

**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 COMPRISE AND 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

**COMPENDIUM OF ERNST & YOUNG LLP
Motion to Approve the Ernst & Young Settlement
February 4, 2013**

February 4, 2013

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TO: THE SERVICE LIST

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Tab A

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**

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 CHARLES M. WRIGHT

I, CHARLES M. WRIGHT, of the City of London, in the Province of Ontario, AFFIRM:

1. I am a partner at Siskinds LLP, who, along with Koskie Minsky LLP (together, "Class Counsel"), are counsel to the plaintiffs (the "Representative Plaintiffs") in the above-captioned class proceeding (the "Ontario Action").

2. Class Counsel have retained Paliare Roland Rosenberg Rothstein LLP for purposes of the above-captioned proceeding (the "Insolvency Proceeding") under the *Companies' Creditors Arrangement Act* ("CCAA"), who act for the Ad Hoc Committee of Purchasers of the Applicant's Securities (together with the Representative Plaintiffs, the "Ontario Plaintiffs").

3. Siskinds Demeules is counsel to the plaintiffs in the class proceeding in the Province of Quebec Superior Court styled as *Guining Liu v. Sino-Forest Corporation, et al.*, File No. 200-06-000132-111.

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

NATURE OF THIS MOTION

5. On November 29, 2012, the Ontario Plaintiffs entered into Minutes of Settlement with the defendant, Ernst & Young LLP, in order to resolve 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 of Compromise and Reorganization of the Applicant under the CCAA dated December 3, 2012 (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", as more fully defined in the as

defined in the Plan). Along with the Minutes of Settlement, the framework of the proposed settlement and release of Ernst & Young is contained in the Plan, and in particular at Article 11.1 and the corresponding definitions (the "Ernst & Young Release" and the "Ernst & Young Settlement"). A copy of the Minutes of Settlement is attached hereto as **Exhibit "A."** Copies of the draft settlement approval orders are attached hereto as **Exhibits "B-1"** and **"B-2."** A copy of the Plan is attached hereto as **Exhibit "C"** and a copy of the order sanctioning the Plan dated December 10, 2012 (the "Sanction Order") is attached hereto as **Exhibit "D."** The endorsement and reasons of the Honourable Justice Morawetz sanctioning the Plan are attached hereto as **Exhibits "E-1"** and **"E-2."** Where I have used capitalized terms that I have not defined in this affidavit, those terms have the same meanings attributed to them in the draft settlement orders or the Plan.

6. I affirm this affidavit in support of the motion brought by the Ontario Plaintiffs for approval of the Ernst & Young Settlement.

OVERVIEW OF THE SETTLEMENT

7. Subject to the terms of the Ernst & Young Settlement, Ernst & Young has agreed to pay CAD\$117,000,000.00 (the "Settlement Amount") to a Settlement Trust to be administered in accordance with orders of the court.

8. In consideration for the Settlement Amount, it is a condition of the Ernst & Young Settlement that Ernst & Young will receive a full and final release in respect of all claims relating to its relationship with Sino-Forest Corporation ("Sino"), its subsidiaries and affiliates, as more fully defined as the Ernst & Young Release in the Plan.

9. The Ernst & Young Settlement is also conditional on the approvals by courts in Ontario, Quebec and the United States and certain other conditions contained in the Minutes of Settlement, the Plan and the Sanction Order.

10. The draft settlement approval orders provide that the distribution of the net Settlement Amount¹ shall be made to the Securities Claimants.

BACKGROUND OF THE ACTION

11. Sino shares were publicly traded at all material times on the Toronto Stock Exchange (the "TSX"), on the Berlin exchange, on the over-the-counter market in the United States and on the Tradedate market. Sino shares also traded on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. During the period from March 19, 2007 through June 2, 2011, approximately 93.4% of the aggregate global volume of trade in Sino common shares took place in Canada (82.9% on the TSX and 10.5% on other trading venues in Canada).

12. Sino also issued and had various notes outstanding. These notes were offered to investors by way of offering memoranda, and were underwritten by various financial institutions who are defendants in the Ontario Action. In addition to those primary market offerings, these notes traded in the secondary market.

13. On June 2, 2011, Muddy Waters Research ("Muddy Waters") released a research report alleging fraud against Sino and alleging that it "massively exaggerates its assets." The release of this report was immediately followed by a dramatic decline in Sino's share price.

¹ The net Settlement Amount is the amount remaining from the Settlement Amount after payment of administration and notice costs, class counsel fees and expenses as approved by the Court and payment to Claims Funding International in accordance with the funding order of Justice Perell dated May 17, 2012, attached hereto as **Exhibit "F."**

14. On June 1, 2011, the day prior to the publication of the Muddy Waters report, Sino's common shares closed at \$18.21. After the Muddy Waters report became public, Sino shares fell to \$14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino's shares fell to a close of \$5.23 (a decline of 71.3% from June 1).
15. A copy of the Muddy Waters report is attached hereto as **Exhibit "G."**
16. Sino's notes also fell in value following the Muddy Waters report. On May 9, 2012 an auction was held to settle the credit derivative trades for Sino-Forest credit default swaps ("CDS"). CDS are essentially an insurance contract for debt instruments, and the price set in that auction represents the market's view of the value of the notes as of May 9, 2012. The CDS auction price was 29% of the notes' face values.
17. On June 3, 2011, Sino issued and filed on SEDAR a press release titled "Sino-Forest Comments on Share Price Decline," which is attached hereto as **Exhibit "H."**
18. On June 6, 2011, Sino issued and filed on SEDAR a press release titled "Sino-Forest Releases Supporting Evidence against Allegations from Short Seller," and announced that a committee of its Board of Directors (the "Independent Committee") had been established and had retained Osler, Hoskin & Harcourt LLP to conduct an investigation into Muddy Waters' allegations. Attached hereto as **Exhibit "I"** is a copy of that press release.
19. Also on June 6, 2011, Sino issued a press release titled "Sino-Forest Independent Committee Appoints PricewaterhouseCoopers," relating to the Independent Committee's investigation into Muddy Waters' allegations, which is attached hereto as **Exhibit "J."**
20. On June 13, 2011, Muddy Waters issued a document titled "Reaction to TRE Q1 Earnings Call," which is attached hereto as **Exhibit "K."**

21. On June 18, 2011, the *Globe and Mail* published an article titled "Key partner casts doubt on Sino-Forest claim," which is attached hereto as **Exhibit "L."**
22. On June 19, 2011, the *Globe and Mail* published an article titled "On the trail of the truth behind Sino-Forest," which is attached hereto as **Exhibit "M."**
23. On June 20, 2011, Sino issued and filed on SEDAR a press release titled "Sino-Forest Responds to the Globe and Mail Article," which is attached hereto as **Exhibit "N."**
24. On June 20, 2011, Muddy Waters issued a document titled "The Ties that Blind, Part 1: Huaihua Yuda," which is attached hereto as **Exhibit "O."**
25. On August 10, 2011, November 15, 2011 and January 31, 2012, the Independent Committee released three reports, reporting its findings.
26. On August 26, 2011, the Ontario Securities Commission ("OSC") issued a temporary cease-trade order in respect of Sino's securities, attached hereto as **Exhibit "P."** The recitals to the cease trade order reflect that Sino appeared to the OSC to have engaged in significant non-arm's length transactions which may have been contrary to Ontario securities laws and the public interest, that Sino and certain of its officers and directors appeared to have misrepresented some of Sino's revenue and exaggerated some of its timber holdings, and that Sino and certain of its officers and directors appeared to be engaging or participating in acts, practices or a course of conduct related to Sino's securities which they (or any of them) knew or ought reasonably to know would perpetuate a fraud.
27. On January 10, 2012, Sino issued a press release stating, among other things, that its historical financial statements and related auditors reports should not be relied upon. Attached hereto as **Exhibit "Q"** is a copy of Sino's press release dated January 10, 2012.

28. As discussed further below, on March 30, 2012, Sino filed for protection from its creditors under the *CCAA* and obtained a stay of proceedings against it, its subsidiaries and directors and officers, including the Ontario Action.

29. On May 9, 2012, Sino's shares were delisted from the TSX. The delisting was imposed due to Sino's failure to meet the continued listing requirements of the TSX as a result of the Insolvency Proceeding (discussed below), and for failure to file on a timely basis certain of its interim financial statements and the audited financial statements for the year ended December 31, 2011. Sino has not filed audited financial statements for any period subsequent to 2010. Ernst & Young resigned as Sino's auditors effective April 4, 2012. No new auditors have been appointed. Copies of Sino's press releases announcing the resignation of Ernst & Young and the delisting of Sino shares from the TSX are attached hereto as **Exhibits "R" and "S."**

ACTIONS AGAINST ERNST & YOUNG RELATING TO SINO

30. On July 20, 2011, the Ontario Action was commenced under the *Class Proceedings Act, 1992* (the "*CPA*") against Sino, Ernst & Young LLP and other defendants on behalf of persons who had purchased Sino securities in the period from March 19, 2007 to June 2, 2011. In this action, the Ontario Plaintiffs allege that Sino misstated its financial statements, overstated the value of its assets, and concealed material information about its business and operations from investors in its public filings. As a result, Sino's securities allegedly traded at artificially inflated prices for many years.

31. Before commencing the Ontario Action, Class Counsel conducted an investigation into the Muddy Waters allegations with the assistance of the Dacheng law firm, one of China's largest law firms ("Dacheng"). This firm retained Dacheng on the day after the Muddy Waters report was issued. Class Counsel's investigation into the Muddy Waters allegations has

continued since that time, and has been aided not only by Dacheng, but also by Hong Kong-based investigators specializing in financial fraud; two separate Toronto-based firms that specialize in forensic accounting, generally accepted accounting principles and generally accepted auditing standards; a lawyer qualified to practice in the Republic of Suriname, where Sino purported to own, through an affiliate, certain timber assets; and a financial economist who specializes in the measurement of damages in securities class actions.

32. On June 9, 2011, Siskinds Desmeules, a Quebec City law firm affiliated with Siskinds, commenced a parallel proceeding against Sino, Ernst & Young LLP and certain other defendants in the Quebec Superior Court. Class Counsel in Ontario and Quebec have been working together in a coordinated manner in both of these proceedings.

33. There were also two other proposed class proceedings commenced in Ontario relating to Sino. *Smith et al. v. Sino Forest Corporation et al.*, commenced on June 8, 2011 (the "*Smith Action*") and *Northwest & Ethical Investments L.P. et al. v. Sino-Forest Corporation et. al.*, commenced on September 26, 2011 (the "*Northwest Action*"). Rochon Genova LLP acted for the plaintiffs in the *Smith Action*, and Kim Orr LLP acted for the plaintiffs in the *Northwest Action*.

34. A copy of the Statement of Claim issued in the *Northwest Action* is attached hereto as **Exhibit "T."**

35. In the *Northwest Action*, the plaintiffs sought a declaration that the misrepresentations alleged were made by the defendants (including Ernst & Young) with knowledge, fraudulently, recklessly or negligently. The Statement of Claim made specific allegations of fraud against

each of the defendants (including Ernst & Young) at paragraphs 226-228 and allegations of knowing, reckless or willfully blind misrepresentations elsewhere.

36. In December 2011, there was a motion to determine which of the three actions in Ontario should be permitted to proceed and which should be stayed. By order dated January 6, 2012, attached hereto as **Exhibit "U,"** the Honourable Justice Perell granted carriage to the Ontario Plaintiffs. His Honour stayed the *Smith Action* and the *Northwest Action*, and appointed Siskinds LLP and Koskie Minsky LLP to prosecute the Ontario Action on behalf of the proposed class. Following that decision, and pursuant to the Court's order, David Grant was added as a proposed representative plaintiff and the scope of the class was expanded to its current scope.

37. On January 27, 2012, the Washington, DC-based law firm of Cohen Milstein Sellers & Toll PLLC ("US Plaintiffs' Counsel") commenced a proposed class action against Sino, Ernst & Young LLP, Ernst & Young Global Limited and other defendants in the New York Supreme Court (the "US Action"). The US Action was transferred from the New York state court to the federal District Court for the Southern District of New York in March 2012.

38. United States securities class actions procedure features a process by which the "lead plaintiff" is selected. On October 18, 2012, US Plaintiffs' Counsel issued the press release required by that process. All parties that intended to seek lead plaintiff status were required to move the U.S. Court within 60 days (by December 17, 2012). A review of the electronic database indicates that David Leopard, IMF Finance SA and Myong Hyon Yoo, represented by US Plaintiffs' Counsel, moved for appointment as lead plaintiffs on December 17, 2012. No other parties filed motions for appointment as lead plaintiffs by the December 17, 2012 deadline.

39. By way of Order of the United States District Court Southern District of New York dated January 4, 2013, David Leopard, IMF Finance SA and Myong Hyon Yoo were appointed as the lead plaintiffs and US Plaintiffs' Counsel as lead counsel to represent the interests of the proposed class. The US action is presently ongoing, and asserts claims on behalf of a class of:

i) all persons or entities who, from March 19, 2007 through August 26, 2011 (the "Class Period") purchased the common stock of Sino-Forest on the Over-the-Counter ("OTC") market and who were damaged thereby; and ii) all persons or entities who, during the Class Period, purchased debt securities issued by Sino-Forest other than in Canada and who were damaged thereby.

40. Class Counsel have had numerous interactions with US Plaintiffs' Counsel concerning developments in the Canadian and New York litigation.

41. On April 18, 2012, the plaintiffs filed a Fresh as Amended Statement of Claim, a copy of which is attached hereto and marked as **Exhibit "V."** A Proposed Fresh as Amended Statement of Claim was served on the defendants as part of the Ontario Plaintiffs' motion record in support of their motion seeking leave under Part XXIII.1 of the *Securities Act* (the "Leave Motion"). Attached and marked as **Exhibit "W"** is a copy of the Proposed Fresh as Amended Statement of Claim.

PLAINTIFFS' MOTIONS FOR CERTIFICATION AND LEAVE

42. In March and April 2012, the Ontario Plaintiffs brought (a) a motion for certification of the Ontario Action as a class action under the *CPA*; and (b) a motion for leave to proceed with statutory claims under Part XXIII.1 of the Ontario *Securities Act* (the "*OSA*").

43. The Ontario Plaintiffs filed voluminous motion records in support of their motions, comprising evidence from their investigations and expert reports. The motion records included:

- (a) an affidavit of Steven Chandler, a former senior law enforcement official from Hong Kong who was involved in investigating Sino in China;

- (b) an affidavit of Alan Mak, an expert in forensic accounting;
- (c) an affidavit of Dennis Deng, a lawyer qualified to practice in the People's Republic of China, and a partner in Dacheng law firm; and
- (d) an affidavit of Carol-Ann Tjon-Pian-Gi, a lawyer qualified to practice in the Republic of Suriname.

44. Justice Perell set a schedule for the proceeding by way of Order dated March 26, 2012. The defendants entered into a tolling agreement with the Ontario Plaintiffs and a separate tolling agreement was entered into amongst the defendants to deal with any potential claims over or third party claims. The tolling agreement between the defendants and the Ontario Plaintiffs was made as of March 6, 2012, and suspended the running of time for the purpose of the proposed Part XXIII.1 claims of the Ontario Plaintiffs and members of the putative class until February 28, 2013. Following the *CCAA* stay of proceedings, a second tolling agreement between these parties was made as of May 8, 2012, wherein the parties agreed that the running of time for the purpose of the proposed Part XXIII.1 claims of the Ontario Plaintiffs and members of the putative class was to be suspended as of March 6, 2012 until the earlier of 12 months following the lifting of the *CCAA* stay or February 1, 2014. This tolling agreement was a result of the Ontario Plaintiffs agreeing to consent to the stay order.

45. The certification and leave motions were scheduled for November 21 to 30, 2012. Those motions were not heard in November 2012 as a result of Sino's insolvency.

SINO'S INSOLVENCY

46. On March 30, 2012, Sino commenced the Insolvency Proceeding and obtained an order for an interim stay of proceedings against the company, its subsidiaries and its directors and officers. Pursuant to an order on May 8, 2012, the stay of proceedings was extended to all other

defendants in the action, including Ernst & Young. The Ontario Plaintiffs agreed not to oppose this order on condition that (a) there was an order permitting a settlement approval hearing and certification hearing relating to a settlement with the defendant Pöyry (Beijing) Consulting Company Limited (described below); and (b) the defendants execute the second tolling agreement reflecting the delay caused by the Insolvency Proceeding. The stay of proceedings is currently extended through to February 1, 2013.

47. From the outset, it was apparent to counsel to the Ontario Plaintiffs that the Insolvency Proceeding presented a material risk to the Ontario Plaintiffs. Namely that in order to effect a restructuring that generated as much value as possible for Sino's creditors, there could be a plan of arrangement that had the effect of imposing an unfavourable settlement on the Ontario Plaintiffs.

48. Consequently, Class Counsel immediately entered into negotiations with other stakeholders in the Insolvency Proceeding, and took a number of steps to vigorously represent the interests of the purchasers of Sino's securities. The following were among Class Counsel's main objectives:

- (a) Reserving the Ontario Plaintiffs' rights to object to various features of the Insolvency Proceeding, so as to generate and/or preserve momentum for the Ontario Plaintiffs' claims and positions;
- (b) Ensuring that a Claims Process was established that identified the universe of stakeholders having an interest in the Insolvency Proceeding while ensuring the recognition of the totality of the representative claim advanced by the Ontario Plaintiffs;
- (c) Establishing a process for the mediation in the Insolvency Proceeding through which the positions of the various stakeholders would be defined; and

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- (d) Obtaining access to information that would permit Class Counsel to make informed recommendations to the Ontario Plaintiffs and the court in connection with the terms of any Plan.

49. To further these objectives, Class Counsel took a number of steps in the Insolvency Proceeding, including the following:

- (a) Bringing or appearing in response to the following motions:
 - (i) March 30, 2012 – Attending at the initial application regarding *CCAA* protection and sales process for Sino and its subsidiaries, including a stay of proceedings against Sino, its subsidiaries and directors and officers;
 - (ii) April 13, 2012 – Attending at the Company’s motion regarding stay extension;
 - (iii) April 20, 2012 – Bringing a motion regarding advice and direction on the *CCAA* stay and its impact on the pending motions in the Ontario Action;
 - (iv) April 20, 2012 – Attending at the Company’s motion regarding expansion of the powers of the Monitor;
 - (v) May 8, 2012 – Attending and participating actively in the motion regarding a third party stay;
 - (vi) May 8, 2012 – Bringing a motion regarding Pöyry settlement leave;
 - (vii) May 14, 2012 – Attending and participating in a motion regarding Claims Procedure Order, including granting of leave to the Ontario Plaintiffs to file a Claim in respect of the substance of the matters set out in the Ontario Action on behalf of the proposed Class and the same leave to the Quebec Plaintiffs;
 - (viii) May 14, 2012 – Attending a motion brought by Contrarian, one of Sino’s noteholders;
 - (ix) May 17, 2012 – Bringing a motion in the Ontario Action regarding a third-party funding agreement;

- (x) May 17, 2012 – Bringing a motion in the Ontario Action regarding Pöyry settlement approval;
- (xi) May 31, 2012 – Attending at the Company’s motion regarding stay extension;
- (xii) June 26, 2012 – Attending at the Company’s motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;
- (xiii) July 25, 2012 – Precipitating and attending at a motion regarding mediation in the *CCAA* proceedings, which included an order that the Ontario Plaintiffs were a party to the mediation;
- (xiv) July 27, 2012 – Attending at the Company’s motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;
- (xv) July 30, 2012 – Bringing a motion regarding document production and a data room;
- (xvi) August 31, 2012 – Attending at the Company’s motion regarding plan filing and meeting Order;
- (xvii) August 31, 2012 – Attending at the Company’s motion regarding adjournment of Ad Hoc Committee’s motion (regarding appointment of Representative Plaintiff and leave to vote on Plan of Compromise);
- (xviii) September 28, 2012 – Attending at the Company’s motion regarding stay extension;
- (xix) October 9, 2012 – Attending and participating in the Company’s motion regarding adjournment of the Ad Hoc Committee’s motion (regarding lifting of the stay against the Third Parties);
- (xx) October 9, 2012 – Attending at the Company’s motion regarding stay extension;
- (xxi) October 28, 2012 – Bringing a motion to limit the scope of stay to exclude to the Third Party Defendants and others;
- (xxii) October 29, 2012 – Attending at the Company’s motion regarding revised noteholder noticing process;

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- (xxiii) November 13, 2012 – Attending an appeal regarding Equity Claims decision; and
 - (xxiv) November 23, 2012 – Attending at the Company's motion regarding stay extension;
 - (xxv) December 7, 2012 – Attending and participating in the motion to sanction the Plan;
- (b) almost from the inception of the Insolvency Proceeding, engaging in extensive and protracted negotiations with the Ad Hoc Noteholder Group and with Sino with respect to the terms of the Plan of Reorganization;
 - (c) bringing a motion early in the proceeding seeking various relief challenging the framework of the Insolvency Proceeding, such as the appointment of a receiver and providing for representation on behalf of the Class Members, and reserving all rights with respect to those issues throughout the Insolvency Proceeding;
 - (d) supporting a motion for an order increasing the powers of the Monitor to administer Sino which took away powers from entrenched management and the then-existing board, protecting the assets of the company for all stakeholders and ensuring greater transparency and balance in the proceeding;
 - (e) negotiating the claims procedure in the Insolvency Proceeding and obtaining the right to file a representative claim so as to protect the interests of the putative Class;
 - (f) obtaining a data room of confidential non-public documents from Sino, which related principally to the audits of Sino's financial statements so as to permit the Ontario Plaintiffs to negotiate with other stakeholders at the Mediation and respond to any plan of arrangement in an informed manner;
 - (g) examining all applicable insurance policies and indemnity agreements and assessed the capacity to pay of various defendants, including Ernst & Young;
 - (h) compelling the attendance of Sino's CEO at a cross-examination and testing his evidence in the Insolvency Proceeding;

- (i) engaging in multiple formal and informal, group and individual mediation and negotiation sessions with other stakeholders regarding the Class Members' claims, including a court-ordered, 2-day Mediation in September presided over by the Honourable Justice Newbould; and
- (j) bringing a motion, in response to the form of the restructuring plan initially filed with the court, which the Ontario Plaintiffs deemed to be contrary to their interests, challenging various features of the Plan, and seeking the right to vote on the Plan, and expressly reserving all of the Ontario Plaintiffs' rights in connection with that motion pending the presentation of the plan for sanction by the court, to ensure that the plan was in the best interests of the Class Members.

SETTLEMENT WITH PÖYRY (BEIJING)

50. The Ontario Plaintiffs engaged in settlement discussions with Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), a defendant in these proceedings, starting in January 2012. Following arm's-length negotiations, the Ontario Plaintiffs entered into a settlement with Pöyry (Beijing) in March 2012. In connection with the motion for court approval of the Pöyry settlement agreement, a notice was disseminated in the form marked and attached hereto as **Exhibit "X."** No one, including any potential Class Member, objected to the settlement with Pöyry (Beijing) at the motion to approve the settlement.

51. On September 25, 2012, this action was certified as a class proceeding as against Pöyry (Beijing) for the purposes of settlement and the Pöyry settlement was approved between the Class (as defined) and Pöyry (Beijing). A copy of the certification and settlement approval order is attached hereto as **Exhibit "Y."**

52. Notice of the certification and Pöyry settlement has been given in accordance with the order of the Honourable Justice Perell, dated September 25, 2012. A copy of this notice is marked and attached hereto as **Exhibit "Z."**

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53. The notice states that “IF YOU CHOOSE TO OPT OUT OF THE CLASS, YOU WILL BE OPTING OUT OF THE **ENTIRE** PROCEEDING. THIS MEANS THAT YOU WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT REACHED WITH OR AGAINST THE REMAINING DEFENDANTS.” [emphasis and caps in original]. The opt-out deadline is January 15, 2013.

54. As of this date, I am advised by the administrators that only one retail investor who purchased Sino shares during the period of March 19, 2007 through June 2, 2011 has validly opted out. That person had purchased 700 Sino shares during that period and explained that he opted out because he has closed his LIRA accounts and gave up rights to Scotiabank, and does not wish to participate in the class action. There is one other retail investor (who did not submit information of the number of shares owned) that submitted invalid documentation, and it is possible that he or she purchased securities during the class period. This individual gave no reason for the decision to opt-out.

SETTLEMENT APPROVAL

Negotiation Process

55. The negotiations leading to the Ernst & Young Settlement were conducted on an adversarial, arm’s-length basis.

56. On July 25, 2012, this Court ordered the various constituencies in the Insolvency Proceeding to attend a mediation. A copy of that order is attached hereto as **Exhibit “AA.”**

57. On September 4 and 5, 2012, the Ontario Plaintiffs attended an all-parties mediation, which included Ernst & Young. The mediation was conducted with the assistance of the Honourable Justice Newbould, acting as mediator. Extensive mediation briefs were filed by all parties. The briefs and the mediation itself set forth the positions of the parties, including Ernst &

Young and the plaintiffs. The mediation did not result in a settlement with any of the parties, including Ernst & Young, at that time.

58. It is Class Counsel's opinion that, given the defendants' negotiating stance at the mediation, the Ontario Plaintiffs could not have negotiated a significant all-party settlement at that mediation.

59. Following the mediation, settlement discussions continued with the defendants. However, those settlement discussions did not come close to bridging the significant difference between the positions of the parties.

60. In mid-October 2012, the Ontario Plaintiffs began bilateral discussions with Ernst & Young. Several offers were exchanged between the Ontario Plaintiffs and Ernst & Young over a number of weeks. Those discussions did not result in a settlement at that time.

61. On October 18, 2012, the Honourable Justice Morawetz issued an endorsement scheduling the Company's motion to sanction the Plan for December 7 and 10, 2012. Attached hereto as **Exhibit "BB"** is a copy of the Endorsement of the Honourable Justice Morawetz dated October 18, 2012.

62. The Ontario Plaintiffs brought a motion returnable October 28, 2012 to have the scope of stay limited to exclude the Third Party Defendants, including Ernst & Young, and certain other parties. By way of Endorsement dated November 6, 2012, the Honourable Justice Morawetz denied the relief sought by the Ontario Plaintiffs to allow the parties to focus on the Plan and the *CCAA* proceedings. Justice Morawetz held that the motion could and should be re-evaluated following the sanction hearing, and in any event no later than December 10, 2012. Attached

hereto as **Exhibit "CC"** is copy of the Endorsement of the Honourable Justice Morawetz dated November 6, 2012.

63. In late November Ernst & Young and the Ontario Plaintiffs agreed to further formal mediation.

64. On November 27, 2012, Clifford Lax, Q.C. conducted a mediation between Ernst & Young and the Ontario Plaintiffs. The parties exchanged mediation briefs in advance of the mediation which were, in the main, the briefs previously filed for the September mediation. At the conclusion of the day, the parties had made progress, but a resolution had not been reached. The parties reconvened the next day and did reach agreement on quantum, but continued to aggressively negotiate other terms of the Minutes of Settlement until the early morning of November 29. At 4 a.m. on November 29, the parties took a four-hour break, and then came back to discuss the terms of the Minutes of Settlement which were finalized in the evening of November 29. The discussions were protracted and challenging.

65. The mediation session resulted in the Ernst & Young Settlement, which conditions include court approval of the Ernst & Young Settlement, and the Ernst & Young Release. Following satisfaction of all conditions precedent as set out in the Minutes of Settlement, Ernst & Young agreed to pay CAD\$117,000,000.

66. The Minutes of Settlement reflect that Ernst & Young would not have entered into the settlement agreement with the Ontario Plaintiffs (and would not have offered the large Settlement Amount) but for the *CCAA* proceedings. Paragraph 10 and Schedule B of the Minutes of Settlement make it clear that the parties intend the settlement to be approved in the

Sino *CCAA* proceedings and that it is conditional upon the full and final release of Ernst & Young by order of the *CCAA* court.

67. Paragraph 11 and Schedule B of the Minutes of Settlement make it clear that the settlement is conditional upon obtaining orders in the *CCAA* proceedings and in the United States Bankruptcy Court resolving all claims against Ernst & Young in relation to Sino.

68. The framework of the Ernst & Young Settlement, as contemplated by the Minutes of Settlement, is contained in the Plan at Article 11.1, and includes the framework for the Ernst & Young Release.

69. A similar framework for Named Third Party Defendants, including the Underwriters and BDO, is contained at Article 11.2 of the Plan. The Ernst & Young Settlement was the template for the framework for the Named Third Party Defendant settlement provisions.

70. Article 11.2 in respect of Named Third Party Defendants provides the Ontario Plaintiffs (and the Underwriters and BDO) with the ability to complete further settlements within the context of the *CCAA* proceedings, subject to further court approval. Such settlements could have the benefit of a full release for the Underwriters or BDO, if ordered by the Court, and would likely result in those parties paying a premium for settlement to resolve all claims against them, to the benefit of the Class.

71. Ernst & Young and the Ontario Plaintiffs supported the Plan on the basis of the inclusion of the framework for the Ernst & Young Settlement and the Ernst & Young Release in the Plan. Ernst & Young, as a creditor of Sino, voted in favour of the Plan. Ernst & Young and the Ontario Plaintiffs supported the Plan at the sanction hearing.

THE ONTARIO PLAINTIFFS SUPPORT THE SETTLEMENT

72. The Ontario Plaintiffs are:

- (a) The trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers Fund"). The Labourers Fund is a multi-employer pension plan providing benefits for employees working in the construction industry. The trustees of the Labourers Fund manage more than \$2.5 billion of assets. During the period from March 19, 2007 to June 2, 2011 the Labourers Fund purchased 360,700 Sino common shares. Most of those shares were purchased in the secondary market over the TSX. The Labourers Fund also purchased Sino common shares pursuant to a prospectus that Sino issued during the Class Period. As at the day before the issuance of the Muddy Waters report, the Labourers Fund held a total of 128,700 Sino shares. The Labourers Fund is a long-standing client of Koskie Minsky LLP;
- (b) The trustees of the International Union of Operating Engineers ("OE Fund"). The OE Fund is a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The trustees of the OE Fund manage approximately \$1.5 billion of assets. The OE Fund purchased 465,130 Sino common shares over the TSX during the Class Period, and held 436,300 such shares at the day before the issuance of the Muddy Waters report. The OE Fund is a long-standing client of Koskie Minsky LLP;
- (c) Sjunde AP-Fonden ("AP7"), the Swedish National Pension Fund. AP7 manages billions of dollars in assets. AP7 purchased 139,398 common shares over the TSX during the Class Period, and held all of those shares as at the day before the issuance of the Muddy Waters report;
- (d) David Grant, an individual resident in Calgary, Alberta. During the Class Period, he purchased 100 of the Sino 6.25% Guaranteed Senior Notes due 2017 pursuant to an offering memorandum. Mr. Grant continued to hold these notes as at the day before the issuance of the Muddy Waters report; and

- (e) Robert Wong, an individual residing in Kincardine, Ontario. Mr. Wong purchased hundreds of thousands Sino shares from 2002 (when he first became a Sino shareholder) through June 2011. During the Class Period, he purchased 896,400 Sino common shares in the secondary market over the TSX and 30,000 shares pursuant to a prospectus that Sino issued during the Class Period, for a total of 926,400 shares. Mr. Wong continued to hold 518,700 Sino common shares at the day before the issuance of the Muddy Waters report.

73. Collectively, the Ontario Plaintiffs owned 1,223,098 Sino common shares at the day before the issuance of the Muddy Waters report, and those shares had a market value immediately prior to the issuance of the Muddy Waters report of approximately \$23.3 million.

74. I am advised by Jonathan Ptak of Koskie Minsky that the trustees of the Labourers Fund and the OE Fund are extremely pleased with the settlement with Ernst & Young and have instructed Class Counsel to seek approval of the Ernst & Young Settlement. I am advised by Dimitri Lascaris that Robert Wong, David Grant and AP7 are also very pleased with the settlement and have instructed Class Counsel to seek approval of the Ernst & Young Settlement.

75. In addition, I am advised by Mr. Lascaris that the proposed settlement with Ernst & Young is supported by the institutions that were the two largest shareholders of Sino, namely, New York-based Paulson & Co. Inc. ("Paulson") and Arizona-based Davis Selected Advisers LP ("Davis"). Paulson and Davis, respectively, owned approximately 14.1 % and 12.6% of Sino's outstanding common shares prior to the issuance of the Muddy Waters report, representing in aggregate a market value of more than \$1.1 billion.

76. Class Counsel have been retained by Davis. Mr. Lascaris advises me that, since the commencement of the class action, he has had numerous and extensive discussions with responsible officials of both Davis and Paulson in regard to the progress generally of the class

action and the Insolvency Proceeding, and in regard in particular to negotiations with Ernst & Young and the terms of and rationale for the settlement.

FACTORS CONSIDERED IN ASSESSING THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

Experience of Class Counsel

77. Siskinds LLP and Koskie Minsky LLP both have extensive experience litigating and resolving complex class action litigation similar to this case. In addition, Kessler Topaz Meltzer and Check LLP, counsel to AP7, are one of the leading U.S. class action firms with particular expertise in securities class actions.

78. Siskinds acted for the plaintiffs in the first action certified as a class proceeding under the *CPA, Bendall v McGhan Medical Corp* (1993), 14 OR (3d) 734 (Gen Div). Since that time, Siskinds has been lead or co-lead counsel to the plaintiffs in well over 100 class proceedings and has successfully resolved over 60 such proceedings, in areas such as securities, competition (price-fixing), product liability (particularly with respect to pharmaceuticals and medical products), the environment and consumer claims.

79. To the date of this affidavit, Siskinds has had approximately 20 securities class actions and 2 derivative proceeding settlements approved by courts, including most recently the *SunOpta, CV Technologies, Bear Lake Gold, PetroKazakhstan, Gildan Activewear, Canadian Superior Energy, Redline Communications, Gammon Gold, and Arctic Glacier* securities class action settlements.

80. Koskie Minsky has prosecuted class actions at all levels of court in Ontario as well as before the Supreme Court of Canada, and has been responsible for shaping class actions law through leading cases including *Cloud v The Attorney General of Canada, Pearson v Inco Ltd, Caputo v Imperial Tobacco, and Markson v MBNA Canada Bank*. Koskie Minsky has

prosecuted actions for securities fraud, pension fund and investment claims, intellectual property violations, environmental damage and residential school abuse, among others.

81. Koskie Minsky has acted for shareholders in securities class actions, including *Lawrence v Atlas Cold Storage Holdings Inc*, *Toevs v Yorkton*, and *Frohlinger v Nortel Networks Corp*.

82. Paliare Roland has appeared as counsel in many CCAA restructuring proceedings, and has acted for a variety of stakeholders in those proceedings, including stakeholders acting in representative capacities. Past engagements include, among others, advising and appearing on behalf of a number of institutional and other investors including various dissident noteholders in connection with the restructuring of Canada's non-bank asset backed commercial paper market, advising and appearing on behalf of the Superintendent of Financial Services in his capacity as administrator of Ontario's Pension Benefits Guarantee Fund in connection with the restructuring of Nortel Networks Corporation and its global subsidiaries, advising and appearing on behalf of the United Steelworkers in connection with the Stelco restructuring, as well as in connection with the restructuring of a variety of other steel mills, pulp mills, and manufacturing facilities across Ontario, and advising and appearing on behalf of the Air Line Pilots Association in connection with the restructuring of Air Canada. Paliare Roland also appeared as counsel to the committee of non-unionized Quebec employees in the restructuring of Fraser Papers, and, most recently, as counsel to a committee of former employees in the Cinram restructuring.

83. As of December 14, 2012, Class Counsel, together with Paliare Roland, in aggregate had more than \$5,701,546.50 in time and \$950,205.51 in disbursements for a total of \$6,651,752.01, exclusive of applicable taxes.

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84. As a result of Class Counsel's involvement in other cases, we have gained considerable experience in the settlement mechanics and imperatives, damages methodologies, and risks associated with this type of litigation.

85. Class Counsel recommend the approval of the Ernst & Young Settlement. In our view, its terms, including the consideration available to the Class, are fair and reasonable in the circumstances. The Ernst & Young Settlement delivers a substantial, immediate benefit to Class Members on claims that faced significant risks.

86. I explain below our rationale for recommending to the Ontario Plaintiffs, and to this Court, the compromise of the claims advanced against Ernst & Young in this action.

Information supporting settlement

87. In assessing our clients' position and the proposed settlement, we had access to and considered the following sources of information:

- (a) all of Sino's public disclosure documents and other publicly available information with respect to Sino;
- (b) the available trading data for Sino's securities;
- (c) non-public documents uploaded by Sino into the data-room established in the Insolvency Proceeding for purposes of the global mediation, which included the documents listed at Schedule "A" to the July 30, 2012 Order of Justice Morawetz, which is marked and attached hereto as **Exhibit "DD"**;
- (d) Ernst & Young LLP's responsive insurance policies;
- (e) the input and opinions of our accounting experts, insolvency law experts, and insurance coverage experts;

- (f) the input and opinion of Frank C. Torchio, the President of Forensic Economics, Inc., who has consulted or given independent damage opinions in securities fraud lawsuits for over 20 years.
- (g) the Statement of Allegations issued against Sino and certain officers and directors by the OSC, dated May 22, 2012, marked and attached hereto as **Exhibit "EE"**;
- (h) the mediation briefs provided by the parties at the global mediation in September, 2012 and by Ernst & Young LLP at the mediation in November, 2012; and
- (i) input from experienced U.S. securities counsel, Kessler Topaz Meltzer & Check, LLP, and discussions with US Plaintiffs' Counsel.

88. On December 3, 2012, after the Ontario Plaintiffs had entered into the Ernst & Young Settlement and on the day of the creditors vote on the Plan, the OSC issued a Statement of Allegations against Ernst & Young relating to the matter of Sino, which is marked and attached hereto as **Exhibit "FF."** Although Class Counsel's recommendation and the Ontario Plaintiffs' approval of the Ernst & Young Settlement were grounded on numerous factors, the OSC Statement of Allegations against Ernst & Young provided further insight about the risks associated with litigating the claims as against Ernst & Young going forward. As explained below, the OSC Statement of Allegation has since become a further factor, alongside the other documents listed above and the considerations explained below, for Class Counsel to now recommend the approval of the Ernst & Young Settlement.

89. In our view, Class Counsel had more than adequate information available from which to make an appropriate recommendation concerning the resolution of the claims as against Ernst & Young.

90. It has always been Class Counsel's view that the claims against Ernst & Young have merit. However, a number of factors in this case presented a significant risk to the ultimate

success and recovery from Ernst & Young. These risks weighed in favour of settlement with Ernst & Young. It is Class Counsel's view that this Ernst & Young Settlement (and the Ernst & Young Release) are fair and reasonable and in the best interests of the Class. Class Counsel's assessment of the Ernst & Young Settlement and our recommendation of it rest primarily on the following factors, in addition to the general risks of proceeding with complex litigation.

Recoverable damages could be far lower than actual damages

91. The Class asserts the following causes of action as against Ernst & Young:

- (a) statutory liability in respect of primary market share purchaser claims pursuant to s 130 of the *OSA*;
- (b) statutory liability in respect of secondary market share purchaser and note purchaser claims pursuant to Part XXIII.1 of the *OSA*; and
- (c) common law claims for negligent misrepresentation, negligence *simpliciter* and knowing or willfully blind misrepresentation for all purchasers of Sino securities.

92. These claims, if entirely successful, could result in an award for significant damages against all defendants. I have reviewed various expert reports by Mr. Torchio regarding damages in this action. Mr. Torchio is the President of Forensic Economics, Inc., and has consulted or given independent opinions in securities fraud lawsuits for over 20 years.

93. We were guided by the advice Mr. Torchio, but were also cognizant that it is common for defendants to produce opinions which make different assumptions and put forth lower damages figures. Indeed, in the course of settlement discussions in this case, Ernst & Young and other defendants insisted that far more conservative damages figures would be appropriate.

94. It is also important to recognize that Mr. Torchio opines on the total estimated damages. His opinions are based in large part on trading models and various assumptions, the results of which could vary from the actual trading patterns of the Class Members.

95. The damages alleged are for all losses suffered, including those attributable to Sino and the defendant directors and officers. Following the *CCAA* Proceedings, only the assets of certain of the defendants (Chan, Poon and Horsley) and the Director and Officer insurance proceeds following major draw-downs and hold-backs, are available to the Ontario Plaintiffs in respect of those claims.

96. Further, as part of the Plan, the Ontario Plaintiffs negotiated a cap of CAD\$150,000,000 for claims by noteholders in the various class actions indemnifiable by the Company, including claims by the Third Party Defendants, including Ernst & Young, for indemnification in respect of any noteholder claims against them (the "Noteholder Class Action Cap"). The Company admitted all claims for indemnification of the Third Party Defendants, including Ernst & Young, for the purposes of the Noteholder Class Action Cap. Ernst & Young waived all distribution to it under the Plan in return for the inclusion of Article 11.1 in the Plan. Therefore, the maximum that may be recovered by all noteholders with regard to indemnifiable claims in all of the class actions against all defendants in the aggregate is CAD\$150,000,000.

97. Moreover, the actual damages to be paid may only be for claims filed. For a variety of reasons, less than 100% of the Class Members generally file claims. Although claim rates vary from case to case, it is never the case in a matter of this nature that all Class Members file claims. Therefore actual payable damages could be some portion Mr. Torchio's figures if the matter proceeded to trial and the defendants succeeded in establishing that damages should be based only on claims filed.

98. Finally, and most significantly, irrespective of the scale of actual damages, the legal impediments to recovery for the claims against Ernst & Young weigh strongly in our recommendation of the Ernst & Young Settlement. In essence, while the damages alleged are in the billions of dollars, recovery against Ernst & Young may be less than the Settlement Amount if certain of Ernst & Young's defences and arguments are successful at trial.

Statutory claims on behalf of primary market share and note purchasers

99. The Ontario Action advances claims against Ernst & Young under s 130 of the *OSA*. Although no Statements of Defence have been delivered in the Ontario Action, the Ontario Plaintiffs understand that Ernst & Young denies that: (i) its auditors' reports contain the misrepresentation alleged; (ii) Sino's financial statements on which Ernst & Young opined were not GAAP-compliant; and (iii) Ernst & Young's audit work was not GAAS-compliant.

100. The Ontario Plaintiffs would be put to the proof that the auditors' reports contained the misrepresentations alleged. The Ontario Plaintiffs also understand that Ernst & Young asserts a due diligence defence under ss130(3) and (4) of the *OSA*. The Ontario Plaintiffs also understand that Ernst & Young takes issue with the damages calculations by Mr. Torchio. The damages for these claims are limited in the aggregate to approximately \$77.8 million.

101. However, recovery from Ernst & Young could be smaller. It is very likely that if Ernst & Young is found liable, responsibility would also be borne by Sino, its officers and directors, BDO Limited, and, notably, the Underwriters. Although liability under section 138 of the *OSA* is joint and several, Ernst & Young would be able to claim contribution from the other co-defendants found responsible for the misconduct. Ernst & Young waives this right to contribution as part of the Ernst & Young Settlement. The Settlement Fund provides certainty of the amount to be paid by Ernst & Young to the Class.

102. It should be noted that the Ontario Action advances claims pursuant to s 130.1 of the *OSA* against Sino for misrepresentations in the offering memoranda that Sino issued during the Class Period. However, the *OSA* does not provide for a statutory right of action relating to the offering memoranda in respect of any other defendant, including Ernst & Young, a fact that Class Counsel have taken into account in recommending the Ernst & Young Settlement.

Common law claims: auditors' duty and standard of care

103. The Ontario Action has asserted common law claims on behalf of secondary market share purchasers against Ernst & Young for negligent misrepresentation, negligence *simpliciter* and knowing or willfully blind misrepresentation.

104. As stated above, the Ontario Plaintiffs understand that Ernst & Young denies these claims.

105. A significant hurdle faced by the Class in asserting these claims is establishing that Ernst & Young, as auditor of Sino's financial statements, owed a duty of care to the Class. The Supreme Court of Canada held in *Hercules*² that the auditor in that case owed no duty of care to the shareholders of a corporation that it had audited. While Class Counsel believe that *Hercules* is distinguishable, a significant risk exists that a court would rely on the reasoning in *Hercules* and find that Ernst & Young did not owe a duty of care to the Class, thereby defeating the common law claims based on negligence against Ernst & Young.

106. Moreover, even if the Class is able to establish that Ernst & Young owed a duty of care to shareholders, there remains the possibility that we will be unable to prove that Ernst & Young breached the standard of care. Within the settlement context and on a privileged basis, Ernst &

² *Hercules Managements Ltd v Ernst & Young*, [1997] 2 SCR 165 ("*Hercules*").

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Young has provided Class Counsel with the opinion of an auditing expert, who opines that Ernst & Young complied with Generally Accepted Auditing Standards ("GAAS") and was not negligent in the preparation of its 2010 audit report (Ernst & Young's counsel have advised us that, as of the date hereof, it expects to receive similar opinions with respect to audit reports for prior years, if necessary).

107. We anticipate that Ernst & Young will argue that it was itself the victim of a fraud by Sino's management, and appropriately relied on other experts during the conduct of its audits, including a major Chinese law firm, and the valuation reports of Pöyry (Beijing) and its affiliate entities. In its Statement of Allegations against Sino and certain of its former senior officers, staff of the OSC allege that Sino's auditors, including Ernst & Young, were not made aware of Sino's alleged falsified contracts.

108. Ernst & Young could also argue, and a court could find, that a negligence claim requires a showing of reliance by each individual class member. Depending on the process a court adopts, this may require active participation by Class Members in the litigation. The need to actively participate, and to prove reliance, is likely to reduce the total judgment ultimately rendered against Ernst & Young in this class proceeding and increase the length, complexity and cost of the proceedings.

109. Finally, to the extent proof of individual reliance is required as an element of these common law claims, it was by no means certain that a court would grant class certification in respect of these claims. Recent authority has been divided on this issue, and without doubt the certification order would be appealed by the losing party.

Part XXIII.1 liability limits

110. The Class asserts statutory secondary market misrepresentation claims against Ernst & Young under Part XXIII.1 of the *OSA*. The Ontario Plaintiffs understand that Ernst & Young denies these claims. The Ontario Plaintiffs understand that Ernst & Young asserts a reasonable investigation defence pursuant to s 138.4(6) of the *OSA*. The Ontario Plaintiffs also understand that Ernst & Young takes issue with the quantification of damages. Further, the Ontario Plaintiffs understand that it is Ernst & Young's position that s 138.7(1) of the *OSA* could limit recoverable damages to the fees that Ernst & Young earned while auditing Sino, being in the range of \$4-\$8.5 million. In other words, even though the damages of these secondary market purchasers is over \$3 billion, the *OSA* could restrict recovery for the Part XXIII.1 claims to a relatively tiny amount.

111. The only exception to this potentially paltry recovery would be for the Ontario Plaintiffs to prove that Ernst & Young knowingly made the alleged misrepresentations. This could be a challenging standard to meet, one which Ernst & Young denies and which Ernst & Young asserts requires proof of fraud.

112. Class Counsel's view that establishing knowledge will be challenging is bolstered by the recent Statement of Allegations against Ernst & Young released by the OSC, more than 15 months after the cease-trade order. The OSC's Statement of Allegations does not include any allegations that amount to knowledge of or recklessness with regards to a representation.

Claims on behalf of purchasers of notes

113. The Ontario Action also advances common law claims against Ernst & Young on behalf of note purchasers (debt securities purchased pursuant to an offering memorandum).³ Class Counsel are mindful that there are challenges to the prosecution of these claims in the circumstance of this case.

114. Recovery on behalf of noteholders in the class actions is limited, with respect to indemnifiable claims, by virtue of the Plan to a total of CAD\$150,000,000, for both primary and secondary market purchasers, and as against all defendants.

115. Certification of the common law claims relating to Sino notes remains subject to certain risks, including those described above in respect of common law claims on behalf of shareholders. These claims are also subject to a number of unique defenses. For example, the trust indentures governing Sino notes restrict the right of individual noteholders to assert claims in relation to their notes. As such, the Ontario Plaintiffs understand that Ernst & Young may assert that anyone who is not a current noteholder, even if they sold their notes only recently, has no right of action. The defendants assert that those former noteholders transferred all of their rights in the notes, including any right to sue for misrepresentations. Further, to allow the common law claims may violate the rule against double proof; the claimants cannot sue both for trading losses and under the note covenants.

116. Ernst & Young has also raised the argument that the current noteholders have chosen to recover from Sino's assets pursuant to the *CCAA* Plan of Arrangement, and that any other remedy would amount to double recovery.

³ As noted, the *OSA* does not provide for a statutory right of action against Ernst & Young in relation to the alleged misrepresentations in the offering memoranda by way of which the notes were distributed.

117. In assessing the noteholders' common law claims in the context of the settlement, Class Counsel have been cognizant of such risks and uncertainties.

Ernst & Young LLP's Insurance

118. Taking into account the available insurance and annual revenues of the firm, it is the view of plaintiffs' counsel that the amount of damages estimated by the plaintiffs' expert would not reasonably be recoverable against an organization such as Ernst & Young LLP.

Other Auditor Settlements in Securities Class Actions

119. Attached as Exhibit "GG" is a list titled "Top 50 Accounting Malpractice Settlements" prepared by Audit Analytics, an independent research provider focused on the accounting, insurance, regulatory, legal and investment communities.

120. Based on our assessment of the Audit Analytics document and other information available in the public domain, the Settlement Amount would represent the largest securities class action settlement paid by defendants involving a Canadian issuer, the shares of which were not listed on a U.S. stock exchange. Before this settlement, the largest such settlement was in the *YBM Magnex* case where the defendants collectively paid \$85 million to settle the action, which claimed \$875 million in damages, on a global basis.

121. Based on our assessment of the Audit Analytics document and other information available in the public domain, the Settlement Amount would also be the largest settlement paid by a Canadian auditing firm in a securities class action lawsuit. Previously, the largest recovery to shareholders by a Canadian auditing firm was a US\$50.5 million settlement paid by the Canadian branch of Deloitte & Touche in *In Re Philip Services Corp Securities Litigation*.

122. Based on our assessment of the Audit Analytics document and other information available in the public domain, the Settlement Amount ranks as the fifth largest settlement paid by an auditing firm worldwide in a securities class action.

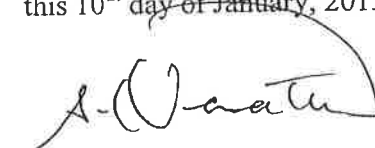
123. The other class action settlements were: i) the \$335 million payment to Cendant shareholders in December 1999; ii) the \$225 million payment to Tyco shareholders in November 2007; iii) the \$210 million payment to Adelphia shareholders in August 2007; and iv) the \$125 million payment to Rite Aid shareholders in March 2003.

124. The remaining settlements on the Audit Analytics list that rank above the Ernst & Young settlement relate to payments made by auditing firms to government regulators or the auditors' clients, or relate to non-securities litigation.

CONCLUSION

125. In light of all of the above considerations, it is Class Counsel's opinion that the Ernst & Young Settlement and Settlement Amount are fair and reasonable to the Class. Class Counsel have no hesitation in recommending to the Court that it approve this settlement.

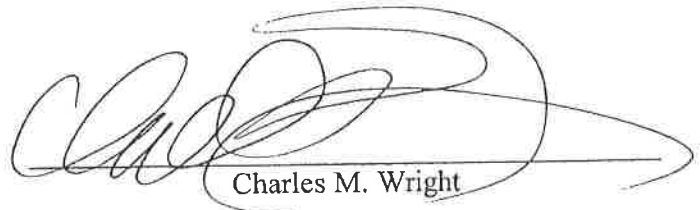
SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 10th day of January, 2013.)


_____)

A Commissioner, etc.)

LSUC # 62311 B)

S. Sajjad Nematollahi)


_____)
Charles M. Wright)

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

Sino-Forest Corporation, et al.

and

Plaintiffs

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

AFFIDAVIT OF CHARLES M. WRIGHT

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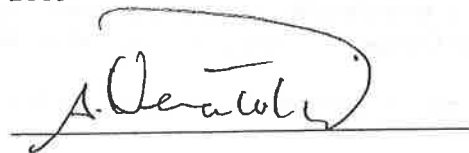
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Lawyers for the Plaintiffs

Tab A

This is Exhibit "A" mentioned and referred to in the affidavit of Charles Wright, sworn before me in the City of Toronto, in the Province of Ontario, this 10th day of January, 2013

A handwritten signature in cursive script, appearing to read "A. Denatolo", is written over a horizontal line.

A Commissioner, etc.

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

BETWEEN:

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada,
The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for
Operating Engineers in Ontario, Sjunde AP-Fonden, David Grant, Robert Wong, Guining Liu,
and any other proposed representative plaintiffs in Ontario Superior Court Action No. CV-11-
431153-00CP and in Quebec Superior Court No. 200-06-000132-111,

in their personal and proposed representative capacities (the "Plaintiffs")

-and-

Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms
thereof ("EY", together with the Plaintiffs the "Parties")

MINUTES OF SETTLEMENT

1. These Minutes of Settlement represent the agreement between the Plaintiffs and EY reached on November 28, 2012 to resolve in accordance with the terms more particularly set out herein the actions, causes of action, claims and/or demands, on all counts howsoever arising and in all jurisdictions, made against EY or which could have been made concerning any claims related to Sino-Forest Corporation and its affiliates and subsidiaries, whether or not captured by the "Class" or the "Class Period", as variously defined, including the actions (the "Actions") listed on Schedule "A" hereto (the "Claims");
2. The terms of these Minutes of Settlement are binding on the Parties;
3. These Minutes of Settlement are and shall remain confidential, and neither party shall publicly disclose or include in a court filing the terms hereof without the prior written consent of the other;
4. EY makes no admissions of liability and waives no defences available to it with respect to the Claims or otherwise;
5. A settlement amount of CDN \$117,000,000 (the "Settlement Fund") shall be paid by EY in accordance with the applicable orders of the courts (Ontario Superior Court of Justice, Ontario Superior Court of Justice Commercial List (supervising CCAA judge), Province of Quebec Superior Court, United States District Court and the United States Bankruptcy Court) ("Courts") on the Effective Date (save for any amounts payable in advance of the Effective Date as set out in paragraph 7), being the date that all requisite approvals and orders are obtained from the Courts and are final and non-appealable;

- 2 -

6. The Settlement Fund represents the full monetary contribution or payment of any kind to be made by EY in settlement of the Claims, inclusive of claims, costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes which may be payable in respect of this settlement), any payments to Claims Funding International, all costs associated with the distribution of benefits, all costs of any necessary notice, all costs associated with the administration of the settlement and any other monetary costs or amounts associated with the settlement or otherwise;
7. No payment of the Settlement Fund shall be made by EY until all conditions herein and set out in Schedule B hereto have been met. However, with respect to notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, the Plaintiffs will incur and pay such costs up to \$200,000 (the "Initial Plaintiffs Costs"), which costs are to be immediately reimbursed from the Settlement Fund after the Effective Date. EY will incur and pay such notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, over and above the Initial Plaintiffs Costs up to a further \$200,000 (the "Initial EY Costs"). The Initial EY Costs shall be deducted from the amount of the Settlement Fund payable to the Plaintiffs. Should any costs in excess of the cumulative amount of the Initial Plaintiffs Costs and the Initial EY Costs, being a total of \$400,000, in respect of notice and administration be incurred prior to the Effective Date, as a result of an Order of the Court, such amounts are to be borne equally between the Plaintiffs and EY, which amounts are to be reimbursed or deducted as the case may be from the Settlement Fund, on the terms set out above in this section. Should the settlement not proceed, the Parties shall bear their respective costs paid to that time;
8. No further proceedings shall be commenced or continued by the Plaintiffs or their counsel against EY in respect of any Claims, other than as necessary to complete the settlement herein;
9. The Plaintiffs agree not to claim from the non-settling defendants in the Actions, that portion of any damages that corresponds to the proportionate share of liability of EY, proven at trial or otherwise, such that EY is not further exposed to the Claims;
10. It is the intention of the Parties that this settlement shall be approved and implemented in the Sino-Forest Corporation CCAA proceedings. The settlement shall be conditional upon full and final releases and claims bar orders in favour of EY and which satisfy and extinguish all Claims against EY, and without opt-outs, and as contemplated by the additional terms attached hereto as Schedule B hereto and incorporated as part of these Minutes of Settlement;
11. This settlement is conditional upon obtaining appropriate orders from the Ontario Superior Court of Justice Commercial List (supervising CCAA judge) and the United States Bankruptcy Court that provide that the payment of the Settlement Fund is in full satisfaction of any and all claims that could be brought in connection with the claims of any security holder or creditor of Sino-Forest Corporation, including claims over for contribution and indemnity or otherwise, howsoever arising in Canada and the United States;

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12. The releases in the Sino-Forest Corporation CCAA proceedings shall include Ernst & Young LLP (Canada) and Ernst & Young Global Limited and all member firms thereof, and all present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each, but does not include any non-settling defendants in the Actions or their respective present or former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers or successors, administrators, heirs and assigns of each in their capacity as officers or directors of Sino-Forest Corporation ("EY Global"). The releases to be provided to EY by the Plaintiffs shall include EY Global and will release all Claims of the Plaintiffs' counsels' clients in all jurisdictions;
13. It is the intention of the Parties that the Settlement Fund shall be distributed in a claims process satisfactory to the CCAA Court, with a prior claims bar order;
14. The Parties shall use all reasonable efforts to obtain all Court approvals and/or orders necessary for the implementation of these Minutes of Settlement, including an order in the CCAA proceedings granting the plaintiffs appropriate representative status to effect the terms herein;
15. If the settlement between the Parties or any terms hereof are not approved by order(s) of the applicable Courts fulfilling all conditions precedent in paragraph 10 hereto the settlement between the Parties and these Minutes of Settlement are null and void;
16. These terms shall be further reduced to a written agreement reflecting the terms of the agreement between the Parties hereto with such additional terms agreed to by the Parties consistent herewith or as agreed to give efficacy in Quebec and the United States. Should the Parties be unable to agree on the form of written agreement, the Parties agree to appoint Clifford Lax as mediator/arbitrator to assist the Parties and his decision as arbitrator shall be final and binding on the Parties, in accordance with the terms herein but subject to the terms of Schedule B hereof, and not subject to appeal;
17. The Parties will agree on a level of disclosure by EY for the purposes of reasonably assisting in the approval process of the applicable Courts, consistent with the Parties' obligations under the relevant class proceedings legislation. Should the Parties be unable to agree on the level of disclosure after good faith efforts to do so, the Parties agree to appoint Clifford Lax as mediator to assist the Parties. If the Parties after mediation are still unable to reach an agreement, then either Party may terminate the settlement;
18. Pending the implementation of this settlement, including the distribution of the Settlement Fund, EY shall advise the plaintiffs of any agreements reached by it with the Ad Hoc Committee of Noteholders, Sino-Forest, the Litigation Trustee, or counsel or representatives of any of these parties, to pay any monetary consideration to any of them.

SIGNATURE LINES ON NEXT PAGE



Date:

KOSKIE MINSKY LLP
Lawyers for the Plaintiffs

Date:

SISKINDS LLP
Lawyers for the Plaintiffs

Date:

**PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP**
Lawyers for the Plaintiffs

Date:

November 29, 2012



**LENCZNER SLAGHT ROYCE SMITH
GRIFFIN LLP**

Lawyers for Ernst & Young LLP, and on behalf
of Ernst & Young Global Limited and all
member firms thereof

R

SCHEDULE "A"

1. The Trustees of The Labourers' Pension Fund of Central and Eastern Canada, et al. v. Sino-Forest Corporation, et al., Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP
2. Guining Liu v. Sino-Forest Corporation, et al., Province of Quebec Superior Court, File No. 200-06-000132-111
3. David Leopard, et al. v. Allen T.Y. Chan, et al., United States New York Southern District Court, Case Number 1:2012-cv-01726-VM

SCHEDULE "B"

Terms and Conditions of any Ernst & Young LLP (Settlement with Class Action Plaintiffs)

A settlement unilaterally with E&Y will be conditional upon such settlement being made to a resolution that:

- a) is a settlement of all Claims, proceedings and potential claims against E&Y in all jurisdictions;
- b) reflects approval of appropriate Courts in relevant jurisdictions as described below; and
- c) accordingly must reflect the following elements in a form satisfactory to E&Y in its sole discretion, without which E&Y is at liberty to reject the settlement at any time:

I. Court Proceedings

(A) *CCAA*

- (i) Plan of Arrangement (in form consented to);
- (ii) Final Sanction Order;
- (iii) Both Plan and Sanction Order to include:
 - (a) a release of E&Y, and all affiliate firms, partners, staff, agents and assigns for any and all Claims (including cross-claims and third-party claims), and
 - (b) a claims bar (must expressly exclude all claims against all Pöyry entities).

(B) Ontario Class Action

- (i) Final Order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;
- (ii) i) above requires:
 - (a) certification for settlement purposes with i) class definition agreeable to E&Y; ii) notice in all relevant jurisdictions

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(including Canada, U.S., Hong Kong, Singapore and PRC);
and iii) opt-out threshold agreeable to E&Y;

(b) fairness hearing having been held to result in (i).

(C) Quebec Class Action

- (i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;
- (ii) certification and settlement approval as in (B).

(D) U.S. Proceedings including Class Action

- (i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;
- (ii) certification and settlement approval as in (B).
- (iii) Undertaking of Company (Applicant) to bring Chapter 15 proceeding to enforce Canadian *CCAA* order;
- (iv) final U.S. order, in compliance with U.S. laws, recognizing *CCAA* order.

II. Releases and Undertakings

- (A) Full and Final Release and Claims Bar in both *CCAA* Plan and final Sanction Order;
- (B) Full and Final Release from Ontario Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;
- (C) Full and Final Release from Company, directors and officers, noteholders and others on satisfactory Pieringer terms and language;
- (D) Agreement from Ontario class counsel and from noteholders' counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction;
- (E) Full and Final Release from Quebec Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;

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- 3 -

- (F) Agreement from Quebec class counsel to not act for or consult with or assist any plaintiff/representative plaintiff in any jurisdiction;
- (G) Full and Final Release from U.S. Class Action Representative Plaintiffs on ~~their own behalf and in their representative capacities including an~~ agreement not to consult or cooperate with any other party advancing Claims against E&Y; and
- (H) Agreement from U.S. class counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction.



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**

B E T W E E N :

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SUPPLEMENTAL AFFIDAVIT OF CHARLES M. WRIGHT

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

1. On January 10, 2013, I swore an affidavit (the "January 10 Affidavit") in the above-captioned matter in support of the motion of the Ontario Plaintiffs for an order approving of the Ernst & Young Settlement. I swear this supplemental affidavit in support of that same motion.
2. Unless otherwise stated herein or the context otherwise requires, capitalized terms in this affidavit have the same meaning as they have in my January 10 Affidavit.
3. I have knowledge of the matters deposed to below. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information, and I believe such information to be true.

THE OBJECTORS' STATEMENTS IN OPPOSITION TO THE E&Y SETTLEMENT

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

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

- 3 -

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

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

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

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

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

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

7. According to these calculations, the Objectors collectively held a total of 3,921,618 Sino shares¹ at the time the Muddy Waters Report was released on June 2, 2011.

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

FURTHER INFORMATION REGARDING THE CARRIAGE MOTION BEFORE JUSTICE PERELL

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

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

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

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

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

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

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

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

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

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

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

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

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

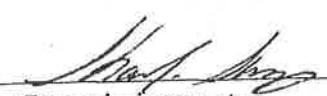
20. On April 18, 2012, the current CEO of Sino, Judson Martin, swore an affidavit in the above-captioned CCAA proceeding in which he stated, at para. 22 that, as of April 29, 2011, Sino had 34,177 beneficial shareholders. A copy of that affidavit is attached as **Exhibit "Q"**.

INITIAL VERSION OF SINO'S PLAN OF ARRANGEMENT (THE "PLAN")

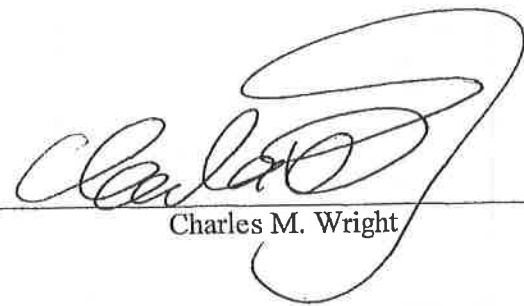
21. Attached hereto as **Exhibit "R"** is the initial, August 14, 2012 version of the Plan, as filed with the Court by Sino. Prior to August 14, 2012, we were provided earlier versions of the

Plan on a without prejudice and confidential basis and sought to negotiate various revisions to those versions of the Plan in order to protect the class' interests.

SWORN before me at the City of)
London, in the Province of Ontario,)
this 23rd day of January, 2013.)


A Commissioner, etc.)

SHARLA JOAN STROOP, a Commissioner, etc.,
Province of Ontario, for Siskinds^{LLP}
Barristers and Solicitors. Expires: October 6, 2015


Charles M. Wright

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

Sino-Forest Corporation, et al.
and
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

**SUPPLEMENTAL AFFIDAVIT OF
CHARLES M. WRIGHT**

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Toronto, ON M5H 3R3

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Tel: 416.595.2117
Fax: 416.204.2889

Jonathan Bida (LSUC#: 54211D)
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Fax: 416.204.2907

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

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

Lawyers for the Plaintiffs

Tab 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

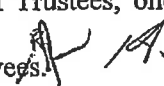
Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF JOSEPH REDSHAW

I, JOSEPH REDSHAW, of the Town of Waterdown, in the Province of Ontario,
 SWEAR:

1. I am President of the IUOE Local 793 and a trustee of the Board of Trustees of the International Union of Operating Engineers Local 793 Pension Plan (the "OE Fund"), one of the plaintiffs in this action, and I have knowledge of the matters herein deposed. Where I make statements in this affidavit that are not within my personal knowledge, I have been informed by Mark Zigler and Kirk Baert of Koskie Minsky LLP, counsel to the OE Fund and to the plaintiffs in this action, and I believe that such information is true.

The OE Fund

2. The OE Fund was established November 1, 1973. It is a specified multi-employer pension plan registered with the Financial Services Commission on Ontario, No. 3890890 and is regulated by the *Pension Benefits Act* (Ontario) and the *Income Tax Act* (Canada). The OE Fund was established pursuant to collective agreements between Local 793 and employer associations and individual employers. The OE Fund is administered by a Board of Trustees, one half of whom are appointed by the union and one half by the participating employees. 

3. As of the commencement of these proceedings, the OE Fund has approximately 8,487 members in active employment and 12,380 retired, inactive and deferred vested members. The OE Fund has approximately 1,001 participating employers. The OE Fund has approximately \$1.5 billion in assets.

4. The trustees are all either union representatives or negotiators or representatives of management with extensive experience in commercial and labour matters, and with the assistance of legal and financial advisors, regularly deal with contentious matters and litigation. We are also familiar with working in a regulatory environment, given the extensive regulation of pension plans under the *Pension Benefits Act* (Ontario) and *Income Tax Act* (Canada).

Background

5. The OE Fund retained Koskie Minsky LLP and Siskinds LLP ("Class Counsel") to advance the class action on behalf of the OE Fund and on behalf of other class members.

6. Class Counsel retained Paliare Roland Rosenberg Rothstein LLP for purposes of the above-captioned proceeding (the "Insolvency Proceeding") under the *Companies' Creditors Arrangement Act*, who act for the Ad Hoc Committee of Purchasers of Applicant's Securities, of which the Engineers are an active member.

7. The class action was commenced on July 20, 2011 against Sino-Forest Corporation ("Sino") and other defendants.

8. On March 19, 2012, my fellow trustee, Michael Gallagher, swore an affidavit in support of the plaintiffs' motion for leave to amend the statement of claim in this action to advance the causes of action under Part XXIII.1 of the Ontario *Securities Act*. That affidavit sets out a description of the OE Fund's investments in Sino, the nature of the claim asserted against the defendants to this action, his understanding of the litigation process and the trustees' agreement to be put forward as representative plaintiffs. Attached hereto and marked as Exhibit "A" is a copy of such affidavit, without exhibits. I rely on and adopt the statements made in Mr. Gallagher's affidavit regarding the trustees' role and responsibilities as representative plaintiffs. We still do not have, on any of the proposed common issues in the class action, any conflict with the interests of any other class members, as proposed in the Statement of Claim in this action, and I believe that we fairly and adequately represent the interests of the class.

9. I now swear this affidavit in support of an order approving the settlement entered into with Ernst & Young LLP (and other Ernst & Young entities) in accordance with the Minutes of Settlement dated November 29, 2012, which is attached hereto as **Exhibit "B"**.

My Involvement in the Action

10. Throughout this litigation, Class Counsel has consulted with me and our Board of Trustees and has provided me with regular updates on the status of the litigation, being both the class proceeding and the Insolvency Proceeding. Class Counsel has provided updates to the trustees of the OE Fund by way of periodic conference call and through reports presented at the OE Fund quarterly Board meetings, and I and members of our Board have provided Class Counsel with instructions with respect to the conduct of this litigation.

Settlement Discussions

11. I have been consulted by, and provided instructions to, Class Counsel with respect to settlement discussions with the defendants. An all-parties mediation occurred on September 4 and 5, 2012. The mediation was conducted with the assistance of the Honourable Justice Newbould, acting as mediator. I attended the mediation and participated in full and frank discussions about the case with counsel and others. That mediation did not result in a settlement with any of the parties, including Ernst & Young, at that time. Given the defendants' negotiating stance at the mediation, it is my belief that Class Counsel could not have negotiated a significant all-party settlement at that mediation.

12. Following the global mediation, I was informed by Mark Zigler that settlement discussions continued with all defendants and in particular with Ernst & Young.

- 5 -

13. While I did not attend the subsequent bilateral mediation with Ernst & Young on November 27, 28 and 29, 2012, Class Counsel kept me apprised of the events and I provided instructions to Class Counsel to settle with Ernst & Young within a particular monetary range. Before the final settlement was concluded, I spoke with Class Counsel and provided my instructions to settle with Ernst & Young.

The Settlement is Fair and Reasonable

14. Mr. Zigler and Kirk Baert of Koskie Minsky LLP discussed the settlement with me and members of our pension fund investment committee and we are satisfied that it is fair and reasonable. I understand that there are many defences to our claims and damages calculations available to Ernst & Young, although I do not understand all the details of the legal argument. I also understand that a significant part of why Ernst & Young was willing to offer to pay the amount of CAD \$117,000,000 was because of the Insolvency Proceeding of Sino. I understand that as part of this motion, a full release of all claims against Ernst & Young, in respect of its involvement with Sino is sought. I understand that the settlement and the release must be approved by the courts before Ernst & Young will pay the settlement funds.

15. I support the proposed settlement, and have instructed Class Counsel to seek approval of the Settlement Agreement.

16. In all the circumstances, I believe that an excellent settlement was reached. This settlement provides compensation for persons who purchased Sino securities, now, at an early stage of the litigation, rather than following what Mr. Zigler has informed me and I believe would be a long litigation process, even before a trial of the proposed common issues and any award of damages. Further, I have been informed by Messrs. Zigler and Baert and believe that it


is possible that many of those securities purchasers would not have recovered anything from Ernst & Young or Sino's insolvency.

17. I swear this affidavit in support of the plaintiffs' motion for approval of the proposed settlement with Ernst & Young and for no improper purpose.

SWORN before me at the Town of)
Oakville, in the Province of Ontario,)
this 10th day of January, 2013.)
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A Commissioner, etc.



Joseph Redshaw

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

Sino-Forest Corporation, et al.

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

AFFIDAVIT OF JOSEPH REDSHAW

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Lawyers for the Plaintiffs

Tab 4

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

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 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.

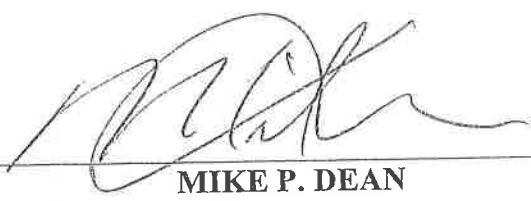
55. If the approval order sought is granted, this Honourable Court will retain continuing supervisory jurisdiction over the implementation of the settlement and specifically the allocation and distribution of the amounts in the Settlement Trust.

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
11th day of January, 2013



Commissioner for Taking Affidavits
Shara N. Roy



MIKE P. DEAN

**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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION**

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

ERNST & YOUNG LLP, et al

Plaintiffs

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF MIKE P. DEAN

**LENCZNER SLAGHT ROYCE
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Lawyers for the Defendant Ernst & Young LLP

Tab 5

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 PLAN OF COMPROMISE OR
ARRANGEMENT OF SINO-FOREST CORPORATION

Applicant

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

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn January 11, 2013)

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

1. I am the Vice-Chairman and Chief Executive Officer of Sino-Forest Corporation ("Sino-Forest" or the "Applicant"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true.
2. This affidavit is made in support of a motion brought by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the representative plaintiffs in the Ontario Class Action (collectively, the "Ontario Plaintiffs"), for approval of a settlement (the "Ernst & Young Settlement"), as further defined in the Plan of Compromise and Reorganization of Sino-Forest dated December 3, 2012 (the "Plan"), with Ernst & Young LLP and the release of claims

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against Ernst & Young LLP (the "Ernst & Young Release", the "Ernst & Young Claims" and "Ernst & Young", all as those terms are defined in the Plan).

3. Terms not defined in this affidavit are as defined in my affidavit sworn March 30, 2012 in support of the application for the initial order made in this proceeding, my affidavit sworn August 14, 2012 in support of the filing of a draft plan of compromise and arrangement, and/or my affidavit sworn November 29, 2012 in support of a motion for sanction of the Plan. I adopt and repeat for the purposes of this motion the statements I made in my earlier affidavits. Copies of these three affidavits are attached hereto (without exhibits) as Exhibits "A," "B," and "C" respectively.

4. I have sworn numerous affidavits in this CCAA Proceeding, in my capacity as Vice Chairman and Chief Executive Officer of the Applicant including those referred to above. In addition to my responsibility for the operational and financial affairs of the Applicant, I have been intimately involved in this restructuring, instructing Applicant's counsel (Bennett Jones LLP) and have worked with FTI Consulting Inc. in its capacity as court-appointed Monitor as well as with the Ad Hoc Committee of Sino-Forest Noteholders (the "Noteholders"), and their respective counsel.

5. In addition, I was involved in the formulation and finalization of the Plan ultimately sanctioned by this Court on December 10, 2012 (the "Sanction Order").

6. As I have explained previously, Sino-Forest itself has no operating assets, and its business in standing timber is conducted through its direct and indirect subsidiaries (collectively the "Sino-Forest Subsidiaries"). All of the standing timber assets of the Sino-Forest companies (of which there are many) are held through the Sino-Forest Subsidiaries, as a result of which

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(and notwithstanding that Sino-Forest is the sole CCAA Applicant), the Sino-Forest Subsidiaries and the business they conduct have been central to this restructuring.

7. As I described in my affidavit sworn November 29, 2012, the Plan provides (for the reasons expressed) that substantially all of Sino-Forest's assets, including the shares in the Sino-Forest Subsidiaries, will be transferred (according to the terms of the Plan) to Newco for the benefit of Affected Creditors.

8. This necessarily required that the claims filed pursuant to the Claims Procedure Order made in this CCAA Proceeding be identified and addressed. That is one reason why Sino-Forest requested, and this Court granted, the term of the Claims Procedure Order requiring claimants to identify potential claims against the Sino-Forest Subsidiaries, notwithstanding that Sino-Forest itself was the sole Applicant.

9. I am generally familiar with the most significant claims filed against the Applicant and the directors and officers of Sino-Forest, and in particular the claims of Ernst & Young, the syndicate of underwriters involved in the various debt and equity offerings of Sino-Forest (the "Underwriters") and BDO Limited ("BDO"). Those claims, advanced against Sino-Forest and the Sino-Forest Subsidiaries, individually and in the aggregate, total in the billions of dollars. Those claims had to be addressed as part of this restructuring.

10. As I stated at paragraph 124 of my affidavit sworn November 29, 2012, there could be no effective restructuring of Sino-Forest's business and separation from the Canadian parent (which Sino-Forest has said from the outset was the objective at the commencement of these proceedings) if the claims asserted against the Sino-Forest Subsidiaries arising out of, or

connected to, claims against Sino-Forest remained outstanding. The Plan provides for the release of claims against the Sino-Forest Subsidiaries.

11. In addition, and as counsel for Sino-Forest has previously submitted to this Court and as has been observed by the court-appointed Monitor, timing and delay were critical factors in this restructuring. I believe that delays and the passage of time negatively impact on the value of Sino-Forest assets and the recovery by stakeholders, and I certainly understand this to be the view of the Noteholders, as has been expressed to me and to Sino-Forest by the Noteholders and their counsel on numerous occasions.

12. Accordingly, it was and remains critical to the success of this restructuring, to the maximization of value and to the preservation of assets that:

- (a) the claims against Sino-Forest and the Sino-Forest Subsidiaries be determined or resolved such that the assets held by the Sino-Forest Subsidiaries were not subject to these contingent claims; and
- (b) that this be achieved as quickly as possible.

13. It was for these reasons, among others, that Sino-Forest, supported by the Noteholders, has continued its efforts to advance this restructuring as soon as possible. Sino-Forest welcomed the initiative by the supervising CCAA Judge, Justice Morawetz, to urge and encourage the principal stakeholders to engage in a constructive dialogue with a view to attempting to resolve disputes on a consensual basis, including the claims against Sino-Forest and the Sino-Forest Subsidiaries.

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14. For these reasons, Sino-Forest welcomed the Mediation Order made in these proceedings and the ensuing mediation, described in my earlier affidavits. As stated above, the Court-ordered mediation involving the parties to the Ontario Class Action, the Noteholders and the Monitor was consistent with the direction and encouragement from the supervising CCAA Judge that the principal stakeholders should focus their efforts on the resolution of claims. As I understand it, this was a continuing theme in these proceedings.

15. While the global mediation conducted by Justice Newbould did not resolve all litigation claims at that time, it did represent the genesis of a substantive dialogue among the key stakeholders and was, I believe, the catalyst for discussions that continued after the conclusion of the formal mediation. Both the global mediation and the subsequent settlement discussions were consistent with the objectives of the Applicant in this restructuring.

16. I understand that Ernst & Young continued discussions with the Ontario Plaintiffs, ultimately resulting in the Minutes of Settlement which define the terms of the Ernst & Young Settlement.

17. Sino-Forest was and remains of the view that the Ernst & Young Settlement is a positive development in this restructuring for the reasons expressed below. As a result, the Applicant was amenable to amending the draft Plan to provide for the mechanics and framework for the Ernst & Young Settlement and the Ernst & Young Release in order that it could be voted on at the meeting of creditors and sanctioned by this Court.

18. In my affidavit sworn November 29, 2012, I discussed the Equity Claims Decision (as defined in that affidavit). Notwithstanding the Equity Claims Decision, I am advised by my counsel, Bennett Jones LLP, and believe that, absent a resolution on terms acceptable to Ernst &

Young, it could and likely would have continued to assert all appeal and other rights in respect of the Equity Claims Decision and in respect of the Sanction Order.

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

- (a) Ernst & Young agreed to support the Plan, including the Plan provisions that deal with the Ernst & Young Settlement;
- (b) Ernst & Young's support simplified and accelerated the Plan process:
 - (i) Ernst & Young agreed that its claims against Sino-Forest and the Sino-Forest Subsidiaries are released, which claims were significant as stated above;
 - (ii) The proofs of claim filed by Ernst & Young in these proceedings set out extensive claims that could be asserted directly against the Sino-Forest Subsidiaries. Components of those claims were not expressly addressed in the Equity Claims Decision made by this Court;
 - (iii) Ernst & Young agreed not to seek leave to appeal to the Supreme Court of Canada in respect of the dismissal by the Court of Appeal for Ontario of Ernst & Young's appeal of the Equity Claims Decision;
 - (iv) By agreeing to release all of its claims, Ernst & Young has eliminated:
 - a. The expense and management time otherwise to be incurred in litigating its claims;
 - b. Dilution of the recovery by other creditors if Ernst & Young's

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claims were ultimately resolved in its favour and not subordinated;
and

c. Potentially extending 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 in respect of Noteholder Class Action Claims, 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; and

(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.

20. Sino-Forest, the only Applicant in the CCAA Proceeding, is a holding company and its only material assets are the shares of the Sino-Forest Subsidiaries. The release of claims by Ernst & Young assisted in allowing the Sino-Forest Subsidiaries to contribute, unencumbered by claims totalling billions of dollars, their assets to the overall restructuring.

21. For these reasons among others, I believe that the Ernst & Young Settlement contributed in a significant and positive way to the timeliness of the Sanction Order, and ultimately to the implementation of the Plan.

22. I understand that the terms of the Ernst & Young Settlement include the provision of a release in favour of Ernst & Young in respect of all claims related to Sino-Forest. The Plan (as

sanctioned) already includes third party releases in respect of other non-Applicant entities and individuals who have made material contributions to the success of the restructuring, including present and former directors and officers, and the Sino-Forest Subsidiaries.

23. The Plan provides for the mechanics and framework for other third party settlements, should those occur in the future. The inclusion of these provisions in the Plan facilitated the support of the Plan by the Underwriters and withdrawal of objections to the Plan by BDO. From the course of the negotiations over the relevant period I believe that the Ernst & Young Settlement was a catalyst to those other parties withdrawing their objections to the Plan. Ultimately, except for the group of securities holders now opposing the Ernst & Young Settlement, the Plan was approved without opposition.

24. In conclusion, for the reasons described above, the Applicant believes that the Ernst & Young Settlement represented a significant contribution to the Plan and to a successful restructuring, and the Applicant supports the motion for approval of the Ernst & Young Settlement.

SWORN BEFORE ME at the City of Hong
Kong, Special Administrative Region,
People's Republic of China this day of
January, 2013



Chan Ching Yee
Solicitor
Reed Smith
Richards Butler
20/F Alexandra House
Hong Kong SAR



W. JUDSON MARTIN

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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

SINO-FOREST CORPORATION

ERNST & YOUNG LLP, et al

Plaintiffs

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF W. JUDSON MARTIN, SWORN THIS
11TH DAY OF JANUARY, 2013

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Lawyers for the Applicant

Tab 6

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’¹ 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:

¹ 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.² 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."

² 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.³ 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:

³ 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-Forest⁴, 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.

⁴ 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 18th 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.

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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 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 INVESCO CANADA LTD. First Name

Current Address
5140 YONGE STREET
SUITE 800

City TORONTO Prov./State ON Postal Code/Zip Code M2N 6X7

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

Telephone Number (Work) 416-228-3670 Telephone Number (Home)

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 4499385

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: [Handwritten Signature] Date Signed: Jan. 11, 2013

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



