

Court of Appeal File No. C56125  
Superior Court File No. CV-12-9667-00CL

**COURT OF APPEAL FOR ONTARIO**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SINO-FOREST CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**Appeal Book and Compendium of the  
Appellant, BDO Limited**

**AFFLECK GREENE McMURTRY LLP**  
Barristers & Solicitors  
200 - 365 Bay St.  
Toronto, ON M5H 2V1

**Peter R. Greene** LSUC#: 19895V  
**Kenneth A. Dekker** LSUC#: 40419P  
**Michelle E. Booth** LSUC#: 53525J  
Tel: (416) 360-2800  
Fax: (416) 360-5960

Lawyers for the Appellant, BDO Limited

# Index

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**INDEX**

<b><u>Tab No.</u></b>	<b><u>Document</u></b>	<b><u>Page No.</u></b>
1.	Notice of Appeal of BDO Limited, dated October 16, 2012	1-8
2.	Order of Justice Morawetz, dated July 27, 2012	9-12
3.	Endorsement of Justice Morawetz, dated July 27, 2012	13-30
4.	Notice of Motion of Sino-Forest Corporation, dated June 8, 2012	31-38
5.	Initial Order of Justice Morawetz, dated March 30, 2012	39-68
6.	Claims Procedure Order of Justice Morawetz, dated May 14, 2012 (w/o Schedules)	69-96
7.	Proof of Claim regarding Sino-Forest Corporation, dated June 19, 2012 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	97-103

8.	Fresh as Amended Statement of Claim, amended April 18, 2012 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	104-231
9.	Engagement Letter, dated August 1, 2005 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	232-239
10.	Engagement Letter, dated December 29, 2006 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	240-247
11.	Engagement Letter, dated May 23, 2007 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	248-250
12.	Engagement Letter, dated July 4, 2008 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	251-253
13.	Engagement Letter, dated May 15, 2009 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	254-256
14.	Engagement Letter, dated June 22, 2009 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	257-259
15.	Engagement Letter, dated November 18, 2009 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	260-262
16.	Engagement Letter, dated November 18, 2009 <i>[Portion of Exhibit A to the Affidavit of Iryna Dubinets, sworn June 22, 2012]</i>	263-265
17.	Certificate Respecting Evidence, dated October 30, 2012	266-267
18.	Certificate of Completeness, dated October 30, 2012	268-269

Tab 1

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

**COURT OF APPEAL FOR ONTARIO**

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OF SINO-FOREST CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT  
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**NOTICE OF APPEAL OF BDO LIMITED**

THE RESPONDENT (APPELLANT IN THE APPEAL), BDO LIMITED  
("BDO"), APPEALS to the Court of Appeal from the Order of The Honourable Mr.  
Justice Morawetz dated July 27, 2012 made at Toronto, Ontario.

**THE APPELLANT ASKS** that the Order below be set aside and an Order be  
granted as follows:

1. An Order abridging the time for service and filing of this Notice of Appeal, Factum, Appeal Book and Compendium and other materials required to perfect this appeal, validating service by email and dispensing with any further service, such that the appeal is properly returnable on a date to be fixed by the Registrar;
2. Dismissing the Equity Claims Motion brought by Sino-Forest Corporation ("Sino"), as defined below;
3. Declaring that any indemnification claims against Sino asserted by BDO and other appellants in the companion appeals with this appeal, are not "equity claims" as

defined in the *Companies' Creditors Arrangement Act*, RSC 1985, c.C-36, as amended (the "CCAA");

4. Ordering that BDO's claims are to be dealt with as unsecured creditor claims in accordance with the Claims Procedure Order, as defined below;
5. Awarding to BDO its costs of the appeal and the motion appealed from; and
6. Such other and further relief as counsel may advise and this Honourable Court permit.

**THE GROUNDS OF APPEAL** are as follows:

1. On March 30, 2012 Sino sought and was granted an order of the Ontario Superior Court of Justice which provided protection from its creditors pursuant to the provisions of the CCAA;
2. Sino and various other parties, including BDO, have been named as defendants in a class action currently pending before the Ontario Courts (the "Class Action");
3. BDO was the auditor of Sino from for the years 2005 and 2006 and remained auditor for Sino until August 2007, when it was replaced by Ernst & Young LLP;
4. The Class Action seeks damages from Sino, BDO and various other defendants in connection with certain alleged misrepresentations in the public disclosure by Sino, including alleged misrepresentations in Sino's financial statements and in documents pursuant to which Sino shares and notes were offered to members of the public;

5. BDO has indemnity claims against Sino and its officers and directors arising from Sino's breach of the contractual and common law duties Sino owed to BDO pursuant to BDO's engagement as Sino's auditor;
6. On April 14, 2012, Sino sought and was granted a claims procedure order by the Ontario Superior Court of Justice (the "Claims Procedure Order");
7. The Claims Procedure Order expressly provides mechanisms and procedures for the identification and determination of all claims against Sino, its subsidiaries, and its officers and its directors, including a procedure for the determination of any dispute in relation to such determination - "equity claims" as defined in the CCAA, s. 2;
8. BDO filed proofs of claim against Sino and its officers and directors in accordance with the Claims Procedure Order by the claims bar date of June 20, 2012 for claims arising from the breach of the contractual and common law duties Sino owed to BDO pursuant to its engagement of BDO as its auditor;
9. Before the claims bar date pursuant to the Claims Procedure Order had passed, Sino brought a motion by way of Notice of Motion dated June 8, 2012 seeking a pre-determination of the nature of some of the very claims that were to be submitted and assessed under the Claims Procedure Order, namely, whether shareholder claims and certain claims for contribution and indemnity by third party service providers to Sino, including BDO, were "equity claims" as defined under s.2 of the CCAA (the "Equity Claims Motion");



10. Over the objection of BDO and certain of Sino's other third party creditors that the Equity Claims Motion was premature and contrary to the process contemplated by the Claims Procedure Order, the motions judge heard the Equity Claims Motion on June 26, 2012;

11. On July 27, 2012, the motions judge granted the order sought by Sino on the Equity Claims Motion and declared that indemnity claims by BDO and other third party service providers to Sino are equity claims as defined under the CCAA, except to the extent that these parties' claims seek compensation for certain defence costs associated with the Class Action;

12. The order made on the Equity Claims Motion significantly affects BDO's entitlement to vote on any CCAA Plan of compromise or arrangement that might be put forward by Sino;

13. In granting the Order sought on the Equity Claims Motion, the motions judge erred as follows:

- (a) The motions Judge erred in finding that the Equity Claims motion was not premature and inappropriate – given that it was brought prior to completion of the process put in place by the Claims Procedure Order, in the absence of a full evidentiary record on the claims affected, and dealt with issues already required to be addressed under the terms of the Claims Procedure Order;

- (b) The motions Judge erred in declaring that the contractual and common law claims by third parties against Sino are “equity claims” as defined under section 2 of the CCAA, despite the fact that those claims were advanced by parties, including BDO, that had never held equity in Sino and did not have claims arising from an equity interest in Sino;
- (c) The motions Judge erred in concluding that BDO’s indemnity claim as well as those advanced by the other third party service providers to Sino was “in respect of an equity interest,” despite the fact that BDO was not, and has never been, an equity holder in Sino;
- (d) The motions Judge erred in concluding that the actual and anticipated losses in respect of which BDO asserts a claim are claims that arise from equity interests, rather than claims arising from breaches of contract and misrepresentations by Sino to BDO;
- (e) The motions Judge erred in interpreting the definition of “equity claims” in s. 2 of the CCAA in a manner contrary to the express and implicit intention of the CCAA that only claims by claimants in respect of their own equity interests in the Applicant corporation are to be subordinated as equity claims, while claims by other third party creditors are to be treated in the same manner as other unsecured claims;
- (f) The motions Judge erred in interpreting the definition of “equity claims” in s. 2 of the CCAA in a manner contrary to the common law rule that only claims arising from the claimants’ own equity holdings in the subject

corporation are properly subordinated as equity claims and contrary to the intent of the relevant amendments to the CCAA that the pre-existing common law rules be codified thereunder;

(g) The motions Judge erred in failing to consider and apply pre-existing common law rules relating to the subordination of equity claims when interpreting the definitions of “equity claims” and “equity interests” under the CCAA and in failing to consider and apply common law rules excluding claims by independent third party service providers from the definition of equity claims and treating them in the same manner as claims by other independent third parties; and

(h) As such, the motions Judge erred in failing to conclude that indemnity claims by arm’s length third party service providers are general unsecured claims and are therefore to be treated as such in the CCAA Proceedings;

14. The CCAA and, specifically, sections 2, 6 and 22.1 thereof; and

15. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:** Under the CCAA, s.13, an appeal from the Order below lies to this Court, with leave. On October 10, 2012, this Court granted leave to appeal to BDO in Court File M41655, as well as to the Underwriters (as these parties are defined in their Notice of Appeal) and to

Ernst & Young, in the two companion appeals to this appeal, Court File Nos. M41656 and M41654, respectively.

October 16, 2012

**AFFLECK GREENE McMURTRY LLP**  
Barristers & Solicitors  
365 Bay Street, Suite 200  
Toronto, Ontario M5H 2V1

**Peter R. Greene** LSUC#: 19895V  
**Kenneth A. Dekker** LSUC#: 40419P  
**Michelle E. Booth** LSUC#: 53525J  
Tel: (416) 360-2800  
Fax: (416) 360-5960

Lawyers for BDO Limited

TO: SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as am.  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST  
CORPORATION

APPLICATION UNDER COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as am.

Court File No:

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**NOTICE OF APPEAL**

**AFFLECK GREENE McMURTRY LLP**  
Barristers & Solicitors  
365 Bay Street, Suite 200  
Toronto, Ontario M5H 2V1

**Peter R. Greene** LSUC#: 19895V  
**Kenneth A. Dekker** LSUC#: 40419P  
**Michelle E. Booth** LSUC#: 53525J  
Tel: (416) 360-2800  
Fax: (416) 360-5960

Lawyers for BDO Limited

Tab 2

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

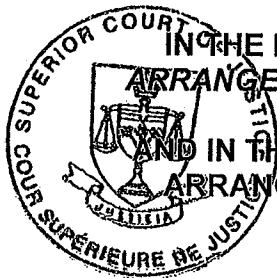
)

FRIDAY, THE 27<sup>th</sup>

JUSTICE MORAWETZ

)

DAY OF JULY, 2012



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

**ORDER**

**THIS MOTION** made by the Applicant, Sino-Forest Corporation ("**SFC**") regarding the status of shareholder claims and related indemnity claims was heard this day, at the courthouse at 330 University Avenue, Toronto, Ontario,

**ON READING** the Motion Record of the Applicant, the Responding Motion Record of Ernst & Young LLP, the Book of Previously Filed Materials and Court Orders, and the Responding Motion Record of BDO Limited and the facts of the parties, and on hearing the submissions of counsel for the Moving Party, Sino-Forest Corporation, the Monitor, the Ad Hoc Committee of Noteholders, Ernst & Young, BDO, and certain underwriters named as defendants in the Ontario Class Action:

1. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion is properly returnable today.
2. **THIS COURT ORDERS** that the claims against SFC resulting from the ownership, purchase or sale of an equity interest in SFC, including, without

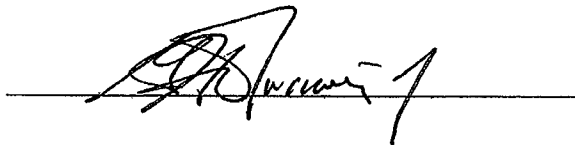
limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A", (collectively, the "Shareholder Claims") are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* (the "CCAA"), being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest.

3. **THIS COURT ORDERS** that any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A", (the "Related Indemnity Claims") are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of claims that are equity claims.
4. **THIS COURT ORDERS** that nothing in paragraph 3 determines whether this Order extends to the aspect of any Related Indemnity Claims that corresponds to defence costs in connection with the defence of any Shareholder Claims.
5. **THIS COURT ORDERS** that the order is without prejudice to SFC's right to apply for a similar order with respect to (i) any claims that are in respect of Securities other than shares and (ii) any indemnification claims against SFC related thereto.

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

AUG 03 2012

PER/PAR:





**Schedule "A"**

1. *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP)
2. *Guining Liu v. Sino-Forest Corporation et al.* (Quebec Superior Court, Court File No: 200-06-000132-111)
3. *Allan Haigh v. Sino-Forest Corporation et al.* (Saskatchewan Court of Queen's Bench, Court File No. 2288 of 2011)
4. *David Leopard et al. v. Allen T.Y. Chan et al.* (District Court of the Southern District of New York, Court File No. 650258/2012)

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

Court File No. CV-12-96667-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**ORDER**

**(Regarding the Status of Shareholder  
Claims and Related Indemnity Claims  
under the CCAA)**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Robert W. Staley (LSUC #27115J)

Kevin Zych (LSUC #33129T)

Derek J. Bell (LSUC #43420J)

Raj Sahmi (LSUC #42942U)

Jonathan Bell (LSUC #55457P)

Tel: 416-863-1200

Fax: 416-863-1716

Lawyers for the Applicant

**Tab 3**

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 4377  
COURT FILE NO.: CV-12-9667-00CL  
DATE: 20120727

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**(COMMERCIAL LIST)**

**RE: 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, Applicant**

**BEFORE: MORAWETZ J.**

**COUNSEL: Robert W. Staley and Jonathan Bell, for the Applicant**

**Jennifer Stam, for the Monitor**

**Kenneth Dekker, for BDO Limited**

**Pcter Griffin and Peter Osborne, for Ernst & Young LLP**

**Benjamin Zarnett, Robert Chadwick and Brendan O'Neill, for the Ad Hoc  
Committee of Noteholders**

**James Grout, for the Ontario Securities Commission**

**Emily Cole and Joseph Marin, for Allen Chan**

**Simon Bieber, for David Horsley**

**David Bish, John Fabello and Adam Slavens, for the Underwriters Named in  
the Class Action**

**Max Starnino and Kirk Baert, for the Ontario Plaintiffs**

**Larry Lowenstein, for the Board of Directors**

**HEARD: June 26, 2012**

**ENDORSEMENT**

- Page 2 -

## Overview

[1] Sino-Forest Corporation ("SFC" or the "Applicant") seeks an order directing that claims against SFC, which result from the ownership, purchase or sale of an equity interest in SFC, are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* ("CCAA") including, without limitation: (i) the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" (collectively, the "Shareholder Claims"); and (ii) any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, those by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" (the "Related Indemnity Claims").

[2] SFC takes the position that the Shareholder Claims are "equity claims" as defined in the CCAA as they are claims in respect of a monetary loss resulting from the ownership, purchase or sale of an equity interest in SFC and, therefore, come within the definition. SFC also takes the position that the Related Indemnity Claims are "equity claims" as defined in the CCAA as they are claims for contribution or indemnity in respect of a claim that is an equity claim and, therefore, also come within the definition.

[3] On March 30, 2012, the court granted the Initial Order providing for the CCAA stay against SFC and certain of its subsidiaries. FTI Consulting Canada Inc. was appointed as Monitor.

[4] On the same day, the Sales Process Order was granted, approving Sales Process procedures and authorizing and directing SFC, the Monitor and Houlihan Lokey to carry out the Sales Process.

[5] On May 14, 2012, the court issued a Claims Procedure Order, which established June 20, 2012 as the Claims Bar Date.

[6] The stay of proceedings has since been extended to September 28, 2012.

[7] Since the outset of the proceedings, SFC has taken the position that it is important for these proceedings to be completed as soon as possible in order to, among other things, (i) enable the business operated in the Peoples Republic of China ("PRC") to be separated from SFC and put under new ownership; (ii) enable the restructured business to participate in the Q4 sales season in the PRC market; and (iii) maintain the confidence of stakeholders in the PRC (including local and national governmental bodies, PRC lenders and other stakeholders) that the business in the PRC can be successfully separated from SFC and operate in the ordinary course in the near future.

[8] SFC has negotiated a Support Agreement with the Ad Hoc Committee of Noteholders and intends to file a plan of compromise or arrangement (the "Plan") under the CCAA by no later than August 27, 2012, based on the deadline set out in the Support Agreement and what they submit is the commercial reality that SFC must complete its restructuring as soon as possible.

- Page 3 -

[9] Noteholders holding in excess of \$1.296 billion, or approximately 72% of the approximately \$1.8 billion of SFC's noteholders' debt, have executed written support agreements to support the SFC CCAA Plan as of March 30, 2012.

### **Shareholder Claims Asserted Against SFC**

#### **(i) Ontario**

[10] By Fresh as Amended Statement of Claim dated April 26, 2012 (the "Ontario Statement of Claim"), the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and other plaintiffs asserted various claims in a class proceeding (the "Ontario Class Proceedings") against SFC, certain of its current and former officers and directors, Ernst & Young LLP ("E&Y"), BDO Limited ("BDO"), Poyry (Beijing) Consulting Company Limited ("Poyry") and SFC's underwriters (collectively, the "Underwriters").

[11] Section 1(m) of the Ontario Statement of Claim defines "class" and "class members" as:

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 securities include those 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.

[12] The term "Securities" is defined as "Sino's common shares, notes and other securities, as defined in the OSA". The term "Class Period" is defined as the period from and including March 19, 2007 up to and including June 2, 2011.

[13] The Ontario Class Proceedings seek damages in the amount of approximately \$9.2 billion against SFC and the other defendants.

[14] The thrust of the complaint in the Ontario Class Proceedings is that the class members are alleged to have purchased securities at "inflated prices during the Class Period" and that absent the alleged misconduct, sales of such securities "would have occurred at prices that reflected the true value" of the securities. It is further alleged that "the price of Sino's Securities was directly affected during the Class Period by the issuance of the Impugned Documents".

#### **(ii) Quebec**

[15] By action filed in Quebec on June 9, 2011, Guining Liu commenced an action (the "Quebec Class Proceedings") against SFC, certain of its current and former officers and directors, E&Y and Poyry. The Quebec Class Proceedings do not name BDO or the Underwriters as defendants. The Quebec Class Proceedings also do not specify the quantum of damages sought, but rather reference "damages in an amount equal to the losses that it and the other members of the group suffered as a result of purchasing or acquiring securities of Sino at inflated prices during the Class Period".

- Page 4 -

[16] The complaints in the Quebec Class Proceedings centre on the effect of alleged misrepresentations on the share price. The duty allegedly owed to the class members is said to be based in "law and other provisions of the *Securities Act*", to ensure the prompt dissemination of truthful, complete and accurate statements regarding SFC's business and affairs and to correct any previously-issued materially inaccurate statements.

(iii) **Saskatchewan**

[17] By Statement of Claim dated December 1, 2011 (the "Saskatchewan Statement of Claim"), Mr. Allan Haigh commenced an action (the "Saskatchewan Class Proceedings") against SFC, Allen Chan and David Horsley.

[18] The Saskatchewan Statement of Claim does not specify the quantum of damages sought, but instead states in more general terms that the plaintiff seeks "aggravated and compensatory damages against the defendants in an amount to be determined at trial".

[19] The Saskatchewan Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities:

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 that the effect of Sino's disclosure documents upon the price of its Sino's [sic] securities.

(iv) **New York**

[20] By Verified Class Action Complaint dated January 27, 2012, (the "New York Complaint"), Mr. David Leopard and IMF Finance SA commenced a class proceeding against SFC, Mr. Allen Chan, Mr. David Horsley, Mr. Kai Kit Poon, a subset of the Underwriters, E&Y, and Ernst & Young Global Limited (the "New York Class Proceedings").

[21] SFC contends that the New York Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities.

[22] The plaintiffs in the various class actions have named parties other than SFC as defendants, notably, the Underwriters and the auditors, E&Y, and BDO, as summarized in the table below. The positions of those parties are detailed later in these reasons.

	Ontario	Quebec	Saskatchewan	New York
E&Y LLP	X	X	-	X
E&Y Global	-	-	-	X
BDO	X	-	-	-

- Page 5 -

Poyry	X	X	-	-
Underwriters	11	-	-	2

### Legal Framework

[23] Even before the 2009 amendments to the CCAA dealing with equity claims, courts recognized that there is a fundamental difference between shareholder equity claims as they relate to an insolvent entity versus creditor claims. Essentially, shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditor claims are not being paid in full. Simply put, shareholders have no economic interest in an insolvent enterprise: *Blue Range Resource Corp. (Re)*, (2004) 4 W.W.R. 738 (Alta. Q.B.) [*Blue Range Resources*]; *Stelco Inc. (Re)*, (2006) CanLII 1773 (Ont. S.C.J.) [*Stelco*]; *Royal Bank of Canada v. Central Capital Corp.* (1996), 27 O.R. (3d) 494 (C.A.).

[24] The basis for the differentiation flows from the fundamentally different nature of debt and equity investments. Shareholders have unlimited upside potential when purchasing shares. Creditors have no corresponding upside potential: *Nelson Financial Group Limited (Re)*, 2010 ONSC 6229 [*Nelson Financial*].

[25] As a result, courts subordinated equity claims and denied such claims a vote in plans of arrangement: *Blue Range Resource*, *supra*; *Stelco*, *supra*; *EarthFirst Canada Inc. (Re)* (2009), 56 C.B.R. (5<sup>th</sup>) 102 (Alta. Q.B.) [*EarthFirst Canada*]; and *Nelson Financial*, *supra*.

[26] In 2009, significant amendments were made to the CCAA. Specific amendments were made with the intention of clarifying that equity claims are subordinated to other claims.

[27] The 2009 amendments define an "equity claim" and an "equity interest". Section 2 of the CCAA includes the following definitions:

"Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others, (...)

(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);

"Equity Interest" means

(a) in the case of a company other than an income trust, a share in the company – or a warrant or option or another right to acquire a share in the company – other than one that is derived from a convertible debt,



- Page 6 -

[28] Section 6(8) of the CCAA prohibits a distribution to equity claimants prior to payment in full of all non-equity claims.

[29] Section 22(1) of the CCAA provides that equity claimants are prohibited from voting on a plan unless the court orders otherwise.

#### Position of Ernst & Young

[30] E&Y opposes the relief sought, at least as against E&Y, since the E&Y proof of claim evidence demonstrates in its view that E&Y's claim:

- (a) is not an equity claim;
- (b) does not derive from or depend upon an equity claim (in whole or in part);
- (c) represents discreet and independent causes of action as against SFC and its directors and officers arising from E&Y's direct contractual relationship with such parties (or certain of such parties) and/or the tortious conduct of SFC and/or its directors and officers for which they are in law responsible to E&Y; and
- (d) can succeed independently of whether or not the claims of the plaintiffs in the class actions succeed.

[31] In its factum, counsel to E&Y acknowledges that during the periods relevant to the Class Action Proceedings, E&Y was retained as SFC's auditor and acted as such from 2007 until it resigned on April 5, 2012.

[32] On June 2, 2011, Muddy Waters LLC ("Muddy Waters") issued a report which purported to reveal fraud at SFC. In the wake of that report, SFC's share price plummeted and Muddy Waters profited from its short position.

[33] E&Y was served with a multitude of class action claims in numerous jurisdictions.

[34] The plaintiffs in the Ontario Class Proceedings claim damages in the aggregate, as against all defendants, of \$9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)* and at common law, in negligence and negligent misrepresentation.

[35] In its factum, counsel to E&Y acknowledges that the central claim in the class actions is that SFC made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and note in particular that E&Y's audit did not comply with Canadian generally accepted accounting standards. Similar claims are advanced in Quebec and the U.S.

[36] Counsel to E&Y notes that on May 14, 2012 the court granted a Claims Procedure Order which, among other things, requires proofs of claim to be filed no later than June 20, 2012. E&Y takes issue with the fact that this motion was then brought notwithstanding that proofs of claim and D&O proofs of claim had not yet been filed.

- Page 7 -

[37] E&Y has filed with the Monitor, in accordance with the Claims Procedure Order, a proof of claim against SFC and a proof of claim against the directors and officers of SFC.

[38] E&Y takes the position that it has contractual claims of indemnification against SFC and its subsidiaries and has statutory and common law claims of contribution and/or indemnity against SFC and its subsidiaries for all relevant years. E&Y contends that it has stand-alone claims for breach of contract and negligent and/or fraudulent misrepresentation against the company and its directors and officers.

[39] Counsel submits that E&Y's claims against Sino-Forest and the SFC subsidiaries are:

- (a) creditor claims;
- (b) derived from E&Y retainers by and/or on behalf of Sino-Forest and the SFC subsidiaries and E&Y's relationship with such parties, all of which are wholly independent and conceptually different from the claims advanced by the class action plaintiffs;
- (c) claims that include the cost of defending and responding to various proceedings, both pre- and post-filing; and
- (d) not equity claims in the sense contemplated by the CCAA. E&Y's submission is that equity holders of Sino-Forest have not advanced, and could not advance, any claims against SFC's subsidiaries.

[40] Counsel further contends that E&Y's claim is distinct from any and all potential and actual claims by the plaintiffs in the class actions against Sino-Forest and that E&Y's claim for contribution and/or indemnity is not based on the claims against Sino-Forest advanced in the class actions but rather only in part on those claims, as any success of the plaintiffs in the class actions against E&Y would not necessarily lead to success against Sino-Forest, and vice versa. Counsel contends that E&Y has a distinct claim against Sino-Forest independent of that of the plaintiffs in the class actions. The success of E&Y's claims against Sino-Forest and the SFC subsidiaries, and the success of the claims advanced by the class action plaintiffs, are not co-dependent. Consequently, counsel contends that E&Y's claim is that of an unsecured creditor.

[41] From a policy standpoint, counsel to E&Y contends that the nature of the relationship between a shareholder, who may be in a position to assert an equity claim (in addition to other claims) is fundamentally different from the relationship existing between a corporation and its auditors.

#### **Position of BDO Limited**

[42] BDO was auditor of Sino-Forest Corporation between 2005 and 2007, when it was replaced by E&Y.

[43] BDO has a filed a proof of claim against Sino-Forest pursuant to the Claims Procedure Order.

- Page 8 -

[44] BDO's claim against Sino-Forest is primarily for breach of contract.

[45] BDO takes the position that its indemnity claims, similar to those advanced by E&Y and the Underwriters, are not equity claims within the meaning of s. 2 of the CCAA.

[46] BDO adopts the submissions of E&Y which, for the purposes of this endorsement, are not repeated.

#### **Position of the Underwriters**

[47] The Underwriters take the position that the court should not decide the equity claims motion at this time because it is premature or, alternatively, if the court decides the equity claims motion, the equity claims order should not be granted because the Related Indemnity Claims are not "equity claims" as defined in s. 2 of the CCAA.

[48] The Underwriters are among the defendants named in some of the class actions. In connection with the offerings, certain Underwriters entered into agreements with Sino-Forest and certain of its subsidiaries providing that Sino-Forest and, with respect to certain offerings, the Sino-Forest subsidiary companies, agree to indemnify and hold harmless the Underwriters in connection with an array of matters that could arise from the offerings.

[49] The Underwriters raise the following issues:

- (i) Should this court decide the equity claims motion at this time?
- (ii) If this court decides the equity claims motion at this time, should the equity claims order be granted?

[50] On the first issue, counsel to the Underwriters takes the position that the issue is not yet ripe for determination.

[51] Counsel submits that, by seeking the equity claims order at this time, Sino-Forest is attempting to pre-empt the Claims Procedure Order, which already provides a process for the determination of claims. Until such time as the claims procedure in respect of the Related Indemnity Claims is completed, and those claims are determined pursuant to that process, counsel contends the subject of the equity claims motion raises a merely hypothetical question as the court is being asked to determine the proper interpretation of s. 2 of the CCAA before it has the benefit of an actual claim in dispute before it.

[52] Counsel further contends that by asking the court to render judgment on the proper interpretation of s. 2 of the CCAA in the hypothetical, Sino-Forest has put the court in a position where its judgment will not be made in the context of particular facts or with a full and complete evidentiary record.

[53] Even if the court determines that it can decide this motion at this time, the Underwriters submit that the relief requested should not be granted.

- Page 9 -

### Position of the Applicant

[54] The Applicant submits that the amendments to the CCAA relating to equity claims closely parallel existing U.S. law on the subject and that Canadian courts have looked to U.S. courts for guidance on the issue of equity claims as the subordination of equity claims has long been codified there: see e.g. *Blue Range Resources, supra*, and *Nelson Financial, supra*.

[55] The Applicant takes the position that based on the plain language of the CCAA, the Shareholder Claims are "equity claims" as defined in s. 2 as they are claims in respect of a "monetary loss resulting from the ownership, purchase or sale of an equity interest".

[56] The Applicant also submits the following:

- (a) the Ontario, Quebec, Saskatchewan and New York Class Actions (collectively, the "Class Actions") all advance claims on behalf of shareholders.
- (b) the Class Actions also allege wrongful conduct that affected the trading price of the shares, in that the alleged misrepresentation "artificially inflated" the share price; and
- (c) the Class Actions seek damages relating to the trading price of SFC shares and, as such, allege a "monetary loss" that resulted from the ownership, purchase or sale of shares, as defined in s. 2 of the CCAA.

[57] Counsel further submits that, as the Shareholder Claims are "equity claims", they are expressly subordinated to creditor claims and are prohibited from voting on the plan of arrangement.

[58] Counsel to the Applicant also submits that the definition of "equity claims" in s. 2 of the CCAA expressly includes indemnity claims that relate to other equity claims. As such, the Related Indemnity Claims are equity claims within the meaning of s. 2.

[59] Counsel further submits that there is no distinction in the CCAA between the source of any claim for contribution or indemnity; whether by statute, common law, contractual or otherwise. Further, and to the contrary, counsel submits that the legal characterization of a contribution or indemnity claim depends solely on the characterization of the primary claim upon which contribution or indemnity is sought.

[60] Counsel points out that in *Return on Innovation Capital v. Gandi Innovations Limited*, 2011 ONSC 5018, leave to appeal denied, 2012 ONCA 10 [*Return on Innovation*] this court characterized the contractual indemnification claims of directors and officers in respect of an equity claim as "equity claims".

[61] Counsel also submits that guidance on the treatment of underwriter and auditor indemnification claims can be obtained from the U.S. experience. In the U.S., courts have held that the indemnification claims of underwriters for liability or defence costs constitute equity claims that are subordinated to the claims of general creditors. Counsel submits that insofar as

- Page 10 -

the primary source of liability is characterized as an equity claim, so too is any claim for contribution and indemnity based on that equity claim.

[62] In this case, counsel contends, the Related Indemnity Claims are clearly claims for "contribution and indemnity" based on the Shareholder Claims.

#### **Position of the Ad Hoc Noteholders**

[63] Counsel to the Ad Hoc Noteholders submits that the Shareholder Claims are "equity claims" as they are claims in respect of an equity interest and are claims for "a monetary loss resulting from the ownership, purchase or sale of an equity interest" per subsection (d) of the definition of "equity claims" in the CCAA.

[64] Counsel further submits that the Related Indemnity Claims are also "equity claims" as they fall within the "clear and unambiguous" language used in the definition of "equity claim" in the CCAA. Subsection (e) of the definition refers expressly and without qualification to claims for "contribution or indemnity" in respect of claims such as the Shareholder Claims.

[65] Counsel further submits that had the legislature intended to qualify the reference to "contribution or indemnity" in order to exempt the claims of certain parties, it could have done so, but it did not.

[66] Counsel also submits that, if the plain language of subsection (e) is not upheld, shareholders of SFC could potentially create claims to receive indirectly what they could not receive directly (*i.e.*, payment in respect of equity claims through the Related Indemnity Claims) – a result that could not have been intended by the legislature as it would be inconsistent with the purposes of the CCAA.

[67] Counsel to the Ad Hoc Noteholders also submits that, before the CCAA amendments in 2009 (the "CCAA Amendments"), courts subordinated claims on the basis of:

- (a) the general expectations of creditors and shareholders with respect to priority and assumption of risks; and
- (b) the equitable principles and considerations set out in certain U.S. cases: see *e.g.* *Blue Range Resources, supra*.

[68] Counsel further submits that, before the CCAA Amendments took effect, courts had expanded the types of claims characterized as equity claims; first to claims for damages of defrauded shareholders and then to contractual indemnity claims of shareholders: see *Blue Range Resources, supra* and *EarthFirst Canada, supra*.

[69] Counsel for the Ad Hoc Noteholders also submits that indemnity claims of underwriters have been treated as equity claims in the United States, pursuant to section 510(b) of the U.S. Bankruptcy Code. This submission is detailed at paragraphs 20-25 of their factum which reads as follows:

- Page 11 -

20. The desire to more closely align the Canadian approach to equity claims with the U.S. approach was among the considerations that gave rise to the codification of the treatment of equity claims. Canadian courts have also looked to the U.S. law for guidance on the issue of equity claims where codification of the subordination of equity claims has been long-standing.

Janis Sarra at p. 209, Ad Hoc Committee's Book of Authorities, Tab 10.

Report of the Standing Senate Committee on Banking, Trade and Commerce, "Debtors and Creditors Sharing the Burden: A Review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*" (2003) at 158, [...]

*Blue Range [Resources]* at paras. 41-57 [...]

21. Pursuant to § 510(b) of the *U.S. Bankruptcy Code*, all creditors must be paid in full before shareholders are entitled to receive any distribution. § 510(b) of the *U.S. Bankruptcy Code* and the relevant portion of § 502, which is referenced in § 510(b), provide as follows:

§ 510. Subordination

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

§ 502. Allowance of claims or interests

(e) (1) Notwithstanding subsections (a), (b) and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that

...

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

...

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined,

- Page 12 -

and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

22. U.S. appellate courts have interpreted the statutory language in § 510(b) broadly to subordinate the claims of shareholders that have a nexus or causal relationship to the purchase or sale of securities, including damages arising from alleged illegality in the sale or purchase of securities or from corporate misconduct whether predicated on pre or post-issuance conduct.

*Re Telegroup Inc.* (2002), 281 F. 3d 133 (3<sup>rd</sup> Cir. U.S. Court of Appeals) [...]

*American Broadcasting Systems Inc. v. Nugent*, U.S. Court of Appeals for the Ninth Circuit, Case Number 98-17133 (24 January 2001) [...]

23. Further, U.S. courts have held that indemnification claims of underwriters against the corporation for liability or defence costs when shareholders or former shareholders have sued underwriters constitute equity claims in the insolvency of the corporation that are subordinated to the claims of general creditors based on: (a) the plain language of § 510(b), which references claims for "reimbursement or contribution" and (b) risk allocation as between general creditors and those parties that play a role in the purchase and sale of securities that give rise to the shareholder claims (i.e., directors, officers and underwriters).

*In re Mid-American Waste Sys.*, 228 B.R. 816, 1999 Bankr. LEXIS 27 (Bankr. D. Del. 1999) [*Mid-American*] [...]

*In re Jacom Computer Servs.*, 280 B.R. 570, 2002 Bankr. LEXIS 758 (Bankr. S.D.N.Y. 2002) [...]

24. In *Mid-American*, the Court stated the following with respect to the "plain language" of § 510(b), its origins and the inclusion of "reimbursement or contribution" claims in that section:

*... I find that the plain language of § 510(b), its legislative history, and applicable case law clearly show that § 510(b) intends to subordinate the indemnification claims of officers, directors, and underwriters for both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor's securities. The meaning of amended § 510(b), specifically the language "for reimbursement or contribution . . . on account of [a claim arising from rescission or damages arising from the purchase or sale of a security]," can be discerned by a plain reading of its language.*

*... it is readily apparent that the rationale for section 510(b) is not limited to preventing shareholder claimants from improving their position vis-a-*

- Page 13 -

vis general creditors; Congress also made the decision to subordinate based on risk allocation. Consequently, when Congress amended § 510(b) to add reimbursement and contribution claims, it was not radically departing from an equityholder claimant treatment provision, as NatWest suggests; it simply added to the subordination treatment new classes of persons and entities involved with the securities transactions giving rise to the rescission and damage claims. The 1984 amendment to § 510(b) is a logical extension of one of the rationales for the original section — because Congress intended the holders of securities law claims to be subordinated, why not also subordinate claims of other parties (e.g., officers and directors and underwriters) who play a role in the purchase and sale transactions which give rise to the securities law claims? As I view it, in 1984 Congress made a legislative judgment that claims emanating from tainted securities law transactions should not have the same priority as the claims of general creditors of the estate. [emphasis added]

[...]

25. Further, the U.S. courts have held that the degree of culpability of the respective parties is a non-issue in the disallowance of claims for indemnification of underwriters; the equities are meant to benefit the debtor's direct creditors, not secondarily liable creditors with contingent claims.

*In re Drexel Burnham Lambert Group*, 148 B.R. 982, 1992 Bankr. LEXIS 2023 (Bankr. S.D.N.Y. 1992) [...]

[70] Counsel submits that there is no principled basis for treating indemnification claims of auditors differently than those of underwriters.

#### Analysis

##### Is it Premature to Determine the Issue?

[71] The class action litigation was commenced prior to the CCAA Proceedings. It is clear that the claims of shareholders as set out in the class action claims against SFC are "equity claims" within the meaning of the CCAA.

[72] In my view, this issue is not premature for determination, as is submitted by the Underwriters.

[73] The Class Action Proceedings preceded the CCAA Proceedings. It has been clear since the outset of the CCAA Proceedings that this issue — namely, whether the claims of E&Y, BDO and the Underwriters as against SFC, would be considered "equity claims" — would have to be determined.



- Page 14 -

[74] It has also been clear from the outset of the CCAA Proceedings, that a Sales Process would be undertaken and the expected proceeds arising from the Sales Process would generate proceeds insufficient to satisfy the claims of creditors.

[75] The Claims Procedure is in place but, it seems to me that the issue that has been placed before the court on this motion can be determined independently of the Claims Procedure. I do not accept that any party can be said to be prejudiced if this threshold issue is determined at this time. The threshold issue does not depend upon a determination of quantification of any claim. Rather, its effect will be to establish whether the claims of E&Y, BDO and the Underwriters will be subordinated pursuant to the provisions of the CCAA. This is independent from a determination as to the validity of any claim and the quantification thereof.

#### **Should the Equity Claims Order be Granted?**

[76] I am in agreement with the submission of counsel for the Ad Hoc Noteholders to the effect that the characterization of claims for indemnity turns on the characterization of the underlying primary claims.

[77] In my view, the claims advanced in the Shareholder Claims are clearly equity claims. The Shareholder Claims underlie the Related Indemnity Claims.

[78] In my view, the CCAA Amendments have codified the treatment of claims addressed in pre-amendment cases and have further broadened the scope of equity claims.

[79] The plain language in the definition of "equity claim" does not focus on the identity of the claimant. Rather, it focuses on the nature of the claim. In this case, it seems clear that the Shareholder Claims led to the Related Indemnity Claims. Put another way, the inescapable conclusion is that the Related Indemnity Claims are being used to recover an equity investment.

[80] The plain language of the CCAA dictates the outcome, namely, that the Shareholder Claims and the Related Indemnity Claims constitute "equity claims" within the meaning of the CCAA. This conclusion is consistent with the trend towards an expansive interpretation of the definition of "equity claims" to achieve the purpose of the CCAA.

[81] In *Return on Innovation*, Newbould J. characterized the contractual indemnification claims of directors and officers as "equity claims". The Court of Appeal denied leave to appeal. The analysis in *Return on Innovation* leads to the conclusion that the Related Indemnity Claims are also equity claims under the CCAA.

[82] It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the Underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of the shareholders cannot achieve the same status. To hold otherwise would indeed provide an indirect remedy where a direct remedy is not available.

[83] Further, on the issue of whether the claims of E&Y, BDO and the Underwriters fall within the definition of equity claims, there are, in my view, two aspects of these claims and it is necessary to keep them conceptually separate.

- Page 15 -

[84] The first and most significant aspect of the claims of E&Y, BDO and the Underwriters constitutes an "equity claim" within the meaning of the CCAA. Simply put, but for the Class Action Proceedings, it is inconceivable that claims of this magnitude would have been launched by E&Y, BDO and the Underwriters as against SFC. The class action plaintiffs have launched their actions against SFC, the auditors and the Underwriters. In turn, E&Y, BDO and the Underwriters have launched actions against SFC and its subsidiaries. The claims of the shareholders are clearly "equity claims" and a plain reading of s. 2(1)(e) of the CCAA leads to the same conclusion with respect to the claims of E&Y, BDO and the Underwriters. To hold otherwise, would, as stated above, lead to a result that is inconsistent with the principles of the CCAA. It would potentially put the shareholders in a position to achieve creditor status through their claim against E&Y, BDO and the Underwriters even though a direct claim against SFC would rank as an "equity claim".

[85] I also recognize that the legal construction of the claims of the auditors and the Underwriters as against SFC is different than the claims of the shareholders against SFC. However, that distinction is not, in my view, reflected in the language of the CCAA which makes no distinction based on the status of the party but rather focuses on the substance of the claim.

[86] Critical to my analysis of this issue is the statutory language and the fact that the CCAA Amendments came into force after the cases relied upon by the Underwriters and the auditors.

[87] It has been argued that the amendments did nothing more than codify pre-existing common law. In many respects, I accept this submission. However, I am unable to accept this submission when considering s. 2(1) of the CCAA, which provides clear and specific language directing that "equity claim" means a claim that is in respect of an equity interest, including a claim for, among other things, "(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)".

[88] Given that a shareholder claim falls within s. 2(1)(d), the plain words of subsections (d) and (e) lead to the conclusions that I have set out above.

[89] I fail to see how the very clear words of subsection (e) can be seen to be a codification of existing law. To arrive at the conclusion put forth by E&Y, BDO and the Underwriters would require me to ignore the specific words that Parliament has recently enacted.

[90] I cannot agree with the position put forth by the Underwriters or by the auditors on this point. The plain wording of the statute has persuaded me that it does not matter whether an indemnity claim is seeking no more than allocation of fault and contribution at common law, or whether there is a free-standing contribution and indemnity claim based on contracts.

[91] However, that is not to say that the full amount of the claim by the auditors and Underwriters can be characterized, at this time, as an "equity claim".

[92] The second aspect to the claims of the auditors and underwriters can be illustrated by the following hypothetical: if the claim of the shareholders does not succeed against the class action defendants, E&Y, BDO and the Underwriters will not be liable to the class action plaintiffs. However, these parties may be in a position to demonstrate that they do have a claim against

- Page 16 -

SFC for the costs of defending those actions, which claim does not arise as a result of "contribution or indemnity in respect of an equity claim".

[93] It could very well be that each of E&Y, BDO and the Underwriters have expended significant amounts in defending the claims brought by the class action plaintiffs which, in turn, could give rise to contractual claims as against SFC. If there is no successful equity claim brought by the class action plaintiffs, it is arguable that any claim of E&Y, BDO and the Underwriters may legitimately be characterized as a claim for contribution or indemnity but not necessarily in respect of an equity claim. If so, there is no principled basis for subordinating this portion of the claim. At this point in time, the quantification of such a claim cannot be determined. This must be determined in accordance with the Claims Procedure.

[94] However, it must be recognized that, by far the most significant part of the claim, is an "equity claim".

[95] In arriving at this determination, I have taken into account the arguments set forth by E&Y, BDO and the Underwriters. My conclusions recognize the separate aspects of the Related Indemnity Claims as submitted by counsel to the Underwriters at paragraph 40 of their factum which reads:

...it must be recognized that there are, in fact, at least two different kinds of Related Indemnity Claims:

- (a) indemnity claims against SFC in respect of Shareholder Claims against the auditors and the Underwriters; and
- (b) indemnity claims against SFC in respect of the defence costs of the auditors and the Underwriters in connection with defending themselves against Shareholder Claims.

#### **Disposition**

[96] In the result, an order shall issue that the claims against SFC resulting from the ownership, purchase or sale of equity interests in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" are "equity claims" as defined in s. 2 of the CCAA, being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest. It is noted that counsel for the class action plaintiffs did not contest this issue.

[97] In addition, an order shall also issue that any indemnification claim against SFC related to or arising from the Shareholders Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim. However, I feel it is premature to determine whether this order extends to the aspect of the Related Indemnity Claims that corresponds to the defence costs of the Underwriters and the auditors in connection with defending themselves against the Shareholder Claims.

- Page 17 -

[98] A direction shall also issue that these orders are made without prejudice to SFC's rights to apply for a similar order with respect to (i) any claims in the statement of claim that are in respect of securities other than shares and (ii) any indemnification claims against SFC related thereto.



MORAWETZ J.

Date: July 27, 2012

**SCHEDULE "A" – SHAREHOLDER CLAIMS**

1. *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP)
2. *Guining Liu v. Sino-Forest Corporation et al.* (Quebec Superior Court, Court File No.: 200-06-000132-111)
3. *Allan Haigh v. Sino-Forest Corporation et al.* (Saskatchewan Court of Queen's Bench, Court File No. 2288 of 2011)
4. *David Leopard et al. v. Allen T.Y. Chan et al.* (District court of the Southern District of New York, Court File No. 650258/2012)

**Tab 4**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES CREDITORS'*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT IN THE MATTER OF SINO-FOREST  
CORPORATION**

**NOTICE OF MOTION**

**(Motion Regarding the Status of Shareholder Claims  
and Related Indemnity Claims under the CCAA)**

The applicant, Sino-Forest Corporation ("SFC"), will make a motion to the Honourable Mr. Justice Morawetz of the Commercial List court on Friday, June 15<sup>th</sup>, 2012 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An order that the claims against SFC resulting from the ownership, purchase or sale of an equity interest in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" (collectively, the "Shareholder Claims") are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* (the "CCAA"), being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest, being shares in SFC;

- 2 -

2. An order that any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" (the "Related Indemnity Claims"), are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim;
3. A direction that the order is without prejudice to SFC's right to apply for a similar order with respect to (i) any claims in the Statement of Claim that are in respect of Securities other than shares and (ii) any indemnification claims against SFC related thereto; and
4. Such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**BACKGROUND**

1. On March 30, 2012, this Honourable Court made an Initial Order granting a stay of proceedings in relation to SFC and its business and property and appointing FTI Consulting Canada Inc. as the Monitor in the CCAA proceedings;
2. Also on March 30, 2012, this Honourable Court made the Sale Process Order approving the sale process procedures attached thereto and authorizing and directing SFC, the Monitor and Houlihan Lokey to carry out the sale process;
3. At the commencement of these proceedings, SFC advised that it was very important for these proceedings to be successfully completed as soon as possible in order to, among



- 4 -

7. By Statement of Claim (as defined below), the class action plaintiffs have made significant Shareholder Claims against SFC and other defendants, and certain of these defendants have stated in these proceedings that they have significant, related indemnity claims against SFC in respect of the Shareholder Claims made against them, and have not confirmed that these claims are not "equity claims";
8. In light of the need to complete these restructuring proceedings as soon as possible, and with a view to having a meeting of creditors in August, 2012, it is necessary to have the legal status of these Shareholder Claims against SFC and Related Indemnity Claims confirmed as "equity claims" as soon as possible in order to ensure that the CCAA proceedings advance in an efficient and effective manner so as to best ensure the business and operations of SFC are protected under the current circumstances;

#### **SHAREHOLDER CLAIMS**

9. By Fresh as Amended Statement of Claim dated April 26, 2012 (the "Statement of Claim"), 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 have asserted various claims against SFC, certain of its current and former officers and directors, Ernst & Young LLP ("E&Y"), BDO Limited ("BDO"), and SFC's underwriters (collectively, the "Underwriters");
10. The Statement of Claim purports to advance claims on behalf of: (i) all persons "who purchased [SFC's] Securities in the secondary market from March 19, 2007 to and including June 2, 2011"; and (ii) all persons who purchased SFC shares and notes in

- 5 -

various offerings from 2009 to 2010. The term "Securities" used in the Statement of Claim refers to SFC shares and SFC notes;

11. The Statement of Claim seeks damages in the amount of approximately \$9.2 billion against SFC and the other defendants;
12. The Statement of Claim states on several occasions that the damages suffered relate to purchasing Securities "at inflated prices during the Class Period" and that absent the alleged misconduct, sales of such Securities "would have occurred at prices that reflected the true value" of the Securities. It is further alleged that "the price of Sino's securities was directly affected during the Class Period by the issuance of the Impugned Documents";
13. Similar Shareholder class actions have also been commenced in other jurisdictions in Canada and the United States, asserting the same or substantially similar allegations with respect to SFC shares;
14. As such, the Shareholder Claims in these actions are "equity claims" as defined in the CCAA, being claims asserting a monetary loss from the ownership, purchase or sale of an equity interest in a debtor, SFC;

#### **RELATED INDEMNITY CLAIMS**

15. In connection with the Statement of Claim, E&Y has asserted that it has contractual claims of indemnification against SFC in respect of the claims against it for all relevant years in respect of its annual audits, the prospectuses and the note offerings. It has stated

- 6 -

that it has "statutory and common law claims of contribution and/or indemnity against Sino-Forest and its subsidiaries for all relevant years";

16. In connection with the Statement of Claim, BDO has asserted that it has claims of indemnification against SFC, including contractual rights of indemnity in respect of the claims against it in the Statement of Claim in each of the engagement letters signed in relation to BDO's audit reports;
17. In connection with the Statement of Claim, the Underwriters have asserted that certain agreements with SFC and certain of its subsidiaries contain indemnity provisions in connection with "an array of matters that could arise from the Offerings" and that these provisions are applicable to support claims for indemnification in respect of the claims against the Underwriters in the Statement of Claim;
18. The foregoing are only examples of the indemnification claims which have been advanced to date by certain parties;
19. As the Related Indemnity Claims are claims for contribution or indemnity in respect of the Shareholder Claims, the Related Indemnification Claims are "equity claims" under section 2 of the CCAA;

#### **MISCELLANEOUS**

20. It is just and convenient and in the interests of all creditors and interested parties, and this restructuring proceeding overall, that the order sought herein be granted;

- 7 -

21. The making of the order sought will assist the Company to proceed with its restructuring in an efficient and effective manner;
22. The making of the order sought will assist in the efficient administration of the CCAA proceedings and with matters related to the CCAA plan;
23. The ad hoc committee of noteholders support the motion;
24. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court; and
25. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the affidavit of Elizabeth Fimio sworn June 8, 2012;
2. the Motion Records and Factums filed by E&Y, BDO and the Underwriters in connection with the May 8, 2012 scope of stay motion in this proceeding; and
3. such further or other material as counsel may advise and this Honourable Court deems just.

- 8 -

June 8, 2012

BENNETT JONES LLP  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Robert W. Staley (LSUC #27115J)  
Kevin Zych (LSUC #33129T)  
Derek J. Bell (LSUC #43420J)  
Raj Sahni (LSUC #42942U)  
Jonathan Bell (LSUC #55457P)  
Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant

TO: THE SERVICE LIST

IN THE MATTER OF THE COMPANIES CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND  
IN THE MATTER OF SINO-FOREST CORPORATION.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**NOTICE OF MOTION**  
(Motion Re the Status of Shareholder  
Claims and Related Indemnity Claims  
under the CCAA)

BENNETT JONES LLP  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario M5X 1A4  
Robert W. Staley (LSUC #27115J)  
Kevin Zych (LSUC #33129T)  
Derek J. Bell (LSUC #43420J)  
Raj Sahni (LSUC #42942U)  
Jonathan Bell (LSUC #55457F)  
Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant

Tab 5

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



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

FRIDAY, THE 30<sup>th</sup>  
DAY OF MARCH, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SINO-FOREST CORPORATION

INITIAL ORDER

THIS APPLICATION, made by Sino-Forest Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of W. Judson Martin sworn March 30, 2012 and the Exhibits thereto (the "Martin Affidavit") and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI") (the "Monitor's Pre-Filing Report"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein, and on hearing the submissions of counsel for the Applicant, the Applicant's directors, FTI, the *ad hoc* committee of holders of notes issued by the Applicant (the "Ad Hoc Noteholders"), and no one else appearing for any other party, and on reading the consent of FTI to act as the Monitor,



**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record and the Monitor's Pre-Filing Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

4. THIS COURT ORDERS that the Applicant shall be entitled to seek any ancillary or other relief from this Court in respect of any of its subsidiaries in connection with the Plan or otherwise in respect of these proceedings.

**POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses, whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) the fees and disbursements of the directors and counsel to the directors, at their standard rates and charges; and
- (d) such other amounts as are set out in the March 29 Forecast (as defined in the Monitor's Pre-Filing Report and attached as Exhibit "DD" to the Martin Affidavit).

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Support Agreement (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding US\$500,000 in any one transaction or US\$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the

disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### RESTRUCTURING SUPPORT AGREEMENT

14. THIS COURT ORDERS that the Applicant and the Monitor are authorized and directed to engage in the following procedures to notify noteholders of the restructuring support agreement dated as of March 30, 2012 (the "Support Agreement") between, among others, the Applicant and certain noteholders (the "Initial Consenting Noteholders"), appended as Exhibit "B" to the Martin Affidavit, to enable any additional noteholders to execute a Joinder Agreement in the form attached as Schedule "C" to the Support Agreement and to become bound thereby as Consenting Noteholders (as defined in the Support Agreement):

- (a) the Monitor shall without delay post a copy of the Support Agreement on its website at <http://ofcanada.filoconsulting.com/sfo> (the "Monitor's Website"); and
- (b) the notice to be published by the Monitor pursuant to paragraph 51 of this Order shall include a statement in form and substance acceptable to the Applicant, the Monitor and counsel to the Ad Hoc Noteholders, each acting reasonably, notifying noteholders of the Support Agreement and of the deadline of 5:00 p.m. (Toronto time) on May 15, 2012 (the "Consent Date") by which any noteholder (other than an Initial Consenting Noteholder) who wishes to become entitled to the Early Consent Consideration pursuant to the Support Agreement (if such Early Consent Consideration becomes payable pursuant to the terms thereof) must execute and return the Joinder Agreement to the Applicant, and shall direct noteholders to the Monitor's Website where a copy of the Support Agreement (including the Joinder Agreement) can be obtained.

15. THIS COURT ORDERS that any noteholder (other than an Initial Consenting Noteholder) who wishes to become a Consenting Noteholder and become entitled to the Early Consent Consideration (if such Early Consent Consideration becomes payable pursuant to the terms thereof, and subject to such noteholder demonstrating its holdings to the Monitor in accordance with the Support Agreement) must execute a Joinder Agreement and return it to the Applicant and the Noteholder Advisors (as defined below) in accordance with the instructions set out in the Support Agreement such that it is received by the Applicant and the Noteholder Advisors prior to the Consent Deadline and, upon so doing, such noteholder shall become a Consenting Noteholder and shall be bound by the terms of the Support Agreement.

16. THIS COURT ORDERS that as soon as practicable after the Consent Deadline, the Applicant shall provide to the Monitor copies of all executed Joinder Agreements received from noteholders prior to the Consent Deadline.

#### NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

17. THIS COURT ORDERS that until and including April 29, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

18. THIS COURT ORDERS that until and including the Stay Period, no Proceeding shall be commenced or continued by any noteholder, indenture trustee or security trustee (each in respect of the notes issued by the Applicant, collectively, the "Noteholders") against or in respect of any of the Applicant's subsidiaries listed on Schedule "A" (each a "Subsidiary Guarantor", and collectively, the "Subsidiary Guarantors"), except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way by a Noteholder against or in respect of any Subsidiary Guarantors are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) prevent the exercise of any termination rights of the Consenting Noteholders under the Support Agreement.

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of the Noteholders against or in respect of the Subsidiary Guarantors are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any Subsidiary Guarantor to carry on any business which such Subsidiary Guarantor is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreement or arrangements, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such



obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the affected creditors of the Applicant or this Court.

#### DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

25. THIS COURT ORDERS that the Applicant shall (i) indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, and (ii) make payments of amounts for which its directors and officers may be liable as obligations they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

26. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property (other than the Applicant's assets which are subject to the Personal Property Security Act registrations on Schedule "B" hereto (the "Excluded Property")), which charge shall not exceed an aggregate amount of \$3,200,000, as security for the indemnity provided in paragraph 25 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 25 of this Order.

#### APPOINTMENT OF MONITOR

28. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor

in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements, as required from time to time;
- (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan, as applicable;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) carry out and fulfill its obligations under the Support Agreement in accordance with its terms; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

30. THIS COURT ORDERS that without limiting paragraph 29 above, in carrying out its rights and obligations in connection with this Order, the Monitor shall be entitled to take such reasonable steps and use such services as it deems necessary in discharging its powers and obligations, including, without limitation, utilizing the services of FTI Consulting (Hong Kong) Limited ("FTI HK").

31. THIS COURT ORDERS that the Monitor shall not take possession of the Property (or any property or assets of the Applicant's subsidiaries) and shall take no part whatsoever in the management or supervision of the management of the Business (or any business of the Applicant's subsidiaries) and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof (or of any business, property or assets, or any part thereof, of any subsidiary of the Applicant).

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property (or any property of any subsidiary of the Applicant) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property (or of any property of any subsidiary of the Applicant) within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any

responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, counsel to the directors, Houlihan Lokey Capital Inc. (the "Financial Advisor"), FTI HK, counsel to the Ad Hoc Noteholders and the financial advisor to the Ad Hoc Noteholders (together with counsel to the Ad Hoc Noteholders, the "Noteholder Advisors") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant, whether incurred prior to or subsequent to the date of this Order, as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors on a weekly basis or otherwise in accordance with the terms of their engagement letters.

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, counsel to the directors, the Financial Advisor, FTI HK, and the Noteholder Advisors shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property (other than the Excluded Property), which charge shall not exceed an aggregate amount of \$15,000,000 as security for their professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$15,000,000); and

Second – Directors' Charge (to the maximum amount of \$3,200,000).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property (other than the Excluded Property) and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Directors' Charge and the beneficiaries of the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees"), shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or

other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### APPROVAL OF FINANCIAL ADVISOR AGREEMENT

44. THIS COURT ORDERS that the letter agreement dated as of December 22, 2012 with respect to the Financial Advisor in the form attached as Exhibit "CC" to the Martin Affidavit (the "Financial Advisor Agreement") and the retention of the Financial Advisor under the terms thereof, including the payments to be made to the Financial Advisor thereunder, are hereby approved.

45. THIS COURT ORDERS that the Applicant is authorized and directed to make the payments contemplated in the Financial Advisor Agreement in accordance with the terms and conditions thereof.

**POSTPONEMENT OF ANNUAL GENERAL MEETING**

46. THIS COURT ORDERS that the Applicant be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

**FOREIGN PROCEEDINGS**

47. THIS COURT ORDERS that the Monitor is hereby authorized and empowered to act as the foreign representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

48. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the Applicant and of the within proceedings, to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.

**SERVICE AND NOTICE**

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within seven days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website.

**GENERAL**

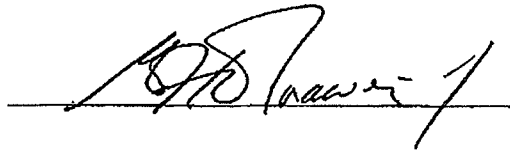
54. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.



56. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in black ink, appearing to read "J. A. Power", is written over a horizontal line.

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

APR 2 - 2012

Handwritten initials, possibly "NM", in black ink.

## Schedule "A"

1. Sino-Panel Holdings Limited (BVI)
2. Sino-Global Holdings Inc. (BVI)
3. Sino-Wood Partners, Limited (HK)
4. Grandeur Winway Limited (BVI)
5. Sinowin Investments Limited (BVI)
6. Sinowood Limited (Cayman Islands)
7. Sino-Forest Bio-Science Limited (BVI)
8. Sino-Forest Resources Inc. (BVI)
9. Sino-Plantation Limited (HK)
10. Suri-Wood Inc. (BVI)
11. Sino-Forest Investments Limited (BVI)
12. Sino-Wood (Guangxi) Limited (HK)
13. Sino-Wood (Jiangxi) Limited (HK)
14. Sino-Wood (Guangdong) Limited (HK)
15. Sino-Wood (Fujian) Limited (HK)
16. Sino-Panel (Asia) Inc. (BVI)
17. Sino-Panel (Guangxi) Limited (BVI)
18. Sino-Panel (Yunnan) Limited (BVI)
19. Sino-Panel (North East China) Limited (BVI)
20. Sino-Panel [Xiangxi] Limited (BVI)
21. Sino-Panel [Hunan] Limited (BVI)
22. SFR (China) Inc. (BVI)
23. Sino-Panel [Suzhou] Limited (BVI)
24. Sino-Panel (Gaoyao) Ltd. (BVI)
25. Sino-Panel (Guangzhou) Limited (BVI)
26. Sino-Panel (North Sea) Limited (BVI)
27. Sino-Panel (Guizhou) Limited (BVI)
28. Sino-Panel (Huaihua) Limited (BVI)
29. Sino-Panel (Qinzhou) Limited (BVI)
30. Sino-Panel (Yongzhou) Limited (BVI)
31. Sino-Panel (Fujian) Limited (BVI)
32. Sino-Panel (Shaoyang) Limited (BVI)
33. Amplemax Worldwide Limited (BVI)
34. Ace Supreme International Limited (BVI)
35. Express Point Holdings Limited (BVI)
36. Glory Billion International Limited (BVI)
37. Smart Sure Enterprises Limited (BVI)
38. Expert Bonus Investment Limited (BVI)
39. Dynamic Profit Holdings Limited (BVI)
40. Alliance Max Limited (BVI)
41. Brain Force Limited (BVI)
42. General Excel Limited (BVI)
43. Poly Market Limited (BVI)
44. Prime Kinetic Limited (BVI)
45. Trillion Edge Limited (BVI)
46. Sino-Panel (China) Nursery Limited (BVI)

47. Sino-Wood Trading Limited (BVI)
48. Homix Limited (BVI)
49. Sino-Panel Trading Limited (BVI)
50. Sino-Panel (Russia) Limited (BVI)
51. Sino-Global Management Consulting Inc. (BVI)
52. Value quest International Limited (BVI)
53. Well Keen Worldwide Limited (BVI)
54. Harvest Wonder Worldwide Limited (BVI)
55. Cheer Gold Worldwide Limited (BVI)
56. Regal Win Capital Limited (BVI)
57. Rich Choice Worldwide Limited (BVI)
58. Sino-Forest International (Barbados) Corporation
59. Mandra Forestry Holdings Limited (BVI)
60. Mandra Forestry Finance Limited (BVI)
61. Mandra Forestry Anhui Limited (BVI)
62. Mandra Forestry Hubel Limited (BVI)
63. Sino-Capital Global Inc. (BVI)
64. Elite Legacy Limited (BVI)

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 3/29/2012  
File Currency Date: 03/28/2012  
Family(ies): 6  
Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

The attached report has been created based on the data received by Cyberbahn, a Thomson Reuters business from the Province of Ontario, Ministry of Government Services. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 3/29/2012  
File Currency Date: 03/28/2012  
Family(ies): 6  
Page(s): 8

SEARCH : Business Debtor : SINO-FOREST CORPORATION

FAMILY : 1 OF 6 ENQUIRY PAGE : 1 OF 8  
SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 609324408 EXPIRY DATE : 27SEP 2015 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20040927 1631 1793 0430 REG TYP: P PPSA REG PERIOD: 10  
02 IND DOB : IND NAME:  
03 BUS NAME: SINO-FOREST CORPORATION

04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208 OCN :  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
05 IND DOB : IND NAME:  
06 BUS NAME: OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
LAW DEBENTURE TRUST COMPANY OF NEW YORK  
09 ADDRESS : 767 THIRD AVENUE, 31ST FLOOR  
CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X  
11 YEAR MAKE MODEL V.I.N.

12  
GENERAL COLLATERAL DESCRIPTION  
13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR PURSUANT TO  
14 A PLEDGE AGREEMENT AND SHARE CHARGE.  
15  
16 AGENT: AIRD & BERLIS LLP #2  
17 ADDRESS : 181 BAY STREET, SUITE 1800  
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 1 OF 6 ENQUIRY PAGE : 2 OF 8  
 SEARCH : BD : SINO-FOREST CORPORATION

FILE NUMBER 609324408  
 PAGE TOT REGISTRATION NUM REG TYPE  
 01 CAUTION : 001 OF 1 MV SCHED: 20090720 1614 1793 6085  
 21 REFERENCE FILE NUMBER : 609324408  
 22 AMEND PAGE: NO PAGE: CHANGE: A AMNDMNT REN YEARS: CORR PER:  
 23 REFERENCE DEBTOR/ IND NAME:  
 24 TRANSFEROR: BUS NAME: SINO-FOREST CORPORATION

25 OTHER CHANGE:  
 26 REASON: TO AMEND SECURED PARTY ADDRESS AND TO AMEND GENERAL COLLATERAL  
 27 /DESCR: DESCRIPTION TO DELETE THE WORDS "PURSUANT TO A PLEDGE AGREEMENT AND  
 28 : SHARE CHARGE"  
 02/05 IND/TRANSFEREE:  
 03/06 BUS NAME/TRFEE:

OCN:  
 04/07 ADDRESS:  
 CITY: PROV: POSTAL CODE:  
 29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :  
 LAW DEBENTURE TRUST COMPANY OF NEW YORK  
 09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
 CITY : NEW YORK PROV : NY POSTAL CODE : 10017  
 CONS. MV DATE OF NO FIXED  
 GOODS INVTY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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 12  
 13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR  
 14  
 15  
 16 NAME : AIRD & BERLIS LLP  
 17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754  
 CITY : TORONTO PROV : ON POSTAL CODE : M5J2T9

FAMILY : 1 OF 6  
SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 3 OF 8

FILE NUMBER 609324408

	PAGE	TOT	REGISTRATION NUM	REG TYPE
01 CAUTION :	001 OF 1	MV SCHED:	20090720 1616 1793 6087	
21 REFERENCE FILE NUMBER :	609324408			
22 AMEND PAGE:	NO PAGE:	CHANGE: B	RENEWAL REN YEARS: 1	CORR PER:
23 REFERENCE DEBTOR/	IND NAME:			
24 TRANSFEROR:	BUS NAME: SINO-FOREST CORPORATION			

25 OTHER CHANGE:  
 26 REASON:  
 27 /DESCR:  
 28 :  
 02/05 IND/TRANSFEREE:  
 03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:  
 CITY: PROV: POSTAL CODE;  
 29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :  
 CITY : PROV : POSTAL CODE ;  
 CONS. MV DATE OF NO FIXED  
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : AIRD & BERLIS LLP  
 17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754  
 CITY : TORONTO PROV : ON POSTAL CODE : M5J2T9

FAMILY : 2 OF 6 ENQUIRY PAGE : 4 OF 8  
 SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 650314305 EXPIRY DATE : 03DEC 2013 STATUS :  
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 02 IND DOB : IND NAME:  
 03 BUS NAME: SINO-FOREST CORPORATION

OCN :  
 04 ADDRESS : 1208-90 BURNHAMTHORPE RD W  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 XEROX CANADA LTD

09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
 CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 YEAR MAKE X MODEL V.I.N. X

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 GENERAL COLLATERAL DESCRIPTION  
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 16 AGENT: XEROX CANADA LTD  
 17 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
 CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1



FAMILY : 3 OF 6 ENQUIRY PAGE : 5 OF 8  
 SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 655022304 EXPIRY DATE : 20JUL 2015 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20090720 1615 1793 6086 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: SINO-FOREST CORPORATION

OCN :  
 04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 LAW DEBENTURE TRUST COMPANY OF NEW YORK

09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
 CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 YEAR MAKE X X MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR

14  
 15

16 AGENT: AIRD & BERLIS LLP - SUSAN PAK

17 ADDRESS : 181 BAY STREET, SUITE 1800  
 CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 4 OF 6 ENQUIRY PAGE : 6 OF 8  
 SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 659079036 EXPIRY DATE : 03FEB 2016 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20100203 1535 1793 2023 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: SINO-FOREST CORPORATION

OCN :  
 04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 LAW DEBENTURE TRUST COMPANY OF NEW YORK

09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
 CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR

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16 AGENT: AIRD & BERLIS LLP (SPAK - 102288)

17 ADDRESS : 181 BAY STREET, SUITE 1800  
 CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 5 OF 6 ENQUIRY PAGE : 7 OF 8  
 SEARCH : BD : SINO-FOREST CORPORATION

00 FILE NUMBER : 665186985 EXPIRY DATE : 15OCT 2020 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20101015 1215 1793 1245 REG TYP: P PPSA REG PERIOD: 10  
 02 IND DOB : IND NAME:  
 03 BUS NAME: SINO-FOREST CORPORATION

OCN :  
 04 ADDRESS : 90 BURNHAMTHORPE ROAD WEST, SUITE 1208  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 LAW DEBENTURE TRUST COMPANY OF NEW YORK  
 09 ADDRESS : 400 MADISON AVENUE, 4TH FLOOR  
 CITY : NEW YORK PROV: NY POSTAL CODE: 10017  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 YEAR MAKE X X MODEL V.I.N.

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 GENERAL COLLATERAL DESCRIPTION  
 13 PLEDGE OF SHARES OF CERTAIN SUBSIDIARIES OF THE DEBTOR.  
 14  
 15  
 16 AGENT: AIRD & BERLIS LLP (RMK-106760)  
 17 ADDRESS : 181 BAY STREET, SUITE 1800  
 CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

FAMILY : 6 OF 6  
 SEARCH : BD : SINO-FOREST CORPORATION

ENQUIRY PAGE : 8 OF 8

00 FILE NUMBER : 665928963 EXPIRY DATE : 17NOV 2016 STATUS :  
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :  
 REG NUM : 20101117 1007 1462 0113 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: SINO-FOREST CORPORATION

04 ADDRESS : 1208-90 BURNHAMTHORPE RD W OCN :  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B3C3  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

07 ADDRESS : OCN :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 XEROX CANADA LTD

09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR  
 CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1  
 CONS, MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 YEAR MAKE X MODEL V.I.N. X

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 13 GENERAL COLLATERAL DESCRIPTION

14  
 15

16 AGENT: PPSA CANADA INC. - (3992)

17 ADDRESS : 110 SHEPPARD AVE EAST, SUITE 303  
 CITY : TORONTO PROV: ON POSTAL CODE: M2N6Y8

Schedule "A"

IN THE MATTER OF THE COMPANIES CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE  
MATTER OF SINO-FOREST CORPORATION

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced in Toronto

INITIAL ORDER

BENNETT JONES LLP  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Robert W. Staley (LSUC #27115J)  
Kevin Zych (LSUC #33129T)  
Derek J. Bell (LSUC #43420J)  
Jonathan Bell (LSUC #55457P)  
Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant

Tab 6

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



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE MR.  
 JUSTICE MORAWETZ

)  
 )  
 )

MONDAY, THE 14th  
 DAY OF MAY, 2012

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND  
 ARRANGEMENT OF SINO-FOREST CORPORATION

**CLAIMS PROCEDURE ORDER**

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order establishing a claims procedure for the identification and determination of certain claims was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion, the affidavit of W. Judson Martin sworn on May 2, 2012, the Second Report of FTI Consulting Canada Inc. (the "Monitor") dated April 30, 2012 (the "Monitor's Second Report") and the Supplemental Report to the Monitor's Second Report dated May 12, 2012 (the "Supplemental Report"), and on hearing the submissions of counsel for the Applicant, the Applicant's directors, the Monitor, the *ad hoc* committee of Noteholders (the "Ad Hoc Noteholders"), and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Monitor's Second Report and the Supplemental Report is hereby abridged and

-2-

validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS AND INTERPRETATION

2. The following terms shall have the following meanings ascribed thereto:
- (a) "2013 and 2016 Trustee" means The Bank of New York Mellon, in its capacity as trustee for the 2013 Notes and the 2016 Notes;
  - (b) "2014 and 2017 Trustee" means Law Debenture Trust Company of New York, in its capacity as trustee for the 2014 Notes and the 2017 Notes;
  - (c) "2013 Note Indenture" means the indenture dated as of July 23, 2008, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;
  - (d) "2014 Note Indenture" means the indenture dated as of July 27, 2009 entered into by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;
  - (e) "2016 Note Indenture" means the indenture dated as of December 17, 2009, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;
  - (f) "2017 Note Indenture" means the indenture dated as of October 21, 2010, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;
  - (g) "2013 Notes" means the US\$345,000,000 of 5.00% Convertible Senior Notes Due 2013 issued pursuant to the 2013 Note Indenture;



-3-

- (h) "2014 Notes" means the US\$399,517,000 of 10.25% Guaranteed Senior Notes Due 2014 issued pursuant to the 2014 Note Indenture;
- (i) "2016 Notes" means the US\$460,000,000 of 4.25% Convertible Senior Notes Due 2016 issued pursuant to the 2016 Note Indenture;
- (j) "2017 Notes" means the US\$600,000,000 of 6.25% Guaranteed Senior Notes Due 2017 issued pursuant to the 2017 Note Indenture;
- (k) "Administration Charge" has the meaning given to that term in paragraph 37 of the Initial Order;
- (l) "BIA" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended;
- (m) "Business Day" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (n) "CCAA" means the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;
- (o) "CCAA Proceedings" means the proceedings commenced by the Applicant in the Court under Court File No. CV-12-9667-00CL;
- (p) "CCAA Service List" means the service list in the CCAA Proceedings posted on the Monitor's Website, as amended from time to time;
- (q) "Claim" means:
  - (i) any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement

-4-

(oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors and Officers) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, or an Equity Claim (each a "Prefiling Claim", and collectively, the "Prefiling Claims");

(ii) a Restructuring Claim; and

(iii) a Secured Claim;

provided, however, that "Claim" shall not include an Excluded Claim, a D&O Claim or a D&O Indemnity Claim;

(r) "Claimant" means any Person having a Claim, a D&O Claim or a D&O Indemnity Claim and includes the transferee or assignee of a Claim, a D&O Claim or a D&O Indemnity Claim transferred and recognized as a Claimant in accordance with paragraphs 46 and 47 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

-5-

- (s) "Claimants' Guide to Completing the D&O Proof of Claim" means the guide to completing the D&O Proof of Claim form, in substantially the form attached as Schedule "E-2" hereto;
- (t) "Claimants' Guide to Completing the Proof of Claim" means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule "E" hereto;
- (u) "Claims Bar Date" means June 20, 2012;
- (v) "Class" means the National Class and the Quebec Class;
- (w) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (x) "Creditors' Meeting" means any meeting of creditors called for the purpose of considering and voting in respect of the Plan, if one is filed, to be scheduled pursuant to further order of the Court;
- (y) "D&O Claim" means, other than an Excluded Claim, (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

-6-

disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, or (B) relates to a time period prior to the Filing Date;

- (z) "D&O Indemnity Claim" means any existing or future right of any Director or Officer against the Applicant which arose or arises as a result of any Person filing a D&O Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant;
- (aa) "D&O Indemnity Claims Bar Date" has the meaning set forth in paragraph 19 of this Order;
- (bb) "D&O Indemnity Proof of Claim" means the indemnity proof of claim in substantially the form attached as Schedule "F" hereto to be completed and filed by a Director or Officer setting forth its purported D&O Indemnity Claim;
- (cc) "D&O Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D-2" hereto to be completed and filed by a Person setting forth its purported D&O Claim and which shall include all supporting documentation in respect of such purported D&O Claim;
- (dd) "Directors" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of the Applicant;
- (ee) "Directors' Charge" has the meaning given to that term in paragraph 26 of the Initial Order;

-7-

- (ff) "Dispute Notice" means a written notice to the Monitor, in substantially the form attached as Schedule "B" hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance;
- (gg) "Employee Amounts" means all outstanding wages, salaries and employee benefits (including, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), vacation pay, commissions, bonuses and other incentive payments, termination and severance payments, and employee expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (hh) "Equity Claim" has the meaning set forth in Section 2(1) of the CCAA;
- (ii) "Excluded Claim" means:
  - (i) any Claims entitled to the benefit of the Administration Charge or the Directors' Charge, or any further charge as may be ordered by the Court;
  - (ii) any Claims of the Subsidiaries against the Applicant;
  - (iii) any Claims of employees of the Applicant as at the Filing Date in respect of Employee Amounts;
  - (iv) any Post-Filing Claims;
  - (v) any Claims of the Ontario Securities Commission; and
  - (vi) any D&O Claims in respect of (i) through (v) above;
- (jj) "Filing Date" means March 30, 2012;

-8-

- (kk) "Government Authority" means a federal, provincial, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over the Applicant;
- (ll) "Initial Order" means the Initial order of the Honourable Mr. Justice Morawetz made March 30, 2012 in the CCAA Proceedings, as amended, restated or varied from time to time;
- (mm) "Known Claimants" means:
- (i) any Persons which, based upon the books and records of the Applicant, was owed monies by the Applicant as of the Filing Date and which monies remain unpaid in whole or in part;
  - (ii) any Person who has commenced a legal proceeding in respect of a Claim or D&O Claim or given the Applicant written notice of an intention to commence a legal proceeding or a demand for payment in respect of a Claim or D&O Claim, provided that where a lawyer of record has been listed in connection with any such proceedings, the "Known Claimant" for the purposes of any notice required herein or to be given hereunder shall be, in addition to that Person, its lawyer of record; and
  - (iii) any Person who is a party to a lease, contract, or other agreement or obligation of the Applicant which was restructured, terminated, repudiated or disclaimed by the Applicant between the Filing Date and the date of this Order;
- (nn) "Monitor's Website" has the meaning set forth in paragraph 12(a) of this Order;
- (oo) "National Class" has the meaning given to it in the Fresh As Amended Statement of Claim in the Ontario Class Action;
- (pp) "Note Indenture Trustees" means, collectively, the 2013 and 2016 Trustee and the 2014 and 2017 Trustee;

-9-

- (qq) "Notes" means, collectively, the 2013 Notes, the 2014 Notes, the 2016 Notes, and the 2017 Notes;
- (rr) "Noteholder" means a registered or beneficial holder on or after the Filing Date of a Note in that capacity, and, for greater certainty, does not include former registered or beneficial holders of Notes;
- (ss) "Notice of Revision or Disallowance" means a notice, in substantially the form attached as Schedule "A" hereto, advising a Person that the Monitor has revised or disallowed all or part of such Person's purported Claim, D&O Claim or D&O Indemnity Claim set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim;
- (tt) "Notice to Claimants" means the notice to Claimants for publication in substantially the form attached as Schedule "C" hereto;
- (uu) "Officers" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant;
- (vv) "Ontario Class Action" means the action commenced against the Applicant and others in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP;
- (ww) "Ontario Plaintiffs" means the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the other named Plaintiffs in the Ontario Class Action;
- (xx) "Person" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

-10-

- (yy) "Plan" means any proposed plan of compromise or arrangement filed in respect of the Applicant pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with its terms;
- (zz) "Post-Filing Claims" means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business, but specifically excluding any Restructuring Claim;
- (aaa) "Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D" hereto to be completed and filed by a Person setting forth its purported Claim and which shall include all supporting documentation in respect of such purported Claim;
- (bbb) "Proof of Claim Document Package" means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the D&O Proof of Claim form, the Claimants' Guide to Completing the Proof of Claim form, the Claimants' Guide to Completing the D&O Proof of Claim form, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable;
- (ccc) "Proven Claim" means the amount and Status of a Claim, D&O Claim or D&O Indemnity Claim of a Claimant as determined in accordance with this Order;
- (ddd) "Quebec Class" has the meaning given to it in the statement of claim in the Quebec Class Action;
- (eee) "Quebec Class Action" means the action commenced against the Applicant and others in the Quebec Superior Court, bearing Court File No. 200-06-000132-111 ;
- (fff) "Quebec Plaintiffs" means Guining Liu and the other named plaintiffs in the Quebec Class Action;
- (ggg) "Restructuring Claim" means any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted



-11-

or made, in connection with any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation on or after the Filing Date and whether such restructuring, termination, repudiation or disclaimer took place or takes place before or after the date of this Order;

- (hhh) "Restructuring Claims Bar Date" means, in respect of a Restructuring Claim, the later of (i) the Claims Bar Date, and (ii) 30 days after a Person is deemed to receive a Proof of Claim Document Package pursuant to paragraph 12(e) hereof.
- (iii) "Secured Claim" means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicant (including statutory and possessor liens that create security interests) up to the value of such collateral, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date;
- (jjj) "Status" means, with respect to a Claim, D&O Claim or D&O Indemnity Claim, or a purported Claim, D&O Claim or D&O Indemnity Claim, whether such claim is secured or unsecured; and
- (kkk) "Subsidiaries" means all direct and indirect subsidiaries of the Applicant other than Greenheart Group Limited (Bermuda) and its direct and indirect subsidiaries, and "Subsidiary" means any one of the Subsidiaries.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation".

5. THIS COURT ORDERS that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

**GENERAL PROVISIONS**

6. THIS COURT ORDERS that the Monitor, in consultation with the Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim, a D&O Claim or a D&O Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of such forms and to request any further documentation from a Person that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Claim, a D&O Claim or a D&O Indemnity Claim.

7. THIS COURT ORDERS that if any purported Claim, D&O Claim or D&O Indemnity Claim arose in a currency other than Canadian dollars, then the Person making the purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim in such currency, rather than in Canadian dollars or any other currency. The Monitor shall subsequently calculate the amount of such purported Claim, D&O Claim or D&O Indemnity Claim in Canadian Dollars, using the Reuters closing rate on the Filing Date (as found at <http://www.reuters.com/finance/currencies>), without prejudice to a different exchange rate being proposed in any Plan.

8. THIS COURT ORDERS that a Person making a purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim without including any interest and penalties that would otherwise accrue after the Filing Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice of Revision or Disallowance, Dispute Notice, Notice to Claimants, the Proof of Claim, the D&O Proof of Claim, the Claimants' Guide to Completing the Proof of Claim, the Claimants' Guide to Completing the D&O Proof of Claim, and D&O Indemnity Proof of Claim substantially in the forms attached as Schedules "A", "B", "C", "D", "D-2", "E", "E-2" and "F" respectively to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the

-13-

Applicant, may from time to time make minor non-substantive changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or advisable.

#### **MONITOR'S ROLE**

10. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

#### **NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS**

12. THIS COURT ORDERS that:

- (a) the Monitor shall no later than five (5) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on its website at <http://cfcanada.fticonsulting.com/sfc> ("Monitor's Website");
- (b) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to the Note Indenture Trustees (or to counsel for the Note Indenture Trustees as appears on the CCAA Service List if applicable) a copy of the Proof of Claim Document Package;
- (c) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to each of the Known Claimants a copy of the Proof of Claim Document Package, provided however that the

-14-

Monitor is not required to send Proof of Claim Document Packages to Noteholders;

- (d) the Monitor shall no later than five (5) Business Days following the making of this Order, cause the Notice to Claimants to be published in (i) The Globe and Mail newspaper (National Edition) on one such day, and (ii) the Wall Street Journal (Global Edition) on one such day;
- (e) with respect to Restructuring Claims arising from the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation, the Monitor shall send to the counterparty(ies) to such lease, contract, or other agreement or obligation a Proof of Claim Document Package no later than five (5) Business Days following the time the Monitor becomes aware of the restructuring, termination, repudiation or disclaimer of any such lease, contract, or other agreement or obligation;
- (f) the Monitor shall, provided such request is received by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor a copy of the Proof of Claim Document Package to any Person requesting such material; and
- (g) the Monitor shall send to any Director or Officer named in a D&O Proof of Claim received by the Claims Bar Date a copy of such D&O Proof of Claim as soon as practicable along with an D&O Indemnity Proof of Claim form, with a copy to counsel for such Directors or Officers.

13. THIS COURT ORDERS that the Applicant shall (i) inform the Monitor of all Known Claimants by providing the Monitor with a list of all Known Claimants and their last known addresses according to the books and records of the Applicant and (ii) provide the Monitor with a list of all Directors and Officers and their last known addresses according to the books and records of the Applicant.

14. THIS COURT ORDERS that, except as otherwise set out in this Order or other orders of the Court, neither the Monitor nor the Applicant is under any obligation to send notice to any

-15-

Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and without limitation, neither the Monitor nor the Applicant shall have any obligation to send notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons (including Known Claimants) shall be bound by any notices published pursuant to paragraphs 12(a) and 12(d) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

15. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Applicant or the Monitor of any liability of the Applicant or any Director or Officer to any Person.

#### CLAIMS BAR DATES

##### *Claims and D&O Claims*

16. THIS COURT ORDERS that (i) Proofs of Claim (but not in respect of any Restructuring Claims) and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date, and (ii) Proofs of Claim in respect of Restructuring Claims shall be filed with the Monitor on or before the Restructuring Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim was commenced prior to the Filing Date.

17. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant; (c) shall not be entitled to vote such Claim at the Creditors' Meeting in respect of the

-16-

Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such Claim.

18. THIS COURT ORDERS that any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Directors or Officers, and all such D&O Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Directors or Officers; (c) shall not be entitled to vote such D&O Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such D&O Claim.

*D&O Indemnity Claims*

19. THIS COURT ORDERS that any Director or Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of receipt of the D&O Proof of Claim by such Director or Officer pursuant to paragraph 12(g) hereof (with respect to each D&O Indemnity Claim, the "D&O Indemnity Claims Bar Date").

20. THIS COURT ORDERS that any Director or Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the D&O Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant; and (c) shall not be entitled to vote such D&O Indemnity Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Indemnity Claim.

*Excluded Claims*

21. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

**PROOFS OF CLAIM**

22. THIS COURT ORDERS that (i) each Person shall include any and all Claims it asserts against the Applicant in a single Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported Claim after the Filing Date, that Person shall file a separate Proof of Claim for each such assigned or transferred purported Claim, and (ii) each Person that has or intends to assert a right or claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a purported Claim made against the Applicant shall so indicate on such Claimant's Proof of Claim.

23. THIS COURT ORDERS that each Person shall include any and all D&O Claims it asserts against one or more Directors or Officers in a single D&O Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported D&O Claim after the Filing Date, that Person shall file a separate D&O Proof of Claim for each such assigned or transferred purported D&O Claim.

24. THIS COURT ORDERS that the 2013 and 2016 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2013 Notes and the 2016 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2013 Note Indenture and the 2016 Note Indenture.

25. THIS COURT ORDERS that the 2014 and 2017 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2014 Notes and the 2017 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2014 Note Indenture and the 2017 Note Indenture.

26. Notwithstanding any other provisions of this Order, Noteholders are not required to file individual Proofs of Claim in respect of Claims relating solely to the debt evidenced by their

-18-

Notes. The Monitor may disregard any Proofs of Claim filed by any individual Noteholder claiming the debt evidenced by the Notes, and such Proofs of Claim shall be ineffective for all purposes. The process for determining each individual Noteholder's Claim for voting and distribution purposes with respect to the Plan and the process for voting on the Plan by Noteholders will be established by further order of the Court.

27. THIS COURT ORDERS that the Ontario Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Ontario Class Action, notwithstanding that leave to make a secondary market liability claim has not been granted and that the National Class has not yet been certified, and that members of the National Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Ontario Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Ontario Class Action.

28. THIS COURT ORDERS that the Quebec Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Quebec Class Action, notwithstanding that leave to make a secondary market liability claim has not been granted and that the Quebec Class has not yet been certified, and that members of the Quebec Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Quebec Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Quebec Class Action.

#### REVIEW OF PROOFS OF CLAIM

29. THIS COURT ORDERS that any Claimant filing a Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall clearly mark as "Confidential" any documents or portions thereof that that Person believes should be treated as confidential.

30. THIS COURT ORDERS that with respect to documents or portions thereof that are marked "Confidential", the following shall apply:



-19-

- (a) any information that is otherwise publicly available shall not be treated as "Confidential" regardless of whether it is marked as such;
- (b) subject to the following, such information will be accessible to and may be reviewed only by the Monitor, the Applicant, any Director or Officer named in the applicable D&O Proof of Claim or D&O Indemnity Proof of Claim and each of their respective counsel, or as otherwise ordered by the Court ("Designated Persons") or consented to by the Claimant, acting reasonably; and
- (c) any Designated Person may provide Confidential Information to other interested stakeholders (who shall have provided non-disclosure undertakings or agreements) on not less than 3 Business Days' notice to the Claimant. If such Claimant objects to such disclosure, the Claimant and the relevant Designated Person shall attempt to settle any objection, failing which, either party may seek direction from the Court.

31. THIS COURT ORDERS that the Monitor (in consultation with the Applicant and the Directors and Officers named in the D&O Proof of Claim, as applicable), subject to the terms of this Order, shall review all Proofs of Claim and D&O Proofs of Claim filed, and at any time:

- (a) may request additional information from a purported Claimant;
- (b) may request that a purported Claimant file a revised Proof of Claim or D&O Proof of Claim, as applicable;
- (c) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, attempt to resolve and settle any issue arising in a Proof of Claim or D&O Proof of Claim or in respect of a purported Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim, then the disputed portion of such purported D&O Claim may not be resolved or settled without such Director or Officer's consent or further order of the Court;

-20-

- (d) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, accept (in whole or in part) the amount and/or Status of any Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim against such Director or Officer, then the disputed portion of such purported D&O Claim may not be accepted without such Director or Officer's consent or further order of the Court; and
- (e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported Claim or D&O Claim.

32. THIS COURT ORDERS that where a Claim or D&O Claim has been accepted by the Monitor in accordance with this Order, such Claim or D&O Claim shall constitute such Claimant's Proven Claim. The acceptance of any Claim or D&O Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person as against any Subsidiary.

33. THIS COURT ORDERS that where a purported Claim or D&O Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the purported Claimant a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

34. THIS COURT ORDERS that where a purported Claim or D&O Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or disallowed purported Claim or D&O Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

**REVIEW OF D&O INDEMNITY PROOFS OF CLAIM**

35. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all D&O Indemnity Proofs of Claim filed, and at any time:

- (a) may request additional information from a Director or Officer;
- (b) may request that a Director or Officer file a revised D&O Indemnity Proof of Claim;
- (c) may attempt to resolve and settle any issue arising in a D&O Indemnity Proof of Claim or in respect of a purported D&O Indemnity Claim;
- (d) may accept (in whole or in part) the amount and/or Status of any D&O Indemnity Claim; and
- (e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported D&O Indemnity Claim.

36. THIS COURT ORDERS that where a D&O Indemnity Claim has been accepted by the Monitor in accordance with this Order, such D&O Indemnity Claim shall constitute such Director or Officer's Proven Claim. The acceptance of any D&O Indemnity Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person as against any Subsidiary.

37. THIS COURT ORDERS that where a purported D&O Indemnity Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the Director or Officer a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

38. THIS COURT ORDERS that where a purported D&O Indemnity Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or

-22-

disallowed purported D&O Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

39. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, in respect of any Claim, D&O Claim or D&O Indemnity Claim that exceeds \$1 million, the Monitor and the Applicant shall not accept, admit, settle, resolve, value (for any purpose), revise or reject such Claim, D&O Claim or D&O Indemnity Claim ~~without the consent of the Ad Hoc Noteholders or~~ <sup>without</sup> Order of the Court.

**DISPUTE NOTICE**

40. THIS COURT ORDERS that a purported Claimant who intends to dispute a Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor as soon as reasonably possible but in any event such that such Dispute Notice shall be received by the Monitor on the day that is fourteen (14) days after such purported Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 50 of this Order. The filing of a Dispute Notice with the Monitor within the fourteen (14) day period specified in this paragraph shall constitute an application to have the amount or Status of such claim determined as set out in paragraphs 42 to 45 of this Order.

41. THIS COURT ORDERS that where a purported Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the time period provided therefor in this Order, the amount and Status of such purported Claimant's purported Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and Status, if any, shall constitute such purported Claimant's Proven Claim, and the balance of such purported Claimant's purported Claim, D&O Claim, or D&O Indemnity Claim, if any, shall be forever barred and extinguished.

**RESOLUTION OF CLAIMS, D&O CLAIMS AND D&O INDEMNITY CLAIMS**

42. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Monitor, in accordance with paragraph 31(c), shall attempt to resolve and settle the purported Claim or D&O Claim with the purported Claimant.

-23-

43. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a D&O Indemnity Claim to the Monitor, the Monitor, in accordance with paragraph 35(c), shall attempt to resolve and settle the purported D&O Indemnity Claim with the Director or Officer.

44. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor, the Applicant and the applicable Claimant, the Monitor shall seek direction from the Court, on the correct process for resolution of the dispute. Without limitation, the foregoing includes any dispute arising as to whether a Claim is or is not an "equity claim" as defined in the CCAA.

45. THIS COURT ORDERS that any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding.

#### NOTICE OF TRANSFEREES

46. THIS COURT ORDERS that neither the Monitor nor the Applicant shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor and the Applicant, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, D&O Claim or D&O Indemnity Claim. Any such transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim, and such Claim, D&O Claim or D&O Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

47. THIS COURT ORDERS that if the holder of a Claim, D&O Claim or D&O Indemnity Claim has transferred or assigned the whole of such Claim, D&O Claim or D&O Indemnity Claim to more than one Person or part of such Claim, D&O Claim or D&O Indemnity Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim, D&O

-24-

Claim or D&O Indemnity Claim and such Claim, D&O Claim or D&O Indemnity Claim shall continue to constitute and be dealt with as a single Claim, D&O Claim or D&O Indemnity Claim notwithstanding such transfer or assignment, and the Monitor and the Applicant shall in each such case not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to send notice to and to otherwise deal with such Claim, D&O Claim or D&O Indemnity Claim only as a whole and then only to and with the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim. Provided that a transfer or assignment of the Claim, D&O Claim or D&O Indemnity Claim has taken place in accordance with paragraph 46 of this Order and the Monitor has acknowledged in writing such transfer or assignment, the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, D&O Claim or D&O Indemnity Claim, but only as a whole, shall be with a specified Person and, in such event, such Claimant, transferee or assignee of the Claim, D&O Claim or D&O Indemnity Claim shall be bound by any notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim by or with respect to such Person in accordance with this Order.

48. THIS COURT ORDERS that the transferee or assignee of any Claim, D&O Claim or D&O Indemnity Claim (i) shall take the Claim, D&O Claim or D&O Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, D&O Claim or D&O Indemnity Claim, and subject to the rights of the Applicant or Director or Officer against any such transferor or assignor, including any rights of set-off which the Applicant, Director or Officers had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, D&O Claim or D&O Indemnity Claim to reduce any amount owing by the transferee or assignee to the Applicant, Director or Officer, whether by way of set off, application, merger, consolidation or otherwise.

## DIRECTIONS

49. THIS COURT ORDERS that the Monitor, the Applicant and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

## SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor and the Applicant may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, and any letters, notices or other documents to Claimants, purported Claimants, Directors or Officers, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Applicant or set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim. Any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 6:00 p.m. on a Business Day, on such Business Day, and if delivered after 6:00 p.m. or other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 50, Notices of Revision or Disallowance shall be sent only by (i) facsimile to a number that has been provided in writing by the purported Claimant, Director or Officer, or (ii) courier.

51. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, D&O Proofs of Claims, D&O Indemnity Proofs of Claim and Notices of Dispute) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery or electronic or digital transmission addressed to:

-26-

FTI Consulting Canada Inc.  
Court-appointed Monitor of Sino-Forest Corporation  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa  
Telephone: (416) 649-8094  
E-mail: [sfc@fticonsulting.com](mailto:sfc@fticonsulting.com)

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of a normal business hours, the next Business Day.

52. THIS COURT ORDERS that if during any period during which notices or other communications are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

53. THIS COURT ORDERS that in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amended claims procedure.

#### MISCELLANEOUS

54. THIS COURT ORDERS that notwithstanding any other provision of this Order, the solicitation of Proofs of Claim, D&O Proofs of Claim and D&O Indemnity Proofs of Claim and the filing by a Person of any Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall not, for that reason only, grant any Person any standing in the CCAA Proceedings or rights under the Plan.

55. THIS COURT ORDERS that the rights of the Ontario Plaintiffs and the Quebec Plaintiffs granted pursuant to paragraphs 27 and 28 of this Order are limited to filing a single Proof of



-27-

*quantification,* (17)

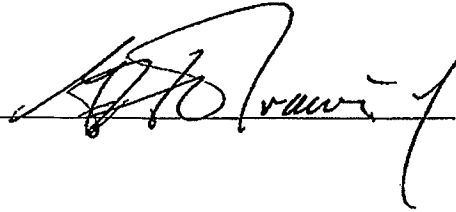
Claim and, if applicable, a single D&O Proof in respect of each of the National Class and the Quebec Class in these proceedings, and not for any other purpose. Without limiting the generality of the foregoing, the filing of any Proof of Claim or D&O Proof of Claim by the Ontario Plaintiffs or the Quebec Plaintiffs pursuant to this Order:

- (a) is not an admission or recognition of their right to represent the Class for any other purpose, including with respect to settlement or voting in these proceedings, the Ontario Class Action or the Quebec Class Action; and
- (b) is without prejudice to the right of the Ontario Plaintiffs and the Quebec Plaintiffs or their counsel to seek an order granting them rights of representation in these proceedings, the Ontario Class Action or the Quebec Class Action.

56. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, D&O Claims, D&O Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, D&O Claims, D&O Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan and the class or classes of creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further Order of the Court.

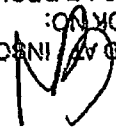
57. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other persons under any existing Director and Officers or other insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicant's insurance and any Director's and/or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors and/or Officers or other persons, whether such recourse or payment is sought directly by the Person asserting a Claim or a D&O Claim from the insurer or derivatively through the Director or Officer or Applicant; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law.

58. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



MAY 14 2012

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



**Tab 7**

SCHEDULE "D"  
PROOF OF CLAIM AGAINST  
SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant BDO Limited Name of Contact Stephen Chan  
Address 25th Floor, Wing On Centre Title Director, Head of Risk  
111 Connaught Road Central Phone # +852 2218 8288  
City Hong Kong Prov / State \_\_\_\_\_ Fax # +852 2815 2239  
Postal/Zip code \_\_\_\_\_ e-mail StephenChan@bdo.com.hk

2. Assignee, if claim has been assigned

Full Legal Name of Assignee \_\_\_\_\_ Name of Contact \_\_\_\_\_  
Address \_\_\_\_\_ Phone # \_\_\_\_\_  
City \_\_\_\_\_ Prov / State \_\_\_\_\_ Fax # \_\_\_\_\_  
Postal/Zip code \_\_\_\_\_ e-mail \_\_\_\_\_

3a. Amount of Claim

The Applicant or Director or Officer was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Prefiling Claim	Restructuring Claim	Secured Claim
\$8,204,375,000.00		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3b. Claim against Subsidiaries

If you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, check the box below, list the Subsidiaries against whom you assert your claim, and provide particulars of your claim against such Subsidiaries.

I/we have a claim against one or more Subsidiary Name(s) of Subsidiaries

Name(s) of Subsidiaries	Currency	Original Currency Amount	Amount of Claim
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim. See attached

5. Certification

I hereby certify that:

- 1. I am the Claimant, or authorized representative of the Claimant.
- 2. I have knowledge of all the circumstances connected with this Claim.
- 3. Complete documentation in support of this claim is attached.

Name Stephen Chan  
 (authorized representative of BDO Limited)  
 Title Director, Head of Risk of BDO Limited

Dated at HONG KONG  
 this 19th day of June 2012

Signature Stephen Chan



Witness Simon Cheung  
 CHEUNG SAI KWONG, SIMON  
 Solicitor, Hong Kong SAR  
 (Simon Cheung & Co.)  
 5B, Two Chiuchem Plaza,  
 135 Des Voeux Road Central,  
 Hong Kong.

6. Filing of Claim

This Proof of Claim must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012, by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.  
 Court-appointed Monitor of Sino-Forest Corporation  
 TD Waterhouse Tower  
 79 Wellington Street West  
 Suite 2010, P.O. Box 104  
 Toronto, Ontario M5K 1G8

Attention: Jodi Forepa  
 Telephone: (416) 649-8094  
 E-mail: sfc@fticonsulting.com

## Proof of Claim

### BDO Limited

1. BDO Limited ("BDO"), is a Hong Kong-based accounting firm formerly known as BDO McCabe Lo Limited that, among other things, conducts audits of the annual financial statements of publicly traded companies. BDO audited the annual financial statements for the Applicant, Sino-Forest Corporation ("Sino") for the years ended December 31, 2005 and December 31, 2006. BDO was the auditor for Sino until on or about August 12, 2007, when BDO was replaced as auditor by Ernst & Young LLP ("E&Y").

#### **The Ontario Class Action:**

2. On July 20, 2011, a Notice of Action was issued commencing a proposed class action brought by The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and others against Sino-Forest Corporation and others in Ontario Superior Court of Justice Court File No. CV-11-431153-00CP (the "Ontario Class Action"). This was followed by the delivery of the initial version of the Statement of Claim in the Ontario Class Action on August 30, 2011.

3. The Ontario Class Action seeks to certify an action on behalf of all persons who purchased Sino securities in Canada during the Class Period (which is defined as March 19, 2007 to June 2, 2011), as well as all Canadian residents who purchased Sino's securities outside of Canada.

4. The original claim in the Ontario Class Action named Sino; several current and former officers and directors of Sino; Sino's auditor from August 2007 until April 2012, E&Y; several investment dealers that acted as underwriters for a series of public offerings of securities by Sino; and P□yry (Beijing) Consulting Company Limited ("P□yry Beijing"), which conducted valuations of Sino's timber assets during a portion of the class period.

5. On or about January 25, 2012, the Statement of Claim in the Ontario Class Action was amended to add BDO as a defendant, and it was further amended on April 18, 2012. A copy of the most recent April 18, 2012 version of the Statement of Claim (the "April 18<sup>th</sup> Claim") is attached at **TAB A** hereto.

6. The April 18<sup>th</sup> Claim seeks to certify the Ontario Class Action as a class action and makes the following damages claims against BDO, along with other defendants to the Ontario Class Action:

- (a) On behalf of all of the Class Members who purchased Sino's securities in the secondary market during the Class Period (which is defined as the period from March 19, 2007 through June 2, 2011), and as against all of the Defendants other than the Underwriters, a claim for general damages in the sum of **\$6.5 billion** (the "Secondary Market Claim");
- (b) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which a June 2007 Prospectus issued by Sino (the "June 2007 Prospectus") related, a claim for general damages in the sum of **\$175,835,000**;
- (c) On behalf of all of the Class Members who purchased Sino common shares in the distribution to which a December 2009 Prospectus issued by Sino (the "December 2009 Prospectus") related, a claim for general damages in the sum of **\$319,200,000**;
- (d) On behalf of all the Class Members who purchased Sino's 5% Convertible Senior Notes due 2013 pursuant to a July 2008 Offering Memorandum issued by Sino (the "July 2008 Offering Memorandum"), a claim for general damages in the sum of **US\$345 million**;
- (e) 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 issued by Sino (the "June 2009 Offering Memorandum"), a claim for general damages in the sum of **US\$400 million**; and
- (f) 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 issued by Sino (the "December 2009 Offering Memorandum"), a claim for general damages in the sum of **US\$460 million**.

7. The claims pleaded against BDO in the April 18<sup>th</sup> Claim stem entirely from allegations relating to the Audit Reports produced by BDO in relation to its audits of Sino's 2005 and 2006 annual audited financial statements (respectively, the "2005 Audit Report" and the "2006 Audit Report" and, collectively, the "BDO Audit Reports"). The 2005 Audit Report was filed in March 2006 and the 2006 Audit Report was filed in March 2007.
8. It is alleged in the April 18<sup>th</sup> Claim that the 2005 Audit Report and the 2006 Audit Report each contain the same statement by BDO; a statement that is alleged to have misrepresented that, in the opinion of BDO, Sino's 2005 and 2006 annual financial statements "...present fairly, in all material respects, the financial position of Sino as at December 31, 2005 and December 31, 2006 and the results of its operations and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles."
9. The claim against BDO for **\$6.5 Billion** in damages on behalf of purchasers of Sino securities in the secondary market is based upon the initial issuance of the BDO Audit Reports in March 2006 and March 2007, respectively.
10. The claim against BDO for **\$495,035,000.00** in total damages on behalf of purchasers of Sino shares pursuant to the June 2007 Prospectus and the December 2009 Prospectus is based upon BDO's consent to the incorporation by reference of the BDO Audit Reports in those Prospectuses and on the actual incorporation by reference of the 2006 Audit Report in the June 2007 Prospectus.
11. The claim against BDO for **US\$1,205,000,000.00** in total damages on behalf of purchasers of Notes pursuant to the July 2008, June 2009, and December 2009 Offering Memoranda is based upon the incorporation by reference of the BDO Audit Reports in those Offering Memoranda.
12. The claim as against BDO further alleges that BDO as Sino's auditor owed and breached a duty to maintain or 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.



**BDO's claims for indemnity against Sino and its officers and directors:**

13. BDO denies any liability for the aforementioned claims advanced against it and if required to do so will vigorously defend the claims asserted against it.
14. However, if a Court finds BDO liable for any of the said claims, BDO claims against Sino for indemnity primarily under the terms of its engagement agreements with Sino in respect of the 2005 and 2006 audit years, as well as the subsequent use of the BDO Audit Reports in the above-noted Prospectuses and Offering Memoranda.
15. BDO says that Sino and its management bore the primary responsibility for ensuring the accuracy of Sino's 2005 and 2006 Annual Financial Statements, as well as the accuracy of the statements regarding the financial status of Sino in the Prospectuses and Offering Memoranda referenced herein. This was a contractual obligation owed by Sino to BDO under the terms of the engagement agreements between Sino and BDO.
16. In particular, BDO's engagement letters with Sino for the 2005 and 2006 audit years expressly provided that BDO relied upon Sino and its management to bear the primary responsibility for preparing its annual financial statements in accordance with Generally Accepted Accounting Principles ("GAAP"). **Copies of the Engagement letters for the 2005 and 2006 audit years, dated August 1, 2005 and December 29, 2006 are attached at TABS B and C hereto.**
17. Under the terms of BDO's engagement letters with Sino for the 2005 and 2006 audit years (TABS B and C), Sino also agreed that its management bore primary responsibility to implement appropriate internal controls to detect fraud and error in relation to its financial reporting.
18. In addition to having claims arising from its reliance on these parties to bear primary responsibility for the accuracy of Sino's financial statements, BDO also has contractual rights of indemnity against Sino in each of the engagement letters signed in relation to the use of BDO's audit reports in Sino's Prospectuses and Offering Memoranda – **Copies attached at TABS D, E, F, G, H, and I hereto.**

19. Further and in the alternative, BDO is entitled to contribution and indemnity from Sino and its officers and directors pursuant to the provisions of the *Negligence Act*, R.S.O. 1990 Chapter N.1.

**Costs of defending the Ontario Class Action:**

20. In addition to the amounts claimed above, BDO also seeks its costs both to date and its future costs relating to the defence of the Ontario Class Action and the protection of BDO's rights during the course of the within proceeding – all of which stem from the same contractual breaches by Sino and its officers and directors.

21. BDO's costs to date are approximately **\$340,000.00** and its future costs of defending the Ontario Class Action are estimated to be a further **\$4 million**. A **billing statement showing the total legal expenses incurred by BDO to date, as redacted for privilege, is attached at TAB J hereto.**

**Summary:**

22. In summary, BDO's claim against Sino and its officers and directors is quantified as follows:

- (a) In respect of the secondary market claim against BDO - **\$6.5 billion;**
- (b) In respect of the claims against BDO by purchasers of Sino securities on the primary market pursuant to the Prospectuses and Offering Memoranda referenced herein - **\$1,700,035,000<sup>1</sup>**; and
- (c) In respect of BDO's current and future legal costs - **\$4,340,000.00.**

**TOTAL: \$8,204,375,000.00**

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<sup>1</sup> This portion of the claim includes damages claims advanced in the Ontario Class Action that are claimed in both U.S. and Canadian dollars. As noted above, **\$1,205,000,000.00** of this portion has been claimed in U.S. dollars. Under s. 121 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, foreign money obligations are to be calculated based upon the applicable exchange rate at the date of judgment. It is assumed, for the purposes of this Proof of Claim that at the applicable conversion date, the U.S.-Canadian dollar exchange rate will be approximately 1:1, however this portion of the claim may need to be adjusted depending upon the exchange rate applicable at the relevant date.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court of Appeal File No. C56125  
Superior Court File No. CV-12-9667-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SINO-FOREST CORPORATION**

**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

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**COURT OF APPEAL FOR ONTARIO**

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**Appeal Book and Compendium of the  
Appellant, BDO Limited**

---

**AFFLECK GREENE McMURTRY LLP**  
Barristers & Solicitors  
200 - 365 Bay St.  
Toronto, ON M5H 2V1

**Peter R. Greene** LSUC#: 19895V  
**Kenneth A. Dekker** LSUC#: 40419P  
**Michelle E. Booth** LSUC#: 53525J  
Tel: (416) 360-2800  
Fax: (416) 360-5960

Lawyers for the Appellant, BDO Limited