

**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 IN THE MATTER OF SINO-FOREST  
CORPORATION**

**AFFIDAVIT OF W. JUDSON MARTIN  
(Sworn April 23, 2012 in support of a Motion  
for Directions Regarding Scope of Stay, Returnable May 8, 2012)**

I, **W. JUDSON MARTIN**, of the City of Hong Kong, Special Administrative Region, People's Republic of China, **MAKE OATH AND SAY:**

1. I am the Vice-Chairman and Chief Executive Officer of Sino-Forest Corporation ("SFC"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true.
2. Capitalized terms not defined in this affidavit are as defined in my affidavit sworn March 30, 2012 (the "Initial Order Affidavit"). A copy of my Initial Order Affidavit (without exhibits) is attached hereto as Exhibit "A".

## **BACKGROUND**

3. On March 30, 2012, this Honourable Court made an Initial Order granting the CCAA stay of proceedings against SFC and certain of its subsidiaries and appointing FTI Consulting Canada Inc. as the Monitor in the CCAA proceedings. A copy of the Initial Order is attached as Exhibit "B".

4. Also on March 30, 2012, this Honourable Court made the Sale Process Order approving sale process procedures in the form attached thereto and authorizing and directing SFC, the Monitor and Houlihan Lokey to do all things reasonably necessary to perform each of their obligations thereunder. A copy of the Sale Process Order is attached as Exhibit "C".

5. On April 13, 2012, this Honourable Court made an order extending the stay of proceedings contained in the Initial Order to June 1, 2012. A copy of the Stay Extension Order is attached as Exhibit "D".

## **CLASS ACTION PROCEEDINGS**

6. As set out in my Initial Order Affidavit, SFC and certain of its current and former officers, directors and employees, along with SFC's current and former auditors, technical consultants and various underwriters involved in prior equity and debt offerings, have been named as defendants in eight class action lawsuits.

7. Five of these class action lawsuits, commenced by three separate groups of counsel, were filed in the Ontario Superior Court of Justice on June 8, 2011, June 20, 2011, July 20, 2011, September 26, 2011 and November 14, 2011. A carriage motion in relation to these actions was heard on December 20 and 21, 2011, and by Order dated January 6, 2012, Justice Perell

appointed Koskie Minsky LLP and Siskinds LLP as class counsel. As a result, Koskie Minsky LLP and Siskinds LLP discontinued their earliest action, and their other two actions have been consolidated and will move forward as one proceeding. The other two Ontario actions, commenced by other counsel, have been stayed.

8. Pursuant to an order of Justice Perell dated March 26, 2012 (entered April 17, 2012), Koskie Minsky LLP and Siskinds LLP filed a Fresh as Amended Statement of Claim in the consolidated proceeding (the "Ontario Class Action") on April 18, 2012. The Fresh as Amended Statement of Claim now names Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Bank of America Securities LLC, instead of Banc of America Securities LLC. A copy of this Fresh as Amended Statement of Claim is attached as Exhibit "E".

9. Parallel class actions have been filed in Quebec and Saskatchewan. Copies of the originating documents in those actions are attached as Exhibit "F". There are no additional defendants named in these actions that are not also named in the Ontario Class Action.

10. Additionally, on January 27, 2012, a class action was commenced against SFC and other defendants in the Supreme Court of the State of New York, U.S.A. The complaint alleges that the action is brought on behalf of persons who purchased SFC shares on the over-the-counter market and on behalf of non-Canadian purchasers of SFC debt securities. The quantum of damages sought is not specified in the complaint. A copy of the complaint in this action is attached as Exhibit "G". The only defendant named in this complaint that is not also named in the Ontario Class Action is Ernst & Young Global Limited.

11. Additional law firms in both the United States and Canada have announced that they are investigating SFC and certain directors and officers thereof with respect to potential additional class action lawsuits.

## **CLAIMS FOR INDEMNIFICATION**

12. I am informed by counsel that many of the defendants in the various class actions may seek to be indemnified by SFC for their costs and liabilities in these class actions. I am informed that such claims could be purported to be founded in contract, common law and statutory claim over provisions. Certain of the potentially relevant indemnification clauses are particularized below.

(a) Ernst & Young

13. Ernst & Young ("EY") was engaged as SFC's auditors from 2007 until April 5, 2012 and is a defendant in the Ontario Class Action. Pursuant to its engagement, EY entered into a number of engagement letters with SFC between June 2007 and December 2010.

14. Each of the engagement letters entered after September 2010 contained an indemnity provision, which stated as follows:

To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us, the other EY Firms and the EY Persons against all claims by third parties (including your affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) arising out of or relating to the Services or this Agreement. On behalf of yourself and your affiliates, you release us, the other EY Firms and the EY Persons from all claims and causes of action (together, "Claims") pending or threatened, that you or they may have arising out of the Services or this Agreement to the extent such Claims result from or arise out of any misrepresentation or fraudulent acts or omission by you, your employees or agents on your behalf.

Attached at Exhibit "H" is a sample EY engagement letter, dated December 7, 2010, containing an indemnity provision (contained at paragraph 11 and side-barred for ease of reference). I am

advised by counsel that each of the engagement letters entered after September 28, 2010 between SFC and EY contain substantially similar indemnity provisions.

15. Engagement letters entered into between EY and SFC prior to September 2010 did not contain similar contractual indemnity provisions. Attached as Exhibit "I" is a sample EY engagement letter dated June 21, 2007.

(b) The Underwriters

16. The following underwriters are defendants in the Ontario Class Action: Credit Suisse Securities (Canada), Inc. ("Credit Suisse Canada"), TD Securities Inc. ("TD"), Dundee Securities Corporation ("Dundee"), RBC Dominion Securities Inc. ("RBC"), Scotia Capital Inc. ("Scotia"), CIBC World Markets Inc. ("CIBC"), Merrill Lynch Canada Inc. ("Merrill Lynch Canada"), Canaccord Financial Ltd. ("Canaccord"), Credit Suisse Securities (USA) LLC ("Credit Suisse USA"), Maison Placements Canada Inc. ("Maison Placements") and Merrill, Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Bank of America Securities LLC) ("Merrill Lynch")

17. On July 17, 2008, SFC entered into a purchase agreement in respect of a July 17, 2008 offering for senior notes. The initial underwriters for this offering were Merrill Lynch and Credit Suisse USA. Pursuant to this purchase agreement, SFC agreed to indemnify the underwriters in accordance with certain terms and conditions. A copy of the purchase agreement, containing indemnity and contribution provisions at section 7 (a) and 8 respectively (side-barred for ease of reference) is attached as Exhibit "J".

18. On May 28, 2007, SFC entered into an underwriting agreement in respect of a June 5, 2007 offering of common shares. This underwriting agreement appointed Dundee, CIBC, Merrill Lynch Canada, Credit Suisse Canada, UBS Securities Canada Inc. ("UBS") and Haywood Securities Inc. ("Haywood") as underwriters. A copy of the underwriting agreement dated May 28, 2007 containing an indemnification provision at section 9 (the relevant portions of which are side-barred for ease of reference) is attached as Exhibit "K".

19. SFC entered into an underwriting agreement on May 22, 2009 in respect of a June 1, 2009 offering. This underwriting agreement appointed Dundee and Credit Suisse Canada as lead underwriters and also appointed Merrill Lynch Canada, Scotia and TD as underwriters. A copy of this underwriting agreement containing indemnification provisions at section 9 (side-barred for ease of reference) is attached as Exhibit "L".

20. On June 24, 2009, SFC entered into a dealer management agreement in respect of an offering of senior guaranteed notes. The lead underwriter for this offering was Credit Suisse USA. A copy of the dealer management agreement dated June 24, 2009 containing indemnity provisions at section 12 (side-barred for ease of reference) is attached hereto as Exhibit "M".

21. SFC also entered into a solicitation agent agreement with Credit Suisse USA on June 24, 2009 in respect of the June 2009 offering of senior guaranteed notes. A copy of this agreement containing an indemnity provision at section 11 (side-barred for ease of reference) is attached as Exhibit "N".

22. On December 10, 2009, SFC entered into a purchase agreement in respect of an offering of convertible senior notes. The initial underwriters for this offering included Credit Suisse USA,

Merrill Lynch and TD. A copy of this agreement containing indemnity and contribution provisions at sections 7 and 8 (side-barred for ease of reference) is attached as Exhibit "O".


23. SFC also entered into an underwriting agreement on December 10, 2009 in respect of a share offering. Pursuant to this agreement, SFC appointed Credit Suisse Canada, TD, Dundee, RBC, Scotia, CIBC, Merrill Lynch Canada, Canaccord and Maison Placements as underwriters. A copy of the December 10, 2009 underwriting agreement containing indemnification provisions at section 9 (side-barred for ease of reference) is attached as Exhibit "P".


24. SFC entered into a purchase agreement on October 14, 2010 in respect of an offering of guaranteed senior notes. Pursuant to this agreement, Credit Suisse USA and Banc of America Securities LLC were appointed lead underwriters. A copy of the October 14, 2010 purchase agreement containing indemnification and contribution provisions at sections 7 and 8 (side-barred for ease of reference) is attached as Exhibit "Q".

**MANAGEMENT'S TIME AND RESOURCES**

25. SFC management's limited resources are fully engaged effecting SFC's restructuring and Sale Process in a very tight time frame. I do not believe that it is in the best interests of SFC's stakeholders to have SFC management's time and efforts diverted from the restructuring and Sale Process at this critical time.

SWORN BEFORE ME at the City of Hong )  
 Kong, Special Administrative Region, )  
 People's Republic of China, this 23<sup>rd</sup> day of )  
 April, 2012 )

  
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**W. Judson Martin**

  
**Yuen Tik Yan Joyce**  
 Solicitor  
 Reed Smith  
 Richards Butler