

accuracy of all the information in the Purchase Contracts. Hung also stated that he ensured that the attachments to the Purchase Contracts, including Confirmations and Survey Reports, would be “in place”. This information was false and misleading.

161. Hung also misled Staff as to the timing of alleged payments made pursuant to the Purchase Contracts.

**D. Ho Materially Misled Staff**

162. During his examination by Staff, Ho made statements that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act and the public interest.

163. Ho was specifically asked about what role he took “in the whole BVI process.” Ho replied, “None whatsoever”, further stating, “No, I’m not at all involved in the BVI whatsoever.” This information was false and misleading.

164. Ho also denied that he was copied on any emails or communications involving the BVI Model. This information was false and misleading.

165. Ho also asserted that Yuda Wood was independent of Sino-Forest and that he had no control over any aspect of its business. This information was false and misleading.

**E. Yeung Materially Misled Staff**

166. During his examination by Staff, Yeung made statements that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act and the public interest.

167. Yeung was specifically asked about his involvement in the creation of Yuda Wood. Yeung stated that he assisted with the application process as a favour to his friend, Person #1. He denied that Sino-Forest supplied the registration capital for Yuda Wood. Yeung also denied any knowledge of Sino-Forest creating fraudulent transactions involving the purchase and sale of Standing Timber. This information was false and misleading.

168. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

**DATED** at Toronto, Ontario, this 22nd day of May 2012.

**SCHEDULE "A"****GLOSSARY OF CERTAIN DEFINED TERMS  
AND LOCATION IN THE STATEMENT OF ALLEGATIONS**

**"AIs"** means the authorized intermediaries to whom Sino-Forest purported to sell assets in the PRC, including Standing Timber (paragraph 45).

**"BVI Model"** means the business model employed by Sino-Forest to buy and sell assets through the BVI Subs in the PRC (paragraph 45).

**"BVI Network"** means the entire network of BVI Subs, Suppliers, AIs and other companies who bought and sold assets in the BVI Model in the PRC (paragraph 56).

**"BVI Subs"** means wholly owned subsidiaries of Sino-Forest incorporated in the British Virgin Islands (paragraph 45).

**"Caretaker Company List"** means the document listing the "peripheral" or "nominee" companies controlled by "caretakers" on behalf of Sino-Forest (paragraph 57).

**"Certificates"** means Plantation Rights Certificates issued by the PRC government (paragraph 72).

**"Company"** means Sino-Forest Corporation including all of its subsidiaries and companies it controls as set out in its public disclosure record and as the context within this Statement of Allegations requires (paragraph 1).

**"Confirmations"** means the confirmations purportedly executed by forestry bureaus that Sino-Forest relied upon to evidence ownership of Standing Timber assets in the BVI Model in the absence of Certificates (paragraph 74).

**"Dacheng"** means Guangxi Dacheng Timber Co. Ltd. (paragraph 90).

**"Dacheng Plantations"** means the timber plantations purchased from Dacheng commencing in 2008 (paragraph 90).

**"Dongkou"** means Dongkou Shuanglian Wood Company Limited (paragraph 60).

**"Farmers' Authorizations"** means farmers' authorization letters (paragraph 72).

**"Fortune Universe"** means Fortune Universe Ltd. (paragraph 145).

**"Gengma Forestry"** means Gengma Dai and Wa Tribe Autonomous Region Forestry Co., Ltd. (paragraph 107).

**"Greenheart"** means the company now known as Greenheart Group Limited (paragraph 12).

**“Greenheart Transaction”** means the series of transactions where Sino-Forest purchased a controlling interest in Greenheart (paragraph 27).

**“GRHL”** means Greenheart Resources Holdings Limited (paragraph 57).

**“Haosen”** means Guangxi Pingle Haosen Forestry Development Co., Ltd. (paragraph 97).

**“Investors”** means the securityholders of Sino-Forest (paragraph 3).

**“Kun’an”** means Guangxi Hezhou City Kun’an Forestry Co., Ltd. (paragraph 114).

**“Material Time”** means the period from June 30, 2006 to January 11, 2012 (paragraph 15).

**“Meishan”** means Guangxi Rongshui Meishan Wood Products Factory (paragraph 97).

**“Montsford”** means Montsford Ltd. (paragraph 145).

**“Offsetting Arrangement”** means the payables/receivables arrangement used in the BVI Model by Sino-Forest to buy and sell Standing Timber (paragraph 48).

**“Overseas Management”** means Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung (paragraph 13).

**“Plantation Fibre”** is one of the two subcomponents of Sino-Forest’s core business segment called Wood Fibre Operation (paragraph 41).

**“PRC”** means the People’s Republic of China (paragraph 2).

**“Purchase Contracts”** means the contracts used by Sino-Forest to purchase assets in the BVI Model (paragraph 45).

**“Sales Contracts”** means the contracts used by Sino-Forest to sell assets in the BVI Model (paragraph 45).

**“Shaoyang Jiading”** means Shaoyang Jiading Wood Products Co. Ltd. (paragraph 68).

**“Sino-Forest”** means Sino-Forest Corporation including all of its subsidiaries and companies it controls as set out in its public disclosure record and as the context within this Statement of Allegations requires (paragraph 1).

**“Sino-Panel”** means Sino-Panel (Asia) Inc., a subsidiary of Sino-Forest (paragraph 39).

**“Sino-Panel Companies”** means the three subsidiaries of Sino-Panel which purported to purchase Standing Timber from Yuangao (paragraph 96).

**“Sino-Panel Gengma”** means Sino-Panel (Gengma) Co., Ltd., a Sino-Forest subsidiary (paragraph 107).

**“Sonic Jita”** means Hong Kong Sonic Jita Engineering Co., Ltd. (paragraph 64).

**“Standing Timber”** means all of the Plantation Fibre subcomponent of Wood Fibre Operations and as the context within this Statement of Allegations requires (paragraph 42).

**“Suppliers”** means the parties from whom Sino-Forest purported to buy assets in the PRC, including Standing Timber (paragraph 45).

**“Survey Reports”** means timber survey reports (paragraph 72).

**“WFOE Model”** means the business model employed by Sino-Forest to buy and sell assets through its WFOEs (paragraph 46).

**“WFOEs”** means Wholly Foreign Owned Enterprises which were subsidiaries of Sino-Forest (paragraph 46).

**“Xinqi”** means Gaoyao City Xinqi Forestry Development Co., Ltd. (paragraph 97).

**“Yuangao”** means Guangxi Hexhou City Yuangao Forestry Development Co., Ltd. (paragraph 96).

**“Yuda Wood”** means Huaihua City Yuda Wood Ltd. (paragraph 57).

**“Yunnan Plantation”** means the Standing Timber plantations in Yunnan Province purportedly purchased in 2007 from Yuda Wood (paragraph 113).

## SCHEDULE "B"

### SELECTED INFORMATION FROM THE 2005-2010 AUDITED ANNUAL FINANCIAL STATEMENTS OF SINO-FOREST

#### Reported Revenue

December 31, 2010	\$1,923,536,000
December 31, 2009	1,238,185,000
December 31, 2008 (restated amount)	896,045,000
December 31, 2007	713,866,000
December 31, 2006 (restated amount)	555,480,000
December 31, 2005	493,301,000

#### Reported Total Assets

December 31, 2010	\$5,729,033,000
December 31, 2009	3,963,899,000
December 31, 2008	2,603,924,000
December 31, 2007	1,837,497,000
December 31, 2006	1,207,255,000
December 31, 2005	895,271,000

#### Reported Timber Assets (with % of total assets)

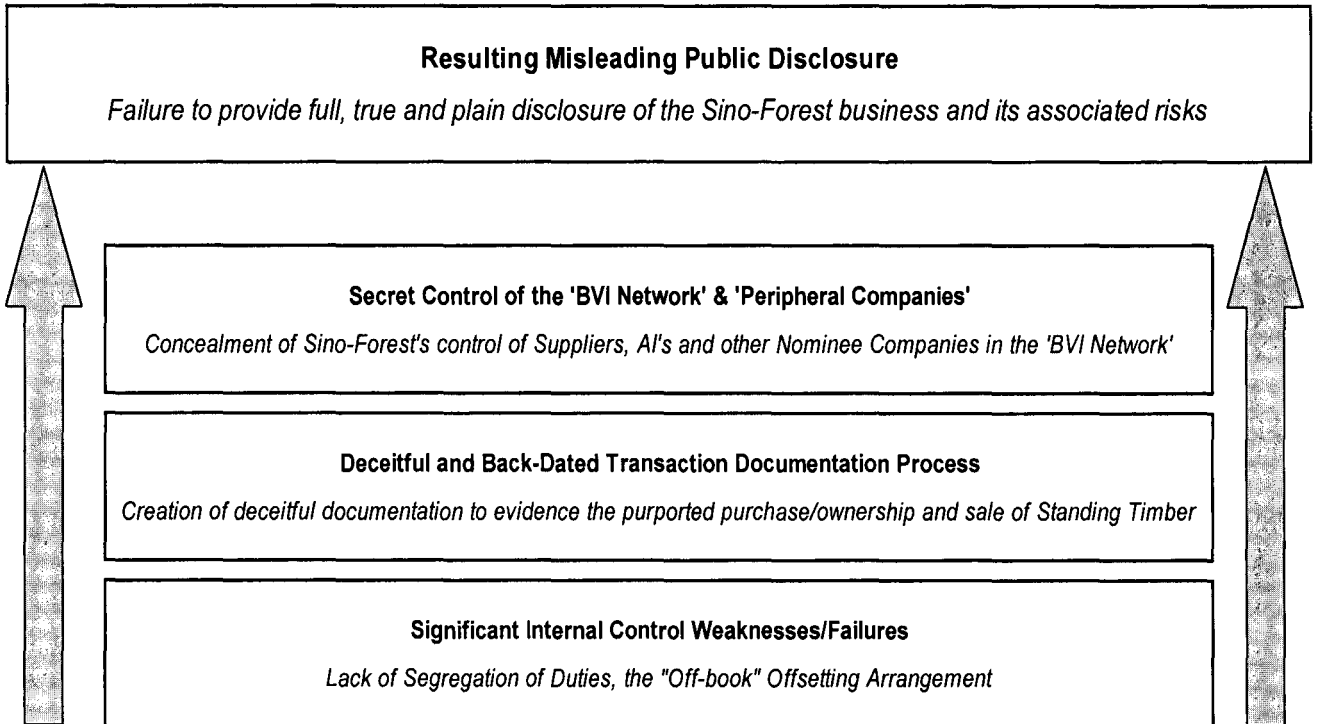
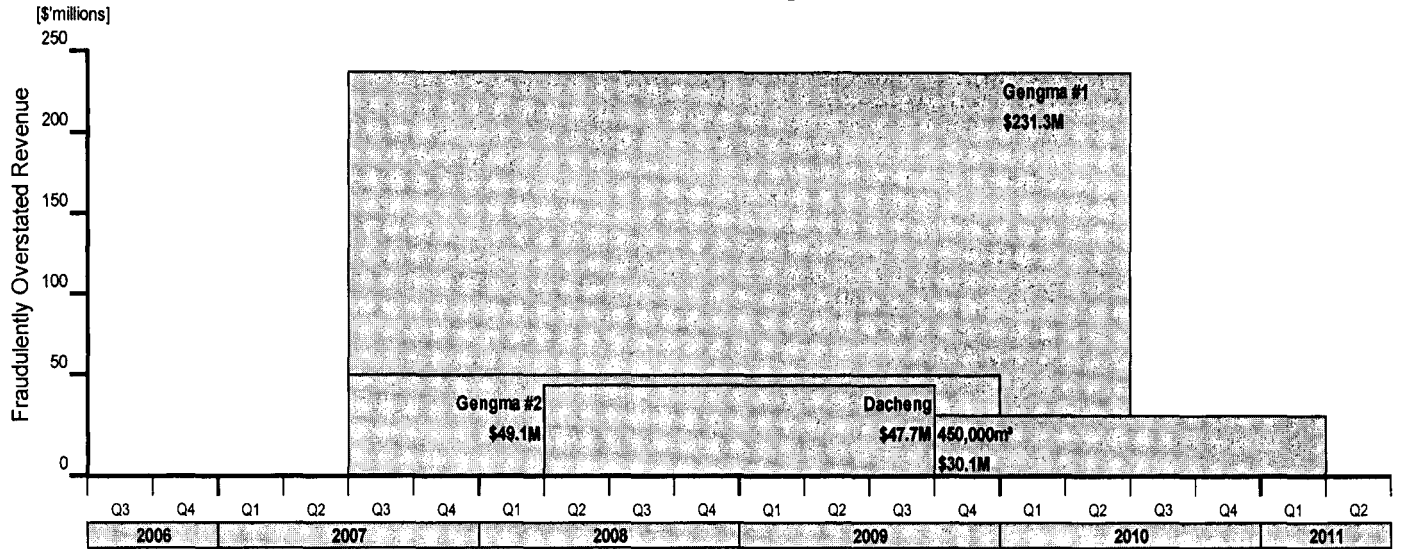
December 31, 2010	\$3,122,517,000 (55%)
December 31, 2009	2,183,489,000 (55%)
December 31, 2008	1,653,306,000 (63%)
December 31, 2007	1,174,153,000 (64%)
December 31, 2006	752,783,000 (62%)
December 31, 2005	513,412,000 (57%)

#### Number of Outstanding Common Shares

December 31, 2010	245,740,889
December 31, 2009	242,129,062
December 31, 2008	183,119,072
December 31, 2007	182,592,961
December 31, 2006	137,999,548
December 31, 2005	137,789,548

**SCHEDULE "C"**

**Sino-Forest Corporation  
Overview of the Standing Timber Fraud**



# **TAB E**



THIS DOCUMENT IS LOCATED AT

Statement of Allegations against Ernst  
& Young by the Ontario Securities  
Commission dated December 3, 2012

Exhibit "FF" to the Affidavit of  
Charles Wright, sworn January 10,  
2013, Plaintiff's Motion Record,  
Vol.3, Tab 2FF

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF  
ERNST & YOUNG LLP**

**STATEMENT OF ALLEGATIONS**

Further to a Notice of Hearing dated December 3, 2012, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

**Overview**

1. Ernst & Young LLP (“Ernst & Young”) were the auditors of Sino-Forest Corporation (“Sino-Forest”) between August 2007 and April 2012. During that time, they audited the annual consolidated financial statements of Sino-Forest and represented to its shareholders that they had performed their audits in accordance with relevant industry standards. Shareholders invested significant sums in Sino-Forest in reliance on these financial statements.
2. Ernst & Young, however, failed to conduct their audits in accordance with relevant industry standards. In particular, as outlined further below, Ernst & Young:
  - (a) failed to perform sufficient audit work to verify Sino-Forest’s ownership of its most significant assets;
  - (b) failed to perform sufficient audit work to verify the existence of Sino-Forest’s most significant assets; and
  - (c) failed to undertake their audit work on the Sino-Forest engagement with a sufficient level of professional skepticism.

3. As the auditors of a publicly traded company, Ernst & Young were required to conduct their audits of Sino-Forest's financial statements in accordance with Canadian generally accepted auditing standards ("GAAS"). Each of Ernst & Young's failures to comply with GAAS in the course of its audits of these financial statements constitutes a breach of section 78 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Securities Act").

4. In addition, Sino-Forest filed a number of documents with the Ontario Securities Commission (the "Commission") which contained Ernst & Young's representation that they had conducted their audits in accordance with GAAS. Each of these filings constitutes a breach of section 122 of the Securities Act by Ernst & Young.

#### **Background**

5. Sino-Forest is a reporting issuer in the province of Ontario as that term is defined in subsection 1(1) of the Securities Act. Sino-Forest represented that it engaged primarily in the purchase and sale of timber located in the People's Republic of China (the "PRC"). Until May 9, 2012, the common shares of Sino-Forest were listed and posted for trading on the Toronto Stock Exchange.

6. Ernst & Young is a firm of chartered accountants with a head office located in Toronto, Ontario. It has offices located across Canada, and it is a member firm of Ernst & Young Global Limited, a global accounting organization.

7. Ernst & Young was appointed as the auditor of Sino-Forest on August 16, 2007. Ernst & Young audited the consolidated financial statements of Sino-Forest as at and for its fiscal years ended December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010 (respectively, the "2007 Financial Statements", the "2008 Financial Statements", the "2009 Financial Statements" and the "2010 Financial Statements" and collectively the "Material Financial Statements").

8. Between February 2003 and October 2010, Sino-Forest raised approximately US \$3.0 billion through the issuance of equity and debt securities to investors. From 2008 onwards, investors relied on the Material Financial Statements in making the decision to purchase Sino-Forest's shares and debt securities in both the primary and secondary markets.

9. Between June 30, 2006 and March 31, 2011, Sino-Forest's share price increased from CDN \$5.75 to CDN \$25.30, an increase of 340%. By March 31, 2011 Sino-Forest's market capitalization was well over CDN \$6.0 billion.

10. On June 2, 2011, the share price of Sino-Forest plummeted after a private analyst made public allegations of fraud against Sino-Forest. On the same day, the Board of Directors of Sino-Forest established an Independent Committee (the "IC") "to independently examine and review the serious and wide-ranging allegations" made in the analyst's report.

11. The IC identified a number of areas of Sino-Forest's business for investigation, including its ownership of trees and the existence of those trees. The IC prepared and released three reports concerning its findings, dated August 10, 2011, November 13, 2011 and January 31, 2012 (the "IC Reports").

12. In the IC Reports, the IC presented its findings regarding the issues of tree ownership and tree existence. The IC Reports concluded that there was uncertainty surrounding the legal certainty of Sino-Forest's claims to a significant proportion of its reported timber assets. In addition, the IC Reports noted significant obstacles to verifying the actual existence of the reported timber assets, including an inability to identify the precise location of the trees which had purportedly been purchased by Sino-Forest.

13. On November 15, 2011, Sino-Forest announced that it would defer the release of its interim filings for the third quarter of 2011. Sino-Forest has not filed these interim filings with the Commission.

14. On January 10, 2012, Sino-Forest took the unusual step of issuing a press release cautioning that its historic financial statements and related audit reports should not be relied upon.

15. Sino-Forest was required to file its consolidated financial statements for the year ended December 31, 2011 (the "2011 Financial Statements") with the Commission by March 30, 2012. On that day, Sino-Forest initiated proceedings in the Ontario Superior Court of Justice requesting protection from its creditors. Sino-Forest has not filed the 2011 Financial Statements with the Commission.

16. On April 4, 2012, Ernst & Young resigned as the auditor of Sino-Forest. In the Change of Auditor Notice dated April 13, 2012, Sino-Forest repeated the caution that its historic financial statements and related audit reports should not be relied upon. The Change of Auditor Notice did not name a successor auditor.

17. On May 22, 2012, Staff issued a Statement of Allegations naming Sino-Forest and six members of its executive management team (the "Sino-Forest SOA"). The Sino-Forest SOA alleged that five of the named members of Sino-Forest's executive management team, including the Chairman and Chief Executive Officer "engaged in a complex fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public disclosure record related to its primary business".

#### **The Purported Business of Sino-Forest**

18. The majority of Sino-Forest's reported business involved the purchase and sale of trees which were categorized on its balance sheet as "Timber Holdings" and commonly referred to as "Standing Timber".

19. Standing Timber was purportedly purchased, held and sold by Sino-Forest through two distinct legal structures or models: the British Virgin Islands Model (the “BVI Model”) and the Wholly Foreign-Owned Enterprises Model (the “WFOE Model”).

20. In the BVI Model, Sino-Forest’s purported purchases and sales of Standing Timber were conducted using wholly owned subsidiaries of Sino-Forest incorporated in the British Virgin Islands (the “BVI Subsidiaries”). The BVI Subsidiaries purported to enter into written purchase contracts with suppliers located in the PRC (the “Purchase Contracts”) and then purported to enter into written sales contracts with customers called “authorized intermediaries” also located in the PRC (the “Sales Contracts”).

21. In the WFOE Model, Sino-Forest used subsidiaries incorporated in the PRC called Wholly Foreign-Owned Enterprises (“WFOEs”) to acquire, cultivate and sell the Standing Timber. The Sino-Forest WFOEs also entered into purchase contracts and sales contracts with other parties in the PRC.

22. Sino-Forest purported to conduct the majority of its business through the BVI Model. At December 31, 2010, Sino-Forest reported total Timber Holdings of US \$3.1 billion comprising 799,700 hectares. Approximately US \$2.5 billion or approximately 80% of the total value of the Timber Holdings were purportedly held in the BVI Model, comprising approximately 467,000 hectares of Standing Timber.

23. Between 2007 and 2010, reported revenue from the BVI Model totalled US \$3.35 billion, representing 94% of Sino-Forest's reported Standing Timber revenue and 70% of Sino-Forest's total revenue. The significance of the revenue from the BVI Model is demonstrated in the following table:

	<u>US \$ (millions)</u>				
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Total</u>
BVI Model Revenue	501.4	644.9	882.1	1,326.0	3,354.4
WFOE Model Revenue	20.1	40.5	72.1	75.2	207.9
<b>Standing Timber Revenue</b>	<b>521.5</b>	<b>685.4</b>	<b>954.2</b>	<b>1,401.2</b>	<b>3,562.3</b>
<b>Total Revenue</b>	<b>713.9</b>	<b>896.0</b>	<b>1,238.2</b>	<b>1,923.5</b>	<b>4,771.6</b>
BVI Model as % of Total Revenue	70%	72%	71%	69%	70%

#### **Ernst & Young's Obligations as Auditor**

24. As a reporting issuer, Sino-Forest was required by section 78(1) of the Securities Act to file its annual consolidated financial statements with the Commission. Sino-Forest filed its 2007 Financial Statements on March 18, 2008, its 2008 Financial Statements on March 16, 2009, its 2009 Financial Statements on March 16, 2010 and its 2010 Financial Statements on March 15, 2011.

25. As the auditor of a reporting issuer, Ernst & Young was required by section 3 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards*, and by sections 78(2) and 78(3) of the Securities Act to audit the Material Financial Statements in accordance with GAAS and to prepare an auditors' report to accompany the financial statements.

26. Each of the Material Financial Statements was accompanied by an auditors' report, prepared by Ernst & Young, addressed to the shareholders of Sino-Forest (the "Auditors' Report"). In each Auditors' Report, Ernst & Young represented that it had conducted its audits in accordance with GAAS. The Auditors' Reports relating to the Material Financial Statements were dated March 12, 2008, March 13, 2009, March 15,

2010 and March 14, 2011 and were filed with the Commission along with the Material Financial Statements.

27. In addition, Sino-Forest filed two short form prospectuses with the Commission dated June 1, 2009 and December 10, 2009 (the "Short Form Prospectuses"). The Short Form Prospectuses incorporated by reference the 2008 Financial Statements accompanied by the relevant Auditors' Report. In addition, in letters addressed to and filed with the Commission along with the Short Form Prospectuses (the "Prospectus Consent Letters"), Ernst & Young consented to use of their Auditors' Report by Sino-Forest and further stated that they had "no reason to believe that there are any misrepresentations" contained in the relevant Auditors' Report.

#### **Generally Accepted Auditing Standards**

28. As set out in GAAS, an auditor's objective is to identify and assess the risks of material misstatement, whether due to fraud or error, in an entity's financial statements. An auditor can achieve this objective by understanding the entity and its environment, including the entity's internal controls. This understanding provides the auditor with a basis for designing and implementing responses to the assessed risks.

#### **(a) Sufficient Audit Evidence Required**

29. GAAS requires auditors to obtain reasonable assurance that the entity's financial statements are free from material misstatements. Reasonable assurance is a high level of assurance. It is achieved when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk to a low level and to provide a reasonable basis to support the content of the audit report. The sufficiency of the audit evidence gathered by the auditor is influenced by the level of materiality set for the audit and the level of risk associated with the audit.

30. The sufficiency and the appropriateness of the audit evidence gathered by the auditor are interrelated. Sufficiency is the measure of the quantity of the audit evidence.



The quantity of the audit evidence needed is affected by the auditor's assessment of the risks of misstatement. That is, the higher the assessed risks, the more audit evidence is likely to be required. The quantity of audit evidence needed is also affected by the quality of the audit evidence. That is, the higher the quality of the audit evidence, the less audit evidence may be required.

31. Obtaining more audit evidence, however, may not compensate for its poor quality. Appropriateness is the measure of the quality of the audit evidence; that is its relevance and its reliability in providing support for the conclusions on which the auditor's opinion is based. The reliability of the audit evidence is influenced by its source and by its nature, and is dependent on the circumstances in which it is obtained.

**(b) Professional Skepticism Required**

32. GAAS requires auditors to plan and perform their audits using professional skepticism, recognizing that circumstances may exist that cause the financial statements to be materially misstated. Professional skepticism requires a questioning attitude which is alert to conditions which may indicate possible misstatement due to error or fraud. Professional skepticism requires an auditor to conduct a critical assessment of the audit evidence.

33. Professional skepticism requires the auditor to be alert to, amongst other things:

- (a) audit evidence that contradicts other audit evidence obtained;
- (b) information that brings into question the reliability of documents and responses to inquiries;
- (c) conditions that may indicate possible fraud; and
- (d) circumstances that suggest the need for additional audit procedures in addition to those required by minimum written professional standards.

**Ernst & Young's Failures to Meet Generally Accepted Auditing Standards**

34. Ernst & Young failed to comply with GAAS by failing to obtain reasonable assurance that the Material Financial Statements were not materially misstated.

35. In particular, Ernst & Young failed to obtain sufficient appropriate audit evidence with respect to the ownership and existence of the Standing Timber that Sino-Forest purported to hold through the BVI Model (the "Purported Assets").

36. In addition, Ernst & Young failed to exercise sufficient professional skepticism when conducting the audits of the Material Financial Statements. This contributed to the failure to obtain sufficient appropriate audit evidence with respect to the ownership and existence of the Purported Assets.

**A. Failure to Adequately Address Ownership of Timber**

37. The audit procedures performed by, and the audit evidence obtained by Ernst & Young with respect to Sino-Forest's ownership of the Purported Assets, were deficient in a number of respects.

**(i) Flawed Purchase Contracts**

38. One of the audit procedures that Ernst & Young performed relating to the ownership of the Purported Assets was a review of all of the Purchase Contracts entered into by Sino-Forest for each fiscal year that it audited. Ernst & Young understood that all of Sino-Forest's Purchase Contracts had been prepared by Sino-Forest from a common template. The Purchase Contracts, however, had two significant deficiencies.

39. To begin, the Purchase Contracts referred to four appendices, titled Stock Volume Report, Resources-Quality Survey Report (the "Survey Report"), Villagers' Letter of Authorization and Decision (the "Villagers' Letters") and Certificate of Forest Proprietorship (the "Certificates").

40. The Villagers' Letters authorized the seller to sell the timber rights set out in the Purchase Contract. The Certificates reflected the contents of the official PRC government registers concerning ownership of the rights to the relevant timber. Ernst & Young never obtained either the Villagers' Letters or the Certificates.

41. The second deficiency was that the specific location of the Purported Assets was not clearly delineated in either the Purchase Contract or any of its available appendices.

42. Both of these deficiencies should have prompted Ernst & Young to make further inquiries of Sino-Forest management and to perform further audit procedures relating to Sino-Forest's ownership of the Purported Assets. In particular, Ernst & Young failed to make further inquiries concerning the two missing appendices, and failed to take steps to understand the process used by Sino-Forest management to precisely identify the location of the Purported Assets.

43. In addition, Ernst & Young failed to consider that all of the Survey Reports had been prepared by the same survey firm, even though the areas purportedly surveyed were widely scattered throughout the PRC. This unusual circumstance should have prompted Ernst & Young to perform further procedures regarding the source and reliability of the surveys.

**(ii) Flawed Legal Opinion**

44. Ernst & Young failed to obtain a sufficient understanding of the legal basis of Sino-Forest's claim to the Purported Assets. During the audit of the 2007 Financial Statements, Ernst & Young asked Sino-Forest to obtain a legal opinion prepared by Jingtian & Gongchen Attorneys at Law ("Jingtian"). Jingtian were Sino-Forest's corporate counsel located in the PRC. Jingtian prepared an opinion dated March 10, 2008 addressed to Sino-Forest (the "Jingtian Opinion") which was provided to Ernst & Young for its review.

45. The Jingtian Opinion discussed the legal regime relating to forestry assets located in the PRC and evaluated the nature and status of Sino-Forest's legal claim to ownership of the Purported Assets. Ernst & Young had selected the representative Purchase Contract that was sent to Jingtian for its review in preparing the Jingtian Opinion.

46. Ernst & Young failed to appreciate and respond to the limitations of the Jingtian Opinion. In particular:

- (a) Ernst & Young failed to consider the fact that it had never obtained copies of the Villagers' Letters or the Certificates for any Purchase Contract; and
- (b) Ernst & Young failed to consider the implications of, or make further inquiries concerning, the disclaimer contained in the Jingtian Opinion that the Villagers' Letters and the Certificates had not been reviewed by Jingtian.

47. The Jingtian Opinion did discuss the status of the Certificates in the PRC legal regime. It noted that the PRC forestry authorities were reporting significant delays and backlogs in the production of the new form of these Certificates. The Jingtian Opinion went on to report, however, that back in 2002 the PRC authorities had predicted that such Certificates would become available beginning in approximately 2004. Ernst & Young failed to follow up on this statement and failed to inquire why the new Certificates were not available by the time the Jingtian Opinion was produced in 2008.

48. Ernst & Young failed to make further inquiries of Sino-Forest management concerning the absence of both the Villagers' Letters and the Certificates from the Purchase Contracts and failed to perform appropriate additional audit procedures relating to Sino-Forest's ownership of the Purported Assets. In particular, and given that Ernst & Young had reviewed copies of Certificates that had been issued for timber acquisitions made through the WFOE Model, Ernst & Young failed to question the absence of

Certificates relating to the Purported Assets and failed to obtain independent audit evidence to support the absence of the Certificates.

49. Further, given that the Jingtian Opinion had described anticipated changes in the PRC's legal regime relating to timber assets, Ernst & Young failed to obtain an updated independent legal opinion for the audits of the 2008, 2009 and 2010 Financial Statements specifically addressing Sino-Forest's ownership of the Purported Assets and the current status of the Certificates in the PRC legal system.

**B. Failure to Adequately Address Existence of Timber**

50. Ernst & Young failed to perform sufficient appropriate audit procedures to verify the existence of the Purported Assets. Ernst & Young recognized that several aspects of Sino-Forest's business resulted in higher inherent risks relating to the existence of the Purported Assets, but they failed to adequately respond to these risks.

51. In particular, Sino-Forest did not make direct cash payments for the acquisition of the Purported Assets. Rather, the payments that Sino-Forest should have received from its customers were immediately applied towards the purported purchase of further timber assets. This increased the risks surrounding the audit of the Purchase Contracts as there were no cash transfers that could be traced and verified.

**(i) Limited Site Visits**

52. Ernst & Young performed only very limited site visits to inspect the Purported Assets, which were represented to be widely scattered throughout the PRC. The audit procedures that Ernst & Young performed in connection with these site visits were both insufficient and inappropriate to respond to the identified risks relating to the existence of the Purported Assets.

**(ii) Inappropriate Reliance on Valuations**

53. Sino-Forest engaged Pöyry Forest Industry Ltd. (“Poyry”) to prepare periodic valuations of its Timber Holdings. Ernst & Young inappropriately relied on Poyry’s valuation work in obtaining assurance of the existence of the Purported Assets.

54. GAAS sets out explicit requirements to be met when an auditor places reliance on work performed by another entity in the course of an audit. Ernst & Young failed to meet these requirements in placing reliance on Poyry’s valuation work when assessing the existence of the Purported Assets, as set out below.

55. Ernst & Young was not involved in Poyry’s process of selecting the plantations to sample, the determination of the location of the sampled plantations or in the counting or measuring of the trees. Ernst & Young did attend with Poyry staff during a small number of Poyry’s plantation site visits. During these visits, Ernst & Young staff observed Poyry staff’s activities.

56. Ernst & Young failed, however, to perform any independent audit procedures to ensure that the plantations visited by Poyry were owned by Sino-Forest or that the location and dimensions of the sites visited corresponded with the extent of the Purported Assets reported by Sino-Forest.

57. Further, the valuation reports produced by Poyry contained a clear disclaimer that they should only be relied on by Sino-Forest for its own valuation purposes. Ernst & Young, therefore, placed inappropriate reliance on Poyry’s work in its attempt to verify the existence of the Purported Assets.

58. Some of these limitations were acknowledged by Ernst & Young staff in the course of performing their audits of the Material Financial Statements but were never adequately addressed. For example, in an e-mail exchange between the members of Ernst & Young’s audit team, one auditor posed the question “[h]ow do we know that the

trees that Poyry is inspecting (where we attend) are actually trees owned by the company? E.g. could they show us trees anywhere and we would not know the difference?" Another auditor answered "I believe they could show us trees anywhere and we would not know the difference...".

### **C. Insufficient Skepticism**

59. Finally, Ernst & Young failed to conduct its audits of the Material Financial Statements with a sufficient level of professional skepticism.

60. As outlined above, Ernst & Young failed to adequately respond to a number of unusual facts and findings that came to its attention in the course of conducting the audits of the Material Financial Statements. These facts and findings should have caused Ernst & Young to treat the representations of Sino-Forest management with greater caution and to perform additional audit procedures and to obtain additional evidence from independent sources.

### **D. Failure to Properly Structure the Audit Team**

61. The failures outlined above were facilitated by Ernst & Young's failure to properly structure its Sino-Forest engagement team. Many Sino-Forest source documents were produced only in Chinese, including the Purchase Contracts, the Sales Contracts and the Jingtian Opinion. Ernst & Young, however, failed to have these and other key documents translated into English.

62. Ernst & Young's audit team comprised both Chinese speaking and non-Chinese speaking staff. Several of the senior partners involved in the audits of the Material Financial Statements, however, were unable to read or speak Chinese.

63. Ernst & Young's non-Chinese speaking staff relied on its Chinese speaking staff to provide informal translations of important source documents. As a result, the non-Chinese speaking staff were often not aware that important information was missing from some of Sino-Forest's key documents.

**Consequences of Ernst & Young's Failures**

64. Ernst & Young's failures to comply with GAAS, as outlined above, led them to overlook or discount significant flaws in Sino-Forest's assertions relating to the ownership and existence of the Purported Assets. The Purported Assets constituted the vast majority of Sino-Forest's assets and produced nearly all of its reported revenue. Ernst & Young's lack of diligence in these areas therefore resulted in significant negative consequences for Sino-Forest's shareholders.

**Breaches of Ontario Securities Law**

65. Each of Ernst & Young's failures to meet GAAS in the course of its audits of each of the Material Financial Statements constitutes a breach of sections 78(2) and 78(3) of the Securities Act.

66. Each of Ernst & Young's representations contained in each of the Auditors' Reports, which were repeated in each of the Prospectus Consent Letters, that the audits of the Material Financial Statements had been conducted in accordance with GAAS, constitutes a materially misleading a statement contrary to section 122(1)(b) of the Securities Act.

67. In addition, the audit failures of Ernst & Young outlined above were contrary to the public interest.

68. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

**DATED** at Toronto, Ontario, this 3rd day of December, 2012.



# TAB 2

THIS DOCUMENT IS LOCATED AT

Supplemental Affidavit of Charles M.  
Wright, sworn January 23, 2013,

Plaintiffs' Reply Motion Record, Tab  
1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING  
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT  
WONG**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly  
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN,  
KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND,  
JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J.  
WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE  
SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES  
CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC  
WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD  
FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE  
SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED (successor by merger to Banc of America Securities LLC)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTAL AFFIDAVIT OF CHARLES M. WRIGHT**

I, **CHARLES M. WRIGHT**, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. On January 10, 2013, I swore an affidavit (the “January 10 Affidavit”) in the above-captioned matter in support of the motion of the Ontario Plaintiffs for an order approving of the Ernst & Young Settlement. I swear this supplemental affidavit in support of that same motion.

2. Unless otherwise stated herein or the context otherwise requires, capitalized terms in this affidavit have the same meaning as they have in my January 10 Affidavit.

3. I have knowledge of the matters deposed to below. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information, and I believe such information to be true.

#### **THE OBJECTORS’ STATEMENTS IN OPPOSITION TO THE E&Y SETTLEMENT**

4. The Objectors’ opposition to the Ernst & Young Settlement has been widely publicized, including through numerous articles published in major Canadian newspapers following the announcement of the proposed Ernst & Young Settlement. Attached hereto as, respectively, **Exhibits “A”, “B”, “C”, “D”, “E” and “F”**, are the following:

- a. a December 7, 2012 *Globe and Mail* article, titled “Big Shareholders Challenge Sino-Forest Deal”;
- b. a December 7, 2012 *Globe and Mail* article, titled “Ruling on Sino-Forest Restructuring Coming Monday”;
- c. a December 7, 2012 *National Post* article, titled “Sino-Forest Investors Oppose Plan That Would Prevent Individual Claims”;

- d. a December 11, 2012 *Globe and Mail* article, titled “Judge Okays Sino-Forest Restructuring”;
- e. a December 11, 2012 *National Post* article, titled “Judge Approved Sino-Forest Restructuring Despite Opposition from Funds”; and
- f. a January 9, 2013 *Globe and Mail* article, titled “Burned Sino-Forest Investors Squabble Among Themselves”.

### **THE OBJECTORS’ HOLDINGS OF SINO SHARES ON JUNE 2, 2011**

5. On January 15, 2013, the six Objectors each submitted Opt-Out Forms, whereby three of them purported to opt-out of the Ontario Action and three of them purported to opt-out of the parallel class proceeding in the Quebec Superior Court (the “Quebec Action”), in each case on a conditional basis. Attached to each of the Opt-Out Forms were particulars of each Objector’s trades in Sino shares. Copies of the Opt-Out Forms of the Objectors, including trading particulars, are attached as **Exhibits “G” to “L”**.

6. I am advised by Serge Kalloghlian, an associate at Siskinds LLP, that he reviewed the trading records of the Objectors and calculated their holdings of Sino shares as of the time of the issuance of the Muddy Water Report on June 2, 2011, as follows:

- a. Gestion Férique: 192,150;
- b. Comité Syndical National de Retraite Bâtirente Inc. (“Bâtirente”): 11,875;
- c. Matrix Asset Management Inc.: 35,931;
- d. Montrusco Bolton Investments Inc.: 163,715;

- e. Invesco Canada Ltd.: 3,011,472; and
- f. Northwest & Ethical Investments L.P. (“NEI”): 506,475.

7. According to these calculations, the Objectors collectively held a total of 3,921,618 Sino shares<sup>1</sup> at the time the Muddy Waters Report was released on June 2, 2011.

8. Attached hereto as **Exhibit “M”** are Sino’s financial statements for the three and six months ended June 30, 2011. According to Note 7 of these financial statements, Sino had outstanding approximately 246 million shares on June 30, 2011.

#### **FURTHER INFORMATION REGARDING THE CARRIAGE MOTION BEFORE JUSTICE PERELL**

9. Attached as Exhibit “B” to the affidavit of Daniel Simard, sworn January 18, 2013, are certain excerpts from the reasons of Perell J. on the carriage motion. For the sake of completeness, I have attached hereto as **Exhibit “N”** the complete reasons of Perell J.

10. Further, at the time that the carriage motion was heard, the competing plaintiff groups were concerned that Sino’s insolvency was imminent. As a result, counsel for the competing plaintiff groups made submissions to Perell J. at the hearing of the carriage motion in regard to their qualifications to represent the class’s interests in an eventual CCAA proceeding. In particular, Jim Orr, counsel to NEI and Bâtirente, argued in essence that its lawyers had sufficient experience in and knowledge of CCAA proceedings in order to represent the class’ interests adequately in such a proceeding.

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<sup>1</sup> This number conflicts with the number at paragraph 6 of the affidavit of Tanya T. Jemec, sworn January 18, 2013, which states that the Objectors held a total of 3,995,932 shares as of June 2, 2011.

**OPT OUTS IN THE ONTARIO ACTION AND OBJECTIONS TO THE PROPOSED ERNST & YOUNG SETTLEMENT**

11. This Court fixed January 18, 2013 as the date by which eligible persons had to file objections to the proposed Ernst & Young Settlement. By that deadline, 86 persons or entities submitted valid Notices of Objection to the proposed Ernst & Young Settlement, including the six Objectors. Excluding the six Objectors, five of the valid objections were filed by institutional investors and corporate entities.

12. I am advised by Michael G. Robb, Serge Kalloghlian and Sajjad Nematollahi of Siskinds LLP and Jonathan Bida and Garth Myers of Koskie Minsky LLP, that they have had discussions regarding the proposed settlement with 26 of the persons and entities who filed objections to the settlement for the purpose of inquiring into their reasons for objecting and explaining to them the basis of the settlement.

13. I am further advised by Messrs. Robb, Kalloghlian, Nematollahi, Bida and Myers that 23 of such objectors have since withdrawn their objections, including all five of the institutional investors and corporate entities referenced in the last sentence of paragraph 11 above. Certain of those objectors indicated that they misunderstood the Notice of Objection and did not in fact intend to object. Others withdrew their objections after the basis of the proposed Ernst & Young Settlement was explained to them. In any event, no institutions other than the Objectors continue to object to the Ernst & Young Settlement.

14. Attached hereto as **Exhibit "O"** is a chart (a) identifying each objector who filed an objection and who has not withdrawn his, her or its objection as of the time I have sworn this affidavit, and (b) setting forth a short summary of the reasons he, she or it provided for objecting to the settlement. As appears from the attached chart, 10 of those objectors have given no reason for their objection.

15. If more of those objectors withdraw their objections before the hearing of the within motion, Class Counsel will file with the Court a further affidavit identifying those objectors.

16. The courts in the Ontario and Quebec Actions fixed January 15, 2013 as the date by which persons wishing to opt out of the actions had to file Opt-Out Forms. By that deadline, 7 individuals and 8 institutional investors had submitted Opt-Out Forms deemed valid by the administrator. Six of the institutions who filed Opt-Out Forms on or before the deadline were the Objectors.

17. I am advised by Kurt Elgie, of NPT RicePoint that 3 of the persons and entities who timely filed valid Opt-Out Forms have since withdrawn their Opt-Out Forms.

18. Attached hereto as **Exhibit “P”** is a chart (a) identifying each person and entity who filed on or before the applicable deadline an Opt-Out Form deemed valid by the administrator, and who has not withdrawn that Opt-Out Form as of the time I have sworn this affidavit, and (b) setting forth a short summary of the reasons he, she or it provided for opting out of the Ontario Action or Quebec Action.

19. If additional persons or entities withdraw their Opt-Out Forms before the hearing of the within motion, Class Counsel will file a further affidavit identifying those persons and entities.

20. On April 18, 2012, the current CEO of Sino, Judson Martin, swore an affidavit in the above-captioned CCAA proceeding in which he stated, at para. 22 that, as of April 29, 2011, Sino had 34,177 beneficial shareholders. A copy of that affidavit is attached as **Exhibit “Q”**.

#### **INITIAL VERSION OF SINO’S PLAN OF ARRANGEMENT (THE “PLAN”)**

21. Attached hereto as **Exhibit “R”** is the initial, August 14, 2012 version of the Plan, as filed with the Court by Sino. Prior to August 14, 2012, we were provided earlier versions of the





# TAB A

THIS DOCUMENT IS LOCATED AT

*Globe and Mail* article: “Burned Sino-Forest Investors Squabble Among Themselves”, dated January 9, 2013

Exhibit “F” to the Supplemental Affidavit of Charles M. Wright, sworn January 23, 2013, Plaintiffs’ Reply Motion Record, Tab 1F

**COURTS**

# Burned Sino-Forest investors squabble among themselves

**JEFF GRAY**

LAW REPORTER — The Globe and Mail

Published Wednesday, Jan. 09 2013, 6:39 PM EST

Last updated Wednesday, Jan. 09 2013, 7:01 PM EST

Big investors who lost billions when Sino-Forest Corp. collapsed amid fraud allegations are at odds over a massive proposed settlement reached with the company's former auditors, Ernst & Young LLP.

The class-action lawyers who brokered the tentative deal and those acting for a group of investment funds who oppose it are both vying for support from burned investors in the company ahead of a hearing next month, when the settlement goes before an Ontario Superior Court judge in Toronto for approval.

The controversial deal would see Ernst & Young pay \$117-million to settle allegations from investors that it failed to properly scrutinize the Toronto-based Chinese forestry company's books. The accounting firm does not admit to any wrongdoing as part of the deal.

But last month's agreement was signed just days before the Ontario Securities Commission announced its own allegations against E&Y in the Sino-Forest affair, prompting critics to question the deal. Concerns have also been raised about a provision of the deal that would bar investors from opting out of the settlement and suing E&Y on their own.

The back-and-forth is the latest chapter in what could be one of the largest scandals to hit Canada's capital markets. At one time, the Toronto Stock Exchange-listed company had a market capitalization of more \$6-billion and claimed to have \$3-billion in forestry assets in China.

Toronto lawyer Won Kim of Kim Orr Barristers PC, acting for a dissident group of investment funds with holdings in Sino-Forest – Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndical National de Retraite Bâtirente Inc. – is challenging the E&Y deal in court, and has requested leave to appeal it before the Ontario Court of Appeal.

On behalf of his clients, Mr. Kim has also been trying to secure support from other burned investors.

That has prompted lawyers with Siskinds LLP and Koskie Minsky LLP, who brokered the E&Y deal on behalf of all Sino-Forest investors included in the potential \$9.18-billion class action against the company, to strike back.

On New Year's Eve, they sent a letter to Sino-Forest investors about Kim Orr's claims, dismissing them as "disinformation" and "meritless." They also organized a round of conference calls for Sino-Forest investors, including one held on Wednesday.

In their Dec. 31 letter, Siskinds and Koskie Minsky say the E&Y deal is the largest settlement with an auditor in a securities class action in Canadian history, and the fifth largest in the world.

They also boast that Paulson & Co., the U.S. hedge fund with the largest holdings in Sino-Forest before the fraud allegations surfaced in June, 2011, is among the investors supporting the settlement.

Siskinds and Koskie Minsky defend the E&Y deal as "historic," and say it was achieved "despite a range of challenges," including a liability limit under Ontario law they say "may well be less than \$10-million" and Sino-Forest's move to seek court protection from its creditors last year, freezing litigation against the company.

They also defend the deal's provision that would bar investors from opting out and suing E&Y on their own, saying this is common in insolvency proceedings and that E&Y is paying a "substantial premium" to put this court fight over Sino-Forest completely behind it.

Mr. Kim referred a request for comment to one of his clients, John Mountain, the senior vice-president for legal affairs at Northwest & Ethical Investments LP, who called much of the memorandum from Siskinds and Koskie Minsky "smoke and mirrors."

He said it was premature to settle before the release of the OSC allegations and before the plaintiffs' lawyers have been able to compel E&Y to hand over documents.

Mr. Mountain argued that the \$117-million settlement, once legal fees are carved out, would represent a mere fraction of the losses suffered by investors: "What you are left with is about a penny on every dollar that every investor lost. So, yes, on one hand, it sounds like a huge amount of money, but on the other hand, it is a pittance."

Dimitri Lascaris, the lead lawyer from Siskinds LLP on the case, said in an interview that he hoped critics of the deal could be convinced the settlement was a good one, given how hard it is under Ontario law to sue auditors in this kind of case: "When you take those realities into account, as difficult as they are, this is a very, very good outcome."

# TAB B

## THIS DOCUMENT IS LOCATED AT

Reasons of Justice Perell, dated  
January 6, 2012

Exhibit "N" to the Supplemental  
Affidavit of Charles M. Wright, sworn  
January 23, 2013, Plaintiffs' Reply  
Motion Record, Tab 1N

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Douglas Smith and Zhongjun Goa**

Plaintiffs

- and -

**Sino-Forest Corporation, Allen T.Y. Chan, James M.E. Hyde, Edmund Mak, W. Judson Martin, Simon Murray, Peter D.H. Wang, David J. Horsley, Ernst & Young LLP, BDO Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc., Canaccord Financial Ltd., and Maison Placements Canada Inc.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AND BETWEEN:**

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

Plaintiffs

- and -

**Sino-Forest Corporation, Ernst & Young LLP, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, Kai Kit Poon, David J. Horsley, James P Bowland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Pöyry (Beijing) Consulting Company Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc. Canaccord Financial Ltd., and Maison Placements Canada Inc.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*



**AND BETWEEN:**

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**COUNSEL:**

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

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

**PERELL, J.**

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

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

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

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

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

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

*Northwest v. Sino-Forest*

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

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

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

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

because they may be difficult to litigate and it does not abandon class members who may not be assured of success or who comprise a small portion of the class.

[231] Kim Orr submits that *Northwest v. Sino-Forest* is comprehensive and also cohesive and corresponds to the factual reality. It submits that the theories of the competing actions do not capture the wrongdoing at Sino-Forest for which many are culpable and who should be held responsible. It submits that its approach will meet the challenges of certification and yield an optimum recovery for the class.

[232] Rochon Genova submits that *Smith v. Sino-Forest* is much more cohesive than the other actions. It submits that the more expansive class definitions and causes of action in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* will present serious difficulties relating to manageability, preferability, and potential conflicts of interest amongst class members that are not present in *Smith v. Sino-Forest*. Rochon Genova submits that it has developed a solid, straightforward theory of the case and made a great deal of progress in unearthing proof of Sino-Forest's wrongdoing.

## **G. CARRIAGE ORDER**

### **1. Introduction**

[233] With the explanation that follows, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I award carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*. In the race for carriage of an action against *Sino-Forest*, I would have ranked Rochon Genova second and Kim Orr third.

[234] This is not an easy decision to make because class members would probably be well served by any of the rival law firms. Success in a carriage motion does not determine which is the best law firm, it determines that having regard to the interests of the plaintiffs and class members, to what is fair to the defendants, and to the policies that underlie the class actions regime, there is a constellation of factors that favours selecting one firm or group of firms as the best choice for a particular class action.

[235] Having regard to the constellation of factors, in the circumstances of this case, several factors are neutral or non-determinative of the choice for carriage. In this group are: (a) attributes of class counsel; (b) retainer, legal, and forensic resources; (c) funding; (d) conflicts of interest; and (e) the plaintiff and defendant correlation.

[236] In the case at bar, the determinative factors are: definition of class membership, definition of class period, theory of the case, causes of action, joinder of defendants, and prospects of certification.

[237] Of the determinative factors, the attributes of the representative plaintiffs is a standalone factor. The other determinative factors are interrelated and concern the rival conceptualizations of what kind of class action would best serve the class members' need for access to justice and the policies of fairness to defendants, behaviour modification, and judicial economy.

however, does not take me to the conclusion that carriage should be granted to *Smith v. Sino-Forest*. Subject to what the defendants may have to say, the class definitions and class period in *Labourers v. Sino-Forest* and in *Northwest v. Sino-Forest* appear to be adequate, reasonable, certifiable, and likely consistent with the common issues that will be forthcoming.

[304] Since for other reasons, I would grant carriage to *Labourers v. Sino-Forest*, the question I ask myself is whether the class definition in *Labourers*, which favourably includes bondholders, but which is not as good a definition as found in *Smith v. Sino-Forest* or in *Northwest v. Sino-Forest* should be a reason not to grant carriage to *Labourers*. My answer to my own question is no, especially since it is still possible to amend the class definition so that it is not under-inclusive.

**(c) Theory of the Case, Causes of Action, Joinder of Defendants, and Prospects of Certification**

[305] The second group of interrelated determinative factors is: theory of the case, causes of action, joinder of defendants, and prospects of certification. Taken together, it is my opinion, that these factors, which are about what is in the best interests of the putative class members, favour staying *Smith v. Sino-Forest* and *Northwest v. Sino-Forest* and granting carriage to *Labourers v. Sino-Forest*.

[306] In applying the above factors, I begin here with the obvious point that it would not be in the interests of the putative class members, let alone not in their best interests to grant carriage to an action that is unlikely to be certified or that, if certified, is unlikely to succeed. It also seems obvious that it would be in the best interests of class members to grant carriage to the action that is most likely to be certified and ultimately successful at obtaining access to justice for the injured or, in this case, financially harmed class members. And it also seems obvious that all other things being equal, it would be in the best interests of class members and fair to the defendants and most consistent with the policies of the *Class Proceedings Act, 1992* to grant carriage to the action that, to borrow from rule 1.04 or the *Rules of Civil Procedure* secures the just, most expeditious and least expensive determination of the dispute on its merits.

[307] While these points seem obvious, there is, however, a major problem in applying them, because the court should not and cannot go very far in determining the matters that would be most determinative of carriage. A carriage motion is not the time to determine whether an action will satisfy the criteria for certification or whether it will ultimately provide redress to the class members or whether it would be the preferable procedure or the most expeditious and least expensive procedure to resolve the dispute.

[308] Keeping this caution in mind, in my opinion, certain aspects of *Northwest v. Sino-Forest* make the other actions preferable. In this regard, I find the joinder of some defendants to *Northwest v. Sino-Forest* mildly troublesome.

[309] More serious, in *Northwest v. Sino-Forest*, I find the employment and reliance on the tort action of fraudulent misrepresentation less desirable than the causes of action utilized to provide procedural and substantive justice to the class members in *Smith v.*

*Sino-Forest* and *Labourers v. Sino-Forest*. In my opinion, the fraudulent misrepresentation action adds needless complexity and costs.

[310] While the finger-pointing of the OSC at Ho, Hung, Ip, and Yeung supports their joinder, the joinder of Chen, Lawrence Estate, Maradin, Wong, and Zhao is mildly troublesome. The joinder of defendants should be based on something more substantive than their opportunity to be a wrongdoer, and at this juncture it is not clear why Chen, Lawrence Estate, Maradin, Wong, and Zhao have been joined to *Northwest v. Sino-Forest* and not to the other proposed class actions. Their joinder, however, is only mildly troublesome, because the plaintiffs in *Northwest v. Sino-Forest* may have particulars of wrongdoing and have simply failed to plead them.

[311] Turning to the pleading of fraudulent misrepresentation, when it is far easier to prove a claim in negligent misrepresentation or negligence, the claim for fraudulent misrepresentation seems a needless provocation that will just fuel the defendants' fervour to defend and to not settle the class action. Fraud is a very serious allegation because of the moral and not just legal turpitude of it, and the allegation of fraud also imperils insurance coverage that might be the source of a recovery for class members.

[312] Kim Orr has understated the difficulties the plaintiffs in *Northwest v. Sino-Forest* will confront in impugning the integrity of Sino-Forest, Ardell, Bowland, Chan, Horsley, Hyde, Mak, Martin, Murray, Poon, Wang, West, Chen, Ho, Hung, Ip, Lawrence Estate, Maradin, Wong, Yeung, Zhao, Canaccord, CIBC, Credit Suisse, Credit Suisse (USA), Dundee, Haywood, Maison, Merrill, Merrill-Fenner, Morgan, RBC, Scotia, TD, UBS, E&Y, BDO, Pöyry, Pöyry Forest, JP Management.

[313] Fraud must be proved individually. In order to establish that a corporate defendant committed fraud, it must be proven that a natural person for whose conduct the corporation is responsible acted with a fraudulent intent. See: *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.) at para. 26; *Toronto-Dominion Bank v. Leigh Instruments Ltd. (Trustee of)*, [1998] O.J. No. 2637 (Gen. Div.) at paras. 477-479.

[314] A claim for deceit or fraudulent misrepresentation typically breaks down into five elements: (1) a false statement; (2) the defendant knowing that the statement is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff being induced to act; and (5) the defendant suffering damages: *Derry v. Peek* (1889), 14 App. Cas. 337 (H.L.); *Graham v. Saville*, [1945] O.R. 301 (C.A.); *Francis v. Dingman* (1983), 2 D.L.R. (4th) 244 (Ont. C.A.). The fraud elements are the second and third in this list.

[315] In the famous case of *Derry v. Peek*, the general issue was what counts as a fraudulent misrepresentation. More particularly, the issue was whether a careless or negligent misrepresentation without more could count as a fraudulent misrepresentation. In the case, the defendants were responsible for a false statement in a prospectus. The prospectus, which was for the sale of shares in a tramway company, stated that the company was permitted to use steam power to work a tram line. The statement was false because the directors had omitted the qualification that the use of steam power required the consent of the Board of Trade. As it happened, the consent was not given, the tram line would have to be driven by horses, and the company was wound-up. The Law

Lords reviewed the evidence of the defendants individually and concluded that although the defendants had all been careless in their use of language, they had honestly believed what they had said in the prospectus.

[316] In the lead judgment, Lord Herschell reviewed the case law, and at p. 374, he stated in the most famous passage from the case:

I think the authorities establish the following propositions. First, in order to sustain an action for deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless, whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false has obviously no such honest belief. Thirdly, if fraud is proved, the motive of the person guilty is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

[317] Lord Herschell's third situation is the one that was at the heart of *Derry v. Peek*, and the Law Lords struggled to articulate that relationship between belief and carelessness in speaking. Before the above passage, Lord Herschell stated at p. 361:

To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true. And it is surely conceivable that a man may believe that what he states is the fact, though he has been so wanting in care that the Court may think that there were no sufficient grounds to warrant his belief.

[318] Lord Herschell is saying that carelessness in making a statement does not necessarily entail that a person does not believe what he or she is saying. However, later in his judgment, he emphasizes that carelessness is relevant and could be sufficient to show that a person did not believe what he or she was saying. Thus, carelessness may prove fraud, but it is not itself fraud. Lord Herschell's famous quotation, where he states that fraud is proven when it is shown that a false statement was made recklessly, careless whether it be true or false, states only awkwardly the role of carelessness and must be read in the context of the whole judgment.

[319] In *Angus v. Clifford*, [1891] 2 Ch. 449 (C.A.) at p. 471, Bowen, L.J. discussed the role of carelessness or recklessness in establishing fraud; he stated:

Not caring, in that context [i.e., in the context of an allegation of fraud], did not mean taking care, it meant indifference to the truth, the moral obliquity which consists of wilful disregard of the importance of truth, and unless you keep it clear that that is the true meaning of the term, you are constantly in danger of confusing the evidence from which the inference of dishonesty in the mind may be drawn - evidence which consists in a great many cases of gross want of caution - with the inference of fraud, or of dishonesty itself, which has to be drawn after you have weighed all the evidence.

[320] Bowen, L.J.'s statement alludes to the second element of what makes a statement fraudulent. Deceit or fraudulent misrepresentation requires that the defendant

have “a wicked mind:” *Le Lievre v. Gould*, [1893] 1 Q.B. 491 at p. 498. Fraud involves intentional dishonesty, the intent being to deceive. If the plaintiff fails to prove this mental element, then, as was the case in *Derry v. Peek*, the claim is dismissed. To succeed in an action for deceit or for fraudulent misrepresentation, the plaintiff must show not only that the defendant spoke falsely and contrary to belief but that the defendant had the intent to deceive, which is to say he or she had the aim of inducing the plaintiff to act mistakenly: *BG Checo International Ltd. v. British Columbia Hydro and Power Authority* (1993), 99 D.L.R. (4th) 577 (S.C.C.).

[321] The defendant’s reason for deceiving the plaintiff, however, need not be evil. In the passage above from *Derry v. Peek*, Lord Herschell notes that the person’s motive for saying something that he or she does not believe is irrelevant. A person may have a benign reason for defrauding another person, but the fraud remains because of the discordance between words and belief combined with the intent to mislead the plaintiff: *Smith v. Chadwick* (1854), 9 App. Cas. 187 at p. 201; *Bradford Building Society v. Borders*, [1941] 2 All E.R. 205 at p. 211; *Beckman v. Wallace* (1913), 29 O.L.R. 96 (C.A.) at p. 101.

[322] In promoting its fraudulent misrepresentation claim, Kim Orr relied on *Gregory v. Jolley* (2001), 54 O.R. (3d) 481 (C.A.), which was a case where a trial judge erred by not applying the third branch of the test articulated in *Derry v. Peek*. Justice Sharpe discussed the trial judge’s failure to consider whether the appellant had made out a case of fraud based on recklessness and stated at para. 20:

With respect to the law, the trial judge's reasons show that he failed to consider whether the appellant had made out a case of fraud on the basis of recklessness. While he referred to a case that in turn referred to the test from *Derry v. Peek*, the reasons for judgment demonstrate to my satisfaction that the trial judge simply did not take into account the possibility that fraud could be made out if the respondent made misrepresentations of material fact without regard to their truth. The trial judge's reasons speak only of an intention to defraud or of statements calculated to mislead or misrepresent. He makes no reference to recklessness or to statements made without an honest belief in their truth. As *Derry v. Peek* holds, that state of mind is sufficient proof of the mental element required for civil fraud, whatever the motive of the party making the representation. In another leading case on civil fraud, *Edgington v. Fitzmaurice*, (1885), 29 Ch. D.459 at 481-82 (C.A.), Bowen L.J. stated: “[I]t is immaterial whether they made the statement knowing it to be untrue, or recklessly, without caring whether it was true or not, because to make a statement recklessly for the purpose of influencing another person is dishonest.” The failure to give adequate consideration to the contention that the respondent had been reckless with the truth in regard to the income figures he gave in order to obtain disability insurance constitutes an error of law justifying the intervention of this court.

[323] From this passage, Kim Orr extracts the notion that there is a viable fraudulent misrepresentation against forty defendants all of whom individually can be shown to be reckless as opposed to careless. That seems unlikely, but more to the point, recklessness is only half the battle. The overall motive may not matter, but the defendant still must have had the intent to deceive, which in *Gregory v. Jolley* was the intent to obtain disability insurance to which he was not qualified to receive.

[324] Recklessness alone is not enough to constitute fraudulent misrepresentation, as Justice Cumming notes at para. 25 of his judgment in *Hughes v. Sunbeam Corp. (Canada)*, [2000] O.J. No. 4595 (S.C.J.), where he states:

The representation must have been made with knowledge of its falsehood or recklessness without belief in its truth. The representation must have been made by the representor with the intention that it should be acted upon by the representee and the representee must in fact have acted upon it.

[325] I conclude that the fraudulent misrepresentation action is a substantial weakness in *Northwest v. Sino-Forest*. In fairness, I should add that I think that the unjust enrichment causes of action and oppression remedy claims in *Labourers v. Sino-Forest* add little.

[326] The unjust enrichment claims in *Labourers* seem superfluous. If Sino-Forest, Chan, Horsley, Mak, Martin, Murray, Poon, Banc of America, Canaccord, CIBC, Credit Suisse, Credit Suisse USA, Dundee, Maison, Merrill, RBC, Scotia and TD, are found to be liable for misrepresentation or negligence, then the damages they will have to pay will far exceed the disgorgement of any unjust enrichment. If they are found not to have committed any wrong, then there will be no basis for an unjust enrichment claim for recapture of the gains they made on share transactions or from their remuneration for services rendered. In other words, the claims for unjust enrichment are unnecessary for victory and they will not snatch victory if the other claims are defeated. Much the same can be said about the oppression remedy claim. That said, these claims in *Labourers v. Sino-Forest* will not strain the forensic resources of the plaintiffs in the same way as taking on a massive fraudulent misrepresentation cause of action would do in *Northwest v. Sino-Forest*.

[327] For the purposes of this carriage motion, I have little to say about the “Integrity Representation” approach to the misrepresentation claims that are at the heart of the claims against the defendants in *Northwest v. Sino-Forest* or of the “GAAP” misrepresentation employed in *Labourers v. Sino-Forest*, or the focus on the authorized intermediaries in *Smith v. Sino-Forest*. Short of deciding the motion for certification, there is no way of deciding which approach is more likely to lead to certification or which approach the defendants will attack as deficient. For present purposes, I am simply satisfied that the class members are best served by the approach in *Labourers v. Sino-Forest*.

[328] The cohesive, yet adequately comprehensive, approach used in *Smith v. Sino-Forest* appears to me close to *Labourers v. Sino-Forest*, but in my opinion, *Smith v. Sino-Forest* wants for the inclusion of the bondholders, and, as noted above, there are other factors which favour *Labourers v. Sino-Forest* over *Smith v. Sino-Forest*. That said, it was a close call for me to choose *Labourers v. Sino-Forest* and not *Smith v. Sino-Forest*.



# TAB C

THIS DOCUMENT IS LOCATED AT

Opt-Out Charts (Ontario and Quebec)

Exhibit "P" to the Supplemental Affidavit of Charles M. Wright, sworn January 23, 2013, Plaintiffs' Reply Motion Record, Tab 1P

**ONTARIO VALID AND TIMELY OPT-OUTS**

<u><b>NAME OF OPT-OUT PARTY</b></u>	<u><b>REASON FOR OPTING OUT</b></u>
Rick Thompson	Closed LIRA accounts and gave up rights to Scotiabank, does not wish to participate in class action
McCann Developments	Opting Out as she does not wish to participate going forward -- health concerns, does not wish for estate to be involved.
Nina Clark	Does not wish to participate as her holdings were very small.
Invesco Canada Ltd.	Intend to pursue litigation outside the class action - client of Kim Orr PC.
Matrix Asset Management Inc.	Intend to pursue litigation outside the class action - client of Kim Orr PC.
Northwest & Ethical Investments LP	Intend to pursue litigation outside the class action - client of Kim Orr PC.
Rupert Bramall	Does not wish to participate as his holdings were very small.
Helen Babalos	No reason given.
Susan Hawley	Sold her shares for a small profit.

**QUEBEC VALID AND TIMELY OPT-OUTS**

<b><u>NAME OF OPT-OUT PARTY</u></b>	<b><u>REASON FOR OPTING OUT</u></b>
Comité Syndical National De Retraite Bâtirente Inc.	Intend to pursue litigation outside the class action - client of Kim Orr PC
Gestion Férique	Intend to pursue litigation outside the class action - client of Kim Orr PC.
Montrusco Bolton Investments Inc.	Intend to pursue litigation outside the class action - client of Kim Orr PC.

# **TAB 3**

THIS DOCUMENT IS LOCATED AT

Answers on Written Examination on  
Affidavits of Charles M. Wright

Brief of Interrogatories, Tab 8

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING  
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT  
WONG**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly  
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN,  
KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND,  
JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J.  
WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE  
SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES  
CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC  
WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD  
FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE  
SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED (successor by merger to Banc of America Securities LLC)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ANSWERS ON WRITTEN EXAMINATION  
ON AFFIDAVITS OF CHARLES M. WRIGHT**

The answers to the Questions on Written Examination on Affidavits of Charles M. Wright, dated January 25, 2013, posed by Gestion Férique, Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Montrusco Bolton Investments Inc., Invesco Canada Ltd. and Northwest & Ethical Investments L.P. (the “Objectors”) are:

1. **Question: “Provide a copy of the opinion referred to in paragraph 106 of your affidavit;”**

**Answer:** Refused. As noted at paragraph 106 of the Affidavit of Charles M. Wright, sworn January 10, 2013, the opinion was provided to Class Counsel on a confidential and without prejudice basis (“Within the settlement context and on a privileged basis, Ernst & Young has provided Class Counsel with the opinion of an auditing expert . . .”).

2. **Question: “Provide a copy of the insurance policies referred to in paragraph 87(d) of your affidavit;”**

**Answer:** Refused. The insurance policies were provided to Class Counsel on the following conditions: (1) the policies are only to be shared with plaintiffs’ counsel in this proceedings, Kessler Topaz Meltzer & Check, LLP and, to the extent necessary to obtain instructions, with the named representative plaintiffs; (2) these policies shall not to be made public or filed with the court, except with the consent of Ernst & Young LLP (“E&Y”) or as required by order of the court; and (3) should such an order be sought or should Class Counsel become aware that these policies might otherwise be made public, Class Counsel will provide E&Y with sufficient notice so that it might seek any confidentiality, sealing and/or other orders.



3. **Question: “If a copy of the insurance policies described in #2 is not within your possession and control, describe the coverage amount, available coverage (if different), and any other terms and/or conditions of the policies that may affect availability and/or coverage in this situation;”**

**Answer:** Refused. See answer to 2, above. In addition, Class Counsel has already disclosed the amount of E&Y’s coverage to the Objectors on a without prejudice and confidential basis. Finally, E&Y has advised Class Counsel that it consents to the *in camera* inspection of the policies by Justice Morawetz, should His Honour be inclined to conduct such an inspection.

4. **Question: “Provide a copy of the transcripts of the cross examination of Sino-Forest’s CEO as referred to at paragraph 49(h) of your affidavit;”**

**Answer:** See attached.

5. **Question: “Provide copies of any notices of objection that were withdrawn and any accompanying correspondence or records of conversation between Class Counsel and the persons who submitted and subsequently withdrew their notices of objection as referred to at paragraphs 11-13 of your supplemental affidavit;”**

**Answer:** As of today’s date, the following objections have been withdrawn: 2288625 Ontario Inc., Alain Vallee, Andrea Sullivan, Archie Sullivan, Augen Resources Strategy Fund, Brian Gore, Brunhilde and Rudolf Huber, Caldwell Institutional Equity Pool, Caldwell Meisels Canada Fund, Chang Teng, Chendreshkumar Amin, Chi Faz Chan/Bi Fang Lei, Cindy Mai, Clarence Moreau, Daniel Liu, David Cristina, David Pike, Eric Lee, Francis Wing Keung Leung, Gene Manion, Grace Nosal, Grant A. Bears, Gundy Inc., Helmuth Slisarenko, Huifang Fan, James William Alsop, Jeannie Mai, John Jeglum, Julianna Bears, Lao Fan, Lena Maria Goveas, Lorraine Dahl, Michael Poon, Reginald McDonald, Richard Dahl, Richard Laskowski, Siu Hung Mai, Suzanne Rochon, Tammy Warren, Walter Nosal, Wei Chun Sun and/or Rebecca S,J, Tsang, William Rankin, and Xiaotong Ji. Copies of those objection forms are attached. Communications between

class members, including any objectors, and Class Counsel are privileged and will not be produced. However, Class Counsel will provide copies of correspondence confirming the withdrawal by the above persons of their objections to Justice Morawetz for an *in camera* inspection, should Justice Morawetz be inclined to conduct such an inspection. With respect to the December 31, 2012 memorandum from Siskinds LLP which is attached as Exhibit “E” to the Affidavit of Eric Adelson (the “Siskinds Memorandum”), the Siskinds Memorandum was not disseminated by Class Counsel to objectors *per se*. Rather, the Siskinds Memorandum was sent to twenty-five recipients, including five law firms and 12 institutions which Class Counsel believe to be class members. The Siskinds Memorandum was sent to such recipients in large part in order to respond to various assertions made by Kim Orr LLP (“Kim Orr”) in two memoranda which Kim Orr and/or its clients disseminated or caused to be disseminated to investors whose identities are unknown to Class Counsel (the “Kim Orr Memoranda”). One of the two Kim Orr Memoranda is dated December 14, 2012 and states on its face that it was authored by Won J. Kim and Megan McPhee. The identity of the person or persons to whom that memorandum was addressed is unknown to Class Counsel. That memorandum is described in question 16 posed to Eric Adelson and question 8 posed to Tanya Jemec. The second of the Kim Orr Memoranda states on its face that it was authored by Won J. Kim, is dated December 17, 2012, and is addressed simply to “Investors.” That memorandum is described in question 11 posed to Eric Adelson and question 1 posed to Tanya Jemec.

6. **Question: “Identify and provide copies of any documents constituting, reflecting, referred to in, or underlying the evidentiary proffer provided by Pöyry (Beijing) Consulting Company Limited (“Pöyry”) to the Ontario Plaintiffs and other Defendants in the Class Action;”**

**Answer:** Refused. Pursuant to sections 3.4(1) and (11), 6.3 and 8.3 of the Settlement Agreement with Pöyry, the requested information may not be furnished to the Objectors or their counsel without the consent of Pöyry, which consent has not been given.

7. **Question: “Identify and provide any verbal and/or documentary information and technical assistance that was provided to the Ontario Plaintiffs and Class Counsel as consideration for agreeing to settle all claims against Pöyry, including any information and cooperation provided under Articles 3.4(2)-3.4(6) of the Pöyry Settlement Agreement;”**

**Answer:** Refused. See 6.

8. **Question: “Describe any consideration or any arrangement entered into with Paulson & Co. Inc., Davis Selected Advisers LP, and/or any current or former Sino-Forest security holder, as referred to in paragraph 75 of your affidavit, in connection with securing the support or non-opposition of any such current or former Sino-Forest security holder to the E&Y Settlement;”**

**Answer:** Davis Selected Advisers LP is a client of Siskinds LLP. Paulson & Co. Inc. is a class member. Communications with both are privileged and will not be produced. Notwithstanding the forgoing, there is no “consideration or any arrangement” “securing the support or non-opposition of any such current or former Sino-Forest security holder to the E&Y Settlement.”

9. **Question: “If arrangements or consideration of any kind pursuant to #8 have in fact been entered into or agreed to, provide copies of any documentation or correspondence evidencing such agreement and/or consideration in exchange for supporting or not opposing the E&Y Settlement;”**

**Answer:** See 8.

10. **Question: “Provide copies of correspondence and/or other documentation evidencing the support or non-opposition of Paulson & Co. Inc., Davis Selected Advisers LP, , [sic] and/or any current or former Sino-Forest security holder to the E&Y Settlement, as referred to in paragraph 75 of your affidavit;”**

**Answer:** Refused. Davis Selected Advisers LP is a client of Siskinds LLP. Paulson & Co. Inc. is a class member. Communications with both are privileged and will not be produced.

11. **Question: “Provide a copy of the list of holders of Sino-Forest securities as of June 2, 2011, delivered to Class Counsel as referred to at page 2 of the Order of Justice Morawetz dated December 21, 2012;”**

**Answer:** Refused. This list is not relevant to this motion.

The Trustees of the Labourer's Pension Fund  
of Central and Eastern Canada, et al.

and

Sino-Forest Corporation, et al.

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

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

**ANSWERS ON WRITTEN EXAMINATION  
ON AFFIDAVITS OF CHARLES M. WRIGHT**

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**A. Dimitri Lascaris (LSUC#: 50074A)**  
Tel: 519.660.7844  
Fax: 519.660.7845

Lawyers for the Plaintiffs

# TAB A

THIS DOCUMENT IS LOCATED AT

Transcript of Cross-Examination  
Video Conference of Judson Martin,  
October 3, 2012

Attachment to Answers on Written  
Examination on Affidavits of Charles  
M. Wright, Brief of Interrogatories,  
Tab 8A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

\*\*\*\*\*

SINO FOREST CORPORATION

Applicant

\*\*\*\*\*

CROSS-EXAMINATION  
VIDEO CONFERENCE

Of JUDSON MARTIN, on his affidavits sworn  
September 24<sup>th</sup> 2012 and October 3<sup>rd</sup> 2012 held at  
the offices of Edcom and M.D.M. Reporting  
Services, London, Ontario on the 3<sup>rd</sup> day of  
October, 2012 at 8:00 p.m., pursuant to  
appointment.

\*\*\*\*\*

APPEARANCES:

Derek J. Bell  
(Bennett Jones LLP)

Counsel for the Applicant

Dimitri Lascaris  
(Siskinds LLP)

Counsel to the Ad Hoc Committee of  
Purchasers of the Applicant's Securities

**M.D.M. REPORTING SERVICES**  
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(519) 672-0246



**M.D.M. REPORTING SERVICES**

- J. Martin

is our number one goal. That's the concern I have, sir.

- 5
93. Q. May I infer from your comment, sir, that to date, the company has not done a deep dive investigation?
- A. Well, I - there's been many parties that have done deep dive investigations through various levels of due diligence including very detailed and lengthy independent committee process.
- 10
94. Q. And you understand that the company extended an excess of \$50 Million in order to conduct that investigation?
- A. The company invested significant funds to complete that investigation, yes.
- 15
95. Q. Is it correct, because I believe you were quoted in a press to this effect, that the amount was at least \$50 Million?
- A. If I w - if I was - if I said that then it would be correct, yes. I don't recall what number I actually said, but if I said it, it would be correct, yes.
- 20
- 25
96. Q. Okay. Well, if you come to a different conclusion - please make enquiries after our exchange this evening. If you decide based upon your enquiries that the number was not
- 30

**M.D.M. REPORTING SERVICES**

- J. Martin

\$50 Million or thereabouts, please let us know.

ADVISEMENT

MR. BELL: We'll consider that.

5

97. MR. LASCARIS: Q. All right, let's operate on the assumption that it was \$50 Million, sir. Now, if in fact the company expended \$50 Million and conducted a deep dive investigation aided by experts having various qualifications, what additional investigation do you think the company is going to have to do to respond to the leave and certification motions in the class action?

10

15

A. It would re - whatever parties would want - whatever work each individual party would want to do um, and I'm sure many parties involved would want to do their own independent deep dives and not rely on others as has been the - the habit here since June 2<sup>nd</sup> of 2011.

20

98. Q. Are you satisfied that the company has done a deep dive?

MR. BELL: In what respect?

25

99. MR. LASCARIS: Q. In investigating the allegations of Muddy Waters.

30

A. I believe that the independent committee process as sanctioned by the board and publicly reported on in full was a very, very extensive examination, yes.

# TAB 4

THIS DOCUMENT IS LOCATED AT

Supplementary Answers on Written  
Examination of Affidavits of Charles  
Wright

Brief of Interrogatories, Tab 9

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING  
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT  
WONG**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly  
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN,  
KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND,  
JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J.  
WEST, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE  
SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES  
CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC  
WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD  
FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE  
SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED (successor by merger to Banc of America Securities LLC)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTARY ANSWERS ON WRITTEN EXAMINATION  
ON AFFIDAVITS OF CHARLES M. WRIGHT**

The following supplements the answers provided on January 29, 2013 to the Questions on Written Examination on Affidavits of Charles M. Wright, dated January 25, 2013, posed by Gestion Férique, Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Montrusco Bolton Investments Inc., Invesco Canada Ltd. and Northwest & Ethical Investments L.P. (the “Objectors”):

6. **Question: “Identify and provide copies of any documents constituting, reflecting, referred to in, or underlying the evidentiary proffer provided by Pöyry (Beijing) Consulting Company Limited (“Pöyry”) to the Ontario Plaintiffs and other Defendants in the Class Action;”**

**Supplementary Answer:** I previously refused to answer this question as the Settlement Agreement with Pöyry prevented disclosure of any documents or information relating to the evidentiary proffer that Pöyry provided to Class Counsel. We had requested Pöyry's consent to provide a summary of the evidentiary proffer to the Objectors' counsel on a confidential basis, but Pöyry refused.

Pöyry has since altered its position in that it has elected to make disclosure to the Objectors' counsel of the substance of the proffer. Accordingly, as a summary of the proffer is now part of the record, it is necessary and appropriate to include Ernst & Young's response to the factual assertions set out in Pöyry's disclosure. Attached is that response, which lays out some of the arguments advanced by Ernst & Young at the mediation.

The Trustees of the Labourer's Pension Fund  
of Central and Eastern Canada, et al.

and

Sino-Forest Corporation, et al.

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

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

**SUPPLEMENTARY ANSWERS ON WRITTEN  
EXAMINATION ON AFFIDAVITS OF  
CHARLES M. WRIGHT**

**KOSKIE MINSKY LLP**  
900-20 Queen Street West  
Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert (LSUC#: 309420)**  
Tel: 416.595.2117  
Fax: 416.204.2889

**Jonathan Bida (LSUC#: 54211D)**  
Tel: 416.595.2072  
Fax: 416.204.2907

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

**A. Dimitri Lascaris (LSUC#: 50074A)**  
Tel: 519.660.7844  
Fax: 519.660.7845

Lawyers for the Plaintiffs

# TAB A



THIS DOCUMENT IS LOCATED AT

Supplementary Answer Pöyry

Attachment to Supplementary Answers  
on Written Examination of Affidavits  
of Charles Wright, Brief of  
Interrogatories, Tab 9A

## Supplementary answer Pöyry

Pöyry (Beijing) Consulting Company Limited and various related entities (“Pöyry”) provided asset valuation, forestry and management consultancy and other services to SFC in connection with SFC’s timber assets during the relevant period. Pöyry also provided similar services to SFC subsidiary Greenheart. Pöyry valuation reports were filed annually on SEDAR.

Pöyry asserts that it raised concerns with SFC starting in 2007 regarding the quality and sufficiency of SFC’s data concerning the physical composition (fibre, species, age) of SFC’s forestry holdings. These concerns do not appear to have extended to location or ownership. To remedy the stated lack of data, Pöyry proposed to SFC that it purchase from Pöyry an expensive and elaborate in-house forest inventory capacity program (FMIS).

Pöyry states that it raised those concerns at a meeting with SFC and Ernst & Young in early 2010, immediately following the issuance of the financial statements for the year-ended December 31, 2009.

Ernst & Young participated in a conference call that included Pöyry personnel on April 9, 2010. The purpose of the conference call was to discuss valuation issues raised by the adoption of International Financial Reporting Standards (IFRS), to take place effective January 1, 2011. For example, on March 25, 2010, David Horsley distributed an email to proposed attendees approximately two weeks in advance of the call, and stated that “the purpose of the meeting/call will be to discuss Pöyry valuation for IFRS purposes as well as a discussion around the quarterly process of having Pöyry the valuation and the FIMS system.” The minutes of the meeting on April 9, 2010 (authored by Pöyry) reflect that the purpose of the conference call and the content of the discussion revolved around the new IFRS standards. Under IFRS, unlike GAAP, biological assets are presented in the financial statements at fair value (not cost based) and therefore it was possible that in the future the plantation valuation in Pöyry reports would be used to record the carrying amount of the timber assets at fair value for IFRS based financial reporting by Sino-Forest. The context of the discussion was whether possible changes were required for future Pöyry reports to be used for IFRS purposes.

It was not suggested during the April 9, 2010 conference call, nor do the Minutes reflect any suggestion, that Pöyry’s previously issued valuation reports, which Ernst & Young had relied upon for audit purposes, were no longer valid.

Following the conference call, Pöyry issued its Valuation of China Forest Crop Assets for SFC as at 31 December 2009. The final report issued on April 23, 2010, reflected no significant change in the value of the plantations from that reflected in the information provided by Pöyry to E&Y during its audit of the SFC consolidated financial statements dated December 31, 2009.

Following the April 9, 2010 conference call Pöyry issued further valuation reports for timber assets held by SFC and a report for Greenheart. The April 23, 2010 Pöyry valuation report for SFC was posted to SEDAR with Pöyry’s consent. Pöyry Valuation reports dated as of December 31, 2010 were press released by SFC on May 27, 2011.

Those valuation reports (and the previous valuation reports) do not contain material qualifications related to the alleged insufficiency of data.

Ernst & Young relied upon Pöyry and its expertise as a valuator, particularly with respect to the physical composition of the timber assets. It is not credible that Pöyry relied on Ernst & Young to remedy any alleged deficiencies in the data provided to it by SFC.

## Supplementary answer Pöyry

Pöyry (Beijing) Consulting Company Limited and various related entities (“Pöyry”) provided asset valuation, forestry and management consultancy and other services to SFC in connection with SFC’s timber assets during the relevant period. Pöyry also provided similar services to SFC subsidiary Greenheart. Pöyry valuation reports were filed annually on SEDAR.

Pöyry asserts that it raised concerns with SFC starting in 2007 regarding the quality and sufficiency of SFC’s data concerning the physical composition (fibre, species, age) of SFC’s forestry holdings. These concerns do not appear to have extended to location or ownership. To remedy the stated lack of data, Pöyry proposed to SFC that it purchase from Pöyry an expensive and elaborate in-house forest inventory capacity program (FMIS).

Pöyry states that it raised those concerns at a meeting with SFC and Ernst & Young in early 2010, immediately following the issuance of the financial statements for the year-ended December 31, 2009.

Ernst & Young participated in a conference call that included Pöyry personnel on April 9, 2010. The purpose of the conference call was to discuss valuation issues raised by the adoption of International Financial Reporting Standards (IFRS), to take place effective January 1, 2011. For example, on March 25, 2010, David Horsley distributed an email to proposed attendees approximately two weeks in advance of the call, and stated that “the purpose of the meeting/call will be to discuss Pöyry valuation for IFRS purposes as well as a discussion around the quarterly process of having Pöyry the valuation and the FIMS system.” The minutes of the meeting on April 9, 2010 (authored by Pöyry) reflect that the purpose of the conference call and the content of the discussion revolved around the new IFRS standards. Under IFRS, unlike GAAP, biological assets are presented in the financial statements at fair value (not cost based) and therefore it was possible that in the future the plantation valuation in Pöyry reports would be used to record the carrying amount of the timber assets at fair value for IFRS based financial reporting by Sino-Forest. The context of the discussion was whether possible changes were required for future Pöyry reports to be used for IFRS purposes.

It was not suggested during the April 9, 2010 conference call, nor do the Minutes reflect any suggestion, that Pöyry’s previously issued valuation reports, which Ernst & Young had relied upon for audit purposes, were no longer valid.

Following the conference call, Pöyry issued its Valuation of China Forest Crop Assets for SFC as at 31 December 2009. The final report issued on April 23, 2010, reflected no significant change in the value of the plantations from that reflected in the information provided by Pöyry to E&Y during its audit of the SFC consolidated financial statements dated December 31, 2009.

Following the April 9, 2010 conference call Pöyry issued further valuation reports for timber assets held by SFC and a report for Greenheart. The April 23, 2010 Pöyry valuation report for SFC was posted to SEDAR with Pöyry’s consent. Pöyry Valuation reports dated as of December 31, 2010 were press released by SFC on May 27, 2011.

Those valuation reports (and the previous valuation reports) do not contain material qualifications related to the alleged insufficiency of data.

Ernst & Young relied upon Pöyry and its expertise as a valuator, particularly with respect to the physical composition of the timber assets. It is not credible that Pöyry relied on Ernst & Young to remedy any alleged deficiencies in the data provided to it by SFC.

# **TAB 5**

THIS DOCUMENT IS LOCATED AT

Affidavit of Tanya T. Jemec, sworn  
January 18, 2013

Responding Motion Record of the  
Objectors, Tab 4

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING  
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and  
ROBERT WONG**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED  
(formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W.  
JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E.  
ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON  
MURRAY, PETER WANG, GARRY J. WEST, PÖYRY (BEIJING)  
CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES  
(CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES  
CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL  
INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC.,  
CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC.,  
CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE,  
FENNER & SMITH INCORPORATED (successor by merger to Banc of America  
Securities LLC)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

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




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

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

7. On December 17, 2012 Counsel in the New York Class Action (*Leapard et al. v. Chan et al.*, 1:12-cv-01726-VM) wrote a letter to the Ontario Plaintiffs' Counsel raising concerns about the E&Y Settlement. Attached hereto and marked as Exhibit "T" is a letter from Mr. Richard Spiers to Mr. A. Dimitri Lascaris dated December 17, 2012.

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

  
\_\_\_\_\_  
A Commissioner for taking affidavits. )  
**NORMAN T. MIZOBUCHI**

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

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

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

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

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

- and -

SINO-FOREST CORPORATION, et al.

Plaintiffs

Defendants

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

Proceeding commenced at Toronto

**AFFIDAVIT OF TANYA T. JEMEC**

**KIM ORR BARRISTERS P.C.**

19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario M5V 1H2

**James C. Orr** (LSUC #23180M)

**Won J. Kim** (LSUC #32918H)

**Megan B. McPhee** (LSUC #48351G)

**Michael C. Spencer** (LSUC #59637F)

Tel: (416) 596-1414

Fax: (416) 598-0601

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

# TAB A

## THIS DOCUMENT IS LOCATED AT

Opt-Out Form of Northwest and Ethical Investments L.P. without trading records for Pöyry Certification for Settlement, dated January 11, 2013

Exhibit "E" to the Affidavit of Tanya T. Jemec, sworn January 18, 2013, Responding Motion Record of the Objectors, Tab 4E

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Northwest & Ethical Investments L.P. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

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

Last Name

First Name

WORTHWEST & ETHICAL INVESTMENTS

Current Address

155 UNIVERSITY AVENUE, 4TH FLOOR

City

Prov./State

Postal Code/Zip Code

TORONTO ON M5H 3B7

Social Insurance Number/Social Security Number/Unique Tax Identifier

N/A

Telephone Number (Work)

Telephone Number (Home)

416-933-6288

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

714,075

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

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

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

Purpose for Opting Out (check only one):

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

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

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

Signature:

Date Signed:

2013/01/11

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



# TAB B

## THIS DOCUMENT IS LOCATED AT

Opt-Out Form of Matrix Asset Management Inc. without trading records for Pöyry Certification for Settlement, dated January 15, 2013

Exhibit "F" to the Affidavit of Tanya T. Jemec, sworn January 18, 2013, Responding Motion Record of the Objectors, Tab 4F



This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Matrix Asset Management Inc.. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

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

Last Name

First Name

M	A	T	R	I	X	.	A	S	S	E	T	.	M	A	N	A	G	.	E	M	E	N	T	.	I	N	C	.	.	.
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Current Address

1	3	0	.	K	I	N	G	.	S	T	R	E	E	T	.	W	E	S	T	.	S	U	I	T	E	.	.	.
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2	2	0	0	.	P	O	.	B	O	X	.	4	2	2	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
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City

Prov./State

Postal Code/Zip Code

T	O	R	O	N	T	O	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Social Insurance Number/Social Security Number/Unique Tax Identifier

N	/	A	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
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Telephone Number (Work)

Telephone Number (Home)

4	1	6	-	3	6	2	-	3	0	7	7
---	---	---	---	---	---	---	---	---	---	---	---

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

.	.	.	.	4	7	8	2	2	2
---	---	---	---	---	---	---	---	---	---

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

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

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

Purpose for Opting Out (check only one):

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

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

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

Signature:

*David Babler*

Date Signed:

*Jan 15 / 2013*

Please mail your Opt Out Form to:

Sino-Forest Class Action

PO Box 3355

London, ON N6A 4K3



# TAB C

## THIS DOCUMENT IS LOCATED AT

Opt-Out Form of Gestion FERIQUE  
without trading records for Pöyry  
Certification for Settlement, dated  
January 14, 2013

Exhibit "G" to the Affidavit of Tanya  
T. Jemec, sworn January 18, 2013,  
Responding Motion Record of the  
Objectors, Tab 4G

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Gestion FÉRIQUE. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

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

Last Name: GESTLON FÉRIQUE  
First Name:

Current Address: 1010 DE LA GAUCHETIÈRE ST WEST  
SUITE 1000

City: MONTRÉAL  
Prov./State: QC  
Postal Code/Zip Code: H3B 2N2

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

N/A

Telephone Number (Work):

514-840-9206

Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 194925

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

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

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

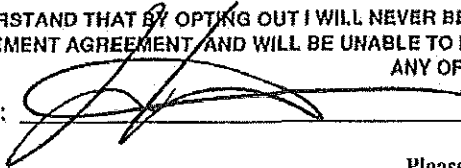
Purpose for Opting Out (check only one):

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

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

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

Signature:



Date Signed:

14/1/2012

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



# TAB D

## THIS DOCUMENT IS LOCATED AT

Opt-Out Form of Montrusco Bolton Investments Inc. without trading records for Pöyry Certification for Settlement, dated January 14, 2013

Exhibit "H" to the Affidavit of Tanya T. Jemec, sworn January 18, 2013, Responding Motion Record of the Objectors, Tab 4H

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Montrusco Bolton Investments Inc. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

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

Last Name First Name  
MONTRUSCO BOLTON INVESTMENTS INC.

Current Address  
1501 MCGILL COLLEGE AVENUE  
SUITE 1200

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

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

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

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

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

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

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

Purpose for Opting Out (check only one):

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

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

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

Signature: [Signature] Date Signed: 14 January 2013

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



# TAB 6



THIS DOCUMENT IS LOCATED AT

Questions for Tanya T. Jemec

Brief of Interrogatories, Tab 12

## QUESTIONS FOR TANYA JEMEC

### Defined Terms

For purposes of the following questions, the following terms have the following meanings:

- (1) “**CCAA**” means the *Companies’ Creditors Arrangement Act*;
- (2) “**Class Counsel**” means Siskinds LLP, Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP;
- (3) “**Client**” means any of Invesco Canada Ltd., Northwest & Ethical Investments LP, Comité Syndical National De Retraite Bâtirente Inc., Matrix Asset Management Inc., Montrusco Bolton Investments Inc. or Gestion Férique, and “**Clients**” two or more of them;
- (4) “**E&Y**” means Ernst & Young LLP;
- (5) “**Insolvency Proceeding**” means the proceeding commenced by **Sino** under the *CCAA* on March 30, 2012;
- (6) “**Kim Orr**” means Kim Orr Barristers P.C.;
- (7) “**Prospective Client**” means any person or entity who solicited from **Kim Orr** advice in relation to that person’s or entity’s claims or possible claims against **Sino** or in relation to the **Insolvency Proceeding**, and who did so prior to the time that that person or entity received the communication in question, and “**Prospective Client**” does not include any person or entity who did not solicit such advice from **Kim Orr** prior to the time that that person or entity received the communication in question; and
- (8) “**Sino**” means Sino-Forest Corporation.

### Questions

1. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim

Orr or a Client, send or caused to be sent a written communication on Kim Orr letterhead to any person or entity who was not a Client, and which communication included the following text (or text that is materially the same as the following text):

We are writing to ask you to join a group of institutional investors seeking to protect important rights concerning recoveries from responsible parties in cases of securities fraud in Canada. In particular, we want to ensure that investors retain "opt out" rights to pursue individual remedies if class action counsel negotiate premature or inadequate settlements.

We represent certain institutional investors that purchased securities of Sino-Forest Corp. before it was revealed as a probable fraud in June 2011. Those investors include: Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Mackenzie Financial Corporation, Fonds Férique, Montrusco Bolton Investments Inc., and Matrix Asset Management Inc.

Our clients are *not* participating as active named plaintiffs in the class action against Sino-Forest and certain of its directors and officers, underwriters, and its auditors (Ernst & Young LLP and BDO). Our clients are, however, "absent" members of the class (not yet certified), and as such they may be affected by those proceedings.

On December 3, Class Counsel (Siskinds LLP and Koskie Minsky LLP) announced they had negotiated a \$117 million settlement with E&Y. This would be the largest securities settlement in Canada, but in our view it is premature (since documents about E&Y's audit work have not been available, and the Ontario Securities Commission has just begun enforcement proceedings against E&Y) and may well be inadequate. Class Counsel presented this settlement in the Commercial Court handling Sino-Forest's insolvency ("CCAA") proceedings, not the class action court in which claims against E&Y and other defendants were brought. On December 7, Class Counsel and E&Y, over our objections, obtained an order in the Commercial Court providing a "framework" for effectuating such settlements. Apparently in extreme haste to push through approval of the settlement, E&Y and Class Counsel obtained a hearing to finalize approval of the settlement on January 4, 2013, with submissions scheduled over the preceding holiday weeks.

Several important aspects of their proposals are objectionable:

1. E&Y and Class Counsel are using the CCAA (insolvency) proceeding to try to avoid normal class action requirements. The settlement in effect deprives investors of their established rights in a class action settlement:

- (a) No "opt-out" rights. The settlement would provide a full general release to E&Y, in the form of a "bar order" in the Sino-Forest CCAA proceedings, without allowing opt-outs for class members who want to litigate individually.
  - (b) Inadequate notice to class members - normal notice is not being given.
  - (c) No approval by class action court - this procedure is also being avoided.
2. In this case, E&Y is at most a "third party defendant" in the Sino-Forest CCAA (insolvency) action. It is improper and unprecedented for a party in E&Y's situation to use a client's insolvency to short-circuit investors' class action rights that otherwise apply. If this is allowed to proceed, it will set an intolerable precedent and dilute investors' rights.
  3. The amount of the proposed E&Y settlement, \$117 million, is rather small compared to the investor losses suffered in Sino-Forest (market cap losses of roughly \$6 billion). Auditors providing audit reports and underwriters performing due diligence for securities offerings are crucial bulwarks against fraud, and in this case represent the only likely source of recoveries for investors.
  4. The unseemly haste with which this settlement is being pushed through the courts indicates that E&Y and Class Counsel are anxious to avoid normal scrutiny. Again, this is an unfortunate precedent.

In short, the proposed E&Y settlement is inconsistent with the goals of transparency, investor protections, and good corporate governance. We hope that investors who care about these principles in Canada will join us in opposing this result - whether or not you are Sino-Forest class members. We invite you to contact us.

2. If the answer to question 1 above is yes, then to how many persons or entities who were not Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above?
3. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above to any person or entity who was not a Client or a Prospective Client?

4. If the answer to question 3 above is yes, then to how many persons or entities who were not Clients or Prospective Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 1 above?
5. Please identify all persons and entities who were not Clients or Prospective Clients and to whom Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, sent or caused to be sent the written communication referred to in question 1 above. If the person or entity to whom the communication was sent was an employee or other representative of an institutional investor, then please identify the institutional investor of whom the person was then an employee or other representative. If the person to whom the communication was sent was a lawyer, then please identify the law firm of which that lawyer was an employee or partner at the time at which the communication was sent. If the person or entity to whom the communication was sent was an investor rights organization, then please so state. If the person or entity to whom the communication was sent was an employee or other representative of an investor rights organization at the time at which the communication was sent, then please identify the investor rights organization of which the person or entity was then an employee or other representative.
6. In the communication referred to in question 1 above, it is stated that Kim Orr ‘represents’ Mackenzie Financial Corporation (“Mackenzie”). At the time that that communication was disseminated, had Mackenzie retained Kim Orr? If not, did Kim Orr subsequently inform the persons to whom the communication was disseminated that Mackenzie had not then retained Kim Orr?
7. In the communication referred to in question 1 above, it is stated that the institutional investors represented by Kim Orr “include” seven named institutions. At the time at which that communication was disseminated, had institutional investors other than the seven institutions named in the communication retained Kim Orr? If so, please state how

many institutional investors other than the seven institutions named in the communication had by then retained Kim Orr. Further, please identify those other institutional investors.

8. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent a written communication to any person or entity who was not a Client, and which communication included the following text (or text that is materially the same as the following text):

[...]

## **OVERVIEW OF THE SANCTION HEARING**

### **Background**

Numerous proposed class actions were commenced against Sino-Forest Corporation ("SFC"), its directors and officers, the underwriters and the auditors in Ontario, Quebec, Saskatchewan and New York after SFC's stock collapsed following allegations that the company had been vastly overstating its assets and revenues while engaging in extensive related-party transactions.

In December 2011 a carriage motion was heard before Justice Perell to determine which of the three proposed Ontario class actions should proceed. On January 6, 2012, Justice Perell awarded carriage of the Ontario class action to *The Trustees of Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, making Koskie Minsky LLP and Siskinds LLP Class Counsel (the "Koskie-Siskinds action").

The proposed class action commenced by Kim Orr on behalf of Northwest & Ethical Investments L.P. ("NEI"), Comité Syndical National de Retraite Bâtirente Inc. ("Bâtirente") and British Columbia Investment Management Corporation was stayed by Justice Perell's carriage order.

On March 30, 2012, SFC filed for creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA"). Under the Initial Order issued by Justice Morawetz on March 30, 2012 all proceedings against SFC have been stayed, including the Koskie-Siskinds action. The Koskie-Siskinds action was stayed prior to the hearing of any certification motion.

Counsel for the Koskie-Siskinds action participated in the CCAA proceedings representing the Ad Hoc Committee of Purchasers of the Applicant's Securities. Class Counsel never received a representation order in the CCAA; putative class

members have not been afforded the opportunity to opt-out of representation by class counsel in the CCAA proceeding.

SFC attempted to enter into a sales process, but failed to attract any qualifying offers. Following the failure of the sales process, SFC announced its intent to proceed with a restructuring transaction. In August 2012 SFC filed a Plan of Compromise and Reorganization where restructuring occurred through the creation of two new corporations. The plan was modified a number of times.

Originally the Creditor's Meeting to vote on the Plan of Compromise and Reorganization was scheduled for November 29, 2012. The date of the meeting was rescheduled when the plan was amended on November 28, 2012.

[...]

### **E& Y Settlement Approval**

In the evening of Wednesday December 12, 2012 Kim Orr received notice that E&Y was appearing before Justice Morawetz on Thursday December 13, 2012 at 9:30 am seeking to schedule the settlement approval for the E&Y settlement.

At the appearance Kim Orr argued that Justice Morawetz did not have the authority to hear a motion in a class proceeding, including the motion for approval of the E&Y settlement, and that a notice program was necessary for the motion for settlement approval to inform putative class members of the possible binding settlement and how that settlement would impact their substantive rights in the litigation.

Justice Morawetz scheduled the settlement approval for Friday, January 4, 2013 without ordering any requirement to disseminate notice to putative class members or other potentially affected individuals. In an unusual move, at the same time the Regional Senior Judge for Toronto, Justice Edward F. Then, assigned the CCAA judge, Justice Morawetz, the power to hear the motion to approve the E&Y settlement and ancillary matters in his capacity as a CCAA judge and as a class proceedings judge.

Also of note, scheduling the approval hearing for Friday January 4, 2013 means that it will be heard on the last business day prior to the Ontario Securities Commission hearing against E&Y, which is scheduled for Monday January 7, 2013.

### **Lack of Procedural Protections**

The framework for release under the Plan and the settlement approval scheduling has occurred in an expedited and closed door manner. The process has not contemplated or given any credence to the importance of ensuring that the

putative class members are provided with full and proper notice of the settlement and its impact on their substantive rights, thereby depriving class members of the opportunity to appear and/or to file materials voicing any objections to the settlement. Further, if the settlement in its current form is approved, class members will be deprived of their substantive right to opt-out of the class action and to pursue their own actions against E&Y and potentially the other Third Party Defendants. The expedited manner in which the E&Y settlement approval has been approached appears to be intended to render it difficult, if not impossible, for any objectors to compile a sufficient mass and resources to ensure that their voices are heard.

9. If the answer to question 8 above is yes, then to how many persons or entities who were not Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above?
10. Between the time that the E&Y settlement was announced on December 3, 2012 and the present time, did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above to any person or entity who was not a Client or a Prospective Client?
11. If the answer to question 10 above is yes, then to how many persons or entities who were not Clients or Prospective Clients did Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, send or caused to be sent the written communication referred to in question 8 above?
12. Please identify all persons and entities who were not Clients or Prospective Clients and to whom Kim Orr, a Client, or any person or entity acting at the behest of Kim Orr or a Client, sent or caused to be sent the written communication referred to in question 8 above. If the person or entity to whom the communication was sent was an employee or other representative of an institutional investor, then please identify the institutional investor of whom the person was then an employee or other representative. If the person or entity to whom the communication was sent was a lawyer, please identify the law firm of which that lawyer was an employee or partner at the time at which the communication was sent. If the person or entity to whom the communication was sent was an investor



- rights organization, then please so state. If the person or entity to whom the communication was sent was an employee or other representative of an investor rights organization at the time at which the communication was sent, then please identify the investor rights organization of which the person or entity was then an employee or other representative.
13. On December 5, 2012, Jim Orr of Kim Orr sent an email to Dimitri Lascaris of Siskinds LLP in which Mr. Orr stated, among other things, that Kim Orr ‘acts for’ “Mackenzie Financial”. A copy of that email is attached as **Exhibit “1”**. At the time at which Mr. Orr made that statement, was that statement correct? If not, did anyone from Kim Orr correct that statement at any time prior to January 25, 2013?
  14. Is it correct that, following the commencement of the Insolvency Proceeding and prior to the announcement of the Ernst & Young settlement on December 3, 2012, Kim Orr never requested from Class Counsel any information in regard to the Insolvency Proceeding? If Kim Orr maintains that it did request such information from Class Counsel during that period, then please describe the information sought by Kim Orr and please state the date(s) on which and the means by which the information was sought. If Kim Orr maintains that it requested such information by means of a written communication to Class Counsel, then please produce copies of such written communications.
  15. Did any Client ever purchase shares or notes of Sino in an offering of Sino shares or notes? If so, please identify the offering and please state the name of the Client who participated in each such offering, the number of shares or notes purchased in each such offering by each Client, and whether each such Client continued to own any of such shares or notes on June 2, 2011.
  16. If the answer to question 15 is that no Client ever purchased shares or notes of Sino in an offering of Sino shares or notes, then do you agree that no Client has a viable claim against any of the underwriters named as defendants in the class proceeding being prosecuted against Sino and others by Class Counsel? If you do not agree with that

proposition, then please explain on what basis you believe that a Client could assert a claim against any such underwriter.

17. At any time after January 18, 2013, did any Kim Orr lawyer, any non-lawyer employee of Kim Orr, or any person acting at the behest of Kim Orr or a Client, contact any person or entity other than a Client who had filed an objection (whether timely or not) to the E&Y settlement, but who subsequently evinced an intention to withdraw his, her or its objection? If so, please state the number of such persons and entities.
  
18. At any time after January 18, 2013, did any Kim Orr lawyer, any non-lawyer employee of Kim Orr, or any person acting at the behest of Kim Orr or a Client, contact any person or entity other than a Client or a Prospective Client who had filed an objection (whether timely or not) to the E&Y settlement, but who subsequently evinced an intention to withdraw his, her or its objection? If so, please state the number of such persons and entities, the identities of such persons and entities, and the manner by which each of them was contacted. If the communications disseminated to any such persons or entities were in writing, then please produce copies of all such communications.

# TAB A

THIS DOCUMENT IS LOCATED AT

Email Chain between Siskinds and  
Kim Orr

Attachment to the Questions for Tanya  
Jemec (excluded from the Brief of  
Interrogatories)

**A. Dimitri Lascaris**

---

**From:** Y G [YG@kimorr.ca] on behalf of Jim Orr [JO@kimorr.ca]  
**Sent:** Wednesday, December 05, 2012 3:16 PM  
**To:** A. Dimitri Lascaris  
**Cc:** Won Kim; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert; Charles M. Wright  
**Subject:** RE: EY Settlement

Dimitri:

At this point we act for the plaintiffs in our stayed class action as well as Invesco Canada Limited and MacKenzie Financial. We have also been contacted by a number of other private and public funds and expect to have further retainers from approximately a dozen funds shortly.

I do not understand why you are refusing to provide the Settlement Agreement given that you purported to negotiate the agreement on behalf of our clients and expect them to be bound by it. Surely the document is not a secret.

Jim



**James C. Orr**  
Kim Orr Barristers PC  
19 Mercer Street, 4th Floor  
Toronto, Ontario  
M5V 1H2

[jo@kimorr.ca](mailto:jo@kimorr.ca)

Direct: 416 349 6571

Tel: 416 596 1414  
Fax: 416 598 0601

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---

**From:** A. Dimitri Lascaris [mailto:dimitri.lascaris@siskinds.com]  
**Sent:** Wednesday, December 05, 2012 12:44 PM  
**To:** Won Kim  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'; Charles M. Wright  
**Subject:** RE: EY Settlement

Won, may I please have a response to my email below?

---

**From:** A. Dimitri Lascaris  
**Sent:** Tuesday, December 04, 2012 5:42 PM  
**To:** 'Won Kim'  
**Cc:** 'Jim Orr'; 'Victoria Paris'; 'Megan McPhee'; 'Michael Spencer(milberg)'; 'Kirk M. Baert'; Charles M. Wright  
**Subject:** RE: EY Settlement

Won, I did not ask you who whether you will be preparing materials. I asked you who your clients are. You have twice requested information from us in relation to the settlement and we are entitled to know the identities of all of the putative class members on whose behalf you seek that information. Please advise.

---

**From:** Won Kim [<mailto:WJK@kimorr.ca>]  
**Sent:** Tuesday, December 04, 2012 5:22 PM  
**To:** A. Dimitri Lascaris  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert; Charles M. Wright  
**Subject:** RE: EY Settlement

We will be preparing materials for the hearing which will be circulated.

---

**From:** A. Dimitri Lascaris [<mailto:dimitri.lascaris@siskinds.com>]  
**Sent:** Tuesday, December 04, 2012 5:17 PM  
**To:** Won Kim  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'; Charles M. Wright  
**Subject:** RE: EY Settlement

Won, in accordance with Rule 15, please identify to us all members of the putative class on whose behalf you act in relation to the Sino-Forest litigation.

---

**From:** Won Kim [<mailto:WJK@kimorr.ca>]  
**Sent:** Tuesday, December 04, 2012 12:34 PM  
**To:** A. Dimitri Lascaris  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); Kirk M. Baert  
**Subject:** RE: EY Settlement

Thank you for your email.

We have the plan of Arrangement.

Can you send us the settlement agreement today? We will ask EY as well.

Regards,

WJK

---

**From:** A. Dimitri Lascaris [<mailto:dimitri.lascaris@siskinds.com>]  
**Sent:** Tuesday, December 04, 2012 12:31 PM  
**To:** Won Kim  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Michael Spencer(milberg); 'Kirk M. Baert'  
**Subject:** RE: EY Settlement

Won, thank you for your note.

The settlement reached with Ernst & Young LLP was a global liability settlement reached in the context of the Sino-Forest Plan of Arrangement under the CCAA.

The transaction forms a part of that Plan of Arrangement which is scheduled for approval before the CCAA Court this Friday and next Monday, as you are aware.

The settlement involves a payment by Ernst & Young and the compromise of its indemnification claims into the Sino-Forest Corporation estate.

Claimants such as those who you might represent would have their entitlements to participate in the settlement funds determined within the context of the trust fund arrangements set up by virtue of the terms of the settlement.

In that way, their entitlement to participate in this settlement is addressed.

The settlement, as part of the Plan of Arrangement, must, and will, extinguish all liabilities against Sino-Forest Corporation and Ernst & Young LLP with respect to these claims.

Should you wish to examine in greater detail the amended Plan of Arrangement, you can do so by clicking on this link:

<http://cfcanada.fticonsulting.com/sfc/docs/CCAA%20Plan%20-%20December%203%202012.pdf>.

Regards, Dimitri

---

**From:** Won Kim [<mailto:WJK@kimorr.ca>]  
**Sent:** Monday, December 03, 2012 3:45 PM  
**To:** A. Dimitri Lascaris; Kirk M. Baert; Daniel Bach  
**Cc:** Jim Orr; Victoria Paris; Megan McPhee; Spencer, Michael  
**Subject:** EY Settlement  
**Importance:** High

Dimitri and Kirk,

First of all, congratulations on the EY settlement.

As you are aware, we represent NEI and Batirente. We've also been retained on behalf of private funds including Invesco (Trimark) and other funds both here and abroad who represent a sizable portion of the holders who will want to review the settlement prior to Friday's attendance.

On behalf of our clients, I would request that you provide us with the details of the settlement including whether our clients' statutory right to opt out have been addressed.

We will be attending the hearing and take steps to notify other parties of our clients intentions.

Thank you.

WJK

Won J Kim P.C.\*



Kim Orr Barristers PC  
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M5V 1H2

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Fax: 416 598 0601

[www.kimorr.ca](http://www.kimorr.ca)

\*Won J. Kim, certified by the Law Society as a Specialist in Civil Litigation

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A. Dimitri Lascaris  
*Class Actions*  
**Siskinds LLP**  
680 Waterloo Street  
London, ON N6A 3V8

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Fax: (519) 660-7845  
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Web: [www.siskinds.com](http://www.siskinds.com)  
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# **TAB 7**

THIS DOCUMENT IS LOCATED AT

Answers to Written Questions Arising  
from the Affidavit of Tanya T. Jemec

Brief of Interrogatories, Tab 13

**ANSWERS TO WRITTEN QUESTIONS ARISING FROM THE  
AFFIDAVIT OF TANYA T. JEMEC**

1. The question is posed in such a way that it requires a breach of solicitor client privilege to answer. We can advise that there was no communication of the type referenced in your question from our firm towards parties to which solicitor client privilege would not attach. In other words, our firm did not conduct any general mailings of the type apparently represented by the Siskinds LLP memorandum dated December 31, 2012. As you are aware solicitor client privilege attaches to the fact of and content of, discussions with parties who ultimately may not retain our firm. With respect to the portion of the question dealing with the issue of whether some of our clients or prospective clients may have exchanged information provided by our firm to them about the litigation with similarly situated investors who had a common interest in the litigation, that is subject to common interest privilege.
2. See answer to Question 1 above.
3. See answer to Question 1 above.
4. See answer to Question 1 above.
5. See answer to Question 1 above.
6. See answer to Question 1 above.
7. See answer to Question 1 above.
8. Same answer as to Question 1 above.
9. See answer to Questions 1 and 8 above.
10. See answer to Questions 1 and 8 above.
11. See answer to Questions 1 and 8 above.
12. See answer to Questions 1 and 8 above.
13. Again that question cannot be answered without disclosing privileged discussions. No one from our firm had further communication with Mr. Lascaris about the issue.
14. No information was requested prior to December 3, 2012 as there was no prior indication that class counsel was purporting to bargain away opt out rights or to agree to CCAA third party releases.

15. Yes. Please see the client information provided with the opt out forms submitted pursuant to the Pöyry (Beijing) Consulting Company Limited settlement opt out process.
16. The answer to question 15 is yes.
17. We can advise that there was no communication of the type referenced in your question emanating from our firm. With respect to the portion of the question dealing with the issue of whether some of our clients or prospective clients may have engaged in the type of communication referred to in your question, such communication would have been with similarly situated investors who had a common interest in the litigation, that is subject to common interest privilege.
18. See answer to question 17 above.

January 28, 2013

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