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Lawyers for an Ad Hoc Committee of Purchasers of the Applicant's Securities

# TAB 8

THIS DOCUMENT IS LOCATED AT

Affidavit of Eric J. Adelson, sworn  
January 18, 2013

Responding Motion Record of the  
Objectors, Tab 2

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 ERIC J. ADELSON**  
**(Sworn January 18, 2013)**

I, ERIC J. ADELSON, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Senior Vice President, Secretary, and Head of Legal of Invesco Canada Ltd. (“Invesco”) and as such I have personal knowledge of the matters to which I depose in this affidavit.

2. Invesco was established in 1981 and is one of Canada’s leading investment management companies, with approximately \$24 billion in assets under management. Invesco’s parent company, Invesco Ltd., is a leading independent global investment manager with approximately \$680 billion in assets under management.

3. I respectfully submit this affidavit in support of Invesco’s and the other Objectors<sup>1</sup> objections 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. I also respectfully submit this affidavit in support of the motion by Invesco under Rule 10.03 of the *Rules of Civil Procedure* for relief from the binding effect of a Representation Order and a Settlement Approval Order in the event this Court appoints the Ontario Plaintiffs as representatives of all Securities Claimants and grants the proposed Settlement Approval Order.

#### **Objections to the E&Y Settlement**

5. Invesco objects to the E&Y Settlement as follows:

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<sup>1</sup> 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.

- a) It was improper for the Ontario Plaintiffs to have traded away the opt out rights of class members in this Class Action, or to have rendered such opt out rights illusory, by agreeing to provide a full and final release under Article 11.1 (“Release”) of the Plan of Compromise and Reorganization (“Plan”) of the claims of Securities Claimants (as defined in Schedule A of the proposed order) against E&Y in this *Companies’ Creditors Arrangement Act* (“CCAA”) proceeding, in return for what the Ontario Plaintiffs’ counsel believe to be a “substantial premium” amount to be paid by E&Y into the proposed Settlement Trust;
- b) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement and any release of Securities Claimants’ claims against E&Y, in this CCAA proceeding, under the present circumstances;
- c) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement of class members’ claims against E&Y in this Class Action without either (a) excluding the persons who opted out in response to the Pöyry notice if the Pöyry opt out procedure is found to have been proper, or (b) providing for certification, notice, and opt out rights to Securities Claimants in connection with this settlement – and in either case assuring that any such opt outs are not illusory by virtue of any Releases as described above;

- d) it is improper and belated for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, the requested representation order in connection with the Release and settlement described above;
- e) it is improper for the Ontario Plaintiffs to present, and it would be improper for the Court to consider and approve, the E&Y Settlement in instalments, particularly in the absence of any plan for distributing any funds deposited in the proposed Settlement Trust. In the absence of a distribution plan, the Objectors cannot evaluate the sufficiency of the E&Y settlement consideration; and
- f) the Objectors reserve the right to supplement these grounds in response to further information emerging in these proceedings.

Attached hereto and marked as Exhibit "A" is the Notice of Objection of Invesco dated January 17, 2013.

6. Invesco caused mutual funds managed by it ("Funds") to purchase a large amount of Sino-Forest shares during the class period. Those Funds held those shares on June 2, 2011, and suffered substantial losses. I and others at Invesco were aware of the ensuing class litigation and knew Invesco was an absent class member in the Class Action. We were also aware that Sino-Forest sought *CCAA* protection, but we did not anticipate that the apparently routine activity in the *CCAA* proceedings would affect Invesco's rights as against E&Y and other defendants in the Class Action, other than as against Sino-Forest and its subsidiaries and perhaps against the company's directors and officers to some extent.

7. Invesco retained Kim Orr Barristers P.C. (“Kim Orr”) in mid-November 2012 when it appeared that upcoming events in the Sino-Forest *CCAA* proceedings might affect investors’ rights. However, I did not see anything in the *CCAA* proceedings that could or would imperil Invesco’s right to proceed separately against E&Y or any other “third-party defendants” if Invesco determined that such a course of action would be prudent once a class was certified or a settlement was proposed, because I believed that opt out rights would be provided as a matter of normal procedure in the Class Action.

8. I believe that there was nothing in the pre-December 3, 2012 versions of the Plan which raised concern at Invesco. In fact, the November 28, 2012 version of the Plan preserved under Article 7.5 the equity Class Action claims against third-party defendants. Attached as Exhibit “B” is a true copy of the November 28, 2012 Plan.

9. On December 3, 2012, Class Counsel announced that a settlement had been entered into with E&Y, whereby E&Y would pay \$117 million into a Settlement Trust formed as part of the *CCAA* proceedings, in return for release of all claims that could be advanced against E&Y by any person in connection with Sino-Forest. Also on December 3, 2012, an amended Plan was filed. For the first time in the *CCAA* proceedings, Article 11 of this Plan contained a so called “framework” for settlement of claims against third-party defendants, including specific provisions concerning the settlement by and Releases for E&Y, and also allowing Named Third Party Defendants to avail themselves of similar provisions for unspecified settlements and Releases in the future.

10. The disclosures of the proposed E&Y Settlement and the Plan “framework” in early December 2012 caused me to have grave concerns about the direction of these proceedings, about the preservation of investors’ opt out rights as against E&Y and other



third-party defendants, and ultimately about investors' ability to obtain a fair adjudication of the merits of their claims against E&Y and other third-party defendants.

11. I previously submitted my affidavit in this *CCAA* proceeding, sworn on December 6, 2012, requesting an adjournment of the application before the Court at that time and offering preliminary reasons for objecting to the Plan's Release provisions. As I stated at paragraph 10 of my December 6, 2012 affidavit, the Ontario Securities Commissions ("OSC") issued a Statement of Allegations against E&Y on December 3, 2012, alleging that E&Y had failed to comply with Generally Acceptable Auditing Standards in connection with its audits of Sino-Forest's financial statements.<sup>2</sup> Attached hereto and marked as Exhibit "C" is a real and true copy of my affidavit sworn December 6, 2012.

12. Since that time, the events that have unfolded have deepened my objections to the Plan, which this Court subsequently sanctioned in the Order of Justice Morawetz dated December 10, 2012, and to the E&Y Settlement, which is now before this Court for review in both the *CCAA* and *Class Proceedings Act, 1992* ("*CPA*") contexts.

13. The statements I made in my December 6, 2012 affidavit remain valid, and I respectfully adopt them in support of Invesco's objections.

14. I expressed concerns, in paragraph 15 of my December 6, 2012 affidavit, that the Plan "framework" might have been devised to allow E&Y to "bind investors to [a] settlement without giving them the opportunity to opt out and pursue their claims on the merits outside the Class Action."

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<sup>2</sup> Statement of Allegations against Ernst & Young by the Ontario Securities Commission dated December 3, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab FF, at p. 825.

15. This Court, in its Endorsement denying Invesco's request to adjourn the Sanction Hearing dated December 10, 2012, determined that such concerns were premature and should be addressed in connection with a later motion for approval of the settlement with E&Y.<sup>3</sup> That time has now arrived. It appears to me that my previously expressed concerns were and are wholly valid. Invesco accordingly renews its strenuous objection and opposition to approval of this settlement.

16. I have not seen anything to indicate that either the "framework" or the Minutes of Settlement between the Ontario Plaintiffs and E&Y was or is necessary for the remainder of the Plan to be implemented.

17. Invesco was also mindful that Class Counsel had reached a proposed settlement with Pöyry (Beijing) Consulting Company Ltd ("Pöyry"), one of the defendants in the Class Action, on March 20, 2012, and that January 15, 2013, was the opt out deadline established by the class action court in connection with that settlement. Invesco determined to opt out, inasmuch as we were not satisfied with Class Counsel's representation of our interests as a class member. A true copy of Invesco's opt out form without Invesco's trading records is attached as Exhibit "D".

18. It appeared to us that the Pöyry opt out procedure might involve a "Catch 22" provision -- if we opted out to pursue our remedies individually, we might be giving up our ability to share in any settlement proceeds, but the proposed full Release of E&Y might prevent us from seeking remedies on our own, thus making the opt out right illusory. Accordingly, in an effort to avoid such a trap, our opt out form states that:

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<sup>3</sup> Plan Sanction Endorsement dated December 10, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab E1, at p. 215-216 at paras. 20, 22-25.

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 Invesco Canada Ltd. Otherwise this opt out right would be wholly illusory.

19. I believe that following the sanction hearing, Class Counsel disseminated a memorandum in which they openly stated they “believe that E&Y paid a substantial premium in order to be released from all claims through the Insolvency Proceeding.” Attached hereto and marked as Exhibit “E” is a true copy of the Memorandum by Siskinds LLP to institutional investors dated December 31, 2012. That Memorandum incorrectly stated that Invesco “ignored” an invitation to discuss the E&Y Settlement with Class Counsel; in fact, I had gone out of town for the holidays by the time that invitation was extended. Furthermore, on January 11, 2013, Invesco participated in a teleconference with Class Counsel on a without prejudice basis.

20. As stated at paragraph 16 of my December 6, 2012 affidavit, Invesco does not view the Ontario Plaintiffs and Class Counsel, with whom it has no direct relationship, as authorized to represent its interests in connection with Sino-Forest and/or E&Y. Invesco never instructed Class Counsel to bargain away Invesco’s right to opt out of the Class Action.

21. Invesco views the grant of no-opt-out Releases to third-party defendants to constitute a misuse of the *CCAA* process.

22. On January 11, 2013, Invesco’s concerns about the misuse of the *CCAA* to grant third-party defendants no-opt-out Releases were reinforced when it was announced that

Allen Chan, alleged by the OSC to have committed fraud in connection with Sino-Forest<sup>4</sup>, was added as a Named Third Party Defendant and thus became eligible to receive a Release under Article 11.2 of the Plan without opt outs. Attached as Exhibits “F”, “G” and “H” are the letters from Jennifer Stam to the Service List dated January 11, 2013, the response from Kim Orr, dated January 11, 2013, and the reply dated January 12, 2013, respectively.

23. Under the present circumstances, Invesco is unable to assess the adequacy and fairness of the proposed settlement amount offered by E&Y:

- a) Invesco and its counsel have not been provided access to any documents relating to E&Y’s audit work at Sino-Forest. I believe that Class Counsel has not had full access to such documents either;
- b) investigations by the OSC and the RCMP into E&Y’s audit work at Sino-Forest have not been completed and the results have not been reported to the public;
- c) the amount of insurance coverage available to E&Y with respect to its audit work for Sino-Forest has not been publicly disclosed; and,
- d) it is not yet established whether E&Y or its agents had knowledge that Sino-Forest’s public representations (including its financial statements) concerning the company’s assets and business operations were materially false, or whether those parties were reckless in not recognizing those facts.

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<sup>4</sup> Statement of Allegations issued against Sino and certain officers and directors issued by the Ontario Securities Commission dated May 22, 2012, Plaintiffs Motion Record (Returnable February 4, 2013), Tab EE, at p. 786.

24. Approval of the E&Y Settlement in these circumstances would send a signal to publicly listed companies, professional service firms, and other third parties that may be accused of securities fraud, that the *CCAA* process can be used by them to procure settlements and Releases of the claims against them without providing opt out rights to injured investors.

**Ontario Plaintiffs Should Not Be Appointed as Representatives**

25. The Ontario Plaintiffs and Class Counsel should not be appointed under Rule 10 of the *Rules of Civil Procedure* to represent Invesco and the other Objectors represented by Kim Orr. Kim Orr already represents our interests.

26. The Ontario Plaintiffs and Class Counsel previously sought to represent class members in the *CCAA* proceeding, but that motion was never granted.

27. I do not believe that the Ontario Plaintiffs and Class Counsel have properly represented Invesco's interests in this matter, and in fact they have acted contrary to our interests, as described above.

28. The fact that Class Counsel believe that the proposed settlement consideration includes a "substantial premium" attributable to the negation of opt out rights also leads me to conclude that Class Counsel are in a conflict position with investors who seek to opt out, in that Class Counsel will seek an award of class counsel fees based on a percentage of the overall settlement consideration, which reportedly includes a premium reflecting loss of our opt out rights. Attached as Exhibit "I" is, to the best of my knowledge and belief, an excerpt from a true copy of Contingency Fee Joint Retainer

Agreement between the Ontario Plaintiffs and Class Counsel signed in July and August 2012.

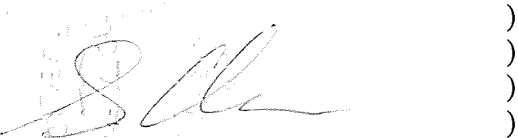
29. The Ontario Plaintiffs' representation request is particularly misguided in that it seeks to vest authority in Class Counsel retroactively, to provide a veneer of regularity over a previously negotiated settlement to which Invesco in fact objects.

**Order Requested**

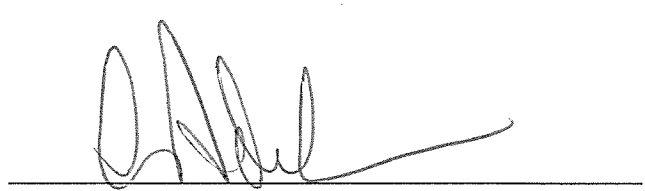
30. Invesco respectfully requests that this Court dismiss the motion to approve the E&Y Settlement.

31. In the alternative, Invesco respectfully requests that relief from the binding effect of the Representation Order and Settlement Approval Order be granted to Invesco and the other Objectors represented by Kim Orr.

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. )  
)



**ERIC J. ADELSON**

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

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 ERIC J. ADELSON**  
(Motion returnable February 4, 2013)

**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)

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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 Invesco without trading records for Pöyry Certification for Settlement, dated January 11, 2013

Exhibit "D" to the Affidavit of Eric J. Adelson, sworn January 18, 2013, Responding Motion Record of the Objectors, Tab 2D

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 Invesco Canada Ltd. 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

I	N	V	E	S	C	O	C	A	N	A	D	A	L	T	D.								
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Current Address

5	1	4	0	Y	O	N	G	E	S	T	R	E	E	T								
S	U	I	T	E	8	0	0															

City

Prov./State

Postal Code/Zip Code

T	O	R	O	N	T	O	O	N	M	2	N	6	X	7
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Social Insurance Number/Social Security Number/Unique Tax Identifier

N/A					
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Telephone Number (Work)

Telephone Number (Home)

4	1	6	-	2	2	8	-	3	6	7	0						
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Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011):

4	4	9	9	3	8	5
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*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: \_\_\_\_\_

Jan. 11, 2013

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



# TAB 9

THIS DOCUMENT IS LOCATED AT

Affidavit of Daniel Simard, sworn  
January 18, 2013, Responding Motion  
Record of the Objectors, Tab 3

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 DANIEL SIMARD  
(Sworn January 18, 2013)**

I, Daniel Simard, of the City of Montréal, in the Province of Québec, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and serve as a non-voting ex-officio member of the Board of Directors and Committees of Comité syndical national de retraite Bâtirente Inc. (“Bâtirente”) and as such I have personal knowledge of the matters to which I depose in this affidavit.

2. I respectfully submit this affidavit in support of Bâtirente’s and the other Objectors<sup>1</sup> objections 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”).

3. I also respectfully submit this affidavit in support of the motion by Bâtirente under Rule 10.03 of the *Rules of Civil Procedure* for relief from the binding effect of a Representation Order and a Settlement Approval Order in the event this Court appoints the Ontario Plaintiffs as representatives of all Securities Claimants and grants the proposed Settlement Approval Order.

#### **Grounds for Objection to the E&Y Settlement**

4. The grounds for Bâtirente’s objections are as follows:
- a) it was improper for the Ontario Plaintiffs to have traded away the opt out rights of class members in this Class Action, or to have rendered such opt out rights illusory, by agreeing to provide a full and final release under

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<sup>1</sup> 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.

Article 11.1 (“Release”) of the Plan of Compromise and Reorganization (“Plan”) of the claims of Securities Claimants (as defined in Schedule A of the proposed order) against E&Y in this *Companies’ Creditors Arrangement Act* (“CCAA”) proceeding, in return for what the Ontario Plaintiffs’ counsel believe to be a “substantial premium” amount to be paid by E&Y into the proposed Settlement Trust;

- b) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement and any release of Securities Claimants’ claims against E&Y, in this *CCAA* proceeding, under the present circumstances;
- c) it is improper for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, any settlement of class members’ claims against E&Y in this Class Action without either (a) excluding the persons who opted out in response to the Pöyry notice if the Pöyry opt out procedure is found to have been proper, or (b) providing for certification, notice, and opt out rights to Securities Claimants in connection with this settlement – and in either case assuring that any such opt outs are not illusory by virtue of any Releases as described above;
- d) it is improper and belated for the Ontario Plaintiffs to seek, and it would be improper for the Court to approve, the requested representation order in connection with the Release and settlement described above;
- e) it is improper for the Ontario Plaintiffs to present, and it would be improper for the Court to consider and approve, the E&Y Settlement in

instalments, particularly in the absence of any plan for distributing any funds deposited in the proposed Settlement Trust. In the absence of a distribution plan, the Objectors cannot evaluate the sufficiency of the E&Y settlement consideration; and

- f) the Objectors reserve the right to supplement these grounds in response to further information emerging in these proceedings.

Attached hereto and marked as Exhibit "A" is the Notice of Objection of Bâtirente dated January 17, 2013.

5. Bâtirente is a non-profit organization, created in 1987. Bâtirente was initiated by the Confederation of National Trade Unions ("CSN") to establish and promote a workplace retirement system for CSN-affiliated unions and other organizations. Most of Bâtirente's board members are elected from representatives of participating groups or appointed by the CSN executive committee.

6. More than 26,000 workers participate in a Bâtirente retirement plan and Bâtirente funds have total assets of approximately \$1.1 billion (non-audited) as at December 31, 2012.

7. Bâtirente, through the funds it manages, owned 11,875 common shares of Sino-Forest Corporation ("Sino-Forest") on June 2, 2011, and accordingly suffered substantial losses after the market in Sino-Forest shares collapsed after public issuance on that day of a securities analyst's report alleging that the company's assets and operations were permeated by fraud.



8. On September 26, 2011, Bâtirente, together with Northwest & Ethical Investments L.P. (“NEI”), issued a proposed class proceeding against Sino-Forest, certain officers and directors, the underwriters, the auditors, and other experts (No. CV-11-43582600-CP, the “NEI Action”). Kim Orr Barristers P.C. (“Kim Orr”) was Bâtirente’s counsel in the NEI Action and continues to be its outside counsel in these proceedings.

9. A number of other class proceedings were commenced against Sino-Forest. The plaintiffs in the various Ontario actions moved for carriage. On January 6, 2012, Justice Perell granted carriage to the plaintiffs in the *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, No. 11-CV-431153CP (the “Class Action”) and stayed the competing actions, including the NEI Action. In his reasons, Justice Perell explicitly noted that Bâtirente, NEI, and other institutional investors were “prime candidates to opt out of the class proceeding” if they were not selected as representative plaintiffs to pursue compensation, if they did not wish to proceed under the Class Action. Attached hereto and marked as Exhibit “B” are excerpts of the decision of Justice Perell granting carriage to the Class Action.

10. NEI’s and Bâtirente’s decisions not to seek leave to appeal the carriage decision was based in part on our understanding that we would be given the opportunity to opt out of the Class Action at an appropriate time, if we deemed it appropriate to do so.

11. Bâtirente has previously served as a representative plaintiff in a class action, and I am well aware that representative plaintiffs have a fundamental duty to represent the class and absent class members fairly and adequately and to act in their best interests. I also noted that the Ontario Plaintiffs in the Class Action confirmed that they had the same understanding of their duties during the carriage motion.

12. In my view, the Ontario Plaintiffs and Class Counsel have violated their duties to class members by acceding to a settlement with E&Y in which class members' opt out rights will be negated and/or rendered illusory.

13. Bâtirente remained interested in the Class Action after losing the carriage motion, and communicated occasionally with Kim Orr about the status of the litigation, while understanding that as an absent class member its interests were being represented by the Ontario Plaintiffs and Class Counsel in the Class Action.

14. On March 20, 2012, Class Counsel announced that they had reached a settlement with Pöyry (Beijing) Consulting Company Limited ("Pöyry"). Pöyry would provide certain cooperation to Class Counsel in the action but would not provide any monetary consideration to the class. The Pöyry settlement contemplated a normal procedure for certification of a settlement class, a settlement approval hearing, and opt out rights for class members that wished to exclude themselves.

15. Ten days later, Sino-Forest entered into *CCAA* proceedings, on March 30, 2012. The Class Action was stayed. In due course, the Ontario Plaintiffs applied for, and the *CCAA* court ordered, a partial lifting of the stay of proceedings to allow the Pöyry settlement to proceed in the Class Action under the *Class Proceedings Act*. Attached hereto and marked as Exhibit "C" is the Order of Justice Morawetz, dated May 8, 2012 and entered May 11, 2012, lifting the stay as to Pöyry.

16. In the meantime, and apparently in view of the fact that a class had not been certified yet in the Class Action, the Ontario Plaintiffs filed a motion in the *CCAA* proceedings on April 13, 2012, seeking a representation order under Rule 10 of the Ontario *Rules of Civil Procedure*. The proposed representation order specifically

provided that class members could opt out of the representation, and included a form of opt out letter that class members could submit for that purpose. However, for reasons that are unclear, the motion was adjourned *sine die* without being decided. Attached hereto and marked as Exhibits “D” and “E” are the Draft Representation Order of the Ad Hoc Committee of Purchasers of the Applicant’s Securities dated April 13, 2012 and the Endorsement of the Honourable Mr. Justice Morawetz dated August 31, 2012 and October 9, 2012, respectively.

17. The proposed Pöyry settlement continued to move forward, however. After notice was sent out to the class, and after a hearing on September 21, 2012, Justice Perell entered an order certifying the proceeding “as a class proceeding, for purposes of settlement only,” allowing opt outs, providing that opt outs “may no longer participate in any continuation or settlement of the within action,” approving the settlement, entering a bar order, and setting an opt out deadline (later defined as January 15, 2013). Attached hereto and marked as Exhibits “F” and “G” are, respectively, a true copy of the Reasons for Decision of Justice Perell in the Class Action, dated September 25, 2012, and a copy of his Order, entered October 30, 2012.

18. We became aware that Class Counsel, acting for the Ontario Plaintiffs and other investors named the “Ad Hoc Committee of Purchasers of the Applicant’s Securities,” were participating in mediations among parties in the *CCAA* proceeding, including defendants in the Class Action. Bâtirente did not see any reason to participate in or object to those discussions.

19. I am informed by counsel that the version of the Plan distributed on November 28, 2012 – i.e., immediately before the E&Y Settlement was announced – explicitly

provided that claims against third-party defendants, including E&Y, were not affected by the Plan:

**7.5 Equity Class Action Claims Against the Third Party Defendants**

Notwithstanding anything to the contrary in this Plan, any Class Action Claim against the Third Party Defendants that relates to the purchase, sale or ownership of Existing Shares or Equity Interests: (a) is unaffected by this Plan; (b) is not discharged, released, cancelled or barred pursuant to this Plan; (c) shall be permitted to continue as against the Third Party Defendants; (d) shall not be limited or restricted by this Plan in any manner as to quantum or otherwise (including any collection or recovery for any such Class Action Claim that relates to any liability of the Third Party Defendants for any alleged liability of SFC); and (e) does not constitute an Equity Claim or an Affected Claim under this Plan.<sup>2</sup>

There was no indication prior to December 3, 2012, that any parties had any different intention.

20. Class Counsel and E&Y announced on December 3, 2012, that they had reached a proposed settlement, one of the terms of which apparently envisioned entry of full and final releases in favour of E&Y in the *CCAA* proceedings and/or settlement proceedings in the Class Action, the effect of which would be to negate the opt out rights of class members. This was a complete surprise to us at Bâtirente, in that nothing in the *CCAA* or Class Action proceedings portended such an attempt, and it was and is our understanding that opt out rights cannot be abrogated under these circumstances.

21. Bâtirente is especially concerned that E&Y, which should have acted as a gatekeeper guarding against abuse and fraud by participants in Canada's capital markets, allowed the Sino-Forest fraud to develop under its watch, and is now misusing a *CCAA*

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<sup>2</sup> Amended Plan of Compromise and Reorganization dated November 28, 2012, Responding Motion Record of the Objectors, Tab \_\_\_\_.

proceeding in which it is only a third-party defendant in order to obtain a global Release from civil liability without providing injured investors the right to litigate their claims individually against E&Y after opting out of class litigation.

22. I respectfully refer and subscribe to the Affidavit of Eric J. Adelson, of Invesco, Ltd., another Objector represented by Kim Orr, with respect to our view of the E&Y Settlement.

23. I understand there is a risk that a class member's failure to opt out of the Pöyry settlement might be interpreted as depriving the class member of any opt out right with respect to the action or any additional settlements in the future. In view of that risk, and in order to preserve our rights as against Pöyry and the other parties in the *CCAA* proceeding and the Class Action, Bâtirente submitted an opt out form on January 15, 2013.

24. In order to avoid the possibility that Bâtirente might be excluded both from participating in the E&Y and/or other third-party defendant settlements, and from being able to prosecute claims against those defendants outside the Class Action, Bâtirente included a condition on the opt-out form:

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 Comité Syndical National de Retraite Bâtirente Inc. Otherwise, this opt out right would be wholly illusory.

Attached hereto and marked as Exhibit "H" is a real and true copy of Bâtirente's opt out form (without trading records).

25. My understanding of opt out rights is that Bâtirente, by opting out, would not be able to participate in the Class Action, but that we were preserving our rights to pursue our own claims against the defendants in the Class Action, including Pöyry and E&Y (among others). The E&Y Settlement, and the framework that may allow other defendants to avail themselves of this procedure, would deprive Bâtirente of those rights.

**Order Requested**

26. Bâtirente respectfully requests that this Court dismiss the motion to approve the E&Y Settlement.

27. In the alternative, Bâtirente respectfully requests that relief from the binding effect of the Settlement Approval Order be granted to Bâtirente and the other Objectors represented by Kim Orr.

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

*Pierre Boies*

A Commissioner for taking affidavits. )

2013-01-18 )



*Daniel Simard*

DANIEL SIMARD

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 DANIEL SIMARD**

**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 Batirente without trading records for Pöyry Certification for Settlement, dated January 11, 2013

Exhibit "H" to the Affidavit Daniel Simard, sworn January 18, 2013, Responding Motion Record of the Objectors, Tab 3H

This opt-out is submitted on condition that, and is intended to be effective only to the extent that 000241  
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 Comité Syndical  
National de Retraite Bâtirente 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

COMITÉ SYNDICAL NATIONAL DE

Current Address

RETRAITE BÂTIRENTE INC.

203-2175 BOUL DE MAISONNEUVE E

City

MONTREAL

Prov./State

QC

Postal Code/Zip Code

H2K 4S3

Social Insurance Number/Social Security Number/Unique Tax Identifier

N/A

Telephone Number (Work)

514-525-5065

Telephone Number (Home)

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

87250

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:

01/11/2013

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



# **TAB 10**

THIS DOCUMENT IS LOCATED AT

Affidavit of Christina Doria, sworn  
January 18, 2013

Responding Motion Record of Pöyry  
(Beijing) Consulting Company  
Limited, 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

**AFFIDAVIT OF CHRISTINA DORIA  
(sworn January 18, 2013)**

I, Christina Doria, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an Associate at Baker & McKenzie LLP, counsel for the defendant Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)") in the Ontario action styled as Trustees of The Labourers' Pension Fund of Central and Eastern Canada et al. (the "Ontario Plaintiffs") v. Sino-Forest Corporation et al., bearing Toronto Court File no. CV-11-431153-00CP (the "Ontario Class Action"), and as such have knowledge of the matters set out below.
2. On March 20, 2012, a settlement was concluded (the "Pöyry Settlement"), subject to Court approval, between Pöyry (Beijing), the Ontario Plaintiffs and the plaintiffs in the Quebec action styled as Guining Liu (the "Quebec Plaintiff") v. Sino-Forest Corporation et al., bearing Quebec Court File No. 200-06-000132-111 (the "Quebec Class Action").
3. On March 30, 2012, Sino-Forest Corporation filed for protection under the CCAA, and was granted a stay of proceedings.
4. On May 8, 2012, the Honourable Justice Morawetz issued an Order permitting the Ontario Plaintiffs and the Quebec Plaintiff to proceed with a motion for approval of the Pöyry Settlement and related motions. Attached hereto as **Exhibit "A"** is a copy of the Order of Justice Morawetz dated May 8, 2012.
5. In accordance with section 3.4(2) of the Pöyry Settlement Agreement, a proffer of Pöyry's evidence relating to the Sino-Forest class actions was conducted on May 30, 2012. Section 3.4(2) of the Pöyry Settlement Agreement reads as follows:

Within thirty (30) days of the Date of Execution or at a time mutually agreed upon by the Parties, the Settling Defendant shall provide, through a meeting between counsel for the Settling Defendant and Class Counsel, an evidentiary proffer, which will include verbal information relating to the allegations in the Proceedings including, without limitation, a summary of the Settling Defendant's material interactions and involvement with Sino-Forest, the Auditors and the Underwriters; the Settling Defendant's understanding of Sino-Forest's business model as it pertains to timber plantation, purchased forests and forestry management; and the Settling Defendant's knowledge and

understanding of Sino-Forest's actual or purported revenues and/or assets during the Class Period.

6. Following the May 30, 2012 proffer, Pöyry (Beijing) agreed that the proffered information would be disclosed to other defendants in the Ontario Class Action and the Quebec Class Action, on a without prejudice basis, for the purpose of an initial mediation conducted within the CCAA proceeding, which was held in September 2012.
7. On September 25, 2012, the Honourable Justice Perell issued an Order certifying the Ontario Class Action for settlement purposes as against Pöyry (Beijing) and approving the Pöyry Settlement. Attached hereto as **Exhibit "B"** is a copy of the Order of Justice Perell dated September 25, 2012, enclosing an executed copy of the Pöyry Settlement Agreement.
8. On November 9, 2012, the Honourable Justice Émond issued a Judgement authorizing the Quebec Class Action for settlement purposes as against Pöyry (Beijing) and approving the Pöyry Settlement. Attached hereto as **Exhibit "C"** is a copy of the Judgment of Justice Émond dated November 9, 2012.
9. On December 3, 2012, the Ernst & Young settlement that forms the subject matter of the within motion was announced.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on January 18, 2013.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
CHRISTINA DORIA

# TAB A



THIS DOCUMENT IS LOCATED AT

Judgment of Justice Emond dated  
November 9, 2012

Exhibit "C" to the Affidavit of  
Christina Doria, sworn January 18,  
2013, Responding Motion Record of  
Pöyry (Beijing) Consulting Company  
Limited, Tab 1C

000247

## COUR SUPÉRIEURE

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC

N° : 200-06-000132-111

DATE : Le 9 novembre 2012

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**SOUS LA PRÉSIDENTE DE L'HONORABLE JEAN-FRANÇOIS ÉMOND, j.c.s.**

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**GUINING LIU**

Requérant

vs.

**SINO-FOREST CORPORATION**

et

**ERNST & YOUNG LLP**

et

**ALLEN T.Y. CHAN**

et

**W. JUDSON MARTIN**

et

**KAI KIT POON**

et

**DAVID J. HORSLEY**

et

**WILLIAM E. ARDELL**

et

**JAMES P. BOWLAND**

et

**JAMES M.E. HYDE**

et

**EDMUND MAK**

et

**SIMON MURRY**

et

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PAGE : 2

**PETER WANG**  
et  
**GARRY J. WEST**  
et  
**PÖYRY (BEIJING) CONSULTING COMPANY LIMITED**  
Intimés

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**JUGEMENT**

**(sur requête en autorisation du recours collectif exercé contre Pöyry (Beijing) Consulting Company Limited pour fins d'approbation au règlement intervenu avec celle-ci)**

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[1] **CONSIDÉRANT** qu'en date du 9 juin 2011, le requérant « Guining Liu » a déposé devant la Cour supérieure du Québec, dans le district de Québec, une requête en vue d'être autorisé à exercer un recours collectif contre les intimés;

[2] **CONSIDÉRANT** que parallèlement au dépôt de cette requête, un recours similaire a été introduit devant la Cour supérieure de l'Ontario;

[3] **CONSIDÉRANT** que le 20 mars 2012, à la suite de l'introduction de ces recours collectifs, les requérants dans ces deux recours ont convenu d'une transaction avec l'intimée Pöyry (Beijing) Consulting Company Limited « Pöyry»;

[4] **CONSIDÉRANT** que la convention établissant les termes et conditions de cette transaction stipule que l'entente ne devient effective que si les recours collectifs sont autorisés par la Cour supérieure [au Québec et en Ontario] aux fins d'approuver cette transaction :

**2.2 Motions for Approval**

(1) Each of the Ontario Plaintiffs and Quebec Plaintiffs shall promptly bring motions before the Ontario Court and the Quebec Court, respectively, for orders approving the notices described in section 10 herein, certifying the Ontario Proceeding and authorizing the Quebec Proceeding as a class proceeding for settlement purposes only and approving this Settlement Agreement.

[5] **CONSIDÉRANT** que cette même convention prévoit qu'à défaut d'obtenir une telle autorisation d'exercer un recours collectif contre Pöyry et d'approuver la transaction intervenue avec celle-ci, la transaction n'a aucun effet;

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[6] CONSIDÉRANT que le 30 mars 2012, la Cour supérieure de l'Ontario a ordonné la suspension de tous les recours exercés à l'encontre de l'une des intimées visées par les deux recours collectifs, savoir Sino-Forest Corporation;

[7] CONSIDÉRANT qu'en raison de cette ordonnance rendue en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*<sup>1</sup>, le recours collectif du requérant Guining Liu et celui exercé en Ontario ont été suspendus;

[8] CONSIDÉRANT que le 8 mai 2012, la Cour supérieure de l'Ontario a autorisé les requérants, dans les deux recours collectifs, à continuer les procédures entreprises contre Sino-Forest Corporation et autres, afin de faire approuver le règlement intervenu avec Pöyry:

3. THIS COURT ORDERS that the Ontario Plaintiffs and the Quebec Plaintiff may proceed after September 1, 2012 with (1) the balance of the relief sought in the Ontario Pöyry Settlement Motion and the Quebec Pöyry Settlement Motion, (2) a motion for approval of the settlement between the Ontario Plaintiffs, the Quebec Plaintiff and Pöyry and (3) any motions that are necessary to give effect to the motions mentioned in (1) and (2) above, on dates to be fixed by the Courts supervising the Ontario Class Action and the Quebec Class Action, such motions to be brought on notice to the parties in the Ontario Class Action and the Service List.

[9] CONSIDÉRANT que le 1<sup>er</sup> juin 2012, à la suite de ce jugement, le requérant Guining Liu a déposé une requête pour être autorisé à publier un avis informant les membres que la requête en autorisation d'exercer un recours collectif allait être présentée, mais seulement contre l'intimée Pöyry et aux seules fins d'approuver la transaction intervenue avec celle-ci;

[10] CONSIDÉRANT qu'une demande similaire a été présentée devant la Cour supérieure de l'Ontario;

[11] CONSIDÉRANT que le 18 juin 2012, la Cour supérieure du Québec a accueilli cette requête, approuvant ainsi la forme et le contenu des avis destinés aux membres et fixant aux 30 et 31 octobre 2012 l'audition de la requête en autorisation d'exercer le recours collectif contre Pöyry seulement et pour approuver le règlement Pöyry;

[12] CONSIDÉRANT qu'aux termes de ce jugement, le Tribunal a également déclaré que la présentation de cette requête ne pouvait restreindre le droit des autres intimés à contester la demande du requérant Guining Liu d'exercer un recours collectif contre eux;

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<sup>1</sup> L.R.C. 1985.

200-06-000132-111

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[13] **CONSIDÉRANT** que le 25 octobre 2012, le requérant Guining Liu a déposé requête en autorisation du recours collectif à l'égard de Pöyry seulement et pour les seules fins d'approuver la transaction intervenue avec celle-ci;

[14] **CONSIDÉRANT** que le 30 octobre 2012, lors de l'audience portant cette requête en autorisation d'exercer un recours collectif visant Pöyry seulement, la question relative aux droits que se réservent les autres intimés [autres que Pöyry] de contester ultérieurement la requête en autorisation d'exercer un recours collectif a été abordée;

[15] **CONSIDÉRANT** que les représentations des parties ont plus spécifiquement porté sur les conséquences du droit que se réservent les autres intimés [autres que Pöyry] de contester ultérieurement la requête en autorisation d'exercer un recours collectif, en l'occurrence, la possibilité qu'une telle réserve donne éventuellement lieu à des jugements contradictoires;

[16] **CONSIDÉRANT** qu'après analyse, le Tribunal estime que l'autorisation recherchée à ce stade-ci ne peut donner lieu à des jugements contradictoires du fait qu'une telle autorisation ne viserait que Pöyry et non tous les intimés;

[17] **CONSIDÉRANT** par ailleurs que le Tribunal doit favoriser les règlements à l'amiable des litiges, et ce, *a fortiori* lorsque tous les intimés qui sont parties à l'instance ne s'objectent pas à ce qu'un règlement visant l'un d'entre eux puisse intervenir, sous réserve de leur droit de continuer leur contestation;

[18] **CONSIDÉRANT** que le 25 septembre 2012, la Cour supérieure de l'Ontario (Justice Perrel) a certifié le recours collectif ontarien aux seules fins d'approuver la transaction Pöyry;

[19] **CONSIDÉRANT** qu'il est dans l'intérêt de la justice et des parties en l'instance d'autoriser l'exercice du recours collectif contre Pöyry seulement, et aux seules fins d'approuver le règlement intervenu avec celle-ci;

[20] **CONSIDÉRANT** qu'il y a enfin lieu de réitérer que cette autorisation ne pourra en aucun cas préjudicier aux droits des autres intimés de contester, le cas échéant, le recours collectif exercé par le requérant Guining Liu;

**PAR CES MOTIFS, LE TRIBUNAL:**

[21] **ACCUEILLE** la requête;

[22] **DÉCLARE** que, pour l'application de ce jugement et sauf dans la mesure où elles sont modifiées par le présent jugement, les définitions énoncées dans la transaction intervenue avec PÖYRY (Beijing) Consulting Company Limited « Transaction Pöyry » s'appliquent à ce jugement et y sont incorporées;

200-06-000132-111

PAGE : 5

[23] **AUTORISE** l'exercice d'un recours collectif contre PÖYRY (Beijing) Consulting Company Limited seulement afin d'obtenir l'approbation de la Transaction Pöyry;

[24] **ACCORDE** au requérant, pour les seules fins de l'approbation de la Transaction PÖYRY, le statut de représentant des personnes faisant partie du groupe ci-après décrit, lequel constitue les « Quebec Class Members » tel que définis à la Transaction PÖYRY et les « Membres du groupe du Québec » aux fins du présent jugement :

«Toutes personnes physiques, de même que toutes personnes morales de droit privé, toutes sociétés ainsi que toutes associations, domiciliées au Québec et qui, en tout temps au cours de la période de douze (12) mois précédant la requête pour autorisation, comptait sous sa direction ou son contrôle au plus cinquante (50) personnes liées à elle par contrat de travail (à l'exception des Défenderesses, leurs filiales, sociétés liées, administrateurs, dirigeants, cadres supérieurs, associés, représentant légaux, héritiers, prédécesseurs, successeurs et ayants droit, actuels ou anciens, ainsi que toutes personnes qui sont membres de la famille immédiate des individus désignés comme Défendeurs) qui ont acheté ou autrement acquis, que ce soit sur le marché secondaire ou sur la foi d'un prospectus ou d'autre document d'offre sur le marché primaire, des actions ordinaires, une créance ou toute autre valeur mobilière de ou ayant trait à *Sino-Forest Corporation*, et ce entre le 19 mars 2007 et le 2 juin 2011 inclusivement.»

[25] **DÉCLARE** que rien dans ce jugement, ne pourra être interprété comme empêchant les autres Intimées de soumettre une défense à l'encontre de quelques questions, allégations ou réclamations formulées contre elles dans cette affaire;

[26] **APPROUVE** la Transaction PÖYRY;

[27] **DÉCLARE** que la Transaction PÖYRY constitue une transaction au sens de l'article 2631 du *Code civil du Québec*, liant toutes les parties et tous les membres qui y sont décrits et qui ne se sont pas valablement exclus;

[28] **DÉCLARE** que la Transaction PÖYRY dans son intégralité (y compris les préambules, les définitions et les annexes) fait partie intégrante de ce jugement;

[29] **APPROUVE** la version détaillée du « Notice of Certification/Authorization and Approval Hearing » (tel que défini à la Transaction PÖYRY et ci-après appelé « l'Avis de Règlement ») essentiellement en la forme de l'avis joint à l'annexe « B »;

[30] **APPROUVE** la version abrégée de l'Avis de Règlement essentiellement en la forme de l'avis joint à l'annexe « C »;

[31] **APPROUVE** le Plan de Publication des Avis essentiellement en la forme du plan joint à l'annexe « D » et ordonne que les Avis de Règlement soient diffusés en conformité avec le Plan de Publication des Avis, la Transaction PÖYRY et les conditions de ce jugement;

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[32] **ORDONNE** que la date limite pour la présentation de l'Exclusion soit le 60<sup>e</sup> jour suivant la première publication de l'Avis de Règlement (la « **Date Limite d'Exclusion** »), la date du cachet postal faisant foi;

[33] **DÉCLARE** qu'à l'arrivée de la Date d'entrée en vigueur, les Parties donnant quittance ne pourront, ni à ce moment ou par la suite, intenter, continuer, maintenir ou faire valoir, que ce soit directement ou indirectement, au Canada ou ailleurs, pour leur propre compte ou au nom de tout groupe ou toute autre personne, toute action, poursuite, cause d'action, réclamation ou demande à l'encontre (i) des Parties quittancées à l'égard de l'une quelconque des Réclamations quittancées; ou (ii) de toute autre personne, société ou association qui pourrait réclamer une contribution ou une indemnité à l'égard de l'une quelconque des Réclamations quittancées, étant entendu que rien dans le présent jugement ne doit être interprété comme empêchant la poursuite de cette affaire contre les autres Intimées qui ne règlent pas;

[34] **DÉCLARE** que, par la Transaction PÖYRY, le requérant et les Membres du groupe du Québec renoncent expressément au bénéfice de la solidarité envers les Intimées qui ne règlent pas, eu égard aux faits et gestes de l'Intimée qui règle;

[35] **DÉCLARE** que le requérant et les Membres du groupe du Québec ne pourront dorénavant réclamer et obtenir que les dommages, y incluant les dommages punitifs le cas échéant, attribuables aux gestes, à la conduite et aux agissements des Intimées qui ne règlent pas;

[36] **DÉCLARE** que tout recours en garantie visant à obtenir une contribution ou une indemnité des Parties quittancées, ou se rapportant aux Réclamations quittancées, est irrecevable et non-avenue;

[37] **DÉCLARE** que nonobstant le présent jugement qui homologue la Transaction PÖYRY, l'Intimée qui règle, demeurera une partie au dossier de cour seulement aux fins de l'exécution des obligations mentionnées aux paragraphes 27 et 32 de l'Ordonnance de l'Honorable Juge Perell de la Cour de justice de l'Ontario, du 25 septembre 2012 approuvant la Transaction PÖYRY et **DONNE ACTE** de l'engagement de chaque « PÖYRY PARTY » (tel que défini au paragraphe 27 de ladite Ordonnance d'Ontario) à renoncer au bénéfice du temps écoulé à l'égard des Intimées qui ne règlent pas, selon les modalités du Québec Tolling Agreement portant la date du 8 mai 2012;

[38] **DÉCLARE** que le Tribunal conservera un rôle de surveillance continue aux fins d'exécution de ce jugement et **CONSTATE** que l'Intimée qui règle reconnaît la compétence du Tribunal d'agir à ces fins;

[39] **ORDONNE** et **DÉCLARE** que le présent jugement ne peut lier ou avoir l'effet de la chose jugée contre les Intimées qui ne règlent pas;

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[40] **LE TOUT** sans frais.



JEAN-FRANÇOIS EMOND, j.c.s.

Mr. Simon Hébert  
*Siskinds, Desmeules (Casier 15)*  
Procureurs pour le requérant

Mr. Michael A. Eizenga  
Mr. Robert W. Staley  
*Bennett Jones*  
3400 One First Canadian Place  
P.O. Box 130  
Toronto (Ontario) M5X 1A4  
Procureurs pour les défendeurs, Sino-Forest Corporation

Me Dominique Gibbens  
Fasken Martineau  
800, Place Victoria, bureau 3700  
Montréal (Québec) H4Z 1E9  
Procureurs pour les preneurs fermes

Me Céline Legendre  
*McCarthy Tétrault (Casier 10)*  
1000, rue de la Gauchetière Ouest, bur. 2500  
Montréal (Québec) H3B 0A2  
Procureurs pour les défendeurs, Ernst & Young LLP

Mr. Bernard Gravel  
*Lapointe Rosenstein Marchand Melançon*  
1250, boulevard René-Lévesque Ouest, bur. 1400  
Montréal (Québec) H3B 5E9  
Procureurs pour les défendeurs, Pöyry (Beijing) Consulting Company Limited

Date d'audience : Le 30 octobre 2012



# **TAB 11**

THIS DOCUMENT IS LOCATED AT

Affidavit of Mike P. Dean, sworn  
January 11, 2013

Motion Record of Ernst & Young, Tab  
1

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

**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*

**AFFIDAVIT OF MIKE P. DEAN**

I, Mike P. Dean, of City of Markham, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Senior Vice-President of Ernst & Young, Inc., which entity is licensed as a corporate trustee in bankruptcy. By virtue of that position, I am also a partner in Ernst & Young LLP. I am a Chartered Accountant, a licenced Trustee in Bankruptcy and a chartered insolvency and restructuring professional.
2. In my more than 15 years of professional restructuring and insolvency experience, I have had carriage of numerous engagements in which Ernst & Young Inc. acted as court-appointed monitor in CCAA proceedings supervised by this Honourable Court (among others), or was appointed under the *Bankruptcy and Insolvency Act* (“BIA”) as a trustee, and I have advised debtors, creditors and other stakeholders with respect to Canadian and cross-border restructuring and financing issues as well as in respect of investigations of offences under the *BIA* and other federal and provincial statutes, all in a variety of industries. Past engagements have included the Royal Crest Group, the asset-backed commercial paper (ABCP) restructuring (involving liabilities with a combined face value of approximately \$32 billion), JTI-MacDonald, Bell Canada International, Slater Steel, Oxford Automotive and Laidlaw, among others. In my capacity as an insolvency and restructuring specialist, I have been involved in this matter on behalf of Ernst & Young LLP as a creditor of Sino-Forest Corporation (“Sino-Forest”).
3. I am not an audit partner of Ernst & Young LLP. I do not practise as an auditor.
4. Where my statements are based upon my information and belief, I believe such statements to be true and I have stated below the source for my information and belief.

5. I have read the affidavit of Charles Wright sworn in these proceedings on January 10, 2013 in support of this motion to approve the Ernst & Young Settlement (the "Wright Affidavit").

**Nature of the Motion**

6. The Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest in the Ontario Superior Court of Justice bearing (Toronto) Court File No. CV-11-431153-CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively) bring this motion to approve the Ernst & Young Settlement. The Ernst & Young Settlement is defined in the Plan of Compromise and Reorganization of the Applicant under the CCAA dated December 3, 2012 (the "Plan"), which was approved by order of this Honourable Court dated December 10, 2012 (the "Sanction Order").

7. The Ernst & Young Settlement includes the provisions at Article 11.1 of the Plan and contemplates the release sought on this motion of all claims against Ernst & Young LLP, Ernst & Young Global Limited and any of its member firms, and any person or entity affiliated with or connected thereto ("Ernst & Young", as more fully defined in the Plan), including all claims that have been asserted or that could have been asserted against Ernst & Young in these class proceedings (the "Ernst & Young Claims" and the "Ernst & Young Release", as more fully defined in the Plan).

**Ernst & Young**

8. Ernst & Young LLP is a firm of chartered accountants carrying on business in Canada as a limited liability partnership. Ernst & Young LLP delivered auditors' reports with respect to the consolidated financial statements of Sino-Forest Corporation ("Sino-Forest", the "Applicant" or the "Company") for fiscal years ended December 31, 2007 through 2010 inclusive, and with

respect to the consolidated financial statements of two of Sino-Forest's subsidiaries (Sino-Wood Partners, Limited and Sino-Panel (Asia) Inc.) for fiscal years ended December 31, 2007 and 2008.

9. From time to time, Ernst & Young LLP consented to the incorporation by reference of its auditors' reports with respect to the consolidated financial statements of Sino-Forest in certain prospectuses and debt offering memoranda of the Company. In addition to audit services, Ernst & Young LLP also provided other professional services to Sino-Forest and its direct and indirect subsidiaries (the "Sino-Forest Subsidiaries"). Ernst & Young LLP resigned as Sino-Forest's auditor effective April 4, 2012.

#### **The Class Actions**

10. I am familiar with various class actions involving Sino-Forest where Ernst & Young is also a defendant and the allegations made by the proposed representative plaintiffs (the "Class Actions"). I adopt the statements in the Wright Affidavit in paragraphs 30, 32-37 and 41, describing the Class Actions and to the best of my information and belief believe them to be true.

#### **Sino-Forest Insolvency Proceedings**

11. On March 30, 2012, in part due to the Class Actions, Sino-Forest sought and obtained protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "Initial Order") and currently remains in CCAA insolvency proceedings in the Ontario Superior Court of Justice (the "CCAA Proceeding"). The Initial Order made in the CCAA Proceeding dated March 30, 2012, stayed the Class Actions against the company, its subsidiaries and its directors and officers.

12. On May 8, 2012, this Honourable Court made a further order, unopposed, that the stay extends to all third party defendants to the Class Actions, including Ernst & Young (the "Third

Party Stay Order”), so that all stakeholders could focus on Sino-Forest’s restructuring. The stay as against all parties has been extended from time to time. As a result, the Ontario Class Action and the Quebec Class Action are stayed as against all defendants, with one narrow exception being that the May 8, 2012 order permitted the proposed representative plaintiffs in Ontario and Quebec to proceed with certain motions relating to Pöyry (Beijing) Consulting Company and a proposed settlement with that party and related entities. Attached hereto as **Exhibit “A”** and **Exhibit “B”** are copies of the Initial Order and the Third Party Stay Order.

13. On May 14, 2012, this Honourable Court granted a claims procedure order (the “Claims Procedure Order”) in the CCAA Proceeding. The motion for the Claims Procedure Order proceeded on an unopposed basis following extensive discussions amongst the stakeholders including the Company, Ernst & Young, the Ontario Plaintiffs and the other third party defendants including the syndicate of underwriters for Sino-Forest’s various debt and equity offerings (the “Underwriters”) and Sino-Forest’s previous auditors, BDO Limited (“BDO”).

14. I am informed by counsel to Ernst & Young that Ernst & Young agreed, following extensive negotiations with the Applicant, the Monitor, the Ad Hoc Committee of Noteholders of Sino-Forest (the “Noteholders”) and other stakeholders, not to oppose the Claims Procedure Order on the basis that it provided for a full claims process in the CCAA Proceedings. The Claims Procedure Order provided for a claims bar date pursuant to which any party wishing to file a proof of claim was required to do so. The Claims Procedure Order called for claims against Sino-Forest and (although they were not Applicants) the Sino-Forest Subsidiaries (“Sino-Forest Proof of Claim”) and separately for claims against the directors and officers of Sino-Forest (“D&O Proof of Claim”, together with the Sino-Forest Proof of Claim, the “Proofs of Claim”).

**Ernst & Young Proofs of Claim and Other Claims**

15. Ernst & Young filed Proofs of Claim pursuant to the Claims Procedure Order and claimed as against each of Sino-Forest, the Sino-Forest Subsidiaries, and the directors and officers of each for:

- (a) Damages for:
  - (i) Breach of contract;
  - (ii) Negligent misrepresentation;
  - (iii) Fraudulent misrepresentation;
  - (iv) Inducing breach of contract (as against the Sino-Forest Subsidiaries only);
  - (v) Injury to Reputation; and
  - (vi) Vicarious Liability (as against Sino-Forest and the Sino-Forest Subsidiaries);
- (b) Contractual indemnity, pursuant to Ernst & Young's engagement letters; and
- (c) Contribution and indemnity under the *Negligence Act*, R.S.O. 1990, c. N-1 and other applicable legislation outside of Ontario (the "*Negligence Act*").

16. Attached hereto as **Exhibit "C"** and **Exhibit "D"** are the Sino-Forest Proof of Claim and the D&O Proof of Claim of Ernst & Young LLP filed pursuant to the Claims Procedure Order. The Ernst & Young Proofs of Claim fully set out the basis for the claims advanced by Ernst & Young against Sino-Forest, the Sino-Forest Subsidiaries and the directors and officers and accordingly I will not repeat those grounds here, but adopt them as true.

17. As a result of the Ernst & Young Settlement, these claims have been resolved on consent, as more particularly described below.

18. Numerous other parties also filed Proofs of Claim in accordance with the Claims Procedure Order. Significantly, the other third party defendants, being the syndicate of underwriters (the



“Underwriters”) who conducted the various Sino-Forest debt and equity offerings at the heart of the plaintiffs’ claims, as well as Sino-Forest’s former auditors, BDO Limited (formerly known as BDO McCabe Lo Limited) (“BDO”) also filed proofs of claim.

19. As I have understood the position of the Underwriters throughout the CCAA Proceedings, one component of the claim they asserted was based upon direct contractual indemnities provided to the Underwriters by certain of the Sino-Forest Subsidiaries as well as Sino-Forest, such that the Underwriters asserted unsecured creditor claims directly as against each of these entities on a contractual basis.

#### **CCAA Process and Mediation**

20. I have reviewed the Monitor’s Reports filed in this CCAA Proceeding, as well as the various affidavits of W. Judson Martin, Vice Chairman and Chief Executive Officer of Sino-Forest, filed in support of the various motions sought. Those materials, together with the submissions made in Court on numerous occasions by counsel to the Applicant, counsel to the Monitor and counsel to the Noteholders, have been consistent and clear to the effect that the timing and urgency of these CCAA Proceedings was critical to those principal stakeholders, and in their view critical to the maximization of assets for the stakeholders and the chances of a viable outcome.

21. In addition, those materials and submissions have been clear and consistent that the resolution of the claims arising out of the allegations made against Sino-Forest and its senior management, among others, have been throughout the process the gating issue in all material respects. To the best of my knowledge and belief, there have been no significant operational restructuring challenges other than those arising from the uncertainty caused by the litigation, investigations, and the subsequent CCAA proceedings.

22. This Honourable Court granted an order on July 25, 2012 that the Parties (as defined in the order and as described below) participate in a mediation process (the "Mediation Order"). A copy of the Mediation Order is attached hereto as **Exhibit "E"**. It is in the context of this CCAA Proceeding, and being advised by the Applicant, Noteholders and Monitor of the urgency of these proceedings, that the Supervising Judge, the Honourable Justice Morawetz, ordered the parties to participate in a global mediation. The Mediation Order was unopposed. Ernst & Young readily agreed to participate as Justice Morawetz requested, as did the other parties.

23. In the Mediation Order, the court ordered that the parties eligible to participate in the mediation were the Applicant, the Ontario Plaintiffs, the Third Party Defendants, the Monitor, the Noteholders and any insurers providing coverage. At paragraph 5, the Mediation Order provides that the Mediation Parties shall participate in the Mediation in person and with representatives present "with full authority to settle the Subject Claims". The Ontario Plaintiffs were granted thereby full authority to settle and resolve the claims. This authority was critical to Ernst & Young's support of the mediation. Put simply, Ernst & Young, and the other parties, needed to have the certainty that the counterparties with whom they were negotiating had the ability to consummate and complete a settlement in the CCAA context if terms could be reached.

24. The Mediation Order (along with all other orders and endorsements in the CCAA Proceedings) is available on the Monitor's website.

25. By further order of the Court dated July 30, 2012, Justice Morawetz ordered that the parties participating in the mediation have access to a data room established by the Company in furtherance of its previous sales process, to which data room would be added additional materials and information by the Company (the "Data Room Order"). The Court specifically required the

parties to enter into a confidentiality agreement with the Applicant on terms acceptable to the Applicant and the Monitor, and all of the parties did so. A copy of the Data Room Order is attached hereto as **Exhibit “F”**. The Applicant, with the assistance of the court-appointed Monitor, established the data room.

26. For the purposes of the mediation, significant efforts of all the principal stakeholders were put into: voluminous mediation materials, review of the relevant materials, and preparation for and attendance at the mediation. The supervising CCAA Judge, Justice Morawetz, directed that Justice Newbould conduct the mediation, and he did so. I did not participate directly in the mediation, but am advised by counsel to Ernst & Young that all of the Parties participated.

27. While the global mediation did not result in an all-party settlement, in my opinion it was a catalyst for continued discussions and dialogue amongst the stakeholders, including negotiations between the Ontario Plaintiffs and Ernst & Young, ultimately resulting in the Ernst & Young Settlement, approval of which is sought on this motion.

28. As those discussions continued, the Ontario Plaintiffs brought a motion in the CCAA Proceedings on October 28, 2012 for an order, among other things, restricting the scope of the stay of proceedings imposed by the Initial Order so that it would not apply to the third party defendants, including Ernst & Young, and certain officers and directors. The Court dismissed that motion, by way of Endorsement dated November 6, 2012 (the “Lift Stay Endorsement”), a copy of which is attached as **Exhibit “G”**. In the Lift Stay Endorsement, the Court observed that the relevant stakeholders should focus on the Plan and Sino-Forest’s restructuring, including issues related to a then pending appeal of the Equity Claims Order. At that time, and notwithstanding the absence of a global settlement, the Court was not prepared to lift the stay to allow the Class Actions to move

ahead separately from the CCAA Proceedings. This decision allowed, and in many respects encouraged, the Parties to continue their negotiations, which they did.

29. The Ernst & Young Settlement was the direct result of the mediation and discussions as had been ordered and directed by the Supervising CCAA Judge, and central to the terms of the Ernst & Young Settlement was its inclusion in the proposed Plan being put forward by the Applicant and the Noteholders.

30. Although I was not directly involved in the mediation and negotiations described in the paragraph, I am advised by counsel to Ernst & Young that, as described in the Wright Affidavit, Ernst & Young and the Ontario Plaintiffs worked literally around the clock, to achieve the terms of an agreement as between them as reflected in the Minutes of Settlement. Clifford Lax, Q.C., an experienced senior counsel and mediator, was engaged to facilitate this bilateral mediation. The mediation was conducted over the course of two lengthy days and nights, continuing into the early hours of the morning.

31. Given the complexity of the claims, the nature of the resolution of the claims and the terms of the Minutes of Settlement, significant amendments to the (then draft) Plan were required to give effect to the Ernst & Young Settlement. Those amendments were ultimately negotiated, agreed upon, approved by the creditors of Sino-Forest and sanctioned by the Court. The Applicant, the Monitor, and the Noteholders were strongly of the view that such amendments must be made urgently, if they were to be included in the Plan, in view of the importance (discussed above) of an expedited restructuring to preserve asset value. A second stage of negotiations, principally with the Noteholders and with the involvement of the Applicant and overseen by the Monitor, was

therefore required to articulate and implement the required amendments to the proposed Plan. I was directly involved in these negotiations, which were intense and complicated..

**The Ernst & Young Settlement**

32. The Minutes of Settlement have been filed in this proceeding and have been publicly available since shortly after the terms were agreed.

33. The Ernst & Young Settlement provides for the payment of CAD\$117,000,000.00 as a Settlement Fund, being the full monetary contribution by Ernst & Young to settlement of the Ernst & Young Claims.

34. The Ernst & Young Settlement is conditional upon the terms set out in the Minutes of Settlement and Schedule "B" thereto, including a global release in these CCAA Proceeding and a Chapter 15 proceeding to be brought in the United States Bankruptcy Court. The Ernst & Young Settlement is also conditional upon the following steps, as set out at Article 11.1 of the Plan:

- (a) the granting of the Sanction Order, sanctioning the Plan including the terms of the Ernst & Young Settlement;
- (b) the issuance of the Settlement Trust Order;
- (c) any other orders necessary to give effect to the Ernst & Young Settlement;
- (d) the fulfillment of all conditions precedent in the Ernst & Young Settlement;  
and
- (e) all orders being final orders and not subject to further appeal or challenge.

35. The condition in the Minutes of Settlement that the Plan include the framework for the Ernst & Young Settlement and the Ernst & Young Release, and that the Plan with those elements be approved by Sino-Forest's creditors and the Court, was critical to Ernst & Young.

36. Attached hereto as **Exhibits “H”, “I” and “J”** are copies of the Thirteenth Report of the Monitor, the Supplement to the Thirteenth Report of the Monitor and the Second Supplement to the Thirteenth Report of the Monitor without attachments, setting out the result of the vote of the meeting of creditors of Sino-Forest held December 3, 2012.

37. The Plan, as ultimately approved by 99% in number and greater than 99% in value of those Affected Creditors (as defined in the Plan) voting, voted in favour of the Plan, (as reported by the Monitor in the Supplement to its Thirteen Report as Exhibit “I”) provides as follows:

- Plan Releases – pursuant to section 7.1 of the Plan, all claims against Sino-Forest, the Subsidiaries and the named directors and officers are fully, finally irrevocably released, discharged and barred on the Plan Implementation Date. This includes, but is not limited to, all of the claims referred to above asserted by Ernst & Young in its Proofs of Claims against Sino-Forest, the Sino-Forest Subsidiaries, and the directors and officers of each of them;
- Also pursuant to section 7.1, the Plan extinguishes and bars any entitlements of Ernst & Young to receive distributions of any kind (including Newco shares, notes and litigation trust interests) under the Plan;
- The Plan in effect transfers to Newco, a new corporation to be incorporated and owned and/or controlled by the Sino-Forest Noteholders, all of the assets of Sino-Forest free and clear from any and all claims. These assets specifically included the shares of the Sino-Forest Subsidiaries, against which entities Ernst & Young had its outstanding claims;
- In section 11.1, the Plan provides (that upon the various conditions precedent being satisfied), including receipt by the Monitor of a certificate from Ernst & Young confirming that it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement, the Ernst & Young Release is in full force and effect in accordance with the Plan.

38. It is important to note the scope of releases in the Plan referred to above. The only Applicant in the CCAA Proceedings is Sino-Forest itself. The Plan, as sanctioned by this Honourable Court, includes numerous other third party releases – specifically in favour of the Sino-Forest subsidiaries (who are non-applicants) and the directors and officers of Sino-Forest and its subsidiaries. To the

best of my information and belief, no party is challenging or has challenged those third party releases.

39. The fact and terms of the Ernst & Young Settlement were disclosed prior to the finalization of the Plan voted on at the creditors' meeting to other stakeholders including (in addition to the Applicant and the Monitor) the Underwriters and BDO, Sino-Forest's former auditors. The Plan as voted also included the framework for future potential settlements with third party defendants including the underwriters at Article 11.2, using the same mechanics that apply to the Ernst & Young Settlement. Following the meeting of creditors, the Plan was amended to include BDO in Article 11.2.

40. I believe that the Ernst & Young Settlement was very much the catalyst for the inclusion in the Plan of these additional provisions, which in turn led to the withdrawal of objections by the Underwriters and BDO to the terms of the Plan and indeed their support for the Plan ultimately sanctioned.

41. The Plan was sanctioned by this Honourable Court by way of the Plan Sanction Order. The Plan Sanction Order implements the Plan and expressly provides (at paragraph 40) for the Ernst & Young Settlement to become effective upon the satisfaction of various enumerated conditions precedent, including the approval sought by way of this motion. In like form, the Plan Sanction Order provides for the implementation of other third party settlements (i.e. the underwriters and BDO) on analogous terms if negotiated and approved by the court.

42. The Ernst & Young Settlement provides significant benefit to these CCAA Proceedings:

- (a) Ernst & Young agreed to support the Plan;

- (b) Ernst & Young's support has materially simplified and accelerated the Plan approval and implementation process:
- (i) Ernst & Young has agreed that its claims against Sino-Forest and the Sino-Forest Subsidiaries are released, which claims were significant and material as stated above. In particular, the Proofs of Claim filed by Ernst & Young set out extensive claims that were asserted directly against the Sino-Forest Subsidiaries. None of these claims were addressed in the Equity Claims Order;
  - (ii) Ernst & Young has agreed to waive any leave to appeal to the Supreme Court of Canada in respect of the dismissal of its appeal by the Court of Appeal for Ontario of the Equity Claims Order;
  - (iii) By agreeing to release all these claims, Ernst & Young has eliminated:
    - (1) Dilution of the Noteholders' recovery if Ernst & Young were ultimately to obtain judgments or settlements in respect of those claims;
    - (2) The expense and management time otherwise to be incurred by Newco and the Subsidiaries in litigating these claims; and
    - (3) What might otherwise have been a significant extension of the timelines to complete the restructuring of Sino-Forest;
- (c) Ernst & Young has agreed not to receive any distributions of any kind under the Plan, as have the other Third Party Defendants. Without that agreement, the Unresolved Claims Reserve would have materially increased, with the potential for a corresponding dilution of consideration paid to the Affected Creditors. In addition, I expect that it would have taken a considerable period of time for the resolution of claims related to the Unresolved Claims Reserve. Considerable time and resources would have been engaged to determine the appropriate level of the significant holdbacks. Those in turn would have needed to be structured and, given their size, carefully funded to a level which might have impaired the ongoing



operations of the business in the hands of the Noteholders, including at the Sino-Forest Subsidiary level where the timber rights assets are held;

- (d) Although the allocation of the settlement funds has yet to be determined, any portion allocated to the equity holders of Sino-Forest will significantly increase the recovery to a class of stakeholders that would not otherwise receive any amount under the Plan; and
- (e) Ernst & Young agreed to not pursue its objections generally to the Plan and its sanction, and agreed to not pursue all of its appeal rights in that regard.

43. Ernst & Young's claims against Sino-Forest and the Sino-Forest Subsidiaries are discussed above. The consensual release of those claims by Ernst & Young, as confirmed on the Plan Sanction hearing, allowed and permitted the Sino-Forest Subsidiaries to be in a position to contribute their assets to the overall restructuring, unencumbered by pending claims totalling billions of dollars. As noted in the Monitor's Thirteenth Report and the supplements thereto, this structure was a centrepiece of the entire Plan. Sino-Forest itself is merely a holding company and its only assets are the shares of the Sino-Forest Subsidiaries. Sino-Forest itself has no other assets. The ability of the Sino-Forest Subsidiaries to be in a position to contribute their assets was therefore very important.

44. The transactional aspects of the Plan are in many ways quite straightforward. Simply put, the Plan extinguishes all claims against the Company and transfers its assets to the Noteholders. What made a very straightforward circumstance more complicated was the existence of all of the intertwining claims. It follows that the resolution of those claims, allowing for the transfer of the Sino-Forest assets to the Company's new holding company without protracted litigation involving the determination of all of those claims (and the risks associated therewith), immensely simplified and accelerated the restructuring process ultimately leading to the sanction referred to above.

45. I have been present in Court during argument in respect of many of the motions and steps that have been brought in the CCAA Proceedings. On numerous occasions, counsel for each of the Applicant, the Noteholders and the Monitor have urged upon this Honorable Court the imperative of speed and the urgency with which the restructuring must be completed if a going-concern outcome was to be achieved in order that asset value could be maximized for the stakeholders of Sino-Forest. In my view, it is beyond question that the consensual resolution of all of the claims, as are facilitated by the terms of the Ernst & Young Settlement, and the corresponding withdrawal for the purposes of Plan approval and implementation of the opposition of the other third party defendants, being the Underwriters and BDO, have contributed materially to the speed with which the Plan has already been sanctioned and with which the restructuring can now be completed.

46. The Ernst & Young Settlement is the direct result of the mediation efforts directed and ordered by the supervising CCAA Judge, Mr. Justice Morawetz, on the urging of the Applicant and supported by the Monitor, to unlock the impasse and advance the restructuring efforts generally. The fact of the settlement is, as I understand it, precisely the objective the supervising judge observed to be imperative to a successful restructuring and that is undoubtedly one of the reasons why this Honourable Court made the Mediation Order and other related orders.

#### **Possible Opposition to the Ernst & Young Settlement**

47. I am aware that this motion may be opposed by certain parties, including Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Batirente Inc. (collectively, the "Funds"), (all of whom opposed the sanction order made in this CCAA Proceeding).

48. I am advised by counsel to Ernst & Young LLP that the Funds (other than Invesco, who was not a named plaintiff), represented by the same counsel who act for them on this motion, commenced their own Ontario proposed class action as against Ernst & Young, Sino-Forest and others, and that the proposed class action was one of the competing actions that was the subject of the carriage motion before the Honourable Justice Perell. Carriage was ultimately granted to counsel for the Ontario Plaintiffs. Accordingly, the Funds have not only been aware of, but indeed were active participants in, the Ontario Class Action from the outset.

49. In addition, the Funds are no strangers to the CCAA Proceedings. I was present in court on December 7, 2012 for the Plan sanction hearing, when counsel for the Funds advised the Court that they had been monitoring the CCAA Proceedings throughout, but had seen no need to participate, make submissions or file materials until they learned of the Ernst & Young Settlement. At that time, the Funds filed a Notice of Appearance in the CCAA Proceedings. Attached hereto as **Exhibit "K"** is a copy of the Funds' Notice of Appearance.

50. This statement by Fund counsel was made in response to a question from the CCAA Judge as to why, notwithstanding the implementation of various steps in the CCAA Proceedings that affected them, the Funds had not appeared or participated in the CCAA Proceedings, let alone objected, if they saw fit to do so.

51. The Funds had the opportunity to participate, but did not participate, in steps and orders including those listed below, which may have affected their interests. I am advised by counsel to Ernst & Young and believe that these steps and orders may affect the ability of the Funds to maintain standing to oppose the Ernst & Young Settlement at this time. These steps and orders include:

- (a) **Third Party Stay Order dated May 8, 2012** – In addition to staying the various Class Actions, at paragraph 3, the Third Party Stay Order provides that the Applicant is authorized to enter into agreements with the plaintiffs and defendants in the Ontario Class Action and in the Quebec Class Action providing for, among other things, the tolling of certain limitation periods. Pursuant to paragraph 4, the Third Party Stay Order is without prejudice to the right of the parties in the Ontario Class Action to move or vary the Third Party Stay Order on or after September 1, 2012;
- (b) **Claims Procedure Order dated May 14, 2012** – The Claims Procedure Order established a claims bar date and a procedure for the determination and/or resolution of claims against the Applicant and others. At paragraph 17, the Claims Procedure Order provides that any person that does not file a proof of claim in accordance with the order is barred from making or enforcing such claim as against any other person who could claim contribution or indemnity from the Applicant. This would include claims by the Funds against Ernst & Young for which Ernst & Young could claim indemnity from Sino-Forest. The Claims Procedure Order provides at paragraphs 27 and 28 that the Ontario Plaintiffs (as defined therein) are authorized to file one Proof of Claim in respect of the substance of the matters set out in the Ontario Class Action and that the Quebec Plaintiffs are similarly authorized to file one Proof of Claim in respect of the substance of the matters set out in the Quebec Class Action. The proposed class in each of the Ontario and Quebec Class Actions includes the Funds. I am advised by counsel to Ernst & Young that the Funds did not object to or oppose the Claims Procedure Order,

either when it was sought or at any time thereafter. Accordingly, the Ontario Plaintiffs were authorized to (and did) file a Proof of Claim in a representative capacity in respect of the claims of the Funds;

- (c) **Mediation Order dated July 25, 2012** – As stated above, at paragraph 3, the court ordered that the parties eligible to participate in the mediation were the Applicant, the Ontario Plaintiffs, the Third Party Defendants, the Monitor, the Noteholders and any insurers providing coverage. I am advised by counsel to Ernst & Young that the Funds did not seek to be named as a Party to the mediation. The Mediation Order provides that the Mediation Parties shall participate in the Mediation in person and with representatives present “with full authority to settle the Subject Claims”. The Ontario Plaintiffs were granted thereby full authority to settle and resolve the claims, including the claims of the Funds;
- (d) **Data Room Order dated July 30, 2012** – The Data Room Order provided for the production, via a data room protected by confidentiality agreements, of certain documents for the purposes of the Mediation. The Data Room Order provided at paragraph 2 that the documents would be made available to the Mediation Parties, as defined above, but no other parties.

52. The Funds did not object, oppose or indeed take any position in respect of any of these steps or orders.

### SUMMARY AND CONCLUSION

53. The Ernst & Young Settlement was the product of a process that began early on in the CCAA Proceedings, in recognition of the substantial impact that the Class Actions had on Sino-Forest.

The process:

- (a) began with the almost immediate participation of the Ontario Plaintiffs (augmented by Siskinds' representation as well of the Quebec Class Action Plaintiffs);
- (b) was augmented early on in these proceedings through recognition by the stakeholders that a resolution of the Class Action litigation, if achievable, would be very much in the best interests of the restructuring process;
- (c) led to the Third Party Stay Order;
- (d) necessarily involved a representative status on the part of the Ontario Plaintiffs, reflected in the orders of this Honourable Court;
- (e) involved from there a closely integrated series of steps by which the Ontario Action Plaintiffs:
  - (i) filed a Proof of Claim in the proceedings on behalf of the entire proposed class;
  - (ii) participated in the claims process;
  - (iii) made the strategic decision on behalf of the class not to oppose the Applicant's motion seeking an order specifying that the shareholder claims were equity claims, as that term is defined in the CCAA;
  - (iv) negotiated certain protections and structure within the Plan in relation to the Noteholder claims advanced in the Class Action litigation;

- (v) sought from time to time to lift the stay with a view to advancing the Ontario Class Action, which steps were ultimately unsuccessful in light of the central role the litigation played in the restructuring of Sino-Forest;
- (f) led to a court-mandated mediation process, in which the Ontario Plaintiffs participated as representatives of the Class with authority to settle claims, directed towards resolving the Class Actions in the context of the CCAA Proceedings;
- (g) resulted in the Parties continuing to attempt, after the unsuccessful formal mediation, to achieve a global resolution;
- (h) involved Ernst & Young and the Ontario Plaintiffs continuing, on a bilateral basis but otherwise consistent with the processes put in place by the CCAA Court, to pursue a settlement that could facilitate the CCAA restructuring, and ultimately succeeding in doing so in late November of 2012;
- (i) led to an important negotiation to incorporate the framework of the Ernst & Young Settlement and the Ernst & Young Release within the Plan so as to:
  - (i) eliminate indemnification claims by Ernst & Young into the Sino-Forest estate, including at the subsidiary level;
  - (ii) facilitate a reduced or eliminated claims process so as to permit prompt Plan implementation;
  - (iii) create a template for further settlements of the Class Actions in a context in which other defendants, notably the Underwriters and BDO gave up their indemnification claims and facilitated a similar, and important, contribution to bringing the restructuring to a conclusion;
- (j) involved, as a result, a significant concession on the part of Ernst & Young by which it:
  - (i) gave up the indemnification claims;

- (ii) gave up its further leave to appeal rights from the Equity Claims Order;
  - (iii) in order to facilitate the expedited restructuring of the Applicant, took the step of permitting the balance of the Plan to be implemented without completion of the settlement approval process;
  - (iv) voted in favour of the Plan;
  - (v) supported the Plan Sanction Order; and
- (k) in the result a fund of CAD\$117,000,000 is available in respect of Ernst & Young Claims, all for the benefit of certain Sino-Forest stakeholders and in such a way as to reduce down substantially the scope of the Class Actions.

54. The Ernst & Young Settlement is one where:

- (a) the claims to be released are rationally related to the purpose of the Plan;
- (b) the release of those claims is necessary for the success of the Plan;
- (c) Ernst & Young is contributing in a tangible and realistic way; and
- (d) the Plan benefits both Sino-Forest and its creditors generally.

55. If the approval order sought is granted, this Honourable Court will retain continuing supervisory jurisdiction over the implementation of the settlement and specifically the allocation and distribution of the amounts in the Settlement Trust.

56. It is as against all of these factors that I believe that the Ernst & Young Settlement is fair and reasonable and Ernst & Young asks that it be approved by this Honourable Court pursuant to both the CCAA and the *Class Proceedings Act*.



**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on this  
11<sup>th</sup> day of January, 2013



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Commissioner for Taking Affidavits  
Shara N. Roy

}



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**MIKE P. DEAN**

# TAB A

THIS DOCUMENT IS LOCATED AT

Third-Party Stay Order, dated May 8,  
2012

Exhibit "B" to the Affidavit of Mike P.  
Dean, sworn January 11, 2013, Motion  
Record of Ernst & Young, Tab 1B

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE 8 <sup>th</sup>
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2012



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

**ORDER**

(Third Party Stay)

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order addressing the scope of the stay of proceedings herein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion and the materials summarized in Schedule "A" to the factum dated May 7, 2012, filed on behalf of the Monitor, as amended, including the affidavit of W. Judson Martin sworn April 23, 2012 (the "**Judson Affidavit**"), and on hearing the submissions of counsel for FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**"), in the presence of counsel for the Applicant, the Applicant's directors and officers named as defendants (the "**Directors**") in the Ontario Class Action (as defined in the Judson Affidavit), Ernst & Young LLP, the plaintiffs in the Ontario Class Action, the underwriters named as defendants in the Ontario Class Action (the "**Underwriters**") and BDO Limited and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

## **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **THIRD PARTY STAY AND TOLLING AGREEMENT**

2. **THIS COURT ORDERS** that no Proceeding (as defined in the initial order granted by this Court on March 30, 2012 (as the same may be amended from time to time, the “**Initial Order**”)) against or in respect of the Applicant, the Business or the Property (each as defined in the Initial Order), including without limitation the Ontario Class Action and any litigation in which the Applicant and the Directors, or any of them, are defendants, shall be commenced or continued as against any other party to such Proceeding or between or amongst such other parties (cross-claims and third party claims if any), until and including the expiration of the Stay Period (as defined in the Initial Order and as the same may be extended from time to time), provided that, notwithstanding the foregoing and anything to the contrary in the Initial Order, there shall be no stay of any Proceeding against Pöyry (Beijing) Consulting Co. Limited and/or any affiliate, any other Pöyry entity, representative or agent.

3. **THIS COURT ORDERS** that the Applicant is authorized to enter into agreements among the plaintiffs and defendants in the Ontario Class Action and in the action styled as Guining Liu v. Sino-Forest Corporation et al., bearing (Quebec) Court File No. 200-06-000132-111 (the “**Quebec Class Action**”), providing for, among other things, the tolling of certain limitation periods, as it sees fit, subject to the Monitor’s approval.

## **MISCELLANEOUS**

4. **THIS COURT ORDERS** that this order is subject to any further order of the court on a motion of any party, and is without prejudice to the right of the parties in the Ontario Class Action to move or vary this order on or after September 1, 2012.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the

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



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



MAY 11 2012

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

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

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**BENNETT JONES LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 3400  
Toronto ON M5X 1A4

**Rob Stanley (LSUC # 27115J)**  
**Kevin Zych (LSUC #33129T)**  
**Derek Bell (LSUC #43420J)**  
**Jonathan Bell (LSUC #55457P)**

Lawyers for the Applicant

# **TAB B**



THIS DOCUMENT IS LOCATED AT

Mediation Order, dated July 25, 2012

Exhibit "E" to the Affidavit of Mike P. Dean, sworn January 11, 2013, Motion Record of Ernst & Young, Tab 1E

AND

Exhibit "AA" to the Affidavit of Charles M. Wright, sworn January 10, 2013, Plaintiffs' Motion Record, Vol. 3, Tab 2AA



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

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

THE HONOURABLE MR.

)

WEDNESDAY, THE 25<sup>th</sup>

JUSTICE MORAWETZ

)

DAY OF JULY, 2012

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

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

**ORDER**  
**(Mediation)**

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**") of Sino-Forest Corporation (the "**Applicant**") for a consent order concerning mediation and related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Monitor's Notice of Motion dated July 13, 2012 and the Fifth Report of the Monitor dated July 13, 2012 (the "**Fifth Report**"), the Responding Motion Record of the Applicants and the Responding Motion Record of Pöyry Beijing (as defined below), and on hearing the submissions of counsel for the Applicant, the Monitor, the ad hoc committee of Noteholders (the "**Ad Hoc Noteholders**"), the ad hoc group of purchasers of the Applicant's securities (the "**Plaintiffs**") and the other defendants in the Ontario Class Action and the Quebec Class Action (the "**Third Party Defendants**") and those other parties present, no one appearing for any of the other parties served with the Monitor's Motion Record, although duly served as appears from the affidavit of service of Alma Cano sworn July 13, 2012, filed.

## **SERVICE AND INTERPRETATION**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record, including the Fifth Report, is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fifth Report.

## **MEDIATION**

3. THIS COURT ORDERS that the parties eligible to participate in the Mediation pursuant to paragraph 5 of this Order are the Applicant, the Plaintiffs, the Third Party Defendants (which shall be read to include Pöyry (Beijing) Consulting Company Limited ("**Pöyry Beijing**")), the Monitor, the Ad Hoc Noteholders and any insurers providing coverage in respect of the Applicant and the Third Party Defendants (collectively, the "**Mediation Parties**").

4. THIS COURT ORDERS that the subject matter of the Mediation shall be the resolution of the claims of the Plaintiffs against the Applicant and the Third Party Defendants as set out in the statements of claim in the Ontario Class Action and the Quebec Class Action and any and all related claims (the "**Subject Claims**"), provided that for the purpose of the Mediation, the Plaintiffs shall not seek contribution from any of the Mediation Parties with respect to amounts that could have been sought by the Plaintiffs from Pöyry Beijing had the Plaintiffs not reached a settlement with Pöyry Beijing (the "**Pöyry Settlement**") and provided that the Plaintiffs shall provide to the Mediation Parties, within 10 days of the date of this Order or such further time as this Court may direct, a written summary of evidence proffered by Pöyry Beijing pursuant to the Pöyry Settlement, which summary shall be treated in the same manner as material in the Data Room (as defined below) pursuant to this Order.

5. THIS COURT ORDERS that, where practicable, the Mediation Parties shall participate in the Mediation in person and with representatives present with full authority to settle the Subject Claims (including any insurer providing coverage), provided that, where not practicable, the Mediation Parties may participate in the Mediation through counsel or other representatives, subject to those counsel or other representatives having access to representatives with full

authority and undertaking to promptly pursue instructions with respect to any proposed agreements that arise from the Mediation.

6. THIS COURT ORDERS that parties in addition to the Mediation Parties shall only have standing to participate in the Mediation on consent of the Applicant and the Monitor, acting reasonably, or by further Order of this Court.

#### **DATA ROOM**

7. THIS COURT ORDERS that in connection with the Mediation, as soon as practicable, but in any event no later than August 3, 2012, the Applicant shall provide access to the Mediation Parties to the existing data room maintained by Merrill (the "**Data Room**"), provided however that prior to access to the Data Room, all participants (other than the Applicant, the incumbent directors of the Applicant and the Monitor) shall have entered into a confidentiality agreement with the Applicant on terms reasonably acceptable to the Applicant and the Monitor.

8. THIS COURT ORDERS that any Mediation Parties who enter into a confidentiality agreement as contemplated by paragraph 7 of this order shall comply with the terms of such confidentiality agreement.

9. THIS COURT ORDERS that the Applicant, its subsidiaries and affiliates, and their directors, officers, employees, agents and advisors, shall incur no liability in connection with causing, effecting or acquiescing in the establishment of the Data Room or disclosure in respect of such materials and the information contained therein in accordance with this Order. The materials in the Data Room shall be made available without any representation as to the truth of their contents or their completeness, and persons relying on those materials shall do so at their own risk. The disclosure of such materials and the information contained therein in accordance with this Order is not and shall not be public disclosure in any respect. Nothing in this paragraph affects any rights or causes of action that any person may have in relation to the prior disclosure of any of the contents of the Data Room, insofar as such rights or causes of action are independent from and not related to the provision of materials and information in accordance with this Order.

**MEDIATION SCHEDULE**

10. THIS COURT ORDER THAT, the schedule for the Mediation shall be as follows:
- (a) the Mediation shall be conducted on September 4<sup>th</sup> and 5<sup>th</sup>, and if a third day is required, on September 10<sup>th</sup>, 2012 (the “**Mediation Dates**”);
  - (b) additional Mediation dates shall only be added, and any adjournments of any mediation dates shall only be accepted, with the prior written consent of all Mediation Parties;
  - (c) the Mediation shall be conducted at a location to be determined by the Mediator (as defined below); and
  - (d) the Applicant, the Plaintiffs and the Third Party Defendants shall deliver their respective written position statements to each other and to the other Mediation Parties on or before August 27, 2012.

**APPOINTMENT OF THE MEDIATOR**

11. THIS COURT ORDERS that the Honourable Justice Newbould shall be appointed mediator (the “**Mediator**”).

12. THIS COURT ORDERS that, prior to the commencement of the Mediation, the Mediator shall have the right to communicate with this Court and the Monitor from time to time as deemed necessary or advisable by the Mediator in their sole discretion.

**TERMINATION OF THE MEDIATION**

13. THIS COURT ORDERS that the Mediation process shall be terminated under any of the following circumstances:

- (a) by declaration by the Mediator that a settlement has been reached;
- (b) by declaration by the Mediator that further efforts at mediation are no longer considered worthwhile;

- (c) for any other reason determined by the Mediator;
- (d) mutual agreement by the Mediation Parties; or
- (e) further Order of this Court,

provided that, the Mediation shall in any event terminate on September 10, 2012, unless extended with the prior written consent of all Mediation Parties.

#### **NO IMPACT ON OTHER PROCEEDINGS**

14. THIS COURT ORDERS that all offers, promises, conduct statements, whether written or oral, made in the course of the Mediation are inadmissible in any arbitration or court proceeding. No person shall subpoena or require the Mediator to testify, produce records, notes or work product in any other existing or future proceedings, and no video or audio recording will be made of the Mediation. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the Mediation. In the event that the Mediation Parties (or any group of them) do reach a settlement, the terms of that settlement will be admissible in any court or other proceeding required to enforce it, unless the Mediation Parties agree otherwise. Information disclosed to the Mediator by any Mediation Party at a private caucus during the Mediation shall remain confidential unless such Mediation Party authorizes disclosure.

15. THIS COURT ORDERS that nothing in this Order nor the participation of any party in the Mediation shall provide such party with rights within these proceedings than such party may otherwise have.

16. THIS COURT ORDERS that, subject to any applicable stay of proceedings, nothing in this Order shall prevent the Applicant, the Monitor or any other party of standing from otherwise pursuing the resolution of claims under the Claims Procedure Order granted by this Court on May 14, 2012, or any other matter in these CCAA proceedings, including without limitation, the filing and advancement of the Meetings Order and a Plan.

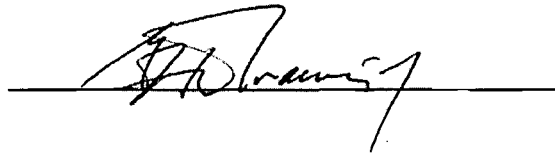
**CONFIDENTIALITY**

17. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties shall be used only in the context of the Mediation and for no other purpose and shall be kept confidential by all such parties irrespective of whether such Mediation Parties sign a confidentiality agreement.

18. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties that contain information obtained from the Data Room may not be shared with or otherwise disclosed to any person or entity that has not signed a confidentiality agreement, other than the Applicant, the incumbent directors of the Applicant, the Monitor and Mediator.

**MISCELLANEOUS**

19. THIS COURT ORDERS that the terms of this Order may only be varied by further Order of this Court, which may be sought on an ex parte basis on consent of the Mediation Parties.



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REGISTERED AT / ENREGISTRÉ À TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.:

JUL 25 2012

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

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

**(PROCEEDING COMMENCED AT TORONTO)**

**ORDER  
(Mediation)**

**GOWLING LAFLEUR HENDERSON LLP**  
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**Derrick Tay / Clifton Prophet / Jennifer Stam**  
**LSUC Nos.: 21152A / 34345K / 46735J**

Telephone: (416) 862-7525  
Facsimile: (416) 862-7661

Lawyers for FTI Consulting Canada Inc.,  
in its capacity as Monitor of the Applicant



# TAB C

THIS DOCUMENT IS LOCATED AT

Thirteenth Report of the Monitor  
(without attachments)

Exhibit "H" to the Affidavit of Mike P.  
Dean, sworn January 11, 2013, Motion  
Record of Ernst & Young, Tab 1H

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

**Sino-Forest Corporation**

**THIRTEENTH REPORT OF THE MONITOR**

**November 22, 2012**

**Volume I of II**

## RECOMMENDATION AND CONCLUSIONS

110. The Monitor's Twelfth Report dated November 16, 2012 attaches the Company's proposed cash flow forecast (the "**November 3 Forecast**") for its stay extension request to February 1, 2013. The November 3 Forecast projects that the Company will have sufficient funds to the proposed stay extension date. However, as set out above and is further evidenced by the November 3 Forecast, the Company continues to burn cash and cannot afford to remain in a CCAA process for much longer.
111. At this time, the only alternative to liquidation is the Plan. The Plan is acceptable to the ICNs (and those Noteholders that signed joinder agreements) who, in total, consist of the vast majority of the Company's funded debt. The Plan further provides actual and tangible benefits to the Third Party Defendants (such as the imposition of the Indemnified Noteholder Class Action Limit) and the Plaintiffs have indicated the Plan is acceptable to them. All of these factors and those set out in the above sections inform the Monitor's conclusion that the Plan provides the best viable alternative to the Company's creditors.
112. Accordingly, the Monitor respectfully recommends that this Honourable Court grant the Company's request for sanction of the Plan.