period starts from the day Sino-Forest closed its public offering of long-term notes that were still outstanding at the end of the class period and ends on the date of the Muddy Waters Research Report. This period covers three share offerings (June 2007, June 2009, and December 2009) and six note offerings (August 2004, July 2008, July 2009, December 2009, February 2010, and October 2010).

[179] For comparison purposes, the *Northwest v. Sino-Forest* class period begins 3 months later and ends three months sooner than the class period in *Smith v. Sino-Forest*. The *Northwest v. Sino-Forest* class period begins approximately two-and-a-half years earlier and ends at the same time as the class period in *Labourers v. Sino-Forest*.

[180] Kim Orr submits that its start date of August 17, 2004 is satisfactory, because on that date, Sino-Forest shares were trading at \$2.85, which is below the closing price of Sino-Forest shares on the TSX for the ten days after June 3, 2011 (\$4.49), which indicates that share purchasers before August 2004 would not likely be able to claim loss or damages based on the public disclosures on June 2, 2011.

[181] However, Koskie Minsky and Siskinds point out that Kim Orr's submission actually provides partial support for the theory for a later start date (March 19, 2007) because, there is no logical reason to include in the class persons who purchased Sino-Forest shares between May 17, 2004, the start date of the *Smith Action* and December 1, 2005, because with the exception of one trading day (January 24, 2005), Sino-Forest's shares never traded above \$4.49 during that period.

#### 8. Theory of the Case against the Defendants

##### *Smith v. Sino-Forest*

[182] In *Smith v. Sino-Forest*, the theory of the case rests on the alleged non-arms' length transfers between Sino-Forest and its subsidiaries and authorized intermediaries, that purported to be suppliers and customers. Rochon Genova's investigations and analysis suggest that there are numerous non-arms length inter-company transfers by which Sino-Forest misappropriated investors' funds, exaggerated Sino-Forest's assets and revenues, and engaged in improper tax and accounting practices.

[183] Mr. Smith alleges that Sino-Forest's quarterly interim financial statements, audited annual financial statements, and management's discussion and analysis reports, which are Core Documents as defined under the *Ontario Securities Act*, misrepresented its revenues, the nature and scope of its business and operations, and the value and composition of its forestry holdings. He alleges that the Core Documents failed to disclose an unlawful scheme of fabricated sales transactions and the avoidance of tax and an unlawful scheme through which hundreds of millions of dollars in investors' funds were misappropriated or vanished.

[184] Mr. Smith submits that these misrepresentations and failures to disclose were also made in press releases and in public oral statements. He submits that Chan, Hyde, Horsley, Mak, Martin, Murray, and Wang authorized, permitted or acquiesced in the release of Core Documents and that Chan, Horsley, Martin, and Murray made the misrepresentations in public oral statements.

[185] In *Smith v. Sino-Forest*, Mr. Smith (and Mr. Collins) brings different claims against different combinations of Defendants; visualize:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*, against all the Defendants
- subject to leave being granted, misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* as against the defendants: Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, BDO and E&Y
- negligent, reckless, or fraudulent misrepresentation against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, and Wang. This claim would appear to cover sales of shares in both the primary and secondary markets.

[186] It is to be noted that *Smith v. Sino-Forest* does not make a claim on behalf of noteholders, and, as described and explained below, it joins the fewest number of defendants.



[187] *Smith* also does not advance a claim on behalf of purchasers of shares through Sino-Forest's prospectus offering of June 5, 2007, because of limitation period concerns associated with the absolute limitation period found in 138.14 of the *Ontario Securities Act*. See: *Coulson v. Citigroup Global Markets Canada Inc.*, 2010 ONSC 1596 at paras. 98-100.

*Labourers v. Sino-Forest*

[188] The theory of *Labourers v. Sino-Forest* is that Sino-Forest, along with its officers, directors, and certain of its professional advisors, falsely represented that its financial statements complied with GAAP, materially overstated the size and value of its forestry assets, and made false and incomplete representations regarding its tax liabilities, revenue recognition, and related party transactions.

[189] The claims in *Labourers v. Sino-Forest* are largely limited to alleged misrepresentations in Core Documents as defined in the *Ontario Securities Act* and other Canadian securities legislation. Core Documents include prospectuses, annual information forms, information circulars, financial statements, management discussion & analysis, and material change reports.

[190] The representative plaintiffs advance statutory claims and also common law claims that certain defendants breached a duty of care and committed the torts of negligent misrepresentation and negligence. There are unjust enrichment, conspiracy, and oppression remedy claims advanced against certain defendants.

[191] In *Labourers v. Sino-Forest*, different combinations of representative plaintiffs advance different claims against different combinations of defendants; visualize:

- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a statutory claim under Part XXIII of the *Ontario Securities Act* against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD and Pöyry
- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a common law negligent misrepresentation claim against Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD based on the common misrepresentation that Sino-Forest's financial statements complied with GAPP
- Labourers' Fund and Mr. Wong, purchasers of shares in a primary market distribution, advance a common law negligence claim against Sino-Forest, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD and Pöyry
- Grant, who purchased bonds in a primary market distribution, advances a statutory claim under Part XXIII of the *Ontario Securities Act* against Sino-Forest

- Grant, who purchased bonds in a primary market distribution, advances a common law negligent misrepresentation claim against Sino-Forest, E&Y and BDO based on the common misrepresentation that Sino-Forest's financial statements complied with GAPP
- Grant, who purchased bonds in a primary market distribution, advances a common law negligence claim against Sino-Forest, E&Y, BDO, Banc of America, Credit Suisse USA, and TD
- All the representative plaintiffs, subject to leave being granted, advance claims of misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation. This claim is against Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E &Y, BDO, and Pöyry
- All of the representative plaintiffs, who purchased Sino-Forest securities in the secondary market, advance a common law negligent misrepresentation claim against all of the Defendants except the underwriters based on the common misrepresentation contained in the Core Documents that Sino-Forest's financial statements complied with GAAP
- All the representative plaintiffs sue Sino-Forest, Chan, Horsley, and Poon for conspiracy. It is alleged that Sino-Forest, Chan, Horsley, and Poon conspired to inflate the price of Sino-Forest's shares and bonds and to profit by their wrongful acts to enrich themselves by, among other things, issuing stock options in which the price was impermissibly low
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Chan, Horsley, Mak, Martin, Murray, and Poon for unjust enrichment in selling shares to class members at artificially inflated prices
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Sino-Forest for unjust enrichment for selling shares at artificially inflated prices
- While it is not entirely clear from the Statement of Claim, it seems that all the representative plaintiffs sue Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, and TD for unjustly enriching themselves from their underwriters fees
- All the representative plaintiffs sue Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, and Wang for an oppression remedy under the *Canada Business Corporations Act*

[192] Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* is more focused than *Smith* and *Northwest* because: (a) its class definition covers a shorter time period and is limited to securities acquired by Canadian residents or in Canadian markets; (b) the material documents are limited to Core Documents under securities legislation; (c) the named individual defendants are limited to directors and officers with statutory obligations to certify the accuracy of Sino-Forest's public filings; and (d) the

causes of action are tailored to distinguish between the claims of primary market purchasers and secondary market purchasers and so are less susceptible to motions to strike.

[193] Koskie Minsky and Siskinds submit that save for background and context, little is gained in the rival actions by including claims based on non-Core Documents, which confront a higher threshold to establish liability under Part XXIII.1 of the *Ontario Securities Act*.

*Northwest v. Sino-Forest*

[194] The *Northwest v. Sino-Forest* Statement of Claim focuses on an “Integrity Representation,” which is defined as: “the representation in substance that Sino-Forest’s overall reporting of its business operations and financial statements was fair, complete, accurate, and in conformity with international standards and the requirements of the *Ontario Securities Act* and National Instrument 51-102, and that its accounts of its growth and success could be trusted.”

[195] The *Northwest v. Sino-Forest* Statement of Claim alleges that all Defendants made the Integrity Representation and that it was a false, misleading, or deceptive statement or omission. It is alleged that the false Integrity Representation caused the market decline following the June 2, 2011, disclosures, regardless of the truth or falsity of the particular allegations contained in the Muddy Waters Report.

[196] In *Northwest v. Sino-Forest*, the representative plaintiffs advance statutory claims under Parts XXIII and XXIII.1 of the *Ontario Securities Act* and a collection of common law tort claims. Kim Orr submits that to the extent, if any, that the statutory claims do not provide complete remedies to class members, whether due to limitation periods, liability caps, or other limitations, the common law claims may provide coverage.

[197] In *Northwest v. Sino-Forest*, the plaintiffs advance different claims against different combinations of defendants; visualize:

- With respect to the June 2009 and December 2009 prospectus, a cause of action for violation of Part XXIII of the *Ontario Securities Act* against Sino-Forest, the underwriter Defendants, the director Defendants, the Defendants who consented to disclosure in the prospectus and the Defendants who signed the prospectus
- Negligent misrepresentation against all of the Defendants for disseminating material misrepresentations about Sino-Forest in breach of a duty to exercise appropriate care and diligence to ensure that the documents and statements disseminated to the public about Sino-Forest were complete, truthful, and accurate.
- Fraudulent misrepresentation against all of the Defendants for acting knowingly and deliberately or with reckless disregard for the truth making misrepresentations in documents, statements, financial statements, prospectus,

offering memoranda, and filings issued and disseminated to the investing public including Class Members.

- Negligence against all the Defendants for a breach of a duty of care to ensure that Sino-Forest implemented and maintained adequate internal controls, procedures and policies to ensure that the company's assets were protected and its activities conformed to all legal developments.
- Negligence against the underwriter Defendants, the note distributor Defendants, the auditor Defendants, and the Pöyry Defendants for breach of a duty to the purchasers of Sino-Forest securities to perform their professional responsibilities in connection with Sino-Forest with appropriate care and diligence.
- Subject to leave being granted, a cause of action for violation of Part XXIII.1 of the *Ontario Securities Act* against Sino-Forest, the auditor Defendants, the individual Defendants who were directors and officers of Sino-Forest at the time one or more of the pleaded material misrepresentations was made, and the Pöyry Defendants.

[198] Kim Orr submits that *Northwest v. Sino-Forest* is more comprehensive than its rivals and does not avoid asserting claims on the grounds that they may take time to litigate, may not be assured of success, or may involve a small portion of the total potential class. It submits that its conception of Sino-Forest's wrongdoing better accords with the factual reality and makes for a more viable claim than does Koskie Minsky and Siskinds' focus on GAAP violations and Rochon Genova's focus on the misrepresentations associated with the use of authorized intermediaries. It denies Koskie Minsky and Siskinds' argument that it has pleaded overbroad tort claims.

[199] Koskie Minsky and Siskinds submit that its conspiracy claim against a few defendants is focused and narrow, and it criticizes the broad fraud claim advanced in *Northwest v. Sino-Forest* against all the defendants as speculative, provocative, and unproductive.

[200] Relying on *McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591 at para. 49; *Corfax Benefits Systems Ltd. v. Fiducie Desjardins Inc.*, [1997] O.J. No. 5005 (Gen. Div.) at paras. 28-36; *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.) at paras. 25 and 38; and *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)*, [1998] O.J. No. 2637 (Gen. Div.) at para. 477, Koskie Minsky and Siskinds submit that the speculative fraud action in *Northwest v. Sino-Forest* is improper and would not advance the interests of class members. Further, the task of proving that each of some twenty defendants had a fraudulent intent, which will be vehemently denied by the defendants, and the costs sanction imposed for pleading and not providing fraud make the fraud claim a negative and not a positive feature of *Northwest v. Sino-Forest*.

## 9. Joinder of Defendants

### Smith v. Sino-Forest

[201] In *Smith v. Sino-Forest*, the Defendants are: Sino-Forest; seven of its directors and officers; namely: Chan, Horsley, Hyde, Mak, Martin, Murray, and Wang; nine underwriters; namely, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD; and Sino-Forest's two auditors during the Class Period, E & Y and BDO.

[202] The *Smith v. Sino-Forest* Statement of Claim does not join Pöyry because Rochon Genova is of the view that the disclaimer clause in Pöyry's reports likely insulates it from liability, and Rochon Genova believes that its joinder would be of marginal utility and an unnecessary complication. It submits that joining Pöyry would add unnecessary expense and delay to the litigation with little corresponding benefit because of its jurisdiction and its potential defences.

### Labourers v. Sino-Forest

[203] In *Labourers v. Sino-Forest*, the Defendants are the same as in *Smith v. Sino-Forest* with the additional joinder of Ardell, Bowland, Poon, West, Banc of America, Credit Suisse (USA), and Pöyry.

[204] The *Labourers v. Sino-Forest* action does not join Chen, Ho, Hung, Ip, Maradin, Wong, Yeung, Zhao, Credit Suisse (USA), Haywood, Merrill-Fenner, Morgan and UBS, which are parties to *Northwest v. Sino-Forest*.

[205] Koskie Minsky and Siskinds' explanation for these non-joinders is that the activities of the underwriters added to *Northwest v. Sino-Forest* occurred outside of the class period in *Labourers v. Sino-Forest* and neither Lawrence nor Wong held a position with Sino-Forest during the proposed class period and the action against Lawrence's Estate is probably statute-barred. (See *Waschkowski v. Hopkinson Estate*, [2000] O.J. No. 470 (C.A.).)

[206] Wong left Sino-Forest before Part XXIII.1 of the *Ontario Securities Act* came into force, and Koskie Minsky and Siskinds submit that proving causation against Wong will be difficult in light of the numerous alleged misrepresentations since his departure. Moreover, the claim against him is likely statute-barred.

[207] Koskie Minsky and Siskinds submit that Chen, Maradin, and Zhao did not have statutory duties and allegations that they owed common law duties will just lead to motions to strike that hinder the progress of an action.

[208] Further, Koskie Minsky and Siskinds submit that it is not advisable to assert claims of fraud against all defendants, which pleading may raise issues for insurers that potentially put available coverage and thus collection for plaintiffs at risk.

[209] Kim Orr submits that it is a mistake in *Labourers v. Sino-Forest*, which is connected to the late start date for the class period, which Kim Orr also regards as a mistake, that those underwriters that may be liable and who may have insurance to indemnify them for their liability, have been left out of *Labourers v. Sino-Forest*.

Northwest v. Sino-Forest

[210] In *Northwest v. Sino-Forest*, with one exception, the defendants are the same as in *Labourers v. Sino-Forest* with the additional joinder of various officers of Sino-Forest; namely: Chen, Ho, Hung, Ip, The Estate of John Lawrence, Maradin, Wong, Yeung, and Zhao; the joinder of Pöyry Forest and JP Management; and the joinder of more underwriters; namely: Haywood, Merrill-Fenner, Morgan, and UBS.

[211] The one exception where *Northwest v. Sino-Forest* does not join a defendant found in *Labourers v. Sino-Forest* is Banc of America.

[212] Kim Orr's submits that its joinder of all defendants who might arguably bear some responsibility for the loss is a positive feature of its proposed class action because the precarious financial situation of Sino-Forest makes it in the best interests of the class members that they be provided access to all appropriate routes to compensation. It strongly denies Koskie Minsky and Siskinds' allegation that *Northwest v. Sino-Forest* takes a "shot-gun" and injudicious approach by joining defendants that will just complicate matters and increase costs and delay.

[213] Kim Orr submits that Rochon Genova has no good reason for not adding Pöyry, Pöyry Forest, and JP Management as defendants to *Smith v. Sino-Forest* and that Koskie Minsky and Siskinds have no good reason in *Labourers v. Sino-Forest* for suing Pöyry but not also suing its associated companies, all of whom are exposed to liability and may be sources of compensation for class members.

[214] While not putting it in my blunt terms, Kim Orr submits, in effect, that Koskie Minsky and Siskinds' omission of the additional defendants is just laziness under the guise of feigning a concern for avoiding delay and unnecessarily complicating an already complex proceeding.

## 10. Causes of Action

Smith v. Sino-Forest

[215] In *Smith v. Sino-Forest*, the causes of action advanced by Mr. Smith on behalf of the class members are:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*
- negligent, reckless, or fraudulent misrepresentation
- subject to leave being granted, misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation

Labourers v. Sino-Forest

[216] In *Labourers v. Sino-Forest*, the causes of action advanced by various combinations of plaintiffs against various combinations of defendants are:

- misrepresentation in a prospectus under Part XXIII of the *Ontario Securities Act*
- negligent misrepresentation

- negligence
- subject to leave being granted misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation
- conspiracy
- unjust enrichment
- oppression remedy.

[217] Kim Orr submits that the unjust enrichment claims and oppression remedy claims seemed to be based on and add little to the misrepresentation causes of action. It concedes that the conspiracy action may be a tenable claim but submits that its connection to the disclosure issues that comprise the nucleus of the litigation is unclear.

*Northwest v. Sino-Forest*

[218] In *Northwest v. Sino-Forest*, the causes of action are:

- misrepresentation in a prospectus in violation of Part XXIII the *Ontario Securities Act*
- misrepresentation in an offering memorandum in violation of Part XXIII the *Ontario Securities Act*
- negligent misrepresentation
- fraudulent misrepresentation
- negligence
- subject to leave being granted misrepresentation in secondary market disclosure under Part XXIII.1 of the *Ontario Securities Act* and, if necessary, equivalent provincial legislation

[219] The following chart is helpful in comparing and contrasting the joinder of various causes of action and the joinder of defendants in *Smith v. Sino-Forest*, *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest*.

Cause of Action	<i>Smith v. Sino-Forest</i> ,	<i>Labourers v. Sino-Forest</i> ,	<i>Northwest v. Sino-Forest</i> ,
Part XXIII of the <i>Ontario Securities Act</i> – primary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Canaccord, CIBC Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management [for June 2009 and Dec. 2009 prospectus]
Part XXIII of the <i>Ontario Securities Act</i> – primary		Sino-Forest [two bond issues]	Sino-Forest [six bond issues]

market bonds			
Negligent misrepresentation – primary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, Canaccord, CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligent misrepresentation – primary market bonds		Sino-Forest, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligence – primary market shares		Sino-Forest, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, E & Y, BDO, CIBC, Canaccord, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, Pöyry,	[see negligence, professional negligence]
Negligence – primary market bonds		Sino-Forest, E&Y, BDO, Banc of America, Credit Suisse USA, TD	[See negligence, professional negligence]
Negligence			Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Professional Negligence			Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management



Part XXIII.1 of the <i>Ontario Securities Act</i> – secondary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E & Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Part XXIII.1 of the <i>Ontario Securities Act</i> – secondary market bonds		Sino-Forest, Ardell, Bowland, Chan, Hyde, Horsley, Mak, Martin, Murray, Poon, Wang, West, E & Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligent misrepresentation – secondary market shares	Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Wang, E&Y, BDO	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligent misrepresentation – secondary market bonds		Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, E&Y, BDO, Pöyry	Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Negligence - secondary market shares		Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, Canaccord, CIBC,	[see negligence, professional negligence]

		Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, TD, E&Y, BDO, Pöyry	
Conspiracy		Sino-Forest, Chan, Horsley, Poon,	
Fraudulent Misrepresentation - Bonds, shares			Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management
Unjust Enrichment		Chan, Horsley, Mak, Martin, Murray, Poon,	
Unjust Enrichment		Sino-Forest,	
Unjust Enrichment		Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia, TD	
Oppression Remedy		Sino-Forest, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang	

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### 11. The Plaintiff and Defendant Correlation

[220] In class actions in Ontario, for every named defendant there must be a named plaintiff with a cause of action against that defendant: *Ragoonanen v. Imperial Tobacco Canada Ltd.*, [2000] O.J. No. 4597 (S.C.J.) at para. 55 (S.C.J.); *Hughes v. Sunbeam Corp. (Canada)* (2002), 61 O.R. (3d) 433 (C.A.) at para. 18.

[221] As an application of the *Ragoonanen* rule, a purchaser in the secondary market cannot be the representative plaintiff for a class member who purchased in the primary market: *Menegon v. Philip Services Corp.*, [2001] O.J. No. 5547 (S.C.J.) at paras. 28-30 aff'd [2003] O.J. No. 8 (C.A.).

[222] Where the class includes non-resident class members, they must be represented by a representative plaintiff that is a non-resident: *McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591 at paras. 109, 117 and 184; *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321 at para. 30 (C.A.).

[223] Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* has no *Ragoonanen* problems. However, they submit that the other actions have problems. For example, until Mr. Collins volunteered, there was no representative plaintiff in *Smith v. Sino-Forest* who had purchased shares in the primary market, and at this juncture, it is not clear that Mr. Collins purchased in all of the primary market distributions. Mr. Smith and Mr. Collins may have timing-of-purchase issues. Mr. Smith made purchases

during periods when some of the Defendants were not involved; viz. BDO, Canaccord CIBC, Credit Suisse, Dundee, Maison, Merrill, RBC, Scotia, and TD.

[224] Koskie Minsky and Siskinds submit that none of the representative plaintiffs in *Northwest v. Sino-Forest* purchased notes in the primary market for the 2007 prospectus offering and that the plaintiffs in *Northwest* may have timing issues with respect to their claims against Wong, Lawrence, JP Management, UBS, Haywood and Morgan.

[225] Rochon Genova's and Kim Orr's response is that there are no *Ragoonanan* problems or no irremediable *Ragoonanan* problems.

## 12. Prospects of Certification

[226] Koskie Minsky and Siskinds framed part of their argument in favour of their being selected for carriage in terms of the comparative prospects of certification of the rival actions. They submitted that *Labourers v. Sino-Forest* was carefully designed to avoid the typical road blocks placed by defendants on the route to certification and to avoid inefficiencies and unproductive claims or claims that on a cost-benefit analysis would not be in the interests of the class to pursue. One of the typical roadblocks that they referred to was challenges to the jurisdiction of the Ontario Court over foreign class members and foreign defendants who have not attorned to the Ontario Superior Court of Justice's territorial jurisdiction.

[227] Koskie Minsky and Siskinds submitted that their representative plaintiffs focus their claims on a single misrepresentation to avoid the pitfalls of seeking to certify a negligent misrepresentation claim with multiple misrepresentations over a long period of time. Such a claim apparently falls into a pit because it is often not certified. Koskie Minsky and Siskinds say it is better to craft a claim that has higher prospects of certification and leave some claims behind. They submit that the Supreme Court of Canada accepted that a representative plaintiff is entitled to restrict their causes of action to make their claims more amenable to class proceedings: *Rumley v. British Columbia*, [2001] 3 S.C.R. 184 at para. 30.

[228] Although *Smith v. Sino-Forest* is even more focused than *Labourers v. Sino-Forest*, Koskie Minsky and Siskinds still submit that their approach is better because *Smith v. Sino-Forest* goes too far in cutting out the bondholders' claims and then losses focus by extending its claims beyond the release of the Muddy Waters Report.

[229] In any event, Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* is better because the named plaintiffs are able to advance statutory and common law claims against all of the named defendants, which arguably is not the case for the plaintiffs in the other actions, who may have *Ragoonanan* problems or no tenable claims against some of the named defendants. Further, *Labourers* arguably is better because of a more focussed approach to maximize class recovery while avoiding the costs and delays inevitably linked with motions to strike.

[230] Kim Orr submits that its more comprehensive approach, where there are more defendant parties and expansive tort claims, is preferable to *Labourers v. Sino-Forest* and *Smith v. Sino-Forest*. Kim Orr submits that it does not shirk asserting claims

because they may be difficult to litigate and it does not abandon class members who may not be assured of success or who comprise a small portion of the class.

[231] Kim Orr submits that *Northwest v. Sino-Forest* is comprehensive and also cohesive and corresponds to the factual reality. It submits that the theories of the competing actions do not capture the wrongdoing at Sino-Forest for which many are culpable and who should be held responsible. It submits that its approach will meet the challenges of certification and yield an optimum recovery for the class.

[232] Rochon Genova submits that *Smith v. Sino-Forest* is much more cohesive than the other actions. It submits that the more expansive class definitions and causes of action in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* will present serious difficulties relating to manageability, preferability, and potential conflicts of interest amongst class members that are not present in *Smith v. Sino-Forest*. Rochon Genova submits that it has developed a solid, straightforward theory of the case and made a great deal of progress in unearthing proof of Sino-Forest's wrongdoing.

## G. CARRIAGE ORDER

### 1. Introduction

[233] With the explanation that follows, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I award carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*. In the race for carriage of an action against *Sino-Forest*, I would have ranked Rochon Genova second and Kim Orr third.

[234] This is not an easy decision to make because class members would probably be well served by any of the rival law firms. Success in a carriage motion does not determine which is the best law firm, it determines that having regard to the interests of the plaintiffs and class members, to what is fair to the defendants, and to the policies that underlie the class actions regime, there is a constellation of factors that favours selecting one firm or group of firms as the best choice for a particular class action.

[235] Having regard to the constellation of factors, in the circumstances of this case, several factors are neutral or non-determinative of the choice for carriage. In this group are: (a) attributes of class counsel; (b) retainer, legal, and forensic resources; (c) funding; (d) conflicts of interest; and (e) the plaintiff and defendant correlation.

[236] In the case at bar, the determinative factors are: definition of class membership, definition of class period, theory of the case, causes of action, joinder of defendants, and prospects of certification.

[237] Of the determinative factors, the attributes of the representative plaintiffs is a standalone factor. The other determinative factors are interrelated and concern the rival conceptualizations of what kind of class action would best serve the class members' need for access to justice and the policies of fairness to defendants, behaviour modification, and judicial economy.

[238] Below, I will first discuss the neutral or non-determinative factors. Then, I will discuss the determinative factors. After discussing the attributes of the representative plaintiffs, I will discuss the related factors in two groups. One group of related factors is about class membership, and the second group of factors is about the claims against the defendants.

## 2. Neutral or Non-Determinative Factors

### (a) Attributes of Class Counsel

[239] In the circumstances of the cases at bar, the attributes of the competing law firms along with their associations with prestigious and prominent American class action firms is not determinative of carriage, since there is little difference among the rivals about their suitability for bringing a proposed class action against Sino-Forest.

[240] With respect to the attributes of the law firms, although one might have thought that Mr. Spencer's call to the bar would diminish the risk, Koskie and Minsky and Siskinds, particularly Siskinds, raised a question about whether Milberg might cross the line of what legal services a foreign law firm may provide to the Ontario lawyers who are the lawyers of record, and Siskinds alluded to the spectre of violations of the rules of professional conduct and perhaps the evil of champerty and maintenance. It suggested that it was unfair to class members to have to bear this risk associated with the involvement of Milberg.

[241] However, at this juncture, I have no reason to believe that any of the competing law firms, all of which have associations with notable American class action firms, will shirk their responsibilities to control the litigation and not to condone breaches of the rules of professional conduct or tortious conduct.

### (b) Retainer, Legal, and Forensic Resources

[242] The circumstances of the retainers and the initiative shown by the law firms and their efforts and resources expended by them are also not determinative factors in deciding the carriage motions in the case at bar, although it is an enormous shame that it may not be possible to share the fruits of these efforts once carriage is granted to one action and not the others.

[243] As I have already noted above, the aggregate expenditure to develop the tactical and strategic plans for litigation not including the costs of preparing for the carriage motion are approximately \$2 million. It seems that this effort by the respective law firms has been fruitful and productive. All of the law firms claim that their respective efforts have yielded valuable information to advance a claim against Sino-Forest and others.

[244] All of the law firms were quickly out of the starting blocks to initiate investigations about the prospects and merits of a class action against Sino-Forest. For different reasonable reasons, the statements of claim were filed at different times.

[245] In the case at bar, I do not regard the priority of the commencement of the actions as a meaningful factor, given that from the publication of the Muddy Waters Report, all the firms responded immediately to explore the merits of a class action and given that all the firms plan to amend their original pleadings that commenced the actions. In any event, I do not think that a carriage motion should be regarded as some sort of take home exam where the competing law firms have a deadline for delivering a statement of claim, else marks be deducted.

(c) Funding

[246] In my opinion, another non-determinative factor is the circumstances that: (a) the representative plaintiffs in *Labourers v. Sino-Forest* may apply for court approval for third-party funding; (b) the plaintiffs in *Northwest v. Sino-Forest* may apply for court approval for third-party funding or they may apply to the Class Proceedings Fund to be protected from an adverse costs award; (c) Messrs. Smith and Collins in *Smith v. Sino-Forest* may apply to the Class Proceedings Fund to be protected from an adverse costs award; and (d) each of the law firms have respectively undertaken with their respective clients to indemnify them from an adverse costs award.

[247] In the future, the court or the Ontario Law Foundation may have to deal with the funding requests, but for present purposes, I do not see how these prospects should make a difference to deciding carriage, although I will have something more to say below about the significance of the state of affairs that clients with the resources of Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, BC Investment, Bâtirente, and Northwest would seek an indemnity from their respective class counsel.

[248] In any event, in my opinion, standing alone, the funding situation is not a determinative factor to carriage, although it may be relevant to other factors that are discussed below.

(d) Conflicts of Interest

[249] In the circumstances of the case at bar, I also do not regard conflicts of interest as a determinative factor.

[250] I do not see how the fact that Northwest, Bâtirente, and BC Investments made their investments on behalf of others and allegedly suffered no losses themselves creates a conflict of interest. It appears to me that they have the same fiduciary responsibilities to their members as do Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, and Healthcare Manitoba.

[251] Northwest, Bâtirente, and BC Investments were the investors in the securities of Sino-Forest and although there may be equitable or beneficial owners, under the common law, they suffered the losses, just like the other investors in Sino-Forest securities suffered losses. The fact that Northwest, Bâtirente, and BC Investments held the investments in trust for their members does not change the reality that they suffered the losses.

[252] It is alleged that Northwest, Bâtirente, and BC Investments, who were involved in corporate governance matters associated with Sino-Forest, failed to properly evaluate the risks of investing in Sino-Forest. Based on these allegations, it is submitted that they have a conflict of interest. I disagree

[253] Having regard to the main allegation being that Sino-Forest was engaged in a corporate shell game that deceived everyone, it strikes me that it is almost a spuriously speculative allegation to blame another victim as being at fault. However, even if the allegation is true, the other class members have no claim against Northwest, Bâtirente, and BC Investments. If there were a claim, it would be by the members of Northwest, Bâtirente, and BC Investments, who are not members of the class suing Sino-Forest. The actual class members have no claim against Northwest, Bâtirente, and BC Investments but have a common interest in pursuing Sino-Forest and the other defendants.

[254] Further, it is arguable that Koskie Minsky and Siskinds are incorrect in suggesting that in *Comité syndical national de retraite Bâtirente inc. c. Société financière Manuvie*, 2011 QCCS 3446, the Superior Court of Québec disqualified Bâtirente as a representative plaintiff because there might be an issue about Bâtirente's investment decisions.

[255] It appears to me that Justice Soldevida did not appoint Bâtirente as a representative plaintiff for a different reason. The action in Québec was a class action. There were some similarities to the case at bar, insofar as it was an action against a corporation, Manulife, and its officers and directors for misrepresentations and failure to fulfill disclosure obligations under securities law. In that action, the personal knowledge of the investors was a factor in their claims against Manulife, and Justice Soldevida felt that sophisticated investors, like Bâtirente, could not be treated on the same footing as the average investor. It was in that context that she concluded that there was an appearance of a conflict of interest between Bâtirente and the class members.

[256] In the case at bar, however, particularly for the statutory claims where reliance is presumed, there is no reason to differentiate the average investors from the sophisticated ones. I also do not see how the difference between sophisticated and average investors would matter except perhaps at individual issues trials, where reasonable reliance might be an issue, if the matter ever gets that far.

[257] Another alleged conflict concerns the facts that BDO Canada, which is not a defendant, is the auditor of Labourers' Fund, and Koskie Minsky and BDO Canada have worked together on several matters. These circumstances are not conflicts of interest. There is no reason to think that Labourers' Fund and Koskie Minsky are going to pull their punches against BDO or would have any reason to do so.

[258] Finally, turning to the major alleged conflict between the bondholders and the shareholders, speaking generally, the alleged conflicts of interest between the bondholders that invested in Sino-Forest and the shareholders that invested in Sino-Forest arise because the bondholders have a cause of action in debt in addition to their causes of action based in tort or statutory misrepresentation claims, while, in contrast,

the shareholders have only statutory and common law claims based in misrepresentation.

[259] There is, however, within the context of the class action, no conflict of interest. In the class action, only the misrepresentation claims are being advanced, and there is no conflict between the bondholders and the shareholders in advancing these claims. Both the bondholders and the shareholders seek to prove that they were deceived in purchasing or holding on to their Sino-Forest securities. That the Defendants may have defences associated with the terms of the bonds is a problem for the bondholders but it does not place them in a conflict with shareholders not confronted with those special defences.

[260] Assuming that the bondholders and shareholders succeed or are offered a settlement, there might be a disagreement between them about how the judgment or settlement proceeds should be distributed, but that conflict, which at this juncture is speculative, can be addressed now or later by constituting the bondholders as a subclass and by the court's supervisory role in approving settlements under the *Class Proceedings Act, 1992*.

[261] If there are bondholders that wish only to pursue their debt claims or who wish not to pursue any claim against Sino-Force or who wish to have the bond trustee pursue only the debt claims, these bondholders may opt out of the class proceeding assuming it is certified.

[262] If there is a bankruptcy of Sino-Forest, then in the bankruptcy, the position of the shareholders as owners of equity is different than the position of the bondholders as secured creditors, but that is a natural course of a bankruptcy. That there are creditors' priorities, outside of the class action, does not mean that, within the class action, where the bondholders and the shareholders both claim damages, i.e., unsecured claims, there is a conflict of interest.

[263] The alleged conflict in the case at bar is different from the genuine conflict of interest that was identified in *Settington v. Merck Frost Canada Ltd.*, [2006] O.J. No. 379 (S.C.J.), where, for several reasons, the Merchant Law Firm was not granted carriage or permitted to be part of the consortium granted carriage in a pharmaceutical products liability class action against Merck.

[264] In *Settington*, one ground for disqualification was that the Merchant Law firm was counsel in a securities class action for different plaintiffs suing Merck for an unsecured claim. If the securities class action claim was successful, then the prospects of an unsecured recovery in the products liability class action might be imperiled. In the case at bar, however, within the class action, the bondholders are not pursuing a different cause of action from the shareholders; both are unsecured creditors for the purposes of their damages' claims arising from misrepresentation. If, in other proceedings, the bondholders or their trustee successfully pursue recovery in debt, then the threat to the prospects of recovery by the shareholders arises in the normal way that debt instruments have priority over equity instruments, which is a normal risk for shareholders.



[265] Put shortly, although the analysis may not be easy, there are no conflicts of interest between the bondholders and the shareholders within the class action that cannot be handled by establishing a subclass for bondholders at the time of certification or at the time a settlement is contemplated.

(e) The Plaintiff and Defendant Correlation

[266] In *Ragoonanan v. Imperial Tobacco Canada Ltd.*, (2000), 51 O.R. (3d) 603 (S.C.J.), in a proposed products liability class action, Mr. Ragoonanan sued Imperial Tobacco, Rothmans, and JTI-MacDonald, all cigarette manufacturers. He alleged that the manufacturers had negligently designed their cigarettes by failing to make them "fire safe." Mr. Ragoonanan's particular claim was against Imperial Tobacco, which was the manufacturer of the cigarette that allegedly caused harm to him when it was the cause of a fire at Mr. Ragoonanan's home. Mr. Ragoonanan did not have a claim against Rothmans or JTI-MacDonald.

[267] In *Ragoonanan*, Justice Cumming established the principle in Ontario class action law that there cannot be a cause of action against a defendant without a plaintiff who has that cause of action. Rather, there must be for every named defendant, a named plaintiff with a cause of action against that defendant. The *Ragoonanan* principle was expressly endorsed by the Court of Appeal in *Hughes v. Sunbeam Corp. (Canada) Ltd.* (2002), 61 O.R. (3de) 433 (C.A.) at paras. 13-18, leave to appeal to S.C.C. ref'd (2003), 224 D.L.R. (4th) vii.

[268] It should be noted, however, that in *Ragoonanan*, Justice Cumming did not say that there must be for every separate cause of action against a named defendant, a named plaintiff. In other words, he did not say that if some class members had cause of action A against defendant X and other class members had cause of action B against defendant X that it was necessary that there be a named representative plaintiff for both the cause of action A v. X and for the cause of action B v. X. It was arguable that if the representative plaintiff had a claim against X, then he or she could represent others with the same or different claims against X.

[269] Thus, there is room for a debate about the scope of the *Ragoonanan* principle, and, indeed, it has been applied in the narrow way, just suggested. Provided that the representative plaintiff has his or her own cause of action, the representative plaintiff can assert a cause of action against a defendant on behalf of other class members that he or she does not assert personally, provided that the causes of action all share a common issue of law or of fact: *Boulanger v. Johnson & Johnson Corp.*, [2002] O.J. No. 1075 (S.C.J.) at para. 22, leave to appeal granted, [2002] O.J. No. 2135 (S.C.J.), varied (2003), 64 O.R. (3d) 208 (Div. Ct.) at paras. 41, 48, varied [2003] O.J. No. 2218 (C.A.); *Healey v. Lakeridge Health Corp.*, [2006] O.J. No. 4277 (S.C.J.); *Matoni v. C.B.S. Interactive Multimedia Inc.*, [2008] O.J. No. 197 (S.C.J.) at paras. 71-77; *Voutour v. Pfizer Canada Inc.*, [2008] O.J. No. 3070 (S.C.J.); *Dobbie v. Arctic Glacier Income Fund*, 2011 ONSC 25 at para. 37. Thus, a representative plaintiff with damages for personal injury can claim in respect of dependents with derivative claims provided that

the statutes that create the derivative causes of action are properly pleaded: *Voutour v. Pfizer Canada Inc.*, *supra*; *Boulanger v. Johnson & Johnson Corp.*, *supra*.

[270] As noted above, in the case at bar, Koskie Minsky and Siskinds submit that *Labourers v. Sino-Forest* has no problem with the *Ragoonanan* principle and that *Smith v. Sino-Forest* and especially the more elaborate *Northwest v. Sino-Forest* confront *Ragoonanan* problems.

[271] For the purposes of this carriage motion, I do not feel it is necessary to do an analysis about the extent to which any of the rival actions are compliant with *Ragoonanan*.

[272] The *Ragoonanan* problem is often easy to fix. The emergence of Mr. Collins in *Smith v. Sino-Forest* to sue for the primary market shareholders is an example, assuming that Mr. Smith's own claims against the defendants do not satisfy the *Ragoonanan* principle. Therefore, I do not regard the plaintiff and defendant correlation as a determinative factor in determining carriage.

[273] It is also convenient here to add that I do not see the spectre of challenges to the Superior Court's jurisdiction over foreign class members or over the foreign defendants are a determinative factor to picking one action over another. It may be that *Northwest v. Sino-Forest* has the potential to attract more jurisdictional challenges but standing alone that potential is not a reason for disqualifying *Northwest v. Sino-Forest*.

### 3. Determinative Factors

#### (a) Attributes of the Proposed Representative Plaintiffs

[274] I turn now to the determinative factors that lead me to the conclusion that carriage should be granted to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*.

[275] The one determinative factor that stands alone is the characteristics of the candidates for representative plaintiff. In the case at bar, this is a troublesome and maybe a profound determinative factor.

[276] Kim Orr extolled the virtues of having its clients, Northwest, Bâtirente and BC Investments, which collectively manage \$92 billion in assets, as candidates to be representative plaintiffs.

[277] Similarly, Koskie Minsky and Siskinds extolled the virtues of having Labourers' Fund, Operating Engineers Fund, and Sjunde AP-Fonden as candidates for representative plaintiff, along with the support of major class member Healthcare Manitoba. Together, these parties to *Labourers v. Sino-Forest* collectively manage \$23.2 billion in assets. As noted above, Koskie Minsky and Siskinds submitted that their clients were not tainted by involving themselves in the governance oversight of Sino-Forest, which had been lauded as a positive factor by Kim Orr.

[278] As I have already discussed above in the context of the discussion about conflicts of interest, I do not regard Bâtirente's, and Northwest's interest in corporate governance generally or its particular efforts to oversee Sino-Forest as a negative factor.

[279] However, what may be a negative factor and what is the signature attribute of all of these candidates for representative plaintiff is that it is hard to believe that given their financial heft, they need the *Class Proceedings Act, 1992* for access to justice or to level the litigation playing field or that they need an indemnity to protect them from exposure to an adverse costs award.

[280] Although these candidates for representative plaintiff would seem to have adequate resources to litigate, they seem to be seeking to use a class action as a means to secure an indemnity from class counsel or a third-party funder for any exposure to costs. If they are genuinely serious about pursuing the defendants to obtain compensation for their respective members, they would also seem to be prime candidates to opt out of the class proceeding if they are not selected as a representative plaintiff.

[281] Mr. Rochon neatly argued that the class proceedings regime was designed for litigants like Mr. Smith not litigants like Labourers Trust or Northwest. He referred to the *Private Securities Litigation Reform Act of 1995*, legislation in the United States that was designed to encourage large institutions to participate in securities class actions by awarding them leadership of securities actions under what is known as a “leadership order”. He told me that the policy behind this legislation was to discourage what are known as “strike suits;” namely, meritless securities class actions brought by opportunistic entrepreneurial attorneys to obtain very remunerative nuisance value payments from the defendants to settle non-meritorious claims.

[282] I was told that the American legislators thought that appointing a lead plaintiff on the basis of financial interest would ensure that institutional plaintiffs with expertise in the securities market and real financial interests in the integrity of the market would control the litigation, not lawyers. See: *LaSala v. Bordier et CIE*, 519 F.3d 121 (U.S. Ct App (3<sup>rd</sup> Cir)) (2008) at p. 128; *Taft v. Ackermans*, (2003), F.Supp.2d, 2003 WL 402789 at 1,2, D.H. Webber, “The Plight of the Individual Investor in Securities Class Actions” (2010) NYU Law and Economics Working Papers, paper 216 at p. 7.

[283] Mr. Rochon pointed out that the litigation environment is different in Canada and Ontario and that the provinces have taken a different approach to controlling strike suits. Control is established generally by requiring that a proposed class action go through a certification process and by requiring a fairness hearing for any settlements, and in the securities field, control is established by requiring leave for claims under Part XXIII.1 of the *Ontario Securities Act*. See *Ainslie v. CV Technologies Inc.* (2008) 93 O.R. (3d) 200 (S.C.J.) at paras. 7, 10-13.

[284] In his factum, Mr. Rochon eloquently argued that individual investors victimized by securities fraud should have a voice in directing class actions. Mr. Smith lost approximately half of his investment fortune; and according to Mr. Rochon, Mr. Smith is an individual investor who is highly motivated, wants an active role, and wants to have a voice in the proceeding.

[285] While I was impressed by Mr. Rochon’s argument, it did not take me to the conclusions that the attributes of the institutional candidates for representative plaintiff in *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* when compared to the

attributes of Mr. Smith should disqualify the institutional candidates from being representative plaintiffs or be a determinative factor to grant carriage to a more typical representative plaintiff like Mr. Smith or Mr. Collins.

[286] I think that it would be a mistake to have a categorical rule that an institutional plaintiff with the resources to bring individual proceedings or the means to opt-out of class proceedings and go it alone should be disqualified or discouraged from being a representative plaintiff. In the case at bar, the expertise and participation of the institutional investors in the securities marketplace could contribute to the successful prosecution of the lawsuit on behalf of the class members.

[287] Although Mr. Smith and Mr. Collins might lose their voice, they might in the circumstances of this case not be best voice for their fellow class members, who at the end of the day want results not empathy from their representative plaintiff and class counsel.

[288] Access to justice is one of the policy goals of the *Class Proceedings Act, 1992* and although it may be the case that the institutional representative plaintiffs want but do not need the access to justice provided by the Act, they are pursuing access to justice in a way that ultimately benefits Mr. Smith and other class members should their actions be certified as a class proceeding.

[289] On these matters, I agree with what Justice Rady said in *McCann v. CP Ships Ltd.*, [2009] O.J. No. 5182 (S.C.J.) at paras. 104-105:

104. I recognize that access to justice concerns may not be engaged when a class is comprised of large institutions with large claims. Authority for this proposition is found in *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (3d) 453 (Div. Ct.). Moldaver J. made the following observation at p. 473:

As a rule, certification should have as its root a number of individual claims which would otherwise be economically unfeasible to pursue. While not necessarily fatal to an order for certification, the absence of this important underpinning will certainly weigh in the balance against certification.

105. Nevertheless, I am satisfied on the basis of the record before me that the individual claims and those of small corporations would likely be economically unfeasible to pursue. Further, there is no good principled reason that a large corporation should not be able to avail itself of the class proceeding mechanism where the other objectives are met.

[290] Another goal of the *Class Proceedings Act, 1992* is judicial economy, and the avoidance of a multiplicity of actions. However, the Act envisions a multiplicity of actions by permitting class members to opt-out and bring their own action against the defendants. However, there is an exception. The only class member that cannot opt out is the representative plaintiff, and in the circumstances of the case at bar, one advantage of granting carriage to one of the institutional plaintiffs is that they cannot opt out, and this, in and of itself, advances judicial economy.

[291] Another advantage of keeping the institutional plaintiffs in the case at bar in a class action is that the institutional plaintiffs are already to a large extent representative plaintiffs. They are already, practically speaking, suing on behalf of their own members, who number in the hundreds of thousands. Their members suffered losses by the

investments made on their behalf by BC Investments, Bâtirente, Northwest, Labourers' Fund, Operating Engineers Fund, Sjunde AP-Fonden, and Healthcare Manitoba. These pseudo-class members are probably better served by the court case managing the class action, assuming it is certified and by the judicial oversight of the approval process for any settlements.

[292] These thoughts lead me to the conclusion that in the circumstances of the case at bar, a determinative factor that favours *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* is the attributes of their candidates for representative plaintiff. In this regard, *Labourers v. Sino-Forest* has the further advantage that it also has Mr. Grant and Mr. Wong, who are individual investors and who can give voice to the interests of similarly situated class members.

**(b) Definition of Class Membership and Definition of Class Period**

[293] The first group of interrelated determinative factors is: definition of class membership and definition of class period. These factors concern who, among the investors in Sino-Forest shares and bonds, is to be given a ticket to a class action litigation train that is designed to take them to the court of justice.

[294] *Smith v. Sino-Forest* offers no tickets to bondholders because it is submitted that (a) the bondholders will fight with the shareholders about sharing the spoils of the litigation, especially because the bondholders have priority over the shareholders and secured and protected claims in a bankruptcy; (b) the bondholders will fight among themselves about a variety of matters including whether it would be preferable to leave it to their bond trustee to sue on their collective behalf to collect the debt rather than prosecute a class action for an unsecured claim for damages for misrepresentation; and (c) a misrepresentation action by the bondholders against some or all of the defendants may be precluded by the terms of the bonds.

[295] In my opinion, the bondholders should be included as class members, if necessary, with their own subclass, and, thus, *Smith v. Sino-Forest* does not fare well under this group of interrelated factors. As I explained above, I do not regard the membership of both shareholders and bondholders in the class as raising insurmountable conflicts of interest. The bondholders have essentially the same misrepresentation claims as do the shareholders, and it makes sense, particularly as a matter of judicial economy, to have their claims litigated in the same proceeding as the shareholders' claims.

[296] Pragmatically, if the bondholders are denied a ticket to one of the class actions now at the Osgoode Hall station because of a conflict of interest, then they could bring another class action in which they would be the only class members. That class action by the bondholders would raise the same issues of fact and law about the affairs of Sino-Forest. Thus, denying the bondholders a ticket on one of the two class actions that has made room for them would just encourage a multiplicity of litigation. It is preferable to keep the bondholders on board sharing the train with any conflicts being managed by the appointment of separate class counsel for the bondholders, who can form a subclass at certification or later assuming that certification is granted.

[297] As already noted above, for those bondholders who do not want to get on the litigation train, they can opt-out of the class action assuming it is certified. That the defendants may have defences to the misrepresentation claims of the bondholders is just a problem that the bondholders will have to confront, and it is not a reason to deny them a ticket to try to obtain access to justice.

[298] In *Caputo v. Imperial Tobacco Ltd.*, [2004] O.J. No. 299 (S.C.J.), Justice Winkler, as he then was, noted at para. 39 that there is a difference between restricting the joinder of causes of action in order to make an action more amenable to certification and restricting the number of class members in an action for which certification is being sought. He stated:

Although *Rumley v. British Columbia*, [2001] 3 S.C.R. 184 holds that the plaintiffs can arbitrarily restrict the causes of action asserted in order to make a proceeding more amenable to certification (at 201), the same does not hold true with respect to the proposed class. Here the plaintiffs have not chosen to restrict the causes of action asserted but rather attempt to make the action more amenable to certification by suggesting arbitrary exclusions from the proposed class. This is diametrically opposite to the approach taken by the plaintiffs in *Rumley*, and one which has been expressly disapproved by the Supreme Court in *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158. There, McLachlin C.J. made it clear that the onus falls on the putative representative to show that the "class is defined sufficiently narrowly" but without resort to arbitrary exclusion to achieve that result.....

[299] For shareholders, *Smith v. Sino-Forest* is more accommodating; indeed, it is the most accommodating, in offering tickets to shareholders to board the class action train. Without prejudice to the arguments of the defendants, who may impugn any of the class period or class membership definitions, and assuming that the bondholders are also included, the best of the class periods for shareholders is that found in *Smith v. Sino-Forest*.

[300] To be blunt, I found the rationales for shorter class periods in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* somewhat paranoid, as if the plaintiffs were afraid that the defendants will attack their definitions for over-inclusiveness or for making the class proceeding unmanageable. Those attacks may come, but I see no reason for the plaintiffs in *Labourers* and *Sino-Forest* to leave at the station without tickets some shareholders who may have arguable claims.

[301] If Mr. Torchio is correct that almost all of the shareholders would be covered by the shortest class period that is found in *Labourers v. Sino-Forest*, then the defendants may think the fight to shorten the class period may not be worth it. If they are inclined to challenge the class definition on grounds of unmanageability or the class action as not being the preferable procedure, the longer class period definition will likely be peripheral to the main contest.

[302] I do not see the extension of the class period beyond June 2, 2011, when the Muddy Waters Report became public, as a problem. Put shortly, at this juncture, and subject to what the defendants may later have to say, I agree with Rochon Genova's arguments about the appropriate class period end date for the shareholders.

[303] If I am correct in this analysis so far, where it takes me is only to the conclusion that the best class period definition for shareholders is found in *Smith v. Sino-Forest*. It,

however, does not take me to the conclusion that carriage should be granted to *Smith v. Sino-Forest*. Subject to what the defendants may have to say, the class definitions and class period in *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* appear to be adequate, reasonable, certifiable, and likely consistent with the common issues that will be forthcoming.

[304] Since for other reasons, I would grant carriage to *Labourers v. Sino-Forest*, the question I ask myself is whether the class definition in *Labourers*, which favourably includes bondholders, but which is not as good a definition as found in *Smith v. Sino-Forest* or in *Northwest v. Sino-Forest* should be a reason not to grant carriage to *Labourers*. My answer to my own question is no, especially since it is still possible to amend the class definition so that it is not under-inclusive.

**(c) Theory of the Case, Causes of Action, Joinder of Defendants, and Prospects of Certification**

[305] The second group of interrelated determinative factors is: theory of the case, causes of action, joinder of defendants, and prospects of certification. Taken together, it is my opinion, that these factors, which are about what is in the best interests of the putative class members, favour staying *Smith v. Sino-Forest* and *Northwest v. Sino-Forest* and granting carriage to *Labourers v. Sino-Forest*.

[306] In applying the above factors, I begin here with the obvious point that it would not be in the interests of the putative class members, let alone not in their best interests to grant carriage to an action that is unlikely to be certified or that, if certified, is unlikely to succeed. It also seems obvious that it would be in the best interests of class members to grant carriage to the action that is most likely to be certified and ultimately successful at obtaining access to justice for the injured or, in this case, financially harmed class members. And it also seems obvious that all other things being equal, it would be in the best interests of class members and fair to the defendants and most consistent with the policies of the *Class Proceedings Act, 1992* to grant carriage to the action that, to borrow from rule 1.04 or the *Rules of Civil Procedure* secures the just, most expeditious and least expensive determination of the dispute on its merits.

[307] While these points seem obvious, there is, however, a major problem in applying them, because the court should not and cannot go very far in determining the matters that would be most determinative of carriage. A carriage motion is not the time to determine whether an action will satisfy the criteria for certification or whether it will ultimately provide redress to the class members or whether it would be the preferable procedure or the most expeditious and least expensive procedure to resolve the dispute.

[308] Keeping this caution in mind, in my opinion, certain aspects of *Northwest v. Sino-Forest* make the other actions preferable. In this regard, I find the joinder of some defendants to *Northwest v. Sino-Forest* mildly troublesome.

[309] More serious, in *Northwest v. Sino-Forest*, I find the employment and reliance on the tort action of fraudulent misrepresentation less desirable than the causes of action utilized to provide procedural and substantive justice to the class members in *Smith v.*

*Sino-Forest and Labourers v. Sino-Forest*. In my opinion, the fraudulent misrepresentation action adds needless complexity and costs.

[310] While the finger-pointing of the OSC at Ho, Hung, Ip, and Yeung supports their joinder, the joinder of Chen, Lawrence Estate, Maradin, Wong, and Zhao is mildly troublesome. The joinder of defendants should be based on something more substantive than their opportunity to be a wrongdoer, and at this juncture it is not clear why Chen, Lawrence Estate, Maradin, Wong, and Zhao have been joined to *Northwest v. Sino-Forest* and not to the other proposed class actions. Their joinder, however, is only mildly troublesome, because the plaintiffs in *Northwest v. Sino-Forest* may have particulars of wrongdoing and have simply failed to plead them.

[311] Turning to the pleading of fraudulent misrepresentation, when it is far easier to prove a claim in negligent misrepresentation or negligence, the claim for fraudulent misrepresentation seems a needless provocation that will just fuel the defendants' fervour to defend and to not settle the class action. Fraud is a very serious allegation because of the moral and not just legal turpitude of it, and the allegation of fraud also imperils insurance coverage that might be the source of a recovery for class members.

[312] Kim Orr has understated the difficulties the plaintiffs in *Northwest v. Sino-Forest* will confront in impugning the integrity of Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management.

[313] Fraud must be proved individually. In order to establish that a corporate defendant committed fraud, it must be proven that a natural person for whose conduct the corporation is responsible acted with a fraudulent intent. See: *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.) at para. 26; *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)*, [1998] O.J. No. 2637 (Gen. Div.) at paras. 477-479.

[314] A claim for deceit or fraudulent misrepresentation typically breaks down into five elements: (1) a false statement; (2) the defendant knowing that the statement is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff being induced to act; and (5) the defendant suffering damages: *Derry v. Peek* (1889), 14 App. Cas. 337 (H.L.); *Graham v. Saville*, [1945] O.R. 301 (C.A.); *Francis v. Dingman* (1983), 2 D.L.R. (4th) 244 (Ont. C.A.). The fraud elements are the second and third in this list.

[315] In the famous case of *Derry v. Peek*, the general issue was what counts as a fraudulent misrepresentation. More particularly, the issue was whether a careless or negligent misrepresentation without more could count as a fraudulent misrepresentation. In the case, the defendants were responsible for a false statement in a prospectus. The prospectus, which was for the sale of shares in a tramway company, stated that the company was permitted to use steam power to work a tram line. The statement was false because the directors had omitted the qualification that the use of steam power required the consent of the Board of Trade. As it happened, the consent was not given, the tram line would have to be driven by horses, and the company was wound-up. The Law



Lords reviewed the evidence of the defendants individually and concluded that although the defendants had all been careless in their use of language, they had honestly believed what they had said in the prospectus.

[316] In the lead judgment, Lord Herschell reviewed the case law, and at p. 374, he stated in the most famous passage from the case:

I think the authorities establish the following propositions. First, in order to sustain an action for deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless, whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such honest belief. Thirdly, if fraud is proved, the motive of the person guilty is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

[317] Lord Herschell's third situation is the one that was at the heart of *Derry v. Peek*, and the Law Lords struggled to articulate that relationship between belief and carelessness in speaking. Before the above passage, Lord Herschell stated at p. 361:

To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true. And it is surely conceivable that a man may believe that what he states is the fact, though he has been so wanting in care that the Court may think that there were no sufficient grounds to warrant his belief.

[318] Lord Herschell is saying that carelessness in making a statement does not necessarily entail that a person does not believe what he or she is saying. However, later in his judgment, he emphasizes that carelessness is relevant and could be sufficient to show that a person did not believe what he or she was saying. Thus, carelessness may prove fraud, but it is not itself fraud. Lord Herschell's famous quotation, where he states that fraud is proven when it is shown that a false statement was made recklessly, careless whether it be true or false, states only awkwardly the role of carelessness and must be read in the context of the whole judgment.

[319] In *Angus v. Clifford*, [1891] 2 Ch. 449 (C.A.) at p. 471, Bowen, L.J. discussed the role of carelessness or recklessness in establishing fraud; he stated:

Not caring, in that context [i.e., in the context of an allegation of fraud], did not mean taking care, it meant indifference to the truth, the moral obliquity which consists of wilful disregard of the importance of truth, and unless you keep it clear that that is the true meaning of the term, you are constantly in danger of confusing the evidence from which the inference of dishonesty in the mind may be drawn - evidence which consists in a great many cases of gross want of caution - with the inference of fraud, or of dishonesty itself, which has to be drawn after you have weighed all the evidence.

[320] Bowen, L.J.'s statement alludes to the second element of what makes a statement fraudulent. Deceit or fraudulent misrepresentation requires that the defendant

have "a wicked mind:" *Le Lievre v. Gould*, [1893] 1 Q.B. 491 at p. 498. Fraud involves intentional dishonesty, the intent being to deceive. If the plaintiff fails to prove this mental element, then, as was the case in *Derry v. Peek*, the claim is dismissed. To succeed in an action for deceit or for fraudulent misrepresentation, the plaintiff must show not only that the defendant spoke falsely and contrary to belief but that the defendant had the intent to deceive, which is to say he or she had the aim of inducing the plaintiff to act mistakenly: *BG Checo International Ltd. v. British Columbia Hydro and Power Authority* (1993), 99 D.L.R. (4th) 577 (S.C.C.).

[321] The defendant's reason for deceiving the plaintiff, however, need not be evil. In the passage above from *Derry v. Peek*, Lord Herschell notes that the person's motive for saying something that he or she does not believe is irrelevant. A person may have a benign reason for defrauding another person, but the fraud remains because of the discordance between words and belief combined with the intent to mislead the plaintiff: *Smith v. Chadwick* (1854), 9 App. Cas. 187 at p. 201; *Bradford Building Society v. Borders*, [1941] 2 All E.R. 205 at p. 211; *Beckman v. Wallace* (1913), 29 O.L.R. 96 (C.A.) at p. 101.

[322] In promoting its fraudulent misrepresentation claim, Kim Orr relied on *Gregory v. Jolley* (2001), 54 O.R. (3d) 481 (C.A.), which was a case where a trial judge erred by not applying the third branch of the test articulated in *Derry v. Peek*. Justice Sharpe discussed the trial judge's failure to consider whether the appellant had made out a case of fraud based on recklessness and stated at para. 20:

With respect to the law, the trial judge's reasons show that he failed to consider whether the appellant had made out a case of fraud on the basis of recklessness. While he referred to a case that in turn referred to the test from *Derry v. Peek*, the reasons for judgment demonstrate to my satisfaction that the trial judge simply did not take into account the possibility that fraud could be made out if the respondent made misrepresentations of material fact without regard to their truth. The trial judge's reasons speak only of an intention to defraud or of statements calculated to mislead or misrepresent. He makes no reference to recklessness or to statements made without an honest belief in their truth. As *Derry v. Peek* holds, that state of mind is sufficient proof of the mental element required for civil fraud, whatever the motive of the party making the representation. In another leading case on civil fraud, *Edgington v. Fitzmaurice*, (1885), 29 Ch. D.459 at 481-82 (C.A.), Bowen L.J. stated: "[I]t is immaterial whether they made the statement knowing it to be untrue, or recklessly, without caring whether it was true or not, because to make a statement recklessly for the purpose of influencing another person is dishonest." The failure to give adequate consideration to the contention that the respondent had been reckless with the truth in regard to the income figures he gave in order to obtain disability insurance constitutes an error of law justifying the intervention of this court.

[323] From this passage, Kim Orr extracts the notion that there is a viable fraudulent misrepresentation against forty defendants all of whom individually can be shown to be reckless as opposed to careless. That seems unlikely, but more to the point, recklessness is only half the battle. The overall motive may not matter, but the defendant still must have had the intent to deceive, which in *Gregory v. Jolley* was the intent to obtain disability insurance to which he was not qualified to receive.

[324] Recklessness alone is not enough to constitute fraudulent misrepresentation, as Justice Cumming notes at para. 25 of his judgment in *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.), where he states:

The representation must have been made with knowledge of its falsehood or recklessness without belief in its truth. The representation must have been made by the representor with the intention that it should be acted upon by the representee and the representee must in fact have acted upon it.

[325] I conclude that the fraudulent misrepresentation action is a substantial weakness in *Northwest v. Sino-Forest*. In fairness, I should add that I think that the unjust enrichment causes of action and oppression remedy claims in *Labourers v. Sino-Forest* add little.

[326] The unjust enrichment claims in *Labourers* seem superfluous. If Sino-Forest, Chan, Horsley, Mak, Martin, Murray, Poon, Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia and TD, are found to be liable for misrepresentation or negligence, then the damages they will have to pay will far exceed the disgorgement of any unjust enrichment. If they are found not to have committed any wrong, then there will be no basis for an unjust enrichment claim for recapture of the gains they made on share transactions or from their remuneration for services rendered. In other words, the claims for unjust enrichment are unnecessary for victory and they will not snatch victory if the other claims are defeated. Much the same can be said about the oppression remedy claim. That said, these claims in *Labourers v. Sino-Forest* will not strain the forensic resources of the plaintiffs in the same way as taking on a massive fraudulent misrepresentation cause of action would do in *Northwest v. Sino-Forest*.

[327] For the purposes of this carriage motion, I have little to say about the “Integrity Representation” approach to the misrepresentation claims that are at the heart of the claims against the defendants in *Northwest v. Sino-Forest* or of the “GAAP” misrepresentation employed in *Labourers v. Sino-Forest*, or the focus on the authorized intermediaries in *Smith v. Sino-Forest*. Short of deciding the motion for certification, there is no way of deciding which approach is more likely to lead to certification or which approach the defendants will attack as deficient. For present purposes, I am simply satisfied that the class members are best served by the approach in *Labourers v. Sino-Forest*.

[328] The cohesive, yet adequately comprehensive, approach used in *Smith v. Sino-Forest* appears to me close to *Labourers v. Sino-Forest*, but in my opinion, *Smith v. Sino-Forest* wants for the inclusion of the bondholders, and, as noted above, there are other factors which favour *Labourers v. Sino-Forest* over *Smith v. Sino-Forest*. That said, it was a close call for me to choose *Labourers v. Sino-Forest* and not *Smith v. Sino-Forest*.

**H. CONCLUSION**

[329] For the above Reasons, I grant carriage to Koskie Minsky and Siskinds with leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim.

[330] In granting leave, I grant leave generally and the plaintiffs are not limited to the amendments sought as a part of this carriage motion. It will be for the plaintiffs to decide whether some amendments are in order to respond to the lessons learned from this carriage motion, and it is not too late to have more representative plaintiffs.

[331] I repeat that a carriage motion is without prejudice to the defendants' rights to challenge the pleadings and whether any particular cause of action is legally tenable.

[332] I make no order as to costs, which is in the usual course in carriage motions.

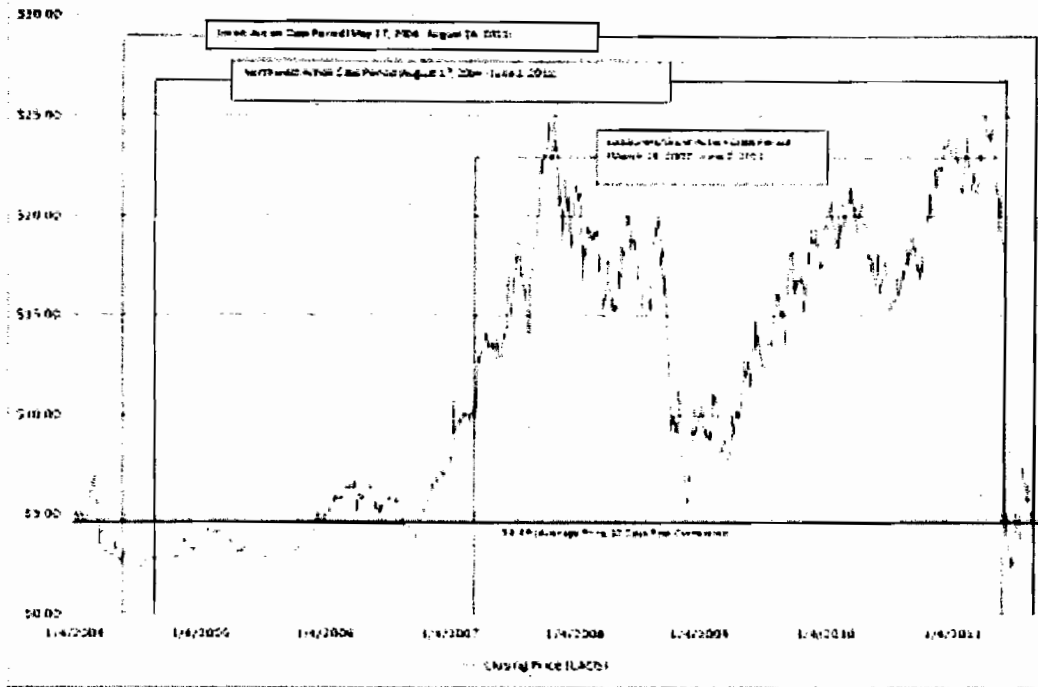
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Perell, J.

Released: January 6, 2012

SCHEDULE "A"

Sino-Forest Jan 4, 2004 - Aug 26, 2011



2012 ONSC 24 (CanLI)

**CITATION:** Smith v Sino-Forest Corporation, 2012 ONSC24  
**COURT FILE NO.:** 11-CV-428238CP  
**COURT FILE NO.:** 11-CV-431153CP  
**COURT FILE NO.:** 11-CV-435826CP  
**DATE:** January 6, 2012

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Douglas Smith and Zhongjun Goa**

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

**AND BETWEEN:**

**The Trustees of the Labourers' Pension Fund  
of Central and Eastern Canada and the  
Trustees of the International Union of  
Operating Engineers Local 793 Pension Plan  
for Operating Engineers in Ontario**

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

**AND BETWEEN:**

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

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

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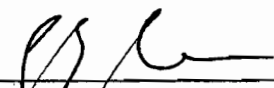
**REASONS FOR DECISION**

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**Perell, J.**

2012 ONSC 24 (CanLII)

This is Exhibit "G" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.



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A Commissioner, etc.  
Serge Kalloghlian  
(LSUC #55557F)

CITATION: Labourers' Pension Fund of Central and Eastern Canada v.  
Sino-Forest Corporation, 2012 ONSC 1924  
COURT FILE NO. 11-CV-431153CP  
DATE: 20120326

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, Sjuunde 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 Banc of America Securities LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

COUNSEL:

- Kirk M. Baert and Michael Robb for the Plaintiffs
- Michael Eizenga for Sino-Forest Corporation, Simon Murray, Edmund Mak, W. Judson Martin, Kai Kit Poon and Peter Wang
- Emily Cole and Megan Mackey for Allan T.Y. Chan
- Peter Wardle and Simon Bieber for David J. Horsley
- Laura Fric and Geoffrey Grove for William E. Ardell, James P. Bowland, James M.E. Hyde and Garry J. West
- John Fabello and Andrew Gray for 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
- Peter H. Griffin and Shara Roy for Ernst & Young LLP
- Kenneth Dekker and Michelle Booth for BDO Limited



- John Pirie and David Gadsden for Pöyry (Beijing) Consulting Company Limited

HEARING DATES: March 22, 2012

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] A motion for an order requiring a defendant to deliver a statement of defence or for an order setting a timetable for a motion should not be a momentous matter. But scheduling is a very big deal in this very big case under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

[2] The Defendants strenuously resist delivering a statement of defence before the certification motion, and they submit that it would both contrary to law and a denial of due process to require them to plead in the normal course of an action.

[3] The Defendants submit that having to plead their statement of defence is contrary to law because the Plaintiffs' statement of claim can be commenced only with leave pursuant to s. 138.8 of the *Securities Act*, R.S.O. 1990, c. S.5 and in *Sharma v. Timminco*, 2012 ONCA 107, the Court of Appeal ruled that the statement of claim does not exist until leave is granted. The Defendants submit that having to plead their statement of defence is a denial of due process because the Plaintiffs' statement of claim includes causes of action that might not survive a challenge under Rule 21 of the *Rules of Civil Procedure*. One of the Defendants, BDO Limited, also argues that claims against it are statute-barred, and, therefore, it should not be required to deliver a statement of defence but should be permitted to bring a Rule 21 motion before the certification hearing.

[4] The position of the Defendants is set out in paragraph 2 of the Defendant Sino-Forest Corporation's factum as follows:

2. The Responding Parties oppose the relief relating to the delivery of a statement of defence because, as a result of the Ontario Court of Appeal's decision in *Sharma v. Timminco*, the secondary market action has yet to be commenced and will not have been commenced unless and until leave has been granted by this Honourable Court. Accordingly, the Defendants cannot be required to deliver a statement of defence to a proceeding that has yet to be commenced. Moreover, the secondary market claims are intertwined with the balance of the allegations in the statement of claim, such that it would not be realistic to provide a partial or bifurcated defence. In addition, the Responding Parties expect to be bringing a motion to strike the Statement of claim, at least in respect of the portion of the claim that purports to be brought on behalf of Noteholders, who are prohibited from commencing such a claim by virtue of the no suits by holder clause.

[5] In response, the Plaintiffs submit that just as defendants are entitled to know the case they must meet, plaintiffs are entitled to know the defence they confront. The Plaintiffs submit that the law and the dictates of due process do not preclude ordering

the delivery of a statement of defence in accordance with the *Rules of Civil Procedure*, and the Plaintiffs' rely on the court's power under s. 12 of the *Class Proceedings Act, 1992* and on what I said in *Pennyfeather v. Timminco*, 2011 ONSC 4257 about the desirability of the pleadings being closed before the certification motion.

[6] In the immediate case, the Defendants also strenuously resist the Plaintiffs' request that the leave motion under s. 138.8 the *Securities Act* and the certification motion under the *Class Proceedings Act, 1992* be heard together. Instead of a combined leave and certification motion, the Defendants submit that a series of motions be scheduled, beginning with the leave motion, followed by Rule 21 motions, followed by the certification motion. Some Defendants would begin with the Rule 21 motions before the leave motion, but all wish a sequence of separate motions.

[7] The Defendants submit that a combined leave and certification motion would be both inappropriate and also unfair, and particularly so, if they are also required to plead their defences. The Defendants submit that fairness dictates that leave be determined in advance of certification, and that their right to attack all or part of whatever pleading emerges from the leave motion be preserved. They submit that it would be inefficient to deliver a statement of defence when the statement of claim is likely to be amended in a substantial manner depending on the outcome of the Plaintiffs' leave motion and the Rule 21 motions.

[8] The Plaintiffs regard the Defendants' proposal of a sequence of motions as something akin to having their action being sentenced to a life of imprisonment on Devil's Island.

[9] For the reasons that follow, I adjourn the motion as it concerns BDO Limited, and I order that there shall be a combined leave and certification motion on November 21-30, 2012 (10 days).

[10] I order that the "Proposed Fresh as Amended Statement of Claim" be the statement of claim for the purposes of the leave and certification motion and that this pleading shall not be amended without leave of the court. Further, I order that with the exception of the Plaintiffs' funding motion, there shall be no other motions before the leave and certification motion without leave of the court first being obtained.

[11] I do not agree that it would be contrary to law or a denial of due process to order the pre-certification delivery of a statement of defence; nevertheless, I shall not order all the Defendants to deliver their statements of defence before the combined leave and certification.

[12] Rather, I shall order that a statement of defence be delivered by any Defendant that delivers an affidavit pursuant to s. 138.8 (2) of the *Securities Act*. I order that any other Defendant may, if so advised, deliver a statement of defence. Further, I order that if a Defendant delivers a statement of defence, then the delivery of the statement of defence is not a fresh step and the Defendant is not precluded from bringing a Rule 21 motion at the leave and certification motion or from contesting that the Plaintiffs have shown a cause of action under s. 5 (1)(a) of the *Class Proceedings Act, 1992*.

[13] In my reasons, I will explain why it may be advantageous to a defendant to deliver a statement of defence although it may not be obliged to do so.

[14] Finally, in my reasons, I will establish a timetable for the funding motion and for the leave and certification motion, which timetable may be adjusted, if necessary, by directions made at a case conference.

## B. FACTUAL AND PROCEDURAL BACKGROUND

[15] Sino-Forest is a Canadian public company whose shares formerly traded on the Toronto Stock Exchange. At the moment, trading is suspended because on June 2, 2011, Muddy Waters Research released a research report alleging fraud by Sino-Forest. The release of the report had a catastrophic effect on Sino-Forest's share price.

[16] On June 20, 2011, The Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers") retained Koskie Minsky LLP to sue Sino-Forest. Koskie Minsky issued a notice of action in a proposed class action with Labourers as the proposed representative plaintiff.

[17] The June action, however, was not pursued, and in July 2011, Labourers and another pension fund, the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario ("Engineers") retained Koskie Minsky and Siskinds LLP to commence a new action, which followed on July 20, 2011, by notice of action. The statement of claim in *Labourers v. Sino-Forest*, which is the action now before the court, was served in August, 2011.

[18] On November 4, 2011, Labourers served the Defendants in *Labourers v. Sino-Forest* with the notice of motion for an order granting leave to assert the causes of action under Part XXIII.1 of the *Ontario Securities Act*.

[19] At this time, there were rival class actions. Douglas Smith had retained Rochon Genova, LLP. Rochon Genova issued a notice of action on June 8, 2011. The statement of claim in *Smith v. Sino-Forest* followed on July 8, 2011. Northwest & Ethical Investments L.P. and Comité Syndical National de Retraite Bâtirente Inc. retained Kim Orr Barristers P.C., and on September 26, 2011, Kim Orr commenced *Northwest v. Sino-Forest*.

[20] On December 20 and 21, 2011, there was a carriage motion, and on January 6, 2012, I released my judgment awarding carriage to Class Counsel in *Labourers v. Sino-Forest*. I granted leave to the Plaintiffs to deliver a Fresh as Amended Statement of Claim, which may include the joinder of the plaintiffs and the causes of action set out in *Grant v. Sino-Forest*, *Smith v. Sino-Forest*, and *Northwest v. Sino-Forest*, as the Plaintiffs may be advised.

[21] On January 26, 2012, the plaintiffs delivered an Amended Statement of Claim.

[22] On March 2, 2012, the Plaintiffs initiated a motion seeking leave to assert causes of action pursuant to ss. 138.3 and 138.8 under Part XXIII.1 of the *Securities Act*

[23] Plaintiffs' motion materials included a draft Fresh as Amended Statement of Claim for the eventuality that leave is granted ("Proposed Fresh as Amended Statement

of Claim”). The Proposed Fresh as Amended Statement of Claim substantially amends and extends the allegations contained in the pleading delivered in January 2012.

[24] In their various pleadings, the Plaintiffs allege that Sino-Forest and the other Defendants made misrepresentations in the primary and secondary markets. The Plaintiffs claims include: \$0.8 billion for primary market claims; \$1.8 billion (U.S.) for noteholders; and \$6.5 billion for secondary market claims. There are also claims against some of the Defendants for a corporate oppression remedy, negligence, negligent misrepresentation, conspiracy, and unjust enrichment. The following chart describes the claims against each Defendant:

	S.A. s. 130 (prospectus)	S.A. s. 130.1 (offering memorandum)	S.A. s. 138.3 (secondary market)	Negligent misrepresentation (secondary market)	Negligent misrepresentation (prospectus / o-memo)	Negligence (prospectus, offering memorandum)	Unjust Enrichment	CCCA Oppression	Conspiracy
Sino Forest	X	X	X	X	X	X	X	X	X
Chan	X		X	X	X	X	X	X	X
Horsley	X		X	X	X	X	X	X	X
Poon	X		X	X	X	X	X	X	X
Wang	X		X	X	X	X		X	
Martin	X		X	X	X	X	X	X	
Mak	X		X	X	X	X	X	X	
Murray	X		X	X	X	X	X	X	
Hyde	X		X	X	X	X		X	
Ardell			X	X				X	
Bowland			X	X				X	
West			X	X				X	
Ernst & Young	X		X	X	X	X			
BDO Ltd.	X		X	X	X	X			
Bdyry (Beijing)	X		X			X			
Credit Suisse	X				X	X	X		
TD Securities	X				X	X	X		
Dundee Securities	X				X	X	X		
RBC Dominion	X				X	X	X		
Scotia Capital	X				X	X	X		
CIBC World	X				X	X	X		
Merrill Lynch	X				X	X	X		
Canaccord	X				X	X	X		
Malson	X				X	X	X		
Credit Suisse (USA)						X	X		
Banc of America						X	X		

[25] On March 6, 2012, there was a case conference, and I scheduled 10 days of hearings from November 21 to November 30, 2012. Apart from deciding that the leave motion must be heard, I did not decide what would be the subject matter of those hearing dates.

[26] None of the Defendants has served a statement of defence. None has advised which, if any, statutory or common law defences they will advance in response to the Plaintiffs' claims. In this regard, it may be noted that the Plaintiffs advance claims under s. 130 of the *Securities Act* with respect to misrepresentations in the primary market.

These claims raises at least eight possible statutory defences, which are set out in subsections 130(3), (4) and (5) of the *Securities Act*. If leave is granted, the Plaintiffs also advance claims under Part XXIII.1 of the *Securities Act*. As noted in Sino-Forest's factum for this motion, there are at least 11 defences to secondary market claims.

### C. DISCUSSION

#### 1. Introduction

[27] In this introductory section, I will address the one relatively easy issue; i.e., the problem of the "moving target" statement of claim.

[28] In the sections that follow, I will address the more difficult issues of: (a) whether the Defendants can and should be ordered to deliver statements of defence; (b) whether the leave motion should be combined with the certification motion or instead there should be a sequence of motions; (c) what other motions, if any, should be permitted before the certification motion; and (d) what should the timetable be for the motions.

[29] Beginning with the relatively easy problem, at the argument of this motion, the Defendants vociferously complained that the Plaintiffs keep changing their statement of claim. The Defendants pointed to substantial differences among the statement of claim delivered before the carriage motion, the statement of claim delivered after the carriage motion, and the Proposed Fresh as Amended Statement of Claim offered up for the purposes of the leave motion.

[30] This complaint about a "moving target" statement of claim was advanced as part of the Defendants' arguments that they cannot legally be ordered to deliver a statement of defence. I, however, do not see how this complaint supports that particular argument.

[31] I rather regard the "moving target" complaint as a proper objection that if the Defendants are to be ordered to deliver a statement of defence, the content of the statement of claim needs first to be finalized.

[32] I agree that for the purposes of a leave or a certification motion, the content of the statement of claim needs to be finalized, and thus the approach should be to order a pleading to be finalized and to order that this pleading not be amended without leave of the court, I so order.

[33] The problem then becomes one of selecting which pleading to finalize for the purposes of the leave and certification motion. It makes common sense to select the pleading for which leave is being sought under the *Securities Act*; i.e. the Proposed Fresh as Amended Statement of Claim, and that indeed is my selection.

#### 2. The Delivery of the Statement of Defence in Class Actions

[34] I turn now to the difficult issues of whether the Defendants can be ordered to deliver statements of defence, and if they can be ordered to plead, whether they should be ordered to plead.

[35] As will be seen shortly, the Defendants submit that they cannot be ordered to plead to a secondary market claim that does not exist unless and until leave is granted under s. 138.8 of the *Securities Act*. For present purposes, I will accept the correctness of this submission, but it does not follow that the Defendants cannot plead to that portion of the Proposed Fresh as Amended Statement of Claim that is not exclusively referable to the secondary market claims. Assuming that the Defendants are correct that there is a portion of the Proposed Fresh as Amended Statement of Claim to which they cannot be obliged to plead does not negate that there are portions of the Proposed Fresh as Amended Statement of Claim that can and should be answered by a statement of defence.

[36] The Defendants' submission rather means that rule 25.07 of the *Rules of Civil Procedure*, which provides the rules of pleading applicable to defences, needs to be amended for the purpose of the leave and certification motion so that defendants do not have to plead to a pregnant action under Part XXIII.1 of the *Securities Act* that may never be born.

[37] Rule 25.07 states:

**Admissions**

25.07 (1) In a defence, a party shall admit every allegation of fact in the opposite party's pleading that the party does not dispute.

**Denials**

(2) Subject to subrule (6), all allegations of fact that are not denied in a party's defence shall be deemed to be admitted unless the party pleads having no knowledge in respect of the fact.

**Different Version of Facts**

(3) Where a party intends to prove a version of the facts different from that pleaded by the opposite party, a denial of the version so pleaded is not sufficient, but the party shall plead the party's own version of the facts in the defence.

**Affirmative Defences**

(4) In a defence, a party shall plead any matter on which the party intends to rely to defeat the claim of the opposite party and which, if not specifically pleaded, might take the opposite party by surprise or raise an issue that has not been raised in the opposite party's pleading.

**Effect of Denial of Agreement**

(5) Where an agreement is alleged in a pleading, a denial of the agreement by the opposite party shall be construed only as a denial of the making of the agreement or of the facts from which the agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the agreement.

**Damages**

(6) In an action for damages, the amount of damages shall be deemed to be in issue unless specifically admitted.

[38] To repeat, for the purposes of the leave motion where a party cannot be obliged to plead and for the combined certification motion, rule 25.07 needs to be revised to accommodate s. 138.8 of the *Securities Act*.

[39] Pursuant to the authority provided by s. 12 of the *Class Proceedings Act, 1992*, which authorizes the court to make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination, I have the jurisdiction to revise the procedure for a class proceeding to accommodate s. 138.8 of the *Securities Act*, and I do so by notionally adding a new subrule 25.07 (7) as follows:

(7) In an action under the *Class Proceedings Act, 1992* for which leave is also being sought to commence an action under section 138.3 of the *Securities Act* (liability for secondary market disclosure), in a defence, a party who does not file an affidavit pursuant to rule 138.8 (2) and who delivers a statement of defence shall decline to either admit or deny the allegations of fact referable solely to his or her liability for secondary market disclosure and not referable to any other pleaded cause of action.

[40] Practically speaking, notional subrule 25.07 (7) divides the Defendants into three classes.

[41] First, there are those Defendants who deliver a s. 138.8 (2) affidavit under the *Securities Act*. These Defendants must deliver a statement of defence for the reasons expressed below.

[42] Second, there are those Defendants against whom there are no allegations of fact referable to liability for secondary market disclosure, who thus have no right or need to deliver a s. 138.8 (2) affidavit under the *Securities Act* and who choose to deliver a statement of defence. These plaintiffs may, if so advised, simply plead in the normal course.

[43] Third, there are those Defendants against whom there are allegations of fact referable to liability for secondary market disclosure and who do not deliver a s. 138.8 (2) affidavit but who deliver a statement of defence.

[44] Under notional rule 25.07 (7), these Defendants shall decline to either admit or deny the allegations of fact referable solely to his or her liability for secondary market liability and not referable to any other pleaded cause of action. These defendants must state that they neither admit nor deny the allegations contained in those paragraphs (*identify paragraph numbers*) of the statement of claim referable solely to liability for secondary market liability and not referable to any other pleaded cause of action. As will become clearer after the discussion below, by being required to neither admit nor deny allegations referable solely to secondary market liability, these Defendants cannot circumvent the requirements of s.138.8 (2) of the *Securities Act* that they must file an affidavit in order to set forth the material facts upon which they intend to rely for the leave motion.

[45] This brings the discussion and the analysis to whether there might be other reasons not to order the Defendants to deliver a statement of defence. The convention in class actions, which existed from 1996 to 2011, was that a defendant not be required to deliver a statement of defence pre-certification because of the likelihood that the statement of claim would be reformulated as a result of the certification decision and

based on the view that the statement of defence had little utility before certification. See *Mangan v. Inco Ltd.* (1996), 30 O.R. (3d) 90 at pp. 94-95 (Gen. Div.); *Glover v. Toronto (City)* [2008] O.J. No. 604 at para. 8 (S.C.J.).

[46] In *Pennyfeather*, I suggested that the convention should be revisited and that it was desirable that the pleadings be closed before the certification motion. See also *Kang v. Sun Life Assurance Company of Canada*, 2011 ONSC 6335.

[47] In *Pennyfeather* at paras. 37-38, 84-92, I stated:

37. Class actions are subject to the *Rules of Civil Procedure*, and there is nothing in the *Class Proceedings Act, 1992* that precludes defendants from pleading before the certification motion. It is informative that the convention of not closing the pleadings is not a statutory rule, and if the Plaintiff insists on the delivery of a pleading, a defendant may need to seek the permission of the court to delay the delivery of the pleading.

38. Moreover, the provisions of the *Class Proceedings Act, 1992* indicate that it was the Legislature's intention that the general rule is that the statement of defence should be delivered before the certification motion. Section 2 (3) of the Act indicates that the timing of the certification motion is measured by the delivery of the statement of defence. ....

84. ... it would be advantageous for the immediate case and for other cases, if the current convention ended and defendants were required in the normal course to deliver a statement of defence before the certification motion. As I will illustrate, there would be several advantages to this approach, and as I mentioned above, the Legislature intended that the general rule should be that the pleadings should be completed before the certification motion.

85. Before I provide some examples of the advantages of closing the pleadings before certification, it is helpful to recall that under s. 5 (1) of the *Class Proceedings Act, 1992*, a plaintiff must satisfy five interdependent criteria for his or her action or application to be certified as a class proceeding. The Plaintiff must: (1) show a cause of action; (2) identify a class; (3) define common issues; (4) show that a class proceeding would be the preferable procedure; and (5) qualify as a representative plaintiff with a litigation plan and adequate Class Counsel.

86. A major advantage of closing the pleadings is that controversies about the first of the five criteria for certification might be resolved or at least narrowed or confined before the certification motion.

87. The delivery of a statement of defence could be a fresh step that could foreclose any subsequent attack by the defendant for any pleadings irregularities and, more to the point, typically defendants do not deliver a statement of defence if there is a substantive challenge to the statement of claim. Rather, they bundle all their challenges to the statement of claim and bring a motion to have the statement of claim or portions of it struck out on both technical and substantive grounds. ...

88. In other words, the requirement of delivering a statement of defence will call out the defendant to make its challenges to the statement of claim and, thus, the s. 5 (1)(a) criterion might be removed as an issue as would any challenge to the pleading for wanting in particulars or for breaching the technical rules for pleading. The s. 5 (1)(a) criterion for certification might be decided before the certification motion.

89. If the defendant brings a comprehensive pleadings challenge before the certification motion, then, the s. 5 (1)(a) criterion would be resolved before the certification hearing one



way or the other. It would be particularly useful to resolve a s. 5 (1)(a) challenge before the certification motion when the challenge is based on the court not having subject-matter jurisdiction over the plaintiff's claim. If that challenge is upheld, then the class action would be dismissed or stayed and the enormous costs of a comprehensive certification motion is avoided.

90. Further, hearing an interlocutory motion about the sufficiency of the pleading might be preferable to having the challenge heard at the certification motion as an aspect of the s. 5 (1)(a) analysis because a common outcome of this analysis is to grant the plaintiff leave to amend his or her statement of claim, which outcome, at a minimum, exacerbates the complexities of determining the certification motion because of the interdependency of the certification criteria.

91. In many cases, the technical or substantive adequacy of a plaintiff's statement of claim is not an issue and, therefore, requiring the completion of the pleadings will involve no interlocutory steps and the analysis of the other four certification criteria would be facilitated by a completed set of pleadings.

92. For instance, having the Statement of defence before the certification motion would provide useful information for analyzing the preferable procedure criterion and the plaintiff's litigation plan. Moreover, it may emerge that there are issues worthy of certification in the defendant's statement of defence.

[48] For present purposes, I do not retreat from what I said in *Pennyfeather*, and I shall emphasize several points and add a few more. In this regard, I emphasize that it was the clear intention of the Legislature that the pleadings be closed before certification. I add that this makes sense because the certification criteria of class definition, common issues, preferable procedure, and litigation plan are best adjudicated in the context of the parameters of the action and it may emerge that the defendant has pleaded issues that may usefully be added to the list of common issues.

[49] Further, I add that the Legislature also indicated by s. 35 of the *Class Proceedings Act, 1992*, that the *Rules of Civil Procedure* apply to class proceedings, reserving the courts' authority to make adjustments to that procedure under s. 12 of the *Act*. Generally speaking, it is desirable to normalize class actions with the procedure under the *Rules of Civil Procedure*. The *Rules* are the norm for a fair procedure, and the norm of civil procedure is that both sides must disclose the case that their opponent must meet. Defendants are not like an accused in a criminal proceeding with a right to remain silent. It is not regarded as unfair or abnormal to compel a defendant to plead a statement of defence in response to a statement of claim.

[50] Further still, I add that having a complete set of pleadings recognizes the maturity of the class action jurisprudence. There already have been many Rule 21 and s.5 (1)(a) challenges, and the viability of many causes of action or types of claim as being suitable for class actions has been informed by twenty years of cases. Recognition of the maturity of the case law in and of itself calls for a rethinking of the convention of not delivering a statement of defence, because assisted by precedents of what has been certified in the past, plaintiffs are better able to exit the certification hearing with their pleadings intact.

[51] In other words, in contemporary times the Defendants' concern that they will have wasted time and effort pleading to a statement of claim that may be different after certification will not be borne out. In any event, the complaint of a wasted effort is overblown. Unless pleadings are to be regarded as a work of fictional literature, claims and defences are based on the material facts that existed, and competent counsel will take instructions about all the possible claims and defences that emerge from those set of facts before the certification motion.

[52] I find it hard to believe that the accomplished lawyers in the case at bar are waiting for the outcome of the leave motion and the certification motion before investigating the material facts and researching the applicable law and advising the Defendants about what defences are available to them. The truth of the matter is that the Defendants and their lawyers are not concerned about wasted time and effort but rather they do not wish to plead because they believe it is tactically better to avoid the disclosure of their case that the *Rules of Civil Procedure* would normally mandate.

[53] I see no unfairness of denying defendants a tactical maneuver that may be inconsistent with general principle of rule 1.04 that the rules "shall be liberally construed to secure, the just, most expeditious and least expensive determination of every civil proceeding on its merits."

[54] I also see no unfairness in denying defendants the tactical maneuver of not delivering a statement of defence before certification when the exchange of pleadings may be tactically and substantively beneficial to defendants. The defendants arguments that class membership is over-inclusive or under-inclusive, that the proposed common issues want for commonality, that the action is not manageable as a class action, that a class proceeding is not the preferable procedure, and that the litigation plan is deficient are best made when the defendants shows the colour of his or her eyes by pleading a defence and these arguments will be stronger than the "is! - is not! - is too!" sandbox arguments of many a certification motion. For whatever it is worth, my own observation from recent certification motions where defendants have pleaded before certification is that both sides and the administration of justice are better for it.

[55] Finally, from a public relations point of view - and class actions are by their nature of considerable interest to the public - I would have thought that many defendants would like to seize the opportunity by pleading the material facts of their defence to take the sting out of the plaintiff's argument that the defendants need behaviour management and to level the playing field about the certification criteria.

[56] Thus, generally speaking, I persist in my view that the pleadings issues should be completed before the certification motion. The Defendants' argue, however, that whatever may be the situation for class actions generally, the Court of Appeal's decision in *Sharma v. Timminco, supra*, has overtaken *Pennyfeather*, and *Sharma* means that in a proposed secondary market class action, a statement of defence cannot be demanded or delivered before leave is granted under s. 138.3 of the *Securities Act*. A defendant cannot be asked to plead to a pregnant statement of claim.

[57] The Defendants take the *Sharma* decision to be authority that a class proceeding is not an action commenced under s. 138.3 until leave is granted and leave is required to

add the s. 138.3 cause of action to the class proceeding. The Defendants submit that without leave, a s. 138.3 action cannot be enforced. As Sino-Forest put it in its factum: "Until leave has been granted, the plaintiff has nothing: no limitation periods are tolled, and no steps in the proceeding – including the filing of a defence – can be taken."

[58] This hyperbolic submission by Sino-Forest and by the rest of the Defendants is not true. Whatever the effect of *Sharma*, it did not take away s. 138.8 of the *Securities Act*, under which subsection (2) requires for the leave motion that the plaintiff and each defendant swear under oath the "material facts upon which each intends to rely."

[59] Section 138.8 of the *Securities Act*, which provides the test for leave and which governs the procedure for the leave motion, states:

Leave to proceed

138.8 (1) No action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

(a) the action is being brought in good faith; and

(b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

Same

(2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court. ....

[60] Subsection 138.8 (2) may be usefully compared and contrasted with rule 25.06 (1) of the *Rules of Civil Procedure*, which is the predominant rule about pleading in an action. Rule 25.06 (1) states:

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

Both the subsection and the rule require the party to disclose to their opponent the "material facts" on which the party "relies." The pleadings rule, however, does not require that the disclosure of material facts be under oath. Assuming that a defendant does file an affidavit under s. 138.8 (2), then the affidavit is, in effect, an under oath version of 25.06 (1)'s requirement that a defendant disclose the material facts upon which he or she relies.

[61] I concede that filing an affidavit under s. 138 (8) is not mandatory and that it cannot be assumed that a defendant will deliver an affidavit for a leave motion under the *Securities Act*, and that he or she cannot be compelled to do so. In *Ainslie v. CV*

*Technologies Inc.* 93 O.R. (3d) 200 at paras. 14-20, 24-25 (S.C.J.), Justice Lax interpreted s. 138.8 (2), and she stated:

14. Section 138.8(1) sets out a two-part test for obtaining leave to bring an action under Part XXIII.1 of the OSA and places the onus on the plaintiffs to demonstrate that (1) their proposed action is brought in good faith and (2) has a reasonable prospect for success at trial. As s. 138.8(1) requires an examination of the merits, the plaintiffs submit that the section is supplemented with s. 138.8(2) and (3). They rely on the mandatory language in s. 138.8(2) ("and each defendant shall") and submit that without the benefit of this requirement and the ability to cross-examine, a plaintiff would be deprived of the tools necessary to meet the standard the legislature created in s. 138.8(1).

15. This submission ignores the legislative purpose of s. 138.8. The section was not enacted to benefit plaintiffs or to level the playing field for them in prosecuting an action under Part XXIII.1 of the Act. Rather, it was enacted to protect defendants from coercive litigation and to reduce their exposure to costly proceedings. No onus is placed upon proposed defendants by s. 138.8. Nor are they required to assist plaintiffs in securing evidence upon which to base an action under Part XXIII.1. The essence of the leave motion is that putative plaintiffs are required to demonstrate the propriety of their proposed secondary market liability claim before a defendant is required to respond. Section 138.8(2) must be interpreted to reflect this underlying policy rationale and the legislature's intention in imposing a "gatekeeper mechanism".

16. The plaintiffs appear to be interpreting s. 138.8(2) as if it read: "Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits." But, the subsection continues: "setting forth the material facts upon which each intends to rely". If there are no material facts upon which a defendant intends to rely in responding to a leave motion, how can it be that a defendant is required to file an affidavit? Similarly, if a defendant files one or more affidavits, how can a plaintiff require that defendant to file other affidavits? By discounting this language, the plaintiffs are proposing an interpretation which relieves them of their obligation to demonstrate that their proposed action meets the pre-conditions for granting leave under the Act.

17. The plaintiffs' interpretation also fails to address the language used in subsections (3) and (4). Section 138.8(3) reads: "The maker of such an affidavit may be examined on it in accordance with the rules of court." Section 138.8(4) reads: "A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed" (emphasis added). Had it been the intention of the legislature to require the parties to file affidavits, irrespective of the onus placed upon the moving party, the legislature would have substituted the word "the" for "any" in s. 138.8(4) and the words "the plaintiff and each defendant" for "maker" in s. 138.8(3). I also note that the legislature attached no consequences to the failure of "each defendant" to file an affidavit.

18. In terms of onus, a useful analogy can be found in the summary judgment rule, Rule 20, of the Rules of Civil Procedure. Rule 20.04 provides:

20.04(1) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest on the mere allegations or denials of the party's pleadings but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

19. Similar to s. 138.8(2), rule 20.04 utilizes language suggesting that a responding party "must" or "shall" file affidavit material. Notwithstanding the use of such language, under Rule 20, a responding party retains the option to counter the motion by simply cross-examining the moving party, rather than by leading any direct evidence on the motion. In

this regard, rule 20.04 has been interpreted as requiring the respondent to a summary judgment motion to "lead trump or risk losing". Notably, however, the onus to establish that there is no genuine issue for trial remains with the moving party. The onus does not shift to the respondent to show that a genuine issue for trial does in fact exist.<sup>8</sup>

20. Similarly, in a motion under s. 138.8 of the Act, the onus to demonstrate that the proposed claim meets the required threshold remains with the plaintiffs. The onus does not shift to the defendants. A defendant that does not "lead trump" by filing affidavit evidence in response to a motion under s. 138.8 may well take the risk that leave will be granted to the plaintiffs. It does not follow, however, that a defendant is obligated to file evidence or produce an affidavit from each named defendant. It is a well-established principle that, as a general proposition, it is counsel who decides on the witnesses whose evidence will be put forward. ....

24. In my view, the "gatekeeper provision" was intended to set a bar. That bar would be considerably lowered if the plaintiffs' view is correct. As I have already indicated, a defendant who does not file affidavit material accepts the risk that it may be impairing its ability to successfully defeat the motion for leave and is probably foregoing the right to assert the statutory defences under Part XXIII.1 of the Act. However, parties are entitled to present their case as they see fit and this includes the right to oppose the leave motion on the basis of the record put forward by the plaintiffs as GT intends, or on the basis of the affidavits of experts as CV intends. [page209]

25. To accept the plaintiffs' submissions would require each defendant to produce evidence that may not be necessary for the leave motion and would serve no purpose other than to expose those defendants to a time-consuming and costly discovery process. It would sanction "fishing expeditions" prior to the plaintiffs obtaining leave to proceed with their proposed action. This is an unreasonable interpretation of s. 138.8(2). It is inconsistent with the scheme and object of the Act. Properly interpreted, the ordinary meaning of s. 138.8(2) is that a proposed defendant must file an affidavit only where it intends to lead evidence of material facts in response to the motion for leave.

[62] In *Ainslie*, leave to appeal was granted [2009] O.J. No. 730 (Div. Ct.), but it appears that the appeal was never argued. In *Sharma v. Timminco Ltd.*, 2010 ONSC 790 at para. 32, I agreed with Justice Lax's interpretation of s. 138.8 (2).

[63] In the case at bar, I do not know whether any of the Defendants will deliver affidavits under s. 138.8 (2), but I do know that if a Defendant does deliver an affidavit, then its protest that it would be unfair to require a statement of defence loses its potency as does the urgency of the Plaintiffs' request that the Defendants be ordered to deliver their statements of defence. Delivering an affidavit under s. 138.8 is essentially the same as delivering a statement of claim or defence. As Justice Lax notes, a defendant who does not file affidavit material accepts the risk that it may be impairing its ability to successfully defeat the motion for leave. Justice Lax also notes that the defendant is probably foregoing the right to assert the statutory defences under Part XXIII.1 of the Act, but I would not necessarily go that far.

[64] Where this analysis takes me is that it while it would be inappropriate to order all the Defendants to deliver a statement of defence to a secondary market claim under the *Securities Act*, it would be proper to order that any Defendant who delivers an affidavit pursuant to s. 138.8 (2) of the *Act* shall also deliver a statement of defence. I so order.

[65] Although I am ordering only Defendants who deliver s. 138.8 (2) affidavits to deliver a statement of defence, I order that any other Defendant may, if so advised, deliver a statement of defence. I leave them to make the tactical decision whether or not to deliver a pleading. As I discussed above, there are advantages for a defendant to plead in a class action.

[66] For reasons that I will come to next, if a Defendant does deliver a statement of defence, the delivery is without prejudice to the Defendant's right to bring a Rule 21 motion or to challenge whether the Plaintiffs have shown a cause of action as required by s. 5 (1)(a) of the *Class Proceedings Act, 1992*.

[67] Here it should be noted that the "plain and obvious" test for disclosing a cause of action from *Hunt v. Carey Canada*, [1990] 2 S.C.R. 959, which is used for a Rule 21 motion, is used to determine whether the proposed class proceedings disclose a cause of action; thus, a claim will be satisfactory under s. 5 (1)(a) unless it has a radical defect or it is plain and obvious that it could not succeed: *Anderson v. Wilson* (1999), 44 O.R. (3rd) 673 (C.A.) at p. 679, leave to appeal to S.C.C. ref'd, [1999] S.C.C.A. No. 476; 1176560 *Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.* (2002), 62 O.R. (3d) 535 (S.C.J.) at para. 19, leave to appeal granted, 64 O.R. (3d) 42 (S.C.J.), aff'd (2004), 70 O.R. (3d) 182 (Div. Ct.); *Healey v. Lakeridge Health Corp.*, [2006] O.J. No. 4277 (S.C.J.) at para. 25.

[68] In this last regard, the Defendants submitted that a defendant has a right to challenge whether the plaintiff has pleaded a reasonable cause of action by bringing a Rule 21 motion and a defendant would lose this procedural right if he or she delivered a statement of defence. Pleading over is a fresh step that deprives a defendant of the right to subsequently challenge the substantive adequacy of a pleading: *Bell v. Booth Centennial Healthcare Linen Services*, [2006] O.J. No. 4646 at paras. 5-7 (S.C.J.); *Cetinalp v. Casino*, [2009] O.J. No. 5015 (S.C.J.). From this true premise, the Defendants submit that since some or all of them wish to bring a Rule 21 motion or some or all will be challenging the reasonableness of the plaintiffs' statement of claim as an aspect of the s. 5 (1)(a) criterion of the of test for certification, they should not be required to deliver a statement of defence before the certification motion.

[69] The court's typical but not inevitable response to a Defendant's request to bring a Rule 21 motion before certification is to direct the motion to be heard at the certification hearing because the test for granting a Rule 21 motion is the same test that is applied for the s. 5 (1)(a) criterion for certification. Typically, when this direction is made the defendant is not required to deliver a statement of defence.

[70] As already noted, in the case at bar, several defendants have indicated that they wish to bring Rule 21 motions on the basis that several of the Plaintiffs' claims do not disclose a reasonable cause of action or on the basis that the bonds contain a "no suits" clause, and BDO Limited wishes to bring a Rule 21 motion based on the argument that it is plain and obvious that claims against it are statute-barred.

[71] I agree that the right of Defendants to challenge the reasonableness of the Plaintiffs' statement of claim should be preserved and protected and I also believe that

this objective can be accomplished while still permitting defendants to deliver a statement of defence.

[72] Once again, using the authority of s. 12 of the *Class Proceedings Act, 1992*, I order that if a Defendant delivers a statement of defence, then the delivery of the statement of defence is not a fresh step and the Defendant is not precluded from bringing a Rule 21 motion at the leave and certification motion or the Defendant is not precluded from disputing that the Plaintiffs have shown a cause of action under s. 5 (1)(a) of the *Class Proceedings Act, 1992*.

### 3. Leave and Certification

[73] The above discussion addresses the matter of the Plaintiffs' request that the Defendants be ordered to deliver statements of defence and the discussion also lays the foundation for the discussion of the Plaintiffs' request that the leave motion under s.138.8 the *Securities Act* and the certification motion under the *Class Proceedings Act, 1992* be heard together and the Defendants' counter-submission that the motions should be sequenced leave motion, Rule 21 motions, and certification motion.

[74] In the case at bar, there is a general consensus that the leave motion should go first, and, in any event, because of the Court of Appeal's ruling in *Sharma* that s. 28 of the *Class Proceedings Act, 1992* is useless in protecting claims under Part XXIII.1 of the *Securities Act* from limitation periods, the leave motion must go first, and I have scheduled ten days of hearing commencing November 21, 2012.

[75] The question then is whether the certification motion should be combined with the leave motion.

[76] The Plaintiffs submit that hearing the two matters together is consistent with the direction from the Ontario Court of Appeal and that Supreme Court of Canada that litigation by installments should be avoided wherever possible because it does little service to the parties or to the efficient administration of justice." *Garland v. Consumers' Gas Company Limited* (2001), 57 O.R. (3d) 127 at para. 76 (C.A.), aff'd [2004] 1 S.C.R. 629 at para. 90. The Plaintiffs note that leave and certification were dealt with together in *Silver v. Imax Corp.*, [2009] O.J. No. 5585 (S.C.J.), leave to appeal refused [2011] O.J. No. 656 (Div. Ct.) and in *Dobbie v. Arctic Glacier Income Fund*, 2011 ONSC 25.

[77] An admonition is different from a prohibition, and while the Court of Appeal and the Supreme Court may frown on litigation in installments, they did not prohibit it. Whether to permit motions before the certification motion is a matter of discretion. In exercising its discretion whether to permit a motion before the certification motion, relevant factors include : (a) whether the motion will dispose of the entire proceeding or will substantially narrow the issues to be determined; (b) the likelihood of delays and costs associated with the motion; (c) whether the outcome of the motion will promote settlement; (d) whether the motion could give rise to interlocutory appeals and delays that would affect certification; (e) the interests of economy and judicial efficiency; and (f) generally, whether scheduling the motion in advance of certification would promote



the fair and efficient determination of the proceeding: *Cannon v. Funds for Canada Foundation*, [2010] O.J. No. 314 (S.C.J.) at paras. 14-15

[78] Thus, in my opinion, the question to be decided in the immediate case is whether it is fair (the most important factor) and efficient to hear the certification motion and the leave motion together.

[79] Provided that any Defendants who deliver s. 138.8 (2) affidavits or any Defendants who deliver statements of defence may bring Rule 21 motions or otherwise challenge all of the certification criteria as they may be advised, I see no unfairness in having the certification motion heard along with the leave motion. Because of the orders that I shall make, already discussed above, a Defendant may challenge all of the certification criteria regardless of whether the Defendant has pleaded or not. Pursuant to notional rule 25.07 (7), Defendants who do not file a s. 138.8 (2) affidavit and who deliver a statement of defence "shall decline to admit or deny the allegations referable solely to liability for secondary market disclosure and not referable to any other pleaded cause of action." I see no unfairness to the Defendants who may resist both the certification motion and the leave motion as they may be advised.

[80] In contrast, the sequential approach being advocated by the Defendants is unfair to the Plaintiffs and to the proposed class and will impede fulfilling the purposes of the class proceedings legislation, which are first and foremost, access to justice, secondarily, judicial economy, and thirdly, behaviour modification, all the while providing due process and fairness to all parties. Unfortunately, the suffocating expense of motions in class actions along with the excruciating delays and the additional costs of the inevitable leave to appeal motions and appeals that follow class action orders is a serious barrier to achieving the purposes of the legislation for both plaintiffs and defendants and a substantial disincentive to class counsel employing the legislation for other than the huge cases that would justify the litigation risks.

[81] As night follows day, if I agreed to schedule sequentially, there would be a ten-day leave motion, followed by the unsuccessful party launching the appeal process which will take several years to resolve. Whatever the outcome of the appeal, the action will return to the Superior Court for the certification motion of the claims not referable solely to liability for secondary market disclosure.

[82] In the case at bar, if Rule 21 motions were permitted before the certification hearing although work that could be done at the certification hearing will be accomplished, this will come at the cost of another round of appeals that will take several years to resolve only for the action to return again to the Superior Court for the determination of whether the balance of the certification criteria have been satisfied. That determination will also be appealed.

[83] In contrast, if I combine the leave motion, the Rule 21 motions, and the certification motion into one hearing, as night follows day, the determination will be appealed but the superior court and the appellate courts including the Supreme Court of Canada will be denied the pleasure of three visits from one or two generations of Class and Defence Counsel.



[84] The Defendants argue that there will be no efficiencies in a sequential ordering of the motions because the criteria for leave differs from the certification criteria, as does the burden of proof for these motions. However, courts are obliged to have the perspicacity to be able to deal with different criteria and different onuses of proof, but, more to the point, the evidentiary footprint for the leave and certification motions are the same, and it makes for little efficiency for the parties and little judicial economy to have the evidence and argument for leave and for certification heard more than once.

[85] Putting aside the somewhat unique circumstances of BDO Limited, I conclude that the certification hearing should be combined with the leave motion and that with the exception of the Plaintiffs' funding motion, which has already been scheduled, there shall be no other motions before the leave and certification motion without leave of the court first being obtained.

#### 4. BDO Limited's Request for a Rule 21 Motion

[86] As noted at the outset of these reasons, I am adjourning the motion as it concerns BDO Limited, whose circumstances may be unique.

[87] BDO was a party to the *Smith v. Sino-Forest* and the *Northwest v. Sino-Forest* rival class actions and it was added to the case at bar after the carriage motion. It submits that all of the statutory claims against it are statute-barred as in one of the main common law misrepresentation claims. It submits that it can diminish its involvement in this expensive litigation by a Rule 21 motion based on the pleadings and without evidence.

[88] The Plaintiffs' response was that if BDO wished to assert a limitation period defence it should be a pleaded defence to which the Plaintiffs would file a reply demonstrating that it was not plain and obvious that the claims were statute-barred or demonstrating that there were defences to the running of the limitation period, presumably based on fraudulent concealment or estoppel or waiver. The Plaintiffs also asserted that there were other common claims against BDO that were not statute-barred and thus there was no utility in permitting a Rule 21 motion that would see BDO only partially out of the action.

[89] BDO's response was that there were no defences that could withstand the ultimate limitation periods of the *Securities Act* and fairness dictated that it should be permitted to substantially reduce being embroiled in this litigation.

[90] My own assessment was that the Plaintiffs were correct in submitting that in the circumstances of this case, BDO should plead its limitation defence and the Plaintiffs should have an opportunity to deliver a reply.

[91] Once BDO has pleaded, I will be in a better position in determining whether to permit a Rule 21 motion or perhaps a Rule 20 partial summary judgment motion.

[92] Accordingly, I am adjourning the motion as it concerns BDO Limited to be brought on again, if at all, after BDO has pleaded its statement of defence and the Plaintiffs their Reply.

5. The Timetable

[93] In light of the discussion above, it is ordered that subject to adjustments, if necessary, made at a case conference, the timetable for the Plaintiff's Funding Approval Motion and for the Leave and Certification Motion is as follows:

Funding Approval Motion

March 9, 2012: Plaintiffs to deliver motion record (completed)

March 30, 2012: Defendants to deliver responding records, if any

April 6, 2012: Plaintiffs to deliver factum

April 13, 2012: Defendants to delivery factum

April, 17, 2012: Hearing of the motion

Leave and Certification Motion

April 10, 2012: Plaintiffs to deliver motion record

June 11, 2012: Defendants to deliver responding records

July 3, 2012: Plaintiffs to delivery reply records, if any

September 14, 2012: Cross-examinations to be completed

October 19, 2012: Plaintiffs to deliver factum

November 9, 2012: Defendants to deliver factum

November 21-30, 2012: Hearing of the motion

D. CONCLUSION

[94] An order shall issue in accordance with these Reasons with costs in the cause.

*Perell J.*

Perell, J.

Released: March 26, 2012

**CITATION: Labourers' Pension Fund of Central and Eastern Canada v.  
Sino-Forest Corporation, 2012 ONSC 1924  
COURT FILE NO. 11-CV-431153CP  
DATE: 20120326**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

Plaintiffs

- and -

Sino-Forest Corporation et al.

Defendants

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**REASONS FOR DECISION**

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Perell, J.

Released: March 26, 2012.

This is Exhibit "I" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.



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A Commissioner, etc.  
Serge Kalloghlian  
(LSUC #55557F)

**FINAL REPORT OF  
THE INDEPENDENT COMMITTEE OF THE BOARD OF DIRECTORS  
OF SINO-FOREST CORPORATION**

Privileged & Confidential

January 31, 2012

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GLOSSARY

SCHEDULES

SCHEDULE I: SECOND INTERIM REPORT – EXECUTIVE SUMMARY

Notes:

1. Capitalized terms used in this Final Report shall have the respective meanings ascribed to them in the Glossary.
2. The IC Advisors have conducted various investigative and review processes, all at the direction of, and subject to such scope limitations as the IC, in its judgment, deemed appropriate. This Final Report, while based on the work of such advisors, is the report of the IC and not the report of the IC Advisors.

## INTRODUCTION

The IC was established by the Board on June 2, 2011 immediately following the release by Muddy Waters of the MW Report. The IC has issued two interim reports to the Board since that date, the first dated August 10, 2011 and the second dated November 13, 2011. The initial members of the IC were William Ardell (Chair), James Bowland and James Hyde. At the invitation of the IC, Mr. Garry West, an independent director of SF, has attended virtually all the IC meetings and participated in its process. Mr. Bowland resigned as a director and from the IC on November 3, 2011 following the delivery to the Board of the IC's draft Second Interim Report. The IC has formally met approximately 75 times, in most cases for several hours, and met informally and communicated by email almost daily, either as IC members or in another Board capacity.

As was noted in the Second Interim Report, the IC focused on the years 2006 and following and limited its process to the examination and review of the issues raised in three core areas: (i) timber asset verification; (ii) timber asset value; and (iii) revenue recognition. Overlaying or intertwined with the latter two areas were the issues raised by the MW allegations regarding related party transactions and relationships. These issues have proved to be very difficult to definitively resolve.

The Second Interim Report described the process undertaken by the IC in its examination and review of the allegations made in the MW Report, summarized the outcomes and findings resulting from such process and identified certain further steps which the IC intended to take. Attached as Schedule I to this report is the Executive Summary from the Second Interim Report which includes an overview of the IC's principal findings as to timber ownership, forestry bureau confirmations and Plantation Rights Certificates, book values of timber, revenue reconciliation, relationships, cash and the BVI structure. The Executive Summary also discusses the challenges encountered by the IC in conducting its process.

The Second Interim Report stated that, while the IC believed its work was substantially complete, there remained certain further steps which it intended to undertake as follows:

- review the information and analysis which had very recently been provided by Management and which was intended to respond to certain issues regarding relationships of the Company with AIs and Suppliers and between AIs and Suppliers as identified in Part IV of the Second Interim Report;
- work with management to engage an independent valuator; and
- such other steps as the IC, in its judgment, deemed advisable in the discharge of its mandate.

This Final Report of the IC sets out the activities undertaken by the IC since mid-November, the findings from such activities and the IC's conclusions regarding its examination and review. The IC's activities during this period have been limited as a result of Canadian and Chinese holidays (Christmas, New Year and Chinese New Year) and the extensive involvement of IC members in the Company's Restructuring and Audit Committees, both of which are advised by different advisors than those retained by the IC. The IC believes that, notwithstanding there remain issues which have not been fully answered, the work of the IC is now at the point of diminishing

returns because much of the information which it is seeking lies with non-compellable third parties, may not exist or is apparently not retrievable from the records of the Company.

In December 2011, the Company defaulted under the indentures relating to its outstanding bonds with the result that its resources are now more focused on dealing with its bondholders. This process is being overseen by the Restructuring Committee appointed by the Board. Pursuant to the Waiver Agreement dated January 18, 2012 between the Company and the holders of a majority of the principal amount of its 2014 Notes, the Company agreed, among other things, that the final report of the IC to the Board would be made public by January 31, 2012.

Given the circumstances described above, the IC understands that, with the delivery of this Final Report, its review and examination activities are terminated. The IC does not expect to undertake further work other than assisting with responses to regulators and the RCMP as required and engaging in such further specific activities as the IC may deem advisable or the Board may instruct. The IC has asked the IC Advisors to remain available to assist and advise the IC upon its instructions.

#### **I. PROCESS SINCE NOVEMBER 13, 2011**

The IC Advisors' privileged report on outstanding items as at the date of the Second Interim Report and limited processes conducted by the IC Advisors since November 13, 2011 (being the date of the IC's Second Interim Report) has been delivered to the Board. Many of those challenges, which are fully described in section C of the Executive Summary of the Second Interim Report, continued to affect the IC's process since November 13, 2011. See Schedule I.

The scope of review and the processes undertaken by the IC Advisors since November 13, 2011 were determined by the IC and have been subject to certain limitations. The IC, in its judgment, considers such limitations to be appropriate and in the best interest of the Company, having regard to the challenges referred to above, time constraints and cost/benefit considerations. This Final Report to the Board, while partially based on the work of the IC Advisors, is the report of the IC and not the work of the IC Advisors.

#### **II. RELATIONSHIPS**

The objectives of the IC's examination of the Company's relationships with its AIs and Suppliers were to determine, in light of the MW allegations, if such relationships are arm's length and to obtain, if possible, independent verification of the cash flows underlying the set-off transactions described in Section II.A of the Second Interim Report. That the Company's relationships with its AIs and Suppliers be arm's length is relevant to SF's ability under GAAP to:

- book its timber assets at cost in its 2011 and prior years' financial statements, both audited and unaudited
- recognize revenue from standing timber sales as currently reflected in its 2011 and prior years' financial statements, both audited and unaudited.



**A. Yuda Wood**

Yuda Wood was founded in April 2006 and was until 2010 a Supplier of SF. Its business with SF from 2007 to 2010 totalled approximately 152,164 Ha and RMB 4.94 billion. Section VI.A and Schedule VI.A.2(a) of the Second Interim Report described the MW allegations relating to Yuda Wood, the review conducted by the IC and its findings to date. The IC concluded that Huang Ran is not currently an employee, and that Yuda Wood is not a subsidiary, of the Company. However, there is evidence suggesting a close cooperation between SF and Yuda Wood which the IC had asked Management to explain. At the time the Second Interim Report was issued, the IC was continuing to review Management's explanations of a number of Yuda Wood-related emails and certain questions arising there-from.

Subsequent to the issuance of its Second Interim Report in mid-November, the IC, with the assistance of the IC Advisors, has reviewed the Management responses provided to date relating to Yuda Wood and has sought further explanations and documentary support for such explanations. This was supplementary to the activities of the Audit Committee of SF and its advisors who have had during this period primary carriage of examining Management's responses on the interactions of SF and Yuda Wood. While many answers and explanations have been obtained, the IC believes that they are not yet sufficient to allow it to fully understand the nature and scope of the relationship between SF and Yuda Wood. Accordingly, based on the information it has obtained, the IC is still unable to independently verify that the relationship of Yuda Wood is at arm's length to SF. It is to be noted that Management is of the view that Yuda Wood is unrelated to SF for accounting purposes. The IC remains satisfied that Yuda is not a subsidiary of SF. Management continues to undertake work related to Yuda Wood, including seeking documentation from third parties and responding to e-mails where the responses are not yet complete or prepared. Management has provided certain banking records to the Audit Committee that the Audit Committee advises support Management's position that SF did not capitalize Yuda Wood (but that review is not yet completed). The IC anticipates that Management will continue to work with the Audit Committee, Company counsel and E&Y on these issues.

**B. Other Relationships**

Section VI.B.1 of the Second Interim Report described certain other relationships which had been identified in the course of the IC's preparation for certain interviews with AIs and Suppliers. These relationships include (i) thirteen Suppliers where former SF employees, consultants or secondees are or have been directors, officers and/or shareholders (including Yuda Wood); (ii) an AI with a former SF employee in a senior position; (iii) potential relationships between AIs and Suppliers; (iv) set-off payments for BVI standing timber purchases being made by companies that are not AIs and other set-off arrangements involving non-AI entities; (v) payments by AIs to potentially connected Suppliers; and (vi) sale of standing timber to an AI potentially connected to a Supplier of that timber. Unless expressly addressed herein, the IC has no further update of a material nature on the items raised above.

On the instructions of the IC, the IC Advisors gave the details of these possible relationships to Management for further follow up and explanation. Just prior to the

Second Interim Report, Management provided information regarding AIs and Suppliers relationships among the Company and such parties.

This information was in the form of a report dated November 10, 2011, subsequently updated on November 21, 2011 and January 20, 2012 (the latest version being the "Kaitong Report") prepared by Kaitong Law Firm ("Kaitong"), a Chinese law firm which advises the Company. The Kaitong Report has been separately delivered to the Board. Kaitong has advised that much of the information in the Kaitong Report was provided by Management and has not been independently verified by such law firm or the IC. Kaitong's work on the information received from Management includes:

- Reconciling the annual transaction amount for each Supplier and AI with the purchase/sales detailed data, which were provided by Management;
- Checking registration documents filed with SAIC to verify the basic information (legal representative, shareholding structure and establishment date) of Suppliers and AIs; and
- Performing Internet searches on the backers including their current and past position, investment and news.

The Kaitong Report generally describes certain relationships amongst AIs and Suppliers and certain relationships between their personnel and Sino-Forest, either identified by Management or through SAIC and other searches. The Kaitong Report also specifically addresses certain relationships identified in the Second Interim Report. The four main areas of information in the Kaitong Report are as follows and are discussed in more detail below:

- (i) **Backers to Suppliers and AIs:** The Kaitong Report explains the concept of "backers" to both Suppliers and AIs. The Kaitong Report suggests that backers are individuals with considerable influence in political, social or business circles, or all three. The Kaitong Report also states that such backers or their identified main business entities do not generally appear in SAIC filings by the Suppliers or AIs as shareholders thereof and, in most instances, in any other capacity.
- (ii) **Suppliers and AIs with Former SF Personnel:** The appendices to the Kaitong Report list certain Suppliers that have former SF personnel as current shareholders.
- (iii) **Common Shareholders Between Suppliers and AIs:** The Kaitong Report states that there are 5 Suppliers and 3 AIs with current common shareholders but there is no cross majority ownership positions between Suppliers and AIs.
- (iv) **Transactions Involving Suppliers and AIs that have Shareholders in common:** The Kaitong Report states that, where SF has had transactions with Suppliers and AIs that have certain current shareholders in common as noted above, the subject timber in those transactions is not the same;

that is, the timber which SF buys from such Suppliers and the timber which SF sells to such AIs are located in different counties or provinces.

The IC Advisors have reviewed the Kaitong Report on behalf of the IC. The IC Advisors liaised with Kaitong and met with Kaitong and current and former Management. A description of the Kaitong Report and the IC's findings and comments are summarized below. By way of summary, the Kaitong Report provides considerable information regarding relationships among Suppliers and AIs, and between them and SF, but much of this information related to the relationship of each backer with the associated Suppliers and AIs is not supported by any documentary or other independent evidence. As such, some of the information provided is unverified and, particularly as it relates to the nature of the relationships with the backers, is viewed by the IC to be likely unverifiable by it.

**1. Backers to Suppliers and AIs**

As noted above, the Kaitong Report explains the concept of backers of certain Suppliers and AIs. The Kaitong Report in effect supersedes certain of the information previously provided by Management and reported in the Second Interim Report (Part V.C.18(b)) concerning AIs and their supporters (then referred to as AI Holdcos or conglomerate).

The Kaitong Report states that all backers to Suppliers and AIs have strong business networks and good relations with various levels of the identified Chinese governments but does not explain the nature of the connections. The Kaitong Report stresses the importance of "Guanxi" in Chinese business, but is not specific as to particular benefits and why these particular relationships are important. The Kaitong Report contains little information to validate the political or business connections of such backers, or the nature of the relationship between the backers and the Suppliers or AIs. There is no documentary evidence of the nature of their support for their respective Suppliers or AIs nor the consideration (if any) received by the backers for their support of the Suppliers or AIs. The Kaitong Report suggests that such backers may provide resources that are important in China such as introductions, endorsements and connections.

As described in Schedule II, the IC Advisors conducted a review of the emails of twenty-three custodians using keyword searches related to the backers.

The documents identified by the IC Advisors from such review as being of potential interest showed no direct communication between backers and SF personnel. No additional substantive information was obtained from such email review or the interactions between the IC Advisors and Kaitong and management either on the relationships between SF and the backers or the roles and involvement of the backers in the business dealings between SF and the AIs and Suppliers. Management has advised that, while they were aware of certain backers of the AIs and Suppliers, the backers were not directly involved in the interactions with the Company. This appears to be borne out by the key word searches.

The SAIC information reviewed by the IC Advisors indicated one connection between an identified backer and an associated Supplier and the Kaitong Report indicates another between a backer and one of his associated Suppliers.

As described below, certain of the persons identified as backers of AIs were interviewed prior to the Second Interim Report and, in some cases, acknowledged an association with the AI for which the Kaitong Report identified them as its backer.

Given the general lack of information on the backers or the nature and scope of the relationships between the Suppliers or AIs and their respective backers and the absence of any documentary support or independent evidence of such relationships, the IC has been unable to reach any conclusion as to the existence, nature or importance of such relationships. As a result, the IC is unable to assess the implications, if any, of these backers with respect to SF's relationships with its Suppliers or AIs. Based on its experience to date, including interviews with Suppliers and AIs involving persons who have now been identified as backers in the Kaitong Report, the IC believes that it would be very difficult for the IC Advisors to arrange interviews with either the AIs or Suppliers or their respective backers and, if arranged, that such interviews would yield very little, if any, verifiable information to such advisors. The IC understands Management is continuing to seek meetings with its AIs and Suppliers with the objective of obtaining information, to the extent such is available, that will provide further background to the relationships to the Audit Committee.

(a) New Suppliers

The Kaitong Report also addresses the observation in the Second Interim Report that several new Suppliers have appeared since 2009 and completed very large transactions with SF. The Kaitong Report states that Management advised that the main reason to have new Suppliers is that as the Company expands its business into new geographic regions, it needs Suppliers established in each such region. In addition, the Company would also like to balance the transactions among Suppliers so as to reduce dependency risk on certain Suppliers. Supplier #21 is named as one such Supplier. This Supplier has the same backer (Backer #24<sup>1</sup>) and one similar shareholder (Shareholder #12 as to 70%) as the earlier supplier, Supplier #2, where Shareholder #12 is shown in SAIC filings as a 20% shareholder. This particular new Supplier is supplying in Sichuan Province, a relatively new area for SF.

(b) Backers to AIs

The Kaitong Report states that from 2006 to 2011 Sino-Forest sold timber to a total of 13 AIs and of these, 6 are supported by four backers. These backers are Backer #5, Backer #7, and Backer #3<sup>2</sup>, Backer #2 and Backer #8. The Kaitong Report states that it is not known if the remaining 7 AIs have backers.

The IC Advisors have interviewed Backer #5, Backer #3 and Backer #2 prior to production of the Kaitong Report as former Management had identified them as associated with certain corporate entities then referred to as AI Holdcos or

<sup>1</sup> For the purposes of this report, certain persons or entities that were labelled as "Shareholder" in the Second Interim Report are referred to as "Backer" in this Final Report. The numeric portion of the assigned name of such persons or entities remains the same where previously referred to in the Second Interim Report.

<sup>2</sup> Formerly referred to as AI-Supplier Contact #3

conglomerates. All confirmed their associations with the relevant AIs , but did not produce any documentation verifying such association.

## 2. Suppliers and AIs with Former SF Personnel

The Appendices to the Kaitong Report list the Suppliers with former SF personnel as current shareholders. According to the information previously obtained by the IC Advisors, the identification of former SF personnel indicated in the Kaitong Report to be current shareholders of past or current Suppliers is correct.

### (a) Suppliers with former SF personnel

The Kaitong Report, which is limited to examining Suppliers where ex-SF employees are current shareholders as shown in SAIC filings, does not provide material new information concerning Suppliers where former SF employees were identified by the IC in the Second Interim Report as having various past or present connections to current or former Suppliers except that the Kaitong Report provides an explanation of two transactions identified in the Second Interim Report. These involved purchases of standing timber by SF from Suppliers controlled by persons who were employees of SF at the time of these transactions. Neither of the Suppliers have been related to an identified backer in the Kaitong Report. The explanations are similar indicating that neither of the SF employees was an officer in charge of plantation purchases or one of SF's senior management at the time of the transactions. The employees in question were Shareholder #14 in relation to a RMB 49 million purchase from Supplier #18 in December 2007 (shown in SAIC filings to be 100% owned by him) and Shareholder #20 in relation to a RMB 3.3 million purchase from Supplier #23 (shown in SAIC filings to be 70% owned by him) in October 2007. The Kaitong Report indicates Shareholder #20 is a current employee of SF who then had responsibilities in SF's wood board production business.

The IC is not aware that the employees' ownership positions were brought to the attention of the Board at the time of the transactions or, subsequently, until the publication of the Second Interim Report and understands the Audit Committee will consider such information.

### (b) AIs with former SF personnel

The Kaitong Report indicates that no SF employees are listed in SAIC filing reports as current shareholders of AIs. Except as noted herein, the IC agrees with this statement. The Kaitong Report does not address the apparent role of an ex-employee Officer #3 who was introduced to the IC as the person in charge of AI #2 by Backer #5 of AI Conglomerate #1. Backer #5 is identified in the Kaitong Report as a backer of two AIs, including AI#2. (The Kaitong Report properly does not include AI #14. as an AI for this purpose, whose 100% shareholder is former SF employee Officer #3. However, the IC is satisfied that the activities of this entity primarily relate to certain onshoring transactions that facilitated the transfer of SF BVI timber assets to SF WFOE subsidiaries.)

There was one other instance where a past shareholding relationship has been identified between an AI #10 and persons who were previously or are still shown on the SF human

resources records, Shareholder #26 and Shareholder #27. Management has explained that such entity sold wood board processing and other assets to SF and that the persons associated with that company consulted with SF after such sale in relation to the purchased wood board processing assets. Such entity subsequently also undertook material timber purchases as an AI of SF in 2007-2008 over a time period in which such persons are shown as shareholders of such AI in the SAIC filing reviewed (as to 47.5% for Shareholder #26 and as to 52.5% for Shareholder #27). That time period also intersects the time that Shareholder #26 is shown in such human resources records and partially intersects the time that Shareholder #27 is shown on such records. Management has also explained that Shareholder #26 subsequent to the time of such AI sales became an employee of a SF wood board processing subsidiary. Management has provided certain documentary evidence of its explanations. The IC understands that the Audit Committee will consider this matter.

**3. Common Shareholders between Supplier and AIs**

The Kaitong Report states that there are 5 Suppliers and 3 AIs that respectively have certain common current shareholders but also states that there is no cross control by those current shareholders of such Suppliers or AIs based on SAIC filings. The Kaitong Report correctly addresses current cross shareholdings in Suppliers and AIs based on SAIC filings but does not address certain other shareholdings. With the exception of one situation of cross control in the past, the IC has not identified a circumstance in the SAIC filings reviewed where the same person controlled a Supplier at the time it controlled a different AI. The one exception is that from April 2002 to February 2006, AI #13 is shown in SAIC filings as the 90% shareholder of Supplier/AI #14. AI #13 did business with SF BVIs from 2005 through 2007 and Supplier/AI #14 supplied SF BVIs from 2004 through 2006. However, the IC to date has only identified one contract involving timber bought from Supplier/AI #14 that was subsequently sold to AI #13. It involved a parcel of 2,379 Ha. timber sold to AI #13 in December 2005 that originated from a larger timber purchase contract with Supplier/AI #14 earlier that year. Management has provided an explanation for this transaction. The IC understands that the Audit Committee will consider this matter.

**4. Transactions involving Suppliers and AIs with Current Shareholders in Common**

The Kaitong Report states that where SF has had transactions with 5 Suppliers and 3 AIs that have current shareholders in common (but no one controlling shareholder) as shown in SAIC filings, the subject timber in the transactions they each undertook with SF is not the same; that is, the timber which SF buys from the Suppliers and the timber which SF sells to the AIs where the Supplier and AI have a current common shareholder were located in different areas and do not involve the same plots of timber. The Kaitong Report further states that where SF has had transactions with 5 Suppliers and 3 AIs with current shareholders in common as shown in SAIC filings, SF had transactions with those AIs prior to having transactions with those Suppliers, thus SF was not overstating its transactions by buying and selling to the same counterparties.

Other than the immaterial timber parcel transaction referred to in Section II.B.3 above, which is a 2005 transaction, the IC believes that the Kaitong Report is accurate in respect of the specific transactions cited by it, except that it could not independently confirm the

information reported for sales from Suppliers with cross minority interests to AI #3 of timber parcels in Jiangxi Province due to the absence of detailed location information in the sales contracts.

The Kaitong Report does not specifically address historical situations involving common shareholders and potential other interconnections between AIs and Suppliers that may appear as a result of the identification of backers. There is generally no ownership connection shown in SAIC filings between backers and the Suppliers and AIs associated with such backers in the Kaitong Report.

The Second Interim Report indicated some potential connections between shareholders of Supplier #3 and two AIs that Management then associated with an entity called AI Conglomerate #1. No direct ownership was indicated between such AIs and AI Conglomerate #1 based on the SAIC filings reviewed, although the Kaitong Report indicates that the current owner of AI Conglomerate #1 is a backer of such AIs. The IC is also now satisfied that based on various corporate filings, there is no current cross ownership between AI Conglomerate #1 and Supplier #3. Further, the IC believes, based on its review of the timber purchase contracts between Supplier #3 and SF and the timber sales contracts between SF and AIs backed by the owner of AI Conglomerate #1 that there were no purchases and sales of the same timber with those parties during any period for which the IC believe there may have been cross ownership between shareholders of Supplier #3 and shareholders of AI Conglomerate #1 (or the two AIs). Further, Management has also provided the IC information suggesting that no proceeds from any sales to those AIs were redeployed to purchase timber from Supplier #3 or entities known to be controlled by its shareholder, Shareholder #3.

The IC notes that there were significant set-off payments from such AIs to Supplier #3 (approximately RMB 1.04 billion). Given Supplier #3 is a major Supplier and such AIs are major AIs, this is consistent with the BVI business model.

### **III. TIMBER ASSET PROOF OF CONCEPT**

#### **A. Background**

The Second Interim Report discussed the absence of maps in documentation for BVI timber purchase transactions. In response to these concerns, Management provided information regarding various issues regarding the due diligence conducted prior to entering into a BVI timber purchase contract, including maps which in the case of timber purchases were provided through forestry bureaus.

Management also provided copies of news articles regarding foreigners being subject to criminal sanctions in China for possessing maps and other geographical information that were deemed to be classified as state secrets. The IC has reviewed these responses from Management and was unable to verify all of Management's assertions regarding forestry maps or that forestry mapping information would be regarded as subject to such sanctions but recognizes that this is an area of the law in China where a conservative approach may be prudent.



In mid December 2011, Management provided a document entitled "Detailed Description of Locating Forestry Resources in China" which explains how the locations of BVI standing timber assets are determined. This document has been provided to the Board.

It indicates that although certain types of stand maps and these land descriptions are available as part of PRCs, maps are not readily available for continuing possession by persons trading in standing timber without a lease as is the case of the transactions by SF's BVI model. Management indicates that such maps usually can be borrowed from forestry bureaus (but not retained) and are used by the survey companies as part of the Company's due diligence. Management believes the ability of a foreign company to retain such maps is unclear and has adopted a cautious approach to this issue. The advice received by the IC from independent forestry experts is that this practice is not inconsistent with the practice of other parties in China who buy and sell standing timber without leasing the underlying land.

#### **B. Independent Review by Forestry Experts**

##### **(i) Background**

The IC requested that a sample proof of concept exercise be undertaken by an independent forestry expert to determine if the specified areas of forest in a particular BVI purchase contract could be located and quantified by such party.

The IC determined that it was appropriate to use two forestry companies that were also being retained by the Company in connection with its restructuring and the valuation process associated therewith. These two independent forestry experts were Indufor Asia Pacific Limited ("Indufor") and Stewart Murray (Singapore) Pte. Ltd. ("Stewart Murray"). Members of the IC were involved in that retainer process. These entities had been retained through BJ for such valuation process and the report they provided was a report to BJ from Indufor on the work done by Indufor and Stewart Murray (collectively, the "Forestry Experts" and their report dated January 27, 2012, the "Forest Report"). The Forest Report has been delivered to the Board. The Forest Report describes the proof of concept asset verification process undertaken to determine if the net stocked area of two forest compartments purchased under two specific SF BVI timber purchase contracts could be verified.

The importance of such a "proof of concept" engagement is that it confirms the technology, methodology and reporting framework that can be used for the wider area verification of the SF estate, subject to access to maps meeting the standards described below.

##### **(ii) Summary**

As part of the proof of concept process and based upon information from SF, including maps that SF indicated were borrowed by SF's contract survey company from the relevant forestry bureaus, the Forestry Experts were then able to locate the two compartments in question and to relate them to the specific contracts. They measured the net stocked area of forest cover in the two compartments compared to the net stocked area for those compartments described in the survey attached to the contracts. Indufor reported that the actual net stocked area of the two selected compartments fell within six percent of the net stocked area recorded for those within the contract documents.



The analysis and findings of the report are limited solely to the two compartments described therein. Indufor states that no extrapolation of findings to the wider SF estate is possible or is implied.

(iii) The Process and Detailed Findings

The IC selected two compartments from ten possible compartment options suggested by the Forestry Experts.

The Forest Report indicates that the ten forest compartment options put forward to the IC met criteria requiring that the compartments:

1. were impartially selected by Indufor and Stewart Murray for the IC and not selected by SF;
2. were part of the SF purchased timber plantations located in Yunnan province of China;
3. were listed as being held by BVI entities and not by WFOE entities, and;
4. should cover multiple county forestry bureaus. It was the IC's intention to select compartments that were in different county forestry bureau jurisdictions.

The IC selected the following two compartments for the area verification process:

1. Purchase Contract STP-SUW-0409 dated January 7, 2011 and Survey Report STP-SUW-0409 dated 27 December 2010. Compartment 11. Located in Jianchuan county, near the township of Ma-teng. Jurisdiction of the Jianchuan County Forestry Bureau, with a stated area of 1145 mu (being 76.3 hectares).
2. Purchase Contract STP-SUW-0411 dated January 14, 2011 and Survey Report STP-SUW-0411 dated 5 January 2011. Compartment 44. Located in Heqing county, near the township of Beiya. Jurisdiction of the Heqing County Forestry Bureau, with a stated area of 957 mu (being 63.8 hectares).

The Forest Report summarizes the results of the proof of concept process as follows:

1. maps of the two compartments were provided by SF to Indufor, which SF indicated were borrowed by the contracted survey company from forestry bureaus;
2. the two maps clearly showed the extent of each compartment's boundary that corresponded to those in Surveys related to the contracts;
3. each compartment's boundary was able to be spatially located (geo-referenced) for use within a Geographic Information System;
4. the Forestry Experts located and physically visited the two forest compartments;
5. the use of recent high resolution satellite images allowed the removal of gaps and areas of unstocked forest from the calculation of each compartment's net stocked area;
6. the net stocked area calculated by the verification process for the two compartments slightly exceeded that stated in the forest survey reports attached to the SF purchase contracts for the compartments; and

7. it is important to reemphasise that no extrapolation of the area verification findings to the wider SF estate is possible.

The Forestry Experts utilized the maps as described above but were not permitted to retain them. Indufor has advised the IC that did not present any material issues to its process or conclusions. They confirm that the compartments were forested, but did not undertake an assessment of standing timber volume.

The Forestry Experts used the combined results of the field observations and satellite imagery to assess the net stocked area for each of the two forest compartments. Net stocked area is forested area and excludes any unstocked forest gaps. The following table compares the SF purchase contract areas and the net stocked area mapped by the Forestry Experts using remote sensing processes.

**Table 1: Net Stocked Area Comparison of Purchase Contract vs. Assessed Area**

Identification Reference	Purchase Contract Area (Ha.)	Assessed Area (Ha.)	Difference (Ha.)	Difference (%)
Compartment 11	76.3	80.5	4.2	+5.5%
Compartment 44	63.8	66.5	2.7	+4.2%

The exercise did prove the concept that was presented for testing – subject to the provision of adequate maps, it was possible to use a combination of remote sensing and ground inspection to assess the net stocked area. The Forestry Experts reported that it should indeed be possible for the Company to use the same technology, process and methodology as demonstrated in the Forest Report to verify the area and land cover status of its entire forest estate. The Forestry Experts observed and emphasised that the viability of such a large scale area verification exercise is critically dependent on having access to maps that meet certain standards, these being:

1. that the maps are provided in a format that is readily usable and reliable, be that in a high quality digital or paper format;
2. the maps are already geo-referenced, or can be readily and reliably geo-referenced; and
3. the maps clearly show the boundaries of each forest compartment or collection of forest compartments.

The Forestry Experts observed that the availability of maps meeting such specifications described above should enable an efficient area verification process of the wider SF estate to be undertaken. Forest compartment maps that did not meet such specifications would prevent their area from being verified.

The Forestry Experts therefore concluded that a large scale area verification exercise has to follow the sequence outlined below:

1. digital geo-referenced maps are combined with satellite images.
2. the locations of the necessary field sample sites are identified.
3. field sample sites are visited and the forest ground cover data are recorded.

4. the forest cover data are combined with the satellite images and the resulting net stocked area of each forest compartment can be measured.

The concept of testing a sample of BVI purchase contracts and survey information by forestry experts was discussed among the IC and counsel to the IC, although the design and testing of the proof of concept that was undertaken was a matter determined by the Forestry Experts within the parameters for selection of the two test areas determined by the IC.

The IC Advisors were not involved in the preparation of the Forest Report although such report was made available to them in order to assist counsel in advising the IC in the preparation of the Final Report.

#### IV. ASSET VERIFICATION

The Company's counsel has engaged Stewart Murray to assist the Company in compiling a full forest description and implementing a forest asset valuation framework as at December 31, 2011. This will enable Management to give its opinion and guidance as to the fair market value of the Company's forest assets to the Board. Stewart Murray will identify and report to the Board on the sources of data (and any assumptions therein) that are incorporated within the Company's forest description, including assigning and reporting the levels of confidence that surround key assumptions. This engagement is expected to expand to include a verification and validation process of the key components that underpin forest value involving both Stewart Murray and Indufor. The exercise will involve a highly structured process that will, over time, systematically assess the area of forest cover and merchantable volume across the SF estate. Members of the IC were involved in determining the scope and parameters of the engagement of Stewart Murray. The IC Advisors were not directly involved in the retainer process of such experts.

#### V. ONTARIO SECURITIES COMMISSION

The OSC sought extensive information from the IC in letters dated December 7, 2011 (7 pages) and December 22, 2011 (29 pages), much of which was information properly sought from the Company.

The IC advised the OSC on January 4, 2012 that it would respond to their extensive inquiries.

The IC has responded to the December 7<sup>th</sup> letter and a response to the December 22<sup>nd</sup> letter, which also requires input from the Company, is expected to be completed within a reasonable period of time after the completion of this report.

#### VI. OUTSTANDING MATTERS

As noted in Section I above, the IC understands that with the delivery of this report, its examination and review activities are terminated. The IC would expect its next steps may include only:

- (a) assisting in responses to regulators and RCMP as required; and
- (b) such other specific activities as it may deem advisable or the Board may instruct.

GLOSSARY

“\$” means, unless otherwise specified, U.S. dollars;

“2010 AIF” or “b” means the Company’s annual information form for the year ending December 31, 2010;

“2010 Financial Statements” means the Company’s audited consolidated financial statements and the notes thereto as at and for the year ended December 31, 2010;

“2010 MD&A” means the Company’s management discussion and analysis for the year ending December 31, 2010;

“AI” means an authorized intermediary, an entity through which a BVI conducts its sales;

“AI HoldCo” means AI Conglomerate #1;

“Audit Committee” means the Audit Committee of the Board;

“BJ” means Bennett Jones LLP, Canadian counsel to the Company;

“Board” means the Board of Directors of SF;

“BVP” means a subsidiary of the Company incorporated in the British Virgin Islands;

“China” means The People’s Republic of China;

“Chop” means the seal typically used in place of signatures in China;

“Company” or “SF” or “Sino-Forest” means Sino-Forest Corporation and, where the context requires, its consolidated subsidiaries;

“CTO” means the cease trade order of the OSC dated August 26, 2010;

“E&Y” means Ernst & Young LLP, the auditor of the Company;

“Executive Summary” means the executive summary of the Second Interim Report, attached hereto as Schedule II;

“Final Report” means the final report of the IC to the Board dated January 31, 2012;

“Forest Report” the report of the Forestry Experts dated January 27, 2012 referred to in Section IIIB(i);

“forestry bureau confirmations” or “confirmations” means documents issued to the WFOEs and BVIs on letterheads with forestry bureau names and featuring Chops (the seal typically used in place of signatures) that indicate that they had been issued by the corresponding forestry bureau, but does not include new confirmations;

“Forestry Experts” means, collectively, Indufor and Stewart Murray;

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- “FTI” means FTI Consulting, a consulting firm advising the Company;
- “GAAP” means the generally accepted accounting principles as set out in the Canadian Institute of Chartered Accountants Handbook – Accounting as applicable to public companies in Canada;
- “Ha.” means hectares, which is equivalent to 15 mu (statements of Ha. herein are approximate, given the rounding associated with the conversion of mu to Ha.);
- “IC” means the Independent Committee to the Board;
- “IC Advisors” means one or more of PwC, Osler, Mallesons and JH;
- “IMET” means an Integrated Market Enforcement Team of the RCMP;
- “Indufor” means Indufor Asia Pacific Limited;
- “JH” or “Chinese counsel” means Jun He Law Offices, independent Chinese IC counsel;
- “Kaitong” means a Chinese law firm retained by the Company;
- “Kaitong Report” means the report of Kaitong dated January 20, 2012 regarding certain relationship issues;
- “Mallesons” means Mallesons Stephen Jaques, independent Hong Kong counsel to the IC;
- “Management” means, at any time, the management of SF at that time;
- “Mandra” means Mandra Forestry Holdings Limited, a wholly-owned subsidiary of SF;
- “MD&A” means management discussion and analysis;
- “mu” means a Chinese unit of measure for area, which is equivalent to 0.067 Ha.;
- “Muddy Waters” or “MW” means Muddy Waters, L.L.C.;
- “MW Report” means the initial “research report” issued by Muddy Waters dated June 2, 2011;
- “OSC” means Ontario Securities Commission;
- “Osler” means Osler, Hoskin & Harcourt LLP, independent Canadian counsel to the IC;
- “Plantation Rights Certificate” or “PRC” means a governmental registered certification of ownership issued by a forestry bureau in China to evidence certain forestry-related rights;
- “PwC” means PricewaterhouseCoopers LLP, forensic accounting advisors to the IC;
- “RCMP” means Royal Canadian Mounted Police;
- “RMB” means Renminbi, the official currency of China;

“**SAIC**” means China’s State Administration for Industry and Commerce, the national authority responsible for administering industry and commerce;

“**Second Interim Report**” means the second interim report of the IC to the Board dated November 13, 2011;

“**Stewart Murray**” means Stewart Murray (Singapore) Pte Ltd.;

“**Supplier**” means a supplier to the Company of plantation assets, either rights to standing timber or plantation/land use rights or both;

“**Survey Report**” means a Forest Resource Survey Report that accompanies BVI timber purchase contracts;

“**SW**” means Sino-Wood Partners, Limited, a Hong Kong incorporated subsidiary of SF;

“**WFOE**” means a subsidiary of the Company incorporated in China as a “Wholly Foreign Owned Enterprise”; and

“**Yuda Wood**” or “**Yuda**” means Huaihua City Yuda Wood Co. Ltd, a Supplier.

**SCHEDULE I**  
**SECOND INTERIM REPORT - EXECUTIVE SUMMARY**

**A. Introduction**

The IC was established by the Board on June 2, 2011, immediately following the release by Muddy Waters of the MW Report regarding SF. The members of the IC are William Ardell (Chair), James Bowland, and James Hyde. At the invitation of the IC, Mr. Garry West, an independent director of SF, attends virtually all IC meetings and participates in its process. Following the delivery to the Board of the IC's draft of this Second Interim Report on November 3, 2011, Mr. James Bowland resigned as a director and therefore from the IC. The mandate of the IC, in general terms, is to independently examine and review the serious and wide-ranging allegations made in the MW Report and report back to and, if appropriate, make recommendations to the Board. To date, the IC has met approximately 48 times.

The IC Advisors' role is to support the IC in its mandate to review the allegations made in the MW Report and related matters. The IC Advisors have conducted various investigative and review processes, all at the direction of, and subject to such scope limitations as the IC, in its judgment, deemed appropriate. (See Part IV.) This Second Interim Report to the Board, while based on the work of such advisors, is the report of the IC and (other than Schedule IV) not the report of the IC Advisors.

The IC's First Interim Report to the Board dated August 10, 2011 outlined the nature and scope of the IC's activities (principally data collection) to that date and the planned next steps. The purpose of this Second Interim Report is to report to the Board on the activities undertaken by the IC since mid-August, the outcomes and findings from such activities and further next steps. The First Interim Report is attached as Schedule I.A.

While the MW Report took a scatter gun approach in its allegations, the IC determined to address the issues raised in three core areas: (i) timber asset verification; (ii) timber asset value; and (iii) revenue recognition. Overlaying the latter two areas are the issues raised by the MW allegations relating to related party transactions. The IC also determined to focus on the years 2006 to 2010. Using this framework for its review, the IC's focus since its last report has been principally on:

- the ownership structure of timber assets on SF's balance sheet;
- verifying the Company's holdings of standing timber ("purchased plantations" as referred to in the 2010 AIF) and plantation land use/lease rights ("planted plantations" as referred to in the 2010 AIF, though some plantation land use/lease rights, such as the Mandra holdings, are classified as "purchased plantations" in the 2010 AIF), held through BVIs and WFOEs and the nature of its interests in such assets (see Part V below);
- interviewing Suppliers and AIs with a view to verifying the existence and nature of SF's relationship with such third parties and seeking to obtain financial particulars about purchase and sale transactions between such third parties and SF (see Part VI below); and

- examining and assessing the relationship with Yuda Wood, historically one of the largest Suppliers of standing timber to SF supplying approximately 21.5% of BVI timber purchases from 2008 through 2011 (see Section VI.A below).

The IC's work has also included:

- examining a number of specific situations which are the subject of MW allegations or critical newspaper articles (see e.g. Sections IV.B.6, VI.B and VI.C and Part VII below);
- engaging with and assisting E&Y in its examination of various issues relevant to its reports on the Company's financial statements (see Schedule IV attached);
- responding to questions and requests for documents and information from the OSC, including enquiries made through the Hong Kong securities authorities, in connection with its publicly announced investigation (see Part IX);
- meeting with and responding to requests for information from BJ and FTI;
- conducting interviews of certain members of Management;
- inspecting original versions of documents issued to the WFOEs and BVIs on letterheads with forestry bureau names and featuring Chops (the seal typically used in place of signatures) that indicate that they had been issued by the corresponding forestry bureau (the "forestry bureau confirmations"), and attending meetings with forestry bureaus in an attempt to verify the Company's holdings of standing timber;
- attending interviews of AIs and Suppliers, examining SF employee and other relationships with AIs and Suppliers (see Schedule IV attached); and
- meeting with and responding to requests for information from the RCMP (see Part XI).

In addition to the IC review, the MW Report has spawned various actions by public and private parties. These actions, which have affected the IC's activities and processes, include:

- an OSC investigation of matters related to SF;
- a review by E&Y of various matters relating to its 2010 and prior years' audits;
- three class action lawsuits in Ontario (one of which has a companion action in Quebec) by securities holders against the Company, its officers, E&Y and others;
- a threatened derivative claim against E&Y and certain officers and employees of the Company;



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- extensive newspaper and analyst reporting of the Company, including several in-depth investigative reports; and
- an enquiry by the RCMP through IMET.

While the IC believes its work is substantially complete, there remain certain further steps which it intends to undertake as follows:

- review the information and analysis very recently provided by Management intended to respond to certain issues regarding relationships of the Company with AIs and Suppliers and between AIs and Suppliers identified in this Second Interim Report (see Part VI);
- engage an independent valuator (see Part VIII);
- such other steps as the IC, in its judgement, deems advisable in the discharge of its mandate; and
- submit its final report and recommendations to the Board.

The IC expects to be able to deliver its final report to the Board prior to the end of 2011.

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## B. Overview of Principal Findings

The following sets out a very high level overview of the IC's principal findings and should be read in conjunction with the balance of this report.

### Timber Ownership

Based on its review and subject to its comments herein, the IC has confirmed to its satisfaction that the Company has:

- registered title to approximately 151,000 Ha. of SW and SP planted plantations and Mandra plantations. This constitutes approximately 17.9% of its timber holdings by area as at December 31, 2010;<sup>1</sup> and
- contractual or other rights to approximately 683,000 Ha. of plantations, being 81.3% of its timber holdings by area as at December 31, 2010 (of these, the Company holds original Plantation Rights Certificates, issued in the name of the Supplier, representing approximately 15,000 Ha., which the IC believes gives the Company a demonstrable chain of title). See Section III.B.

In connection with such confirmation, the IC has reviewed originals or copies of purchase contracts (and the corresponding set-off documentation confirming payment, in the case of the BVI purchased plantations) for the acquisition by the Company of:

- approximately 467,000 Ha. of BVIs purchased plantations;<sup>2</sup>
- approximately 237,000 Ha. of WFOE purchased plantations;<sup>3</sup> and
- approximately 129,000 Ha. of planted plantations<sup>4</sup>

representing approximately 106%<sup>5</sup> of SF's disclosed timber holdings of 788,700 Ha. as at December 31, 2010. With respect to these holdings, the IC has verified to its satisfaction that the Company has registered title:

<sup>1</sup> Timber holdings by area as at December 31, 2010 have been calculated by adding approximately 51,000 Ha. of planted plantation land for which the Company has contracts but has yet to classify as plantations under management for the purposes of its annual disclosure, to the Company's disclosed plantation of holdings of 788,700 Ha.

<sup>2</sup> BVI purchased plantations are comprised of standing timber without underlying leases of land use rights.

<sup>3</sup> The Company classifies this as being comprised of all WFOE (SP) standing timber and all Mandra leased plantations. Mandra leased plantations are considered to be "purchased" plantations in the Company's public disclosure because they were acquired through the 2010 acquisition of Mandra.

<sup>4</sup> The Company classifies this as being comprised of all WFOE (SW and SP) leased plantations.

<sup>5</sup> The Company's explanation for this figure being approximately 106% of its disclosed timber holdings as at December 31, 2010 is that the IC reviewed leases for approximately 51,000 Ha. of plantation land which were not included in the disclosed total of planted plantations of 77,700 Ha. as of December 31, 2010, due to a number of reasons, primarily because these lands had not yet been planted.

- via original Plantation Rights Certificates in the Company's name, to approximately 86,000 Ha. of WFOE purchased plantations,<sup>6</sup> and approximately 43,000 Ha. of WFOE planted plantations;<sup>7</sup> and
- via copies of Plantation Rights Certificates in the Company's name, to approximately 9,000 Ha. of WFOE purchased plantations, and approximately 12,000 Ha. of WFOE planted plantations.

In addition, as at December 31, 2010, the IC has determined that the Company has original or copies of forestry bureau confirmations relating to the acquisition of:

- approximately 467,000 Ha. of BVIs purchased plantations;
- approximately 89,000 Ha. of WFOE (SP) purchased plantations; and
- approximately 50,000 Ha. of WFOE (SP only) planted plantations.

The Company does not obtain registered title to BVI purchased plantations. In the case of the BVIs' plantations, the IC has visited forestry bureaus, Suppliers and AIs to seek independent evidence to establish a chain of title or payment transactions to verify such acquisitions. The purchase contracts, set-off arrangement documentation and forestry bureau confirmations constitute the documentary evidence as to the Company's contractual or other rights. The IC has been advised that the Company's rights to such plantations could be open to challenge. However, Management has advised that, to date, it is unaware of any such challenges that have not been resolved with the Suppliers in a manner satisfactory to the Company.

#### **Forestry Bureau Confirmations and Plantation Rights Certificates**

Registered title, through Plantation Rights Certificates is not available in the jurisdictions (i.e. cities and counties) examined by the IC Advisors for standing timber that is held without land use/lease rights. Therefore the Company was not able to obtain Plantation Rights Certificates for its BVIs standing timber assets in those areas. In these circumstances, the Company sought confirmations from the relevant local forestry bureau acknowledging its rights to the standing timber.

The IC Advisors reviewed forestry bureau confirmations for virtually all BVIs assets and non-Mandra WFOE purchased plantations held as at December 31, 2010. The IC Advisors, in meetings organized by Management, met with a sample of forestry bureaus with a view to obtaining verification of the Company's rights to standing timber in those jurisdictions. The result of such meetings to date have concluded with the forestry bureaus or related entities having issued new confirmations as to the Company's contractual rights to the Company in respect of 111,177 Ha. as of December 31, 2010<sup>8</sup> and 133,040 Ha. as of March 31, 2011,<sup>9</sup> and

<sup>6</sup> These 86,000 Ha. of WFOE purchased plantations are composed of approximately 84,000 Ha. of leases under Mandra and approximately 2,000 Ha. of standing timber under SP.

<sup>7</sup> These 43,000 Ha. of WFOE planted plantations are composed approximately of 31,000 Ha. of leases under SW and approximately 12,000 Ha. of leases under SP.

<sup>8</sup> Composed of 106,446 Ha. of BVI plantations and 4,731 Ha. of WFOE planted plantations, of which 60,707 Ha. were confirmed in the Hunan Forestry Entity Confirmation. This amount is, however, different from the total 60,696 Ha. shown on the confirmation, which appears to arise from an addition error.

have acknowledged the issuance of existing confirmations issued to the Company as to certain rights, among other things, in respect of 113,058 Ha. as of December 31, 2010.<sup>10</sup>

Forestry bureau confirmations are not officially recognized documents and are not issued pursuant to a legislative mandate or, to the knowledge of the IC, a published policy. It appears they were issued at the request of the Company or its Suppliers. The confirmations are not title documents, in the Western sense of that term, although the IC believes they should be viewed as comfort indicating the relevant forestry bureau does not dispute SF's claims to the standing timber to which they relate and might provide comfort in case of disputes. The purchase contracts are the primary evidence of the Company's interest in timber assets.

In the meetings with forestry bureaus, the IC Advisors did not obtain significant insight into the internal authorization or diligence processes undertaken by the forestry bureaus in issuing confirmations and, as reflected elsewhere in this report, the IC did not have visibility into or complete comfort regarding the methods by which those confirmations were obtained. It should be noted that several Suppliers observed that SF was more demanding than other buyers in requiring forestry bureau confirmations.

#### Book Value of Timber

Based on its review to date, the IC is satisfied that the book value of the BVIs timber assets of \$2.476 billion reflected on its 2010 Financial Statements and of SP WFOE standing timber assets of \$298.6 million reflected in its 2010 Financial Statements reflects the purchase prices for such assets as set out in the BVIs and WFOE standing timber purchase contracts reviewed by the IC Advisors. Further, the purchase prices for such BVIs timber assets have been reconciled to the Company's financial statements based on set-off documentation relating to such contracts that were reviewed by the IC. However, these comments are also subject to the conclusions set out above under "Timber Ownership" on title and other rights to plantation assets.

The IC Advisors reviewed documentation acknowledging the execution of the set-off arrangements between Suppliers, the Company and AIs for the 2006-2010 period. However, the IC Advisors were unable to review any documentation of AIs or Suppliers which independently verified movements of cash in connection with such set-off arrangements between Suppliers, the Company and the AIs used to settle purchase prices paid to Suppliers by AIs on behalf of SF. We note also that the independent valuation referred to in Part VIII below has not yet been completed.

#### Revenue Reconciliation

As reported in its First Interim Report, the IC has reconciled reported 2010 total revenue to the sales prices in BVIs timber sales contracts, together with macro customer level data from other businesses. However, the IC was unable to review any documentation of AIs or Suppliers which independently verified movements of cash in connection with set-off

<sup>9</sup> Composed of 128,309 Ha. of BVI plantations and 4,731 Ha. of WFOE planted plantations, of which 60,707 Ha. were confirmed in the Hunan Forestry Entity Confirmation. This amount is however different from the total hectare of 60,696 shown on the confirmation, which appears to arise from an addition error.

<sup>10</sup> Composed of 90,905 Ha. of BVI plantations and 22,153 Ha. of WFOE planted plantations.

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arrangements used to settle purchase prices paid, or sale proceeds received by, or on behalf of SF.

#### Relationships

- Yuda Wood: The IC is satisfied that Mr. Huang Ran is not currently an employee of the Company and that Yuda Wood is not a subsidiary of the Company. However, there is evidence suggesting close cooperation (including administrative assistance, possible payment of capital at the time of establishment, joint control of certain of Yuda Wood's RMB bank accounts and the numerous emails indicating coordination of funding and other business activities). Management has explained these arrangements were mechanisms that allowed the Company to monitor its interest in the timber transactions. Further, Huang Ran (a Yuda Wood employee) has an ownership and/or directorship in a number of Suppliers (See Section VI.B). The IC Advisors have been introduced to persons identified as influential backers of Yuda Wood but were unable to determine the relationships, if any, of such persons with Yuda Wood, the Company or other Suppliers or AIs. Management explanations of a number of Yuda Wood-related emails and answers to E&Y's questions are being reviewed by the IC and may not be capable of independent verification.
- Other: The IC's review has identified other situations which require further review. These situations suggest that the Company may have close relationships with certain Suppliers, and certain Suppliers and AIs may have cross-ownership and other relationships with each other. The IC notes that in the interviews conducted by the IC with selected AIs and Suppliers, all such parties represented that they were independent of SF. Management has very recently provided information and analysis intended to explain these situations. The IC is reviewing this material from Management and intends to report its findings in this regard in its final report to the Board. Some of such information and explanations may not be capable of independent verification.
- Accounting Considerations: To the extent that any of SF's purchase and sale transactions are with related parties for accounting purposes, the value of these transactions as recorded on the books and records of the Company may be impacted.

#### Cash

As reported in the IC's First Interim Report, as a precautionary measure, the IC requested that PwC confirm SF's cash balances. PwC did this as of June 13, 2011 for both China accounts and "offshore" accounts. A total of 293 accounts controlled by SF in Hong Kong were confirmed, representing 100% of the expected cash position. There are a very significant number of accounts held by SF in China (in excess of 260) and the logistics and requirements of in-person/in-branch verification in that country led the IC to confirm only a portion of the China accounts (28 accounts, representing approximately 81% of the expected China cash position). The IC was satisfied that SF's expected cash position existed as at the date of the confirmation. The Board should be aware that at the time of the cash confirmation process, SF only updated the details of its cash position quarterly, so the confirmation results must be considered in that context. The IC has instituted certain additional controls over cash

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movements in excess of \$1 million held in SF Hong Kong bank accounts in order to provide the IC with some precautionary comfort during the examination process. Further, Management has advised that cash balances are now updated on a more frequent basis. See Part XII.

#### **BVI Structure**

The BVI structure used by SF to purchase and sell standing timber assets could be challenged by the relevant Chinese authorities as the undertaking of "business activities" within China by foreign companies, which may only be undertaken by entities established within China with the requisite approvals. However, there is no clear definition of what constitutes "business activities" under Chinese law and there are different views among the IC's Chinese counsel and the Company's Chinese counsel as to whether the purchase and sale of timber in China as undertaken by the BVIs could be considered to constitute "business activities" within China. In the event that the relevant Chinese authorities consider the BVIs to be undertaking "business activities" within China, they may be required to cease such activities and could be subject to other regulatory action. As regularization of foreign businesses in China is an ongoing process, the government has in the past tended to allow foreign companies time to restructure their operations in accordance with regulatory requirements (the cost of which is uncertain), rather than enforcing the laws strictly and imposing penalties without notice. See Section II.B.2.

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### C. Challenges

Throughout its process, the IC has encountered numerous challenges in its attempts to implement a robust independent process which would yield reliable results. Among those challenges are the following:

(a) Chinese Legal Regime for Forestry:

- national laws and policies appear not yet to be implemented at all local levels;
- in practice, none of the local jurisdictions tested in which BVIs hold standing timber appears to have instituted a government registry and documentation system for the ownership of standing timber as distinct from a government registry system for the ownership of plantation land use rights;
- the registration of plantation land use rights, the issue of Plantation Rights Certificates and the establishment of registries, is incomplete in some jurisdictions based on the information available to the IC;
- as a result, title to standing timber, when not held in conjunction with a land use right, cannot be definitively proven by reference to a government maintained register; and
- Sino-Forest has requested confirmations from forestry bureaus of its acquisition of timber holdings (excluding land leases) as additional evidence of ownership. Certain forestry bureaus and Suppliers have indicated the confirmation was beyond the typical diligence practice in China for acquisition of timber holdings.

(b) Obtaining Information from Third Parties: For a variety of reasons, all of them outside the control of the IC, it is very difficult to obtain information from third parties in China. These reasons include the following:

- many of the third parties from whom the IC wanted information (e.g., AIs, Suppliers and forestry bureaus) are not compellable by the Company or Canadian legal processes;
- third parties appeared to have concerns relating to disclosure of information regarding their operations that could become public or fall into the hands of Chinese government authorities: many third parties explained their reluctance to provide requested documentation and information as being "for tax reasons" but declined to elaborate; and
- awareness of MW allegations, investigations and information gathering by the OSC and other parties, and court proceedings; while not often explicitly articulated, third parties had an awareness of the controversy

surrounding SF and a reluctance to be associated with any of these allegations or drawn into any of these processes.

- (c) Small Management Team: The Company has a very small executive management team and it is stretched by:
- demands from the IC, the OSC and E&Y;
  - the placement on administrative leave in late August 2011 of certain members of Management by the Company, based upon the advice of BJ. These employees remained available to assist Management upon request on a supervised basis, which further stretched the remaining management;
  - the appointment of a new Chief Executive Officer part way through the IC process; and
  - the fact that Management is dispersed among Canada, Hong Kong and various parts of China.
- (d) Cultural/Language/Geographic Issues:
- vast majority of operational documents are in Chinese;
  - most Asia-based Management employees' first language is Chinese;
  - business practices in China and the SF business model:
    - rely heavily on personal relationships; and
    - documentation of contractual arrangements is not as comprehensive as would be typical in Western jurisdictions, is often not done until after the transaction is agreed and is frequently incomplete;
  - geographic and time distances for the North American-based teams;
  - SF's operations in China are widely and remotely geographically dispersed, a number of plantations are close to sensitive border areas and some are accessible only by overland vehicle travel; and
  - public records in China are more limited than in Western jurisdictions and are often not complete, accessible, up to date or accurate.
- (e) Corporate Governance/Operational Weaknesses: Management has asserted that business in China is based upon relationships. The IC and the IC Advisors have observed this through their efforts to obtain meetings with forestry bureaus, Suppliers and AIs and their other experience in China. The importance of relationships appears to have resulted in dependence on a relatively small group of Management who are integral to maintaining customer relationships, negotiating and finalizing the purchase and sale of



plantation fibre contracts and the settlement of accounts receivable and accounts payable associated with plantation fibre contracts. This concentration of authority or lack of segregation of duties has been previously disclosed by the Company as a control weakness. As a result and as disclosed in the 2010 MD&A, senior Management in their ongoing evaluation of disclosure controls and procedures and internal controls over financial reporting, recognizing the disclosed weakness, determined that the design and controls were ineffective. The Chairman and Chief Financial Officer provided annual and quarterly certifications of their regulatory filings. Related to this weakness the following challenges presented themselves in the examination by the IC and the IC Advisors:

- operational and administration systems that are generally not sophisticated having regard to the size and complexity of the Company's business and in relation to North American practices; including:
  - incomplete or inadequate record creation and retention practices;
  - contracts not maintained in a central location;
  - significant volumes of data maintained across multiple locations on decentralized servers;
  - data on some servers in China appearing to have been deleted on an irregular basis, and there is no back-up system;
  - no integrated accounting system: accounting data is not maintained on a single, consolidated application, which can require extensive manual procedures to produce reports; and
  - a treasury function that was centralized for certain major financial accounts, but was not actively involved in the control or management of numerous local operations bank accounts;
- no internal audit function although there is evidence the Company has undertaken and continues to assess its disclosure controls and procedures and internal controls over financial reporting using senior Management and independent control consultants;
- SF employees conduct Company affairs from time to time using personal devices and non-corporate email addresses which have been observed to be shared across groups of staff and changed on a periodic and organized basis; this complicated and delayed the examination of email data by the IC Advisors; and
- lack of full cooperation/openness in the ICs examination from certain members of Management.

- (f) Complexity, Lack of Visibility into, and Limitations of BVIs Model: The use of AIs and Suppliers as an essential feature of the BVIs standing timber business model contributes to the lack of visibility into title documentation, cash movements and tax liability since cash settlement in respect of the BVIs standing timber transactions takes place outside of the Company's books.
- (g) Cooperation and openness of the Company's executives throughout the process: From the outset, the IC Advisors sought the full cooperation and support of Allen Chan and the executive management team. Initially, the executive management team appeared ill-prepared to address the IC's concerns in an organized fashion and there was perhaps a degree of culture shock as Management adjusted to the IC Advisors' examination. In any event, significant amounts of material information, particularly with respect to the relationship with Yuda Wood, interrelationships between AIs and/or Suppliers, were not provided to the IC Advisors as requested. In late August 2011 on the instructions of the IC, interviews of Management were conducted by the IC Advisors in which documents evidencing these connections were put to the Management for explanation. As a result of these interviews (which were also attended by BJ) the Company placed certain members of Management on administrative leave upon the advice of Company counsel. At the same time the OSC made allegations in the CTO of Management misconduct.

Following the implementation of these administrative leaves and the subsequent appointment of Judson Martin as the new Chief Executive Officer of the company on August 26, 2011, the cooperation received by the IC Advisors from the Company improved significantly. As a result of Mr. Martin's direction, meetings have been arranged and held with Suppliers, AI's and additional forestry bureaus. In addition, as noted above, very recently, Management presented information regarding AIs and Suppliers and relationships among the Company and such parties. The IC is reviewing this material from Management and intends to report its findings in this regard in its final report to the Board.

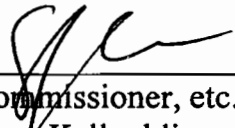
- (h) Independence of the IC Process: The cooperation and collaboration of the IC with Management (operating under the direction of the new Chief Executive Officer) and with Company counsel in completing certain aspects of the IC's mandate has been noted by the OSC and by E&Y. Both have questioned the degree of independence of the IC from Management as a result of this interaction. The IC has explained the practical impediments to its work in the context of the distinct business culture (and associated issues of privacy) in the forestry sector in China in which the Company operates. Cooperation of third parties in Hong Kong and China, including employees, depends heavily on relationships and trust. As noted above, the Company's placing certain members of Management on administrative leave, as well as the OSC's allegations in the CTO, further hampered the IC's ability to conduct its process. As a result, the work of the IC was frequently done with the assistance of, or in reliance on, the new Chief Executive Officer and his Management team and Company counsel. Given that Mr. Martin was, in effect, selected by the IC and BJ was appointed in late June 2011, the IC concluded that, while not ideal, this was a practical and appropriate way to proceed in the circumstances. As evidenced by the increased number of

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scheduled meetings with forestry bureaus, Suppliers and AIs, and, very recently, the delivery to the IC of information regarding AIs and Suppliers and relationships among the Company and such parties, it is acknowledged that Mr. Martin's involvement in the process has been beneficial. It is also acknowledged that in executing his role and assisting the IC he has had to rely on certain of the members of Management who had been placed on administrative leave.

Privileged & Confidential

This is Exhibit "J" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.



---

A Commissioner, etc.  
Serge Kalloghlian  
(L~~S~~UC #55557F)

BN Sino-Forest Truth May Never Be Known as Ardell Defends Founder  
Feb 13 2012 19:11:00

By Christopher Donville and Steven Frank

Feb. 14 (Bloomberg) -- Sino-Forest Corp. Chairman William Ardell says he found no sign of major fraud while overseeing an eight-month probe of the company. He also says a full account of the Chinese timber producer's activities and business ties may never be known.

"There has been no material evidence provided that would indicate that there has been a major fraud," Ardell said in an interview. "I can't give you a 100 percent guarantee as to everything."

Ardell led an independent committee of company directors charged with investigating allegations made by research company Muddy Waters LLC that Sino-Forest exaggerated its timber assets and operated a Ponzi scheme. The committee, which said in a report last month it may not be able to disprove some of the allegations, hasn't conclusively demonstrated that "there is timber there, and there is value there," Ardell said in the interview.

Once the largest Chinese forestry company by market value, Sino-Forest has lost shareholders about C\$3.3 billion (\$3.3 billion) since Muddy Waters published its report on June 2. Ardell and his colleagues are trying to pull the company out of a death spiral after its shares were suspended amid investigations by Canadian regulators and police, and Chief Executive Officer and founder Allen Chan stepped down.

The plight of Hong Kong- and Mississauga, Ontario-based Sino-Forest and its shareholders also has thrown a spotlight on contrasting Chinese and North American business practices. Ardell, 68, who spoke at his lawyer's office in Toronto on Feb. 4 and in three separate phone interviews, says his challenge now is to convince investors, regulators and auditors that the company's lack of transparency doesn't diminish its underlying value.

#### 'Life Imploded'

"I have a belief in the business," Ardell said. "I have a belief in Allen Chan."

The first inkling Ardell had that his belief might be put to the test came the day Muddy Waters issued its report.

"Have you heard?" Ardell recalls his wife, Sherry, asking him by phone just after he'd finished 18 holes at Lambton Golf & Country Club in Toronto. "'Sino-Forest is a fraud.'"

"Life imploded at that point," Ardell said.

Sino-Forest shares slumped as much as 25 percent before being suspended on the Toronto Stock Exchange. They tumbled 64 percent the following day after trading resumed. Ardell, a Canadian who lives in Oakville, just outside Toronto, says he's spent four months in Hong Kong since then dealing with the fallout.

#### 'Unjustifiable Black Hole'

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Ardell started his career in accountancy and rose to become CEO of Southam Inc., once Canada's largest newspaper publisher, which was acquired in 1996 by Hollinger International Inc., the media company whose chairman and CEO at the time was Conrad Black.

He joined Sino-Forest as a director in 2010 and was appointed chairman in August to replace Chan, who resigned after the Ontario Securities Commission halted the stock pending an investigation.

Sino-Forest's structure makes documenting its assets and revenues difficult, according to Ardell. About 80 percent of its timber assets measured by value are held by subsidiaries based in the British Virgin Islands. Those units use suppliers and what the company calls "authorized intermediaries" in China to buy and sell timber and plantation harvesting rights.

The so-called BVI model and its use of intermediaries is "an unjustifiable black hole" that's been used to fabricate sales, avoid taxes and overstate the company's timber holdings, Muddy Waters said in its report.

#### Cash Flow

Ardell says the structure was put in place in the late 1990s to deal with rules barring foreign companies from leasing timberland and repatriating forestry profits.

With its profits marooned in China, Sino-Forest reinvested the money in more timberland while using some proceeds from sales of bonds and shares to cover operating costs, according to Ardell.

While it was the only way to organize the company, it meant "you can't see the cash move," he said. Ardell also says that helps explain why Sino-Forest doesn't have positive free cash flow or pay a dividend, both factors cited by Muddy Waters as evidence the company is a Ponzi scheme.

Since 2004, the company has been able to structure its Chinese units as so-called Wholly Foreign Owned Enterprises, which allows them to lease timberland and repatriate money, Ardell says. While Sino-Forest plans eventually to switch to this model entirely instead of the BVI structure, the timing isn't certain, he says.

#### No Maps

One of the few ways Sino-Forest can prove its ownership of standing timber is through purchase contracts negotiated with Chinese villages, communes and other leaseholders, Ardell says. Because they don't infer title to land, the contracts aren't registered with local government forestry bureaus, he says.

"There just isn't a central registry for sales and purchases of standing timber, and there wouldn't be in North America either," Ardell said.

What's more, Sino-Forest doesn't retain complete maps of some of its timber holdings because "there is a sensitivity in

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the Chinese government about maps being held by foreign-controlled companies," Ardell said.

The independent committee, aided by PricewaterhouseCoopers LLP, spent \$50 million on its investigation and reviewed more than 1.5 million documents, according to Ardell. It was hindered by a lack of cooperation from many of the suppliers and intermediaries involved in the BVI transactions, Ardell says.

#### Cash Holdings

"All of a sudden a lot doors closed very quickly" following the Muddy Waters report, he said.

A lack of documentation relating to corporate relationships was due partly to a lack of adequate internal controls and also to Chinese business practices, he says.

"The Chinese generally aren't as meticulous at record-keeping as in the West because so much of the business is based on personal relationships," said John Evans, a retired senior partner at Osler Hoskin & Harcourt LLP in Toronto who has known Ardell for more than 20 years. "A lack of documentation is very common in China."

The committee said in its final report published Jan. 31 that it wasn't able to confirm the existence of all the company's timber and cash holdings in China, or the full scope of Sino-Forest's relationships with its suppliers.

#### Bondholder Accord

"You can't spend that much time, money and witness managements' interference with your investigation and reasonably conclude that the fraud charges had no merit," Carson Block, a short seller and Muddy Waters founder, said Feb. 4 in a telephone interview.

Ardell says management hasn't interfered in the investigation.

After missing an interest payment on its 2016 convertible bonds in December, Sino-Forest reached an accord last month with a group of bondholders, in return ceding them a degree of control over its affairs. A restructuring committee is working to write a new plan for the company and deliver its report to bondholders by March 31.

Ardell says he's sticking with the company and continues to assist the Ontario Securities Commission and Royal Canadian Mounted Police investigations. Sino-Forest has commissioned two consulting companies to independently evaluate its holdings, which according to its website cover about 894,200 hectares (3,452 square miles) in China, an area about three times the size of Rhode Island.

"If I can demonstrate ownership, existence and value, the rest of it all goes away," Ardell said. "That's basically what the business is: Ownership and value."

For Related News and Information:

Sino-Forest news: TRE CN <Equity> CN BN <GO>

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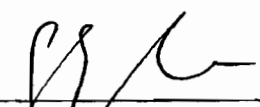
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This is Exhibit "M" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.



---

A Commissioner, etc.  
Serge Kalloghlian  
(LSUC #55557F)



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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Toronto ON M5H 3S8

CP 55, 19<sup>e</sup> étage  
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Toronto ON M5H 3S8

**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c.S.5, as amended**

- and -

**IN THE MATTER OF  
SINO-FOREST CORPORATION, ALLEN CHAN, ALBERT IP, ALFRED C.T. HUNG,  
GEORGE HO AND SIMON YEUNG**

**TEMPORARY ORDER**

**(Section 127(1) & (5))**

**WHEREAS** it appears to the Ontario Securities Commission (the "Commission") that:

1. Sino-Forest Corporation ("Sino-Forest") is a publicly traded Canadian company and a "reporting issuer" in Ontario and other provinces, as that term is defined in section 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");
2. Allen Chan ("Chan") is Chairman and Chief Executive Officer ("CEO") of Sino-Forest;
3. Albert Ip ("Ip") is the Senior Vice President Development and Operations North-East and South-West China of Sino-Forest;
4. Alfred C.T. Hung ("Hung") is Vice-President Corporate Planning and Banking of Sino-Forest;
5. George Ho ("Ho") is Vice-President Finance of Sino-Forest;
6. Simon Yeung ("Yeung") is Vice President - Operation within the Operation / Project Management group of Sino-Panel (Asia) Inc., a subsidiary of Sino-Forest ("Yeung");
7. Since 2003, Sino-Forest has raised approximately \$2.986 billion from public investment and/or debt securities issues including four public offerings between 2004 and 2009 which approximately raised \$1.05 billion;
8. Sino-Forest has over 150 subsidiaries, the majority of which are registered in the British Virgin Islands and Peoples Republic of China ("PRC");

9. Sino-Forest's operations are predominately in the PRC and its management has offices in Hong Kong primarily and also in the PRC and Ontario;
10. Staff of the Commission is conducting an investigation into the activities and business of Sino-Forest and its subsidiaries and their management;
11. The Independent Committee of Sino-Forest has also been conducting an investigation into the activities and business of Sino-Forest and its subsidiaries and their management. As a result, Sino-Forest has recently suspended Ho, Hung, and Yeung temporarily and curtailed Ip's duties and responsibilities.
12. Sino-Forest, through its subsidiaries, appears to have engaged in significant non-arm's length transactions which may have been contrary to Ontario securities laws and the public interest;
13. Sino-Forest and certain of its officers and directors appear to have misrepresented some of its revenue and/or exaggerated some of its timber holdings by providing information to the public in documents required to be filed or furnished under Ontario securities laws which may have been false or misleading in a material respect contrary to section 122 or 126.2 of the Act and contrary to the public interest;
14. Sino-Forest and certain of its officers and directors including Chan appear to be engaging or participating in acts, practices or a course of conduct related to its securities which it and/or they know or reasonably ought to know perpetuate a fraud on any person or company contrary to section 126.1 of the Act and contrary to the public interest;

**AND WHEREAS**, the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in section 127(5) of the Act;

**AND WHEREAS** the Commission considers it to be in the public interest to make this order;

**AND WHEREAS** by Authorization Order made July 14, 2011, pursuant to subsection 3.5(3) of the Act, each of Howard I. Wetston, James E. A. Turner, Kevin J. Kelly, James D. Carnwath, Mary G. Condon, Paulette L. Kennedy, Vern Krishna, Christopher Portner and Edward P. Kerwin, acting alone, is authorized, to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 17 of the Act.

**IT IS HEREBY ORDERED** that, pursuant to clause 2 of section 127(1) of the Act that all trading in the securities of Sino-Forest shall cease;

**IT IS FURTHER ORDERED** that pursuant to clauses 7 and 8 of section 127(1) of the Act that Chan, Ip, Hung, Ho and Yeung resign any and all positions that they hold as a director or officer of Sino-Forest or any other registrant and that they are prohibited from becoming or acting as director or officer of an issuer;

**IT IS FURTHER ORDERED** that pursuant to clause 2 of section 127(1) of the Act that all trading by Chan, Ip, Hung, Ho and Yeung in securities shall cease;

**IT IS FURTHER ORDERED** that, pursuant to section 127(6) of the Act that this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

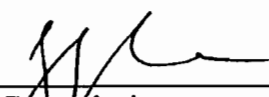
**DATED** at Toronto this 26th day of August, 2011.

*"Howard Wetston"*

---

Howard Wetston, Chair

This is Exhibit "Z" mentioned and referred to in the Affidavit of Daniel E. H. Bach, sworn before me at the City of Toronto, in the Province of Ontario, this 11th day of April, 2012.

  
\_\_\_\_\_  
A Commissioner, etc.  
Serge Kalloghlian  
(LSUC #55557F)

**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**

**SINO-FOREST CLASS ACTION  
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;

- 2 -

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;

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).

- (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

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.

- (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

(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.



- (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.

(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

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.

(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

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

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

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.



(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

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

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.

### **6.3 No Further Claims**

The Releasors 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

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.

- (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.

**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

(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

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 Releasors 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

Agreement are joint and several (in Quebec, solidary) amongst them and are indivisible under the laws of Quebec.

#### **11.9 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **11.10 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **11.11 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendant, the Releasees, the Settlement Class Members, the Releasors and all of their successors and assigns unless and until this Settlement Agreement is not approved by the Courts, in which case only those sections referenced in section 5.2 of this Settlement Agreement shall continue to be binding in the manner contemplated in this section 11.11. Without limiting the generality of the foregoing, each and every covenant, condition, release and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant, condition, release and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees unless and until this Settlement Agreement is not approved by the Courts, in which case only those sections referenced in section 5.2 of this Settlement Agreement shall continue to be binding in the manner contemplated in this section 11.11.

#### **11.12 General Obligation**

Without limiting the generality of any other provisions of this Settlement Agreement, until such time as either of the Courts have refused to approve this Settlement Agreement and the

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.

**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](mailto:john.pirie@bakermckenzie.com)

For Settling Defendant  
in the Quebec Proceeding

Bernard Gravel

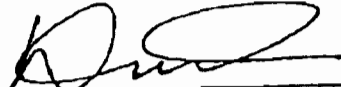
**Lapointe Rosenstein Marchand Melançon,  
LLP  
1250 René-Lévesque Blvd. West, Suite 1400  
Montreal, Quebec, H3B 5E9  
Canada**

Telephone: 514.925.6382  
Fax: 514.925.5082  
Email: [bernard.gravel@lrmm.com](mailto:bernard.gravel@lrmm.com)

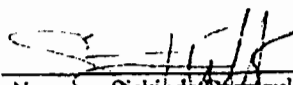


11.24 Date of Execution

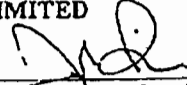
The Parties have executed this Settlement Agreement as of the date on the cover page.

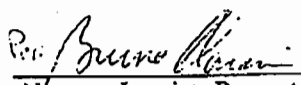
By:   
Name: Siskinds LLP  
Title: Ontario Counsel

By:   
Name: Koskie Minsky LLP  
Title: Ontario Counsel

By:   
Name: Siskinds Desmeules s.e.n.c.r.l  
Title: Quebec Counsel

PÖYRY (BEIJING) CONSULTING  
COMPANY LIMITED

By: Per:   
Name: Baker & McKenzie LLP  
Title: Counsel for the Settling  
Defendant in Ontario

By:   
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

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.

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**

**AFFIDAVIT OF DANIEL E. H. BACH**

I, Daniel E. H. Bach, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am a lawyer in the class actions department of Siskinds LLP ("Siskinds"), co-counsel for the plaintiffs (the "Plaintiffs") in the class proceeding styled *Trustees of the Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation et al.*, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Class Action").
2. As such, I have knowledge of the matters to which I hereinafter depose. Where that knowledge is based on information obtained from others, I have so indicated and believe that information to be true.

**Overview**

3. On April 11, 2012, I swore an affidavit (the "Initial Bach Affidavit") in support of the Plaintiffs' motion (the "Motion") for an order, inter alia, terminating these proceedings

under the Companies' Creditors Arrangement Act ("CCAA") and appointing a receiver of the assets, undertakings and properties of Sino-Forest Corporation ("Sino").

4. On April 17, 2012, I was cross-examined by counsel for Ernst & Young LLP ("E&Y") and counsel for the Underwriters in the Ontario Class Action on the Initial Bach Affidavit. Counsel for certain other defendants in the Ontario Class Action attended the cross-examination but did not ask any questions.
5. On April 13, 2012 we received correspondence from E&Y's counsel. Attached hereto and marked as **Exhibit "A"** is a copy of that letter.
6. On April 19, 2012 we received correspondence from E&Y's counsel addressed to the monitor's counsel on which we were copied. Attached hereto and marked as **Exhibit "B"** is a copy of that letter.
7. Late on April 19, 2012, E&Y's counsel served its factum in response to the Motion. Upon reviewing E&Y's factum, it became clear for the first time that E&Y would take the position that the settlement between the Plaintiffs and Pöyry (Beijing) Consulting Company Limited ("Pöyry") (the "Pöyry Settlement") was entered into on April 2, 2012 (after the March 30, 2012 stay). I swear this affidavit for the purpose of clarifying this issue concerning the Pöyry Settlement. No portion of this affidavit is meant to waive, nor should it be construed as a waiver of, solicitor-client, litigation or any other privilege.

#### **The Pöyry Settlement**

8. On March 20, 2012, following ongoing settlement negotiations with Pöyry's counsel, Baker & McKenzie LLP ("B&M"), the Pöyry Settlement was agreed to.


9. On March 21, 2012, David Gadsden (of B&M) sent me an email enclosing a copy of the Pöyry Settlement agreement (the "Agreement") that had been signed by B&M on behalf of Pöyry. Attached hereto and marked as **Exhibit "C"** is a copy of Mr. Gadsden's email to me of March 21, 2012 (partially redacted on the basis of privilege) and the copy of the Agreement attached to that email.
10. On March 22, 2012, I signed the Agreement on behalf of the Plaintiffs and emailed a copy of the Agreement back to Mr. Gadsden. Attached hereto and marked as **Exhibit "D"** is a copy of my email to Mr. Gadsden of March 22, 2012 (partially redacted on the basis of privilege) and the copy of the Agreement attached to that email.
11. I am advised by Mr. Gadsden, and verily believe, that on March 22, 2012, B&M advised Pöyry that the Pöyry Settlement had been concluded with the Plaintiffs.
12. During the afternoon of March 22, 2012, I called Mr. Gadsden to confirm our intention to advise Sino's counsel of the Pöyry Settlement that had been concluded. Mr. Gadsden confirmed that he and his client had no issue with Siskinds doing so.
13. I am informed by Dimitri Lascaris of Siskinds LLP, and verily believe, that he spoke with Mr. Staley, counsel to Sino, on March 23, 2012 and informed him that a settlement with Pöyry had been concluded.
14. On March 26, 2012, I received a telephone call from Mr. Gadsden and John Pirie of B&M in respect of a proposed amendment to the Agreement. In particular, an amendment was proposed in relation to the definition of "Released Claims" contained in the Agreement (three words were to be changed).

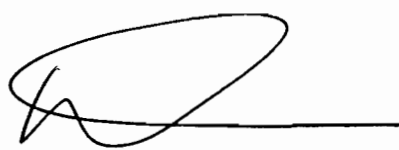
15. After internal discussions regarding the proposed amendments with Plaintiffs counsel, including Kirk Baert of Koskie Minsky LLP ("KM") and my colleagues in Quebec, I confirmed with B&M that same day (March 26, 2012) that the Plaintiffs agreed to the proposed amendment.
16. In the late afternoon on March 26, 2012, Mr. Gadsden sent me an email enclosing a copy of the Agreement, revised to include the above-noted, agreed upon amendment, and signed by B&M and Pöyry's Quebec counsel, Lapointe Rosenstein Marchand Melançon, LLP, on behalf of Pöyry (the "Amended Agreement"). Attached hereto and marked as **Exhibit "E"** is a redacted copy of Mr. Gadsden's email to me of March 26, 2012 and the copy of the Amended Agreement attached to that email.
17. On the morning of March 27, 2012, I signed the Amended Agreement on behalf of the Plaintiffs and emailed a copy of the Amended Agreement to Mr. Gadsden. Attached hereto and marked as **Exhibit "F"** is a copy of my email to Mr. Gadsden of March 27, 2012 and the copy of the Amended Agreement attached to that email.
18. On the afternoon of March 30, 2012, I emailed Mr. Gadsden a copy of the Amended Agreement that had been signed by Siskinds Desmeules s.e.n.c.r.l. Attached hereto and marked as **Exhibit "G"** is a copy of my email to Mr. Gadsden of March 30, 2012 and the copy of the Amended Agreement attached to that email.
19. As of March 30, 2012, the only firm that had yet to execute the Amended Agreement was KM. Mr. Baert, of KM, was away from the office at this point, but confirmed by email that he would sign the Amended Agreement on his return on April 4, 2012. Attached

hereto and marked as **Exhibit "H"** is a copy of an email from Mr. Baert to Mr. Gadsden dated March 30, 2012.

- 20. On April 2, 2012, Siskinds worked with KM to finalize the Plaintiffs' Motion Record for its Motion for Certification for Settlement Purposes and Notice of Fairness Hearing. As Mr. Baert was still away from the office at this point and had not had an opportunity to sign the Amended Agreement, Jonathan Bida, an associate at KM, signed the Amended Agreement on April 2<sup>nd</sup>.
- 21. The Plaintiffs' motion record, including the Amended Agreement, was served on counsel for all parties in the Ontario Class Action on April 2, 2012.
- 22. Attached hereto as **Exhibit "I"** is a CD containing electronic versions of the litigation funding, settlement approval, *Securities Act* leave and certification motion records.

SWORN before me at the City of )  
 Toronto, in the Province of Ontario, )  
 this 26<sup>th</sup> day of April, 2012. )

  
 \_\_\_\_\_ )  
 A Commissioner, etc. )  
 Serge Kalloghlian (LSUC #55557F) )

  
 \_\_\_\_\_ )  
 Daniel E. H. Bach )



**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**

**AFFIDAVIT OF DAVID WEIR**

I, David Weir, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of NPT RicePoint Class Actions Services Inc. ("NPT RicePoint"). NPT RicePoint has been retained by Siskinds LLP, which is, along with Koskie Minsky LLP, counsel for the plaintiffs (the "Plaintiffs") in the class proceeding styled *Trustees of the Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation et al.*, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Class Action").
2. As such, I have knowledge of the matters to which I hereinafter depose. Where that knowledge is based on information obtained from others, I have so indicated and believe that information to be true.
3. NPT RicePoint provides notice and administrative services for class action settlements. Our bilingual services include the design and delivery of notice plans, the processing of

claims, acting as the escrow agent for settlement funds, calculating class member entitlements, distributing settlement funds, and finally, reporting to the court and counsel on select aspects of an administration.

4. NPT RicePoint has administered or been appointed claims administrator on over 20 class action settlements and distributed over 90 million dollars over the past nine years. NPT RicePoint is a privately held Canadian firm backed by NPT LLP, one of the largest independent and respected C.A. firms in Southwestern Ontario with over 60 full time employees.
5. I specialize in the design and implementation of legal notification campaigns. Most recently I have designed notice plans for:
  - (a) *Gray v. Great-West Lifeco et al.*, a shareholder case settled in Court of Queen's Bench for Manitoba;
  - (b) *Lavier v. My Travel Canada Holidays Inc.*, a negligence/personal injury class action prosecuted and settled in the Ontario Superior Court of Justice;
  - (c) *Sherebrin et al. v. Building Products of Canada Corp.*, a product liability class action resolved in the Ontario Superior Court of Justice; and
  - (d) *Allen v. Uponor Ltd.*, a product liability class action relating to allegedly defective plumbing products in the Saskatchewan Court of Queen's Bench, Judicial Centre of Saskatoon
6. Under my direction, NPT RicePoint team members have executed notice plans for the following cases in the Ontario Superior Court of Justice:

- (a) *Conlon v. Bristol-Myers Squibb Canada Co. and Bristol-Myers Squibb Co.*, a product liability class action involving a pharmaceutical product;
- (b) *Irving Paper v. Solvay Chemicals Inc. and Solvay S.A. et al*, a class action alleging improper anti-competitive behaviour in the hydrogen peroxide industry;
- (c) *OMERS & McCam v CP Ships et al.*, a securities class action involving alleged misrepresentations made to primary and secondary market purchasers of securities;
- (d) *O'Neil v SunOpta et al.*, a cross border securities class action involving alleged misrepresentations made to primary and secondary market purchasers of securities;
- (e) *Metzler v. Gildan Activewear Inc. et al*, a cross border securities class action alleging misrepresentation to secondary market purchasers of securities;
- (f) *Wheeler v. China National Petroleum Corp. et al*, a securities class action alleging improper insider trading of securities;
- (g) *The Fanshawe College of Applied Arts and Technology et al. v. Epson Imaging Devices Corporation et al.*, a class action alleging illegal anti-competitive behaviour in the consumer electronics LCD panels industry;
- (h) *Lynda Quinton and Fred Quinton v. C.B. Fleet Holding Company Inc., C.B. Fleet Company Inc, Johnson & Johnson – Merck Consumer Pharmaceuticals of Canada*, a product liability class action relating to a pharmaceutical product;

- (i) *1355741 Ontario Inc et al. v. Appliances Components Companies S.p.A. and ACC USA LLC*, a class action alleging illegal anti-competitive behaviour in the cooling compressor industry;
  - (j) *Douglas Devlin and Pathway Multi Series Fund Inc v. Canadian Superior Energy Inc. and Challenger Energy Corp. et al.*, a securities class action alleging misrepresentations made to secondary market purchasers of securities;
  - (k) *Waterville TG Inc., R.N. Parton Ltd. And Jean-Claude Fluet v. DSM Elastomers Europe B.V. and DSM Copolymer Inc. et al.*, a class action alleging illegal anti-competitive behaviour in the rubber industry; and
  - (l) *Nor-Dor Developments Limited and Deborah Bozh v. Redline Communications Group Inc et al.*, a securities class action alleging misrepresentations made to primary and secondary market purchasers of securities.
7. In December 2010 I was retained by Cassels Brock & Blackwell LLP, co-counsel for the defendants in *Meeking v. The Cash Store*, Court File No. C110-01-66061, Court of Queen's Bench of Manitoba, Winnipeg Centre, to provide my opinion as an expert witness on the effectiveness of the notice plan undertaken in the national settlement of the class action *McCutcheon v. The Cash Store*, Court File No. 06-CV-319400CP in the Ontario Superior Court of Justice.
8. I have also gained experience and knowledge of notice procedures in U.S. class actions. My knowledge of US procedures comes from my experience in cross border securities class actions and a relationship our firm has with Gilardi & Co., LLC "Gilardi" of San Rafael California. Gilardi is the largest, private full service administrator of class action

settlements in the US with a resume of over 3,000 settlements and distributions of assets greater than \$12 billion. Because many of the securities settlements NPT RicePoint administers involve a US class and US brokers, we work together with Gilardi to help facilitate notice. The securities class action notice campaigns described in this affidavit are generally consistent with those of Gilardi in the US.

9. In forming the opinions expressed below, I draw from my in-depth class action experience, as well as my educational and related work experiences. I have a Bachelor of Arts Degree from Wilfrid Laurier University and an MBA from the Richard Ivey School of Business. Prior to becoming president of NPT RicePoint, I was Vice President at Bell Canada in Toronto where I was responsible for the design and execution of marketing programs within the National Sales Division.

#### **POYRY NOTICE PLAN**

10. I have been asked to design a notice plan for proposed settlement with a co-defendant in the Ontario Class Action. Charles Wright of Siskinds LLP has advised me that the proposed budget for notice of the settlement is \$100,000 which amount is to cover the cost to deliver the notice to members of the class proposed to be certified for settlement purposes and the cost of an Opt Out Administrator.
11. I have prepared the notice plan attached as Exhibit A (the "Notice Plan").
12. In my opinion, the Notice Plan, if implemented, will provide notice to Sino-Forest shareholders in a manner consistent with the delivery of notice in similar securityholder class actions. In the Notice Plan there is a heavy emphasis on giving direct (as opposed to publication) notice, given its superior effectiveness and relatively low cost when compared to other forms of notice such as newspaper publications.

13. In my experience in delivering notice in securities class action settlements, data on class members is typically obtained in two ways. First, as part of the settlement, the issuer defendant instructs its transfer agent to provide the administrator with information on registered shareholders. The administrator mails to these shareholders the notice package advising the shareholders of the settlement and their rights.
14. Second, the administrator initiates an outreach to the broker community seeking their assistance in notifying potential class members who held the relevant securities through the brokers of a settlement and their rights in that settlement. For confidentiality reasons, many of the brokers request that the administrator provide unaddressed printed claims packages. On receipt of these packages, the broker firm addresses the packages and mails to potential class members. In other instances, under privacy agreements, the broker provides the administrator with a list of potential class members and the administrator facilitates a mailing of the notice package to each individual on the list.
15. These are the steps contemplated by the Notice Plan.
16. In my experience, having supervised the implementation of the notice program and claims administration for seven securities class actions (referenced above at paragraph 6), and the distribution of over 124,000 claims packages in those cases, it is my opinion that of the class members who received compensation, a significant majority of those class members received their notice directly through the broker outreach and transfer agent programs.
17. That view is supported by the percentage of claims received through our edata system and from individual claimants who have filed out their claim on the colour coded claim forms we include in the claim packages to brokers.

18. As a service to their clients, many brokerage firms file class actions claims on behalf of their clients. To simplify this exercise we developed an electronic filing process that allows brokers who adhere to our filing standards the ability to file electronically. In my experience edata claims typically account for over 50% of the claims received in a given securities class action.
19. To efficiently process claims, we preprint claims forms with a specially designed ink that can be read by our high speed scanners. These preprinted claim forms are included in the claim packages sent to or through the brokers. Individuals who see the notice in the newspapers, and wish to participate in the settlement, will either download a claim form from the website, in which case it will not have the special ink, or they call the toll free number and request a claim package be sent. In my experience, the number of individuals calling and requesting a claim package is quite small.
20. In my experience, edata claims and those claims filed by individuals using the packages distributed by class members account for over 70% of the total filed claims in securities class actions which NPT RicePoint has administered.

**AFFIDAVIT OF MR. JUDSON MARTIN**

21. On April 18, 2012 I was asked by Mr. Wright, to review the affidavit of Mr. Judson Martin sworn April 18, 2012 (the "Martin Affidavit"). In particular, Mr. Wright asked me to review paragraphs 19 – 24 that deal with obtaining a shareholder list.
22. In paragraph 20 Mr. Judson suggests that a current list of registered shareholders would be of little value because in total they account for only 3% of the outstanding shares of Sino Forest. In my experience, although that list may represent only 3% of the shares,

there may be within that 3% some shareholders with substantial holdings who deserve and wish to be made aware of their rights.

23. In paragraphs 20 and 21, Mr. Martin points out that the remaining 97% of Sino-Forest's shares are beneficially owned through brokers registered with Clearing and Depository Services "CDS". He goes on to say that within the 97% there are "Objecting Beneficial Owners" ("OBOs") and "Non Objecting Beneficial Owners ("NOBOs"). Commenting specifically on the OBOs, he states that "Sino Forest is unable to obtain a list of the personal information of OBOs at any time" because OBOs object to disclosing their identities to Sino Forest.
24. While that may be true, such was also the case in each of the securities class actions referenced above. That is why we undertake the broker outreach program described above. Individuals have a right to withhold their private information for a variety of reasons. That does not mean, however, that shareholders designated as OBOs do not want to be made aware of their rights in a class action settlement. In our experience, we receive excellent cooperation from brokers who see it as their responsibility to notify their eligible clients of their rights in a class action settlement.
25. With respect to the NOBOs, Mr. Martin suggests that because Broadridge Financial Solutions Inc. ("Broadridge") only has current shareholder information, that information would be of little value. While historical information, specific to the class period, would be preferred, a list of current NOBOs would likely include many individuals who did acquire shares during the class period and would benefit by being made aware of the settlement and their rights. In this respect, the fact that trading in Sino-Forest securities



has been halted since August of 2011 is relevant, as it means that persons who held their shares when the trading halt came into effect have not been able to divest since then.

26. At paragraph 22, Mr. Martin notes that there would have been a list of current holders as of April 29, 2011. He suggests, however that it would have been of limited usefulness because 64 million shares traded between that date and June 2, 2011. I believe that list would be very useful for the purpose of giving direct notice to Sino Forest's shareholders.

27. As Mr. Martin points out, 64 million Sino-Forest securities traded between April 29 and June 2, 2011, which number represented approximately 30% of the total number of shares available for trading. There is no way of knowing whether some of those 64 million shares traded were the same shares trading on multiple occasions. It is, however, possible to conclude that at least 70% of the Sino Forest's shares did not trade between April 29, 2011 and June 2, 2011. As such, a shareholder list current as of April 29, 2011 would be valuable for providing notice to the members of the class proposed in the Ontario Class Action.

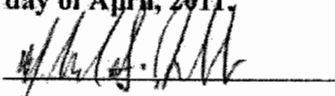
#### **Conclusion**

28. The Notice Plan provides for an effective notice campaign and is consistent with notice plans of other securities class actions in Canada and the United States. If conducted in accordance with its terms, it is my opinion that it will result in the delivery of the proposed notice to a substantial number of persons who will fall within the proposed class. It is further my view that the Notice Plan can be implemented within the proposed budget of \$100,000.

29. The delivery of the list of registered shareholders – both the current list and the list as of April 29, 2011 - is an important part of the implementation of the Notice Plan with respect



This is Exhibit "A" to the  
Affidavit of David Weir  
sworn before me this 19<sup>th</sup>  
day of April, 2011.

A handwritten signature in black ink, appearing to read "Michael G. Robb", is written over a horizontal line.

**Michael G. Robb**  
A commissioner etc.



March 16, 2012

VIA EMAIL

Mr. Daniel Bach  
Siskinds LLP  
47 Colborne Street  
Suite 203  
Toronto, Ontario  
M5E 1P8

Re: In re: Sino Forest

Dear Daniel:

Thank you for the opportunity to provide you with a proposal to act as the Opt Out and Notice Administer in the above referenced matter.

NPT RicePoint Class Action Services Inc. was established in London over fifteen years ago and comprises twelve partners, along with a combination of other supporting staff of Chartered Accountants, Certified General Accountants and students in training for each designation and program. In total, we have over 60 full-time employees, including Partners. NPT provides services in four areas: accounting services, business valuations, wealth management, and class action administration.

Class action administration services are provided through NPT RicePoint Class Action Services Inc. Over the past eight years, we have administered over 25 cases involving securities, product liability and price fixing settlements and distributed over \$90 million in settlement assets. For a list of representative cases, please see Appendix B of this proposal or visit our website at [www.nptricepoint.com](http://www.nptricepoint.com)

## **Scope of Engagement**

The following is NPT RicePoint's understanding of the services to be provided for the Sino Forest Notice Plan and drafting of the Notice Order.

### **1. Background :**

- The security traded on the Toronto Stock Exchange until trading was halted on August 26, 2011
- As of August 26, 2011 there were approximately 246,000,000 outstanding shares with a market cap of \$1.18 billion.
- The class period for the Ontario action is from March 19, 2007 to June 2, 2011
- The class period for the Quebec action is from August 12, 2008 – June 2, 2011
- The Defendant will pay \$100,000.00 into a fund to cover the cost of Notice and Opt Out administration.

### **2. Scope of Work:**

- a. Assist in the development of the Notice Plan:
  - i. Advise on language that would compel the issuer to provide transfer agent records that could be used to effect a direct notice campaign
  - ii. Advise on the cost and time to complete a direct mail program to data obtained from the transfer agent and the nominees
  - iii. Make a recommendation on newspapers and the associated budget necessary to provide for an effective publication of the Short Form Notice.
  - iv. Advise on language and a budget that would compel brokerage firms, custodians and asset managers across Canada to assist in identifying class members
- b. Act as the Opt Out Administrator

### **3. Notice Plan:**

#### **Suggested Language to Obtain Transfer Agent Records**

The Defendant shall cause Sino Forest's transfer records and shareholder information to be made available to the Notice Administrator, at no cost to the Class, no later than ten (10) days following the entry of this Order for the purpose of identifying and giving notice to the class

#### **Suggested Language for Nominees**

Nominee purchasers are directed, within ten (10) days of the receipt of this Notice a) to provide the Notice Administrator with lists of names and addresses of beneficial owners; or b) to request additional copies of the Notice from the Notice Administrator

and within ten (10) days of receipt of the copies of Notice from the Notice 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 Notice Administrator that the mailing was completed as directed.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, with appropriate documentation you may obtain reimbursement for reasonable administrative costs actually incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice. The Notice Administrator shall not pay in excess of five thousand Canadian dollars (CAN \$5,000.00) in aggregate for such costs. If the requests for reimbursement exceed five thousand Canadian dollars (CAN \$5,000.00), then the Notice Administrator shall distribute the sum of five thousand dollars (CAN \$5,000.00) to such nominee firms on a pro rata basis.

**4. Opt Out Administration:**

- Receive Opt Outs, record, scan and advise Counsel
- Issue Opt Out Report to Counsel within fourteen (14) days of the Opt Out Deadline

**Fee Schedule (not including tax)**

	Unit	Fee	Assumptions
<b>Opt Out Administrator</b>	One time	\$5,000.00- \$10,000.00	<ul style="list-style-type: none"> <li>o Set up PO Box</li> <li>o Receive Opt Outs</li> <li>o Scan</li> <li>o File Opt Out Report</li> <li>o Provide affidavit, if necessary</li> </ul>
<b>Broker Outreach</b>	One time	\$4,500.00	<ul style="list-style-type: none"> <li>o Design a notice package – cover letter &amp; short form notice</li> <li>o Mail to all Canadian nominees on NPT RicePoint proprietary list</li> <li>o Follow-up as necessary</li> </ul>
<b>Direct Notice to Nominees and Registered Shareholders</b>	Postcard (estimated)	50,000*x \$0.85 per package = \$42,500.00	<ul style="list-style-type: none"> <li>o Receive list of registered shareholders from transfer agent</li> <li>o Receive list of eligible beneficial holders from Canadian nominees</li> <li>o Cleanse data (dedupe, address correction, NCOA)</li> <li>o Setup variable print</li> <li>o Print, address &amp; mail Canada Post First Class 4.25 x 6 postcard</li> <li>o Process and record returned mail</li> <li>o Provide declaration or affidavit as necessary</li> </ul>
<b>Notice Publication</b>	One time (not including tax)	G&M – \$4,553. Nat'l Post- \$3,579. La Presse- \$4,136. Le Soleil- \$2,197. NPT RicePoint - \$2,375	<ul style="list-style-type: none"> <li>o Publish Short Form Notice one weekday in the Legal Notices section of the Globe and Mail and National Post                             <ul style="list-style-type: none"> <li>o Negotiate fee</li> <li>o Prepare file</li> <li>o Proofread</li> <li>o Obtain counsel sign-off</li> <li>o Prepare &amp; place order</li> <li>o Audit</li> <li>o Process payment</li> </ul> </li> <li>o 1/6 page</li> <li>o Provide affidavit, if required</li> </ul>
<b>Nominee Reimbursement</b>		\$5,000.00	

\*this is an estimate only based on our review of various factors against other security class actions (share price before analyst report, trading volumes, market cap, length of class period, number of exchanges where it was traded, the sector)

## Supporting Material

As a supplement, we are providing additional materials detailing the experience of our executive team, a representation of some of our cases, and a description of the services we provide:

- Appendix A – Key Personnel
- Appendix B – Representative Cases
- Appendix C – Service Description

Thank you again for this opportunity and please email/call if you have any questions or require additional information.

Respectfully submitted,



David A. Weir

President  
NPT RicePoint Class Action Services Inc.  
300-633  
Colborne Street  
London, Ontario  
N6B 2V3

Dated: March 16, 2012

Approved:

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Representative of Counsel

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Date



**APPENDIX A: KEY PERSONNEL**

**David A. Weir, M.B.A.**  
**President, NPT RicePoint Class Action Services**

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#### **Education**

- Master of Business Administration – Richard Ivey School of Business - 1998
- Business Administration Diploma – Wilfrid Laurier University – 1989
- Bachelor of Arts – Wilfrid Laurier University - 1988
- Canadian Securities Course - 1993

#### **Responsibilities**

David is the President of NPT RicePoint. In addition to his business development responsibilities, David is focused on the day to day management of administrations. It is through this hands-on approach that new ideas for driving efficiencies and improvement on take-up rates are discovered. David's commitment to senior level involvement in cases enables Clients to remove themselves fully from case administration.

#### **Experience**

Following university, David worked in Toronto for Bell Canada. Over 12 years at Bell, David took on progressively senior roles. As Vice-President of Strategic Planning for Bell's national sales unit, David worked at the senior levels with leaders of Canadian banks to design and deliver leading edge technology solutions. As Vice-President of Capital Investment, David led the redesign of Bell's \$3.5 billion capital allocation model.

Fulfilling an entrepreneurial desire, David founded RicePoint Class Action Services Inc. Working within a partner organization, RicePoint's initial focus was in the delivery of data management, printing and distribution services. After several years, RicePoint became fully independent and expanded its services to become a full service claims administrator focused on improving take-up rates through the use of technology and one to one marketing.

In 2009, RicePoint Class Action Services Inc. merged with NPT Administration Inc. This merger delivered immediate gains in capacity and efficiency while also offering Clients an increased level of senior leadership to consult with.

#### **Professional and Community Service**

- Board of Directors – Rotary Club of London, 2010 - Present
- Member Rotary of London, 2005 - Present
- Big Brothers of London – Board of Directors 2002 – 2005
- Past Member – Engineering & Science Advisory Council – University of Western Ontario
- Executive Sponsor – Canada 2001 Summer Games 1998 – 2001
- Big Brothers – Ten year Big Brother with Big Brothers of Kitchener-Waterloo 1987 – 1997
- Toastmasters International – CTM 1993 – 1996

**John D. R. Prueter, C.A., M.B.A.**  
**Managing Partner, NPT LLP**

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#### Education

- Master of Business Administration – Richard Ivey School of Business - 1997
- Chartered Accountant - 1986
- Canadian Securities Course - 1984
- Bachelor of Commerce with Honours, Queen's University - 1984

#### Responsibilities

John is the Managing Partner of NPT LLP as well as a full service partner providing business services to individuals and corporations, including accounting, auditing, tax, estate planning and general business advice. John has been the partner in charge of the Class Action Administration business of the firm since its inception in 2000.

#### Experience

John has been in public accounting for over twenty-three years. He is responsible for many small to medium sized owner managed businesses, publicly listed clients, professionals and individuals, offering full business services to them with a high level of personal service.

John's past experiences have included involvement with public offerings, information circulars, prospectuses and related information and direct audit experience with large not-for-profit organizations and institutions, universities, pension plans, and other publicly traded corporations.

John has managed many different class action administrations involving alleged price fixing, securities and pension related cases with varying degrees of complexities.

John is a graduate of the executive MBA program at the Richard Ivey School of Business. This additional training and experience benefits all clients and engagements.

#### Professional and Community Service

- Canadian Institute of Chartered Accountants
- Ontario Institute of Chartered Accountants
- Institute of Chartered Accountants of Western Ontario
- Member of the London Hunt and Country Club
- Member of the London Club
- Past Chairman of the London Health Sciences Foundation
- Past Treasurer of Westminster College

**APPENDIX B – REPRESENTATIVE CASES**

ADMINISTRATION	CLAIMS PROCESSED	SETTLEMENT FUND	CLAIM DEADLINE
Redline Communications Class Action	In progress	CAD \$3,600,000	In progress
OPSEU Local 330 Surplus Benefits	In progress	CAD \$1,780,000	In progress
Canadian Superior Energy Securities Litigation	In progress	USD \$5,200,000	December 7, 2011
Ethylene Propylene Diene Monomer Class Action	34	CAD \$4,249,537	October 11, 2011
Fleet Phospo-Soda Class Action	60	CAD \$11,995,000	September 22, 2011
MyTravel Canada Holidays Inc. Class Action	393	CAD \$2,250,000	May 25, 2011
Gildan Activewear Securities Litigation	22,749	USD \$22,500,000	March 10, 2011
PetroKazakhstan Inc. Securities Litigation	2,112	CAD \$9,900,000	February 24, 2011
SunOpta Inc. Securities Litigation	5,059	USD \$11,250,000	June 11, 2010
CP Ships Ltd. Securities Litigation	11,216	CAD \$12,800,000	June 7, 2010
TVI Pacific Securities Litigation	609	CAD \$2,100,000	January 18, 2010
Hydrogen Peroxide Class Action	73	CAD \$20,490,000	September 8, 2009
Tequin Class Action	91	CAD \$5,000,000	February 27, 2009

**APPENDIX – NPT RICEPOINT SERVICES**

**Claims Administration Services**

Our firm offers services that address each phase of the settlement process, from designing custom websites & databases for claimants to administering the Notification, Claims Processing and Settlement Distribution stages of a case.

**Website & Database Design**

- Custom Web-Sites
- Custom Data Base Systems
- Custom Notification Programs
- Custom Claims Processing Programs

**Notification Procedures**

- Design & Print Notices and Claim Forms
- Place Notices & Claim Forms
- Locating Current Addresses
- Place Summary Publications in Media
- Institute Call Center

**Claims Processing**

- Verify Data
- Document Claims
- Maintain Claimant Data
- Validate Claims & Settlement Amounts
- Calculate Claim Amounts under Plans of Allocation

**Settlement Distribution**

- Verification of Claims & Distribution Amount
- Preparation & Distribution of Settlement Cheques
- Reconciliation of Distribution Amounts
- Preparation of Final Reports
- Tax Compliance & Administration of Qualified Settlement Funds

**Notice Services**

In addition to traditional claims administration, NPT RicePoint also has a Notice Group that designs and executes all aspects of a Notice Plan including:

- **Social Media Campaigns:** To assist in pre certification case collection or post settlement notice plans.
- **Notice Placement:** Media estimating, negotiating, preparation and booking of orders, auditing and reporting.
- **Notice Plan Design:** Developing a strategy and tactics to effectively and efficiently reach class members. To establish a budget for use during settlement negotiations.
- **Search:** Locating missing class members

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**AFFIDAVIT OF DAVID WEIR**

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Lawyers for the Plaintiffs



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

COMPENDIUM OF THE AD HOC COMMITTEE OF PURCHASERS OF  
THE APPLICANT'S SECURITIES, INCLUDING THE REPRESENTATIVE  
PLAINTIFFS IN THE ONTARIO CLASS ACTION  
(Motion Returnable May 8, 2012)

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