

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

FACTUM OF THE APPLICANT,
SINO-FOREST CORPORATION

(Scope of Stay Motion returnable May 8, 2012)

Dated: May 3, 2012

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

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant

TO: THE SERVICE LIST

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I. OVERVIEW

1. The Applicant, Sino-Forest Corporation ("SFC") seeks the direction of this Honourable Court with respect to the scope of the stay of proceedings (the "CCAA Stay") under the initial order issued by this Honourable Court on March 30, 2012 (the "Initial Order"). Specifically, SFC asks that this Court declare that:

- (a) The CCAA Stay applies to all defendants (the "Third Party Defendants") in litigation to which SFC is a defendant (the "Class Actions"), including the Ontario action identified by court file number CV-11-431153-CP (the "Ontario Class Action"); or

(b) In the alternative, that the CCAA Stay should be extended, *nunc pro tunc* to the date of the Initial Order to stay the proceedings against the Third Party Defendants.

2. The express language of the CCAA Stay states that the stay applies not just to proceedings *against* SFC, but also to proceedings "in respect of" SFC, its business and its property. There is no serious argument that can be advanced that the claims against the Third Party Defendants are not claims "in respect of" SFC.

3. Moreover, for all of the reasons set out by this Honourable Court in *Timminco (Re)*, it is appropriate that the claims of the Class Plaintiffs against the Third Party Defendants to be stayed, because it would cause unfairness to SFC to have the claims against the Third Party Defendants to proceed when those claims concern SFC. This is particularly the case given that the Third Party Defendants have or likely will seek indemnity in respect of these claims within these proceedings.

4. SFC is actively engaged in a restructuring and sales process that requires significant time and attention from SFC's management, which must be completed within a short timeframe. It is not in the interests of SFC or its stakeholders for management time and attention to be diverted to deal with a class action, particularly given that there is nothing in the class action that is pressing requiring immediate action. Moreover, it is not in the interests of justice to have the class actions against the Third Party Defendants continue, given the duplicative use of court time, the possibility of inconsistent findings on similar or identical factual and legal issues, and

given the unlikelihood that any such claims would be resolved within the class proceedings regime in a timely manner.¹

II. FACTS

A. Background

5. On March 30, 2012, this Honourable Court made the Initial Order granting the CCAA Stay against SFC and certain of its subsidiaries and appointing FTI Consulting Canada Inc. as the Monitor in the CCAA proceedings.

Affidavit of W. Judson Martin sworn April 23, 2012 (the "April 23 Martin Affidavit"), at para. 3, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 7.

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

April 23 Martin Affidavit at para. 4, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 7.

7. On April 13, 2012, this Honourable Court made an order extending the CCAA Stay to June 1, 2012.

April 23 Martin Affidavit at para. 5, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 7.

¹ The Port Colborne class action, *Inco v. Smith*, recently concluded with the Supreme Court of Canada denying leave to appeal, 11 years after the action began. The plaintiffs in *Danier Leather*, for example, commenced their claim on November 13, 1998, with the Supreme Court's decision being rendered nine years later on October 12, 2007.

B. Management's Time and Resources

8. SFC management's limited resources are fully engaged effecting SFC's restructuring and sale process in a very tight time frame.

April 23 Martin Affidavit at para. 25, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 12.

9. As set out in the First Report of the Monitor dated April 11, 2012, management has worked with the Monitor to establish communication protocols and reporting mechanisms with Sino-forest in Hong Kong and the PRC. Management has met with the Monitor in both Toronto and Hong Kong to provide the information the Monitor requires immediately and on an ongoing basis.

First Report of the Monitor dated April 11, 2012 at paras. 15-16.

10. SFC's management has also worked with the Monitor and SFC's counsel and advisors in preparing the proposed Claims Procedure Order and significant effort has been undertaken to consult with all of the relevant stakeholders regarding same.

C. Class Action Proceedings

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

April 23 Martin Affidavit at para. 6, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 7.

12. Five of these class action lawsuits, commenced by three separate groups of counsel, were filed in the Ontario Superior Court of Justice on June 8, 2011, June 20, 2011, July 20, 2011, September 26, 2011 and November 14, 2011. A carriage motion in relation to these actions was heard on December 20 and 21, 2011, and by Order dated January 6, 2012, Justice Perell appointed Koskie Minsky LLP and Siskinds LLP as class counsel. As a result, Koskie Minsky LLP and Siskinds LLP discontinued their earliest action, and their other two actions have been consolidated and will move forward as one proceeding, the Ontario Class Action. The other two Ontario actions, commenced by other counsel, have been stayed.

April 23 Martin Affidavit at para. 7, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 7.

13. Pursuant to an order of Justice Perell dated March 26, 2012 (entered April 17, 2012), Koskie Minsky LLP and Siskinds LLP filed a Fresh as Amended Statement of Claim in the Ontario Class Action on April 18, 2012. The Fresh as Amended Statement of Claim now names Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Bank of America Securities LLC, instead of Banc of America Securities LLC, in addition to the previously named defendants.

April 23 Martin Affidavit at para. 8, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 8.

14. Parallel class actions have been filed in Quebec and Saskatchewan. There are no additional defendants named in these actions that are not also named in the Ontario Class Action.

April 23 Martin Affidavit at para. 9, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 8.

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

April 23 Martin Affidavit at para. 10, Applicant's Motion Record for Directions
Regarding Scope of Stay, Vol. I, Tab 2, p. 8.

16. Additional law firms in both the United States and Canada have announced that they are investigating SFC and certain directors and officers thereof with respect to potential additional class action lawsuits. No lift stay motion has yet been announced or scheduled by any such parties to commence such lawsuits.

April 23 Martin Affidavit at para. 11, Applicant's Motion Record for Directions
Regarding Scope of Stay, Vol. I, Tab 2, p. 9.

D. Claims for Indemnification

17. Many of the defendants in the various class actions may seek to be indemnified by SFC for their costs and liabilities in these class actions. Certain of the potentially relevant indemnification clauses are particularized below.

April 23 Martin Affidavit at para. 12, Applicant's Motion Record for Directions
Regarding Scope of Stay, Vol. I, Tab 2, p. 9.

a. Ernst & Young

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

April 23 Martin Affidavit at para. 13, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 9.

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

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

Each of the engagement letters entered after September 28, 2010 between SFC and EY contain substantially similar indemnity provisions.

April 23 Martin Affidavit at para. 14, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 9.

b. The Underwriters

20. The following underwriters are defendants in the Ontario Class Action: Credit Suisse Securities (Canada), Inc. ("Credit Suisse Canada"), TD Securities Inc. ("TD"), Dundee Securities

Corporation ("Dundee"), RBC Dominion Securities Inc. ("RBC"), Scotia Capital Inc. ("Scotia"), CIBC World Markets Inc. ("CIBC"), Merrill Lynch Canada Inc. ("Merrill Lynch Canada"), Canaccord Financial Ltd. ("Canaccord"), Credit Suisse Securities (USA) LLC ("Credit Suisse USA"), Maison Placements Canada Inc. ("Maison Placements") and Merrill, Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Bank of America Securities LLC) ("Merrill Lynch").

April 23 Martin Affidavit at para. 16, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 10.

21. On July 17, 2008, SFC entered into a purchase agreement in respect of a July 17, 2008 offering for senior notes. The initial underwriters for this offering were Merrill Lynch and Credit Suisse USA. Pursuant to this purchase agreement, SFC agreed to indemnify the underwriters in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 17, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p 7 and Exhibit J at ss. 7(a) & 8, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. II, Tab J at pp. 448, 450-451.

22. On May 28, 2007, SFC entered into an underwriting agreement in respect of a June 5, 2007 offering of common shares. This underwriting agreement appointed Dundee, CIBC, Merrill Lynch Canada, Credit Suisse Canada, UBS Securities Canada Inc. ("UBS") and Haywood Securities Inc. ("Haywood") as underwriters. Pursuant to this purchase agreement, SFC agreed to indemnify the underwriters in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 18, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 11 and Exhibit K at s. 9, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. II, Tab K at pp. 600-604.

23. SFC entered into an underwriting agreement on May 22, 2009 in respect of a June 1, 2009 offering. This underwriting agreement appointed Dundee and Credit Suisse Canada as lead underwriters and also appointed Merrill Lynch Canada, Scotia and TD as underwriters. Pursuant to this purchase agreement, SFC agreed to indemnify the underwriters in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 19, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 11 and Exhibit L at s. 9, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. II, Tab L at pp. 689 & 691-692.

24. On June 24, 2009, SFC entered into a dealer management agreement in respect of an offering of senior guaranteed notes, pursuant to which SFC agreed to indemnify the underwriter(s) in accordance with certain terms and conditions. The lead underwriter for this offering was Credit Suisse USA.

April 23 Martin Affidavit at para. 20, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 11 and Exhibit M at s. 12, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. II, Tab M at pp. 735-736.

25. SFC also entered into a solicitation agent agreement with Credit Suisse USA on June 24, 2009 in respect of the June 2009 offering of senior guaranteed notes. Pursuant to this agreement, SFC agreed to indemnify Credit Suisse USA in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 21, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 11 and Exhibit N at s. 11, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. III, Tab N at pp. 798-800.

26. On December 10, 2009, SFC entered into a purchase agreement in respect of an offering of convertible senior notes, pursuant to which SFC agreed to indemnify the underwriters in

accordance with certain terms and conditions. The initial underwriters for this offering included Credit Suisse USA, Merrill Lynch and TD.

April 23 Martin Affidavit at para. 22, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 11 and Exhibit O at ss. 7 & 8, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. III, Tab K at pp. 900-902.

27. SFC also entered into an underwriting agreement on December 10, 2009 in respect of a share offering. Pursuant to this agreement, SFC appointed Credit Suisse Canada, TD, Dundee, RBC, Scotia, CIBC, Merrill Lynch Canada, Canaccord and Maison Placements as underwriters and agreed to indemnify the underwriters in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 23, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 12 and Exhibit P at s. 9, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. III, Tab P at pp. 1078-1081.

28. SFC entered into a purchase agreement on October 14, 2010 in respect of an offering of guaranteed senior notes. Pursuant to this agreement, Credit Suisse USA and Banc of America Securities LLC were appointed lead underwriters and SFC agreed to indemnify the underwriters in accordance with certain terms and conditions.

April 23 Martin Affidavit at para. 24, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. I, Tab 2, p. 12 and Exhibit Q at ss. 7 & 8, Applicant's Motion Record for Directions Regarding Scope of Stay, Vol. III, Tab Q at pp. 1132-1135.

III. LAW AND ARGUMENT

A. The Words Chosen in the CCAA Stay

29. The CCAA Stay used in this case is based on the Commercial List Users Committee Model Initial CCAA Order, and reads:

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

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

30. Further, under the section heading "No Exercise of Rights or Remedies", the Initial Order states:

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

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

31. Finally, paragraph 24 extends the stay to directors and officers:

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

32. As drafted, the Initial Order and the Model Order it is based upon, by its own terms extends beyond claims against the debtor. If the stay was only intended to apply to the debtor personally, and nobody else, other words would have been used. Such a provision would simply involve striking out the following words from the model order (as adapted in this case):

17. THIS COURT ORDERS that until and including April 29, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against ~~or in respect of~~ the Applicant or the Monitor, ~~or affecting the Business or the Property,~~ except with the written consent of the

Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against ~~or in respect of~~ the Applicant ~~or affecting the Business or the Property~~ are hereby stayed and suspended pending further Order of this Court

33. Instead, the model order and the Initial Order expressly extend to claims "in respect of" the Applicant. The words "in respect of" has been interpreted by the Supreme Court of Canada as follows:

The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to", or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

Sarvanis v. Canada, 2002 SCC 28 at para. 20

B. The Rationales for the CCAA Stay

34. A stay of proceedings is at the core of a CCAA proceeding, whereby all creditors are effectively required to put their "pens down" while the debtor makes an effort to make a proposal to its creditors to restructure its debt. The stay of proceedings is the key tool that is designed to ensure that the *status quo* is maintained during the restructuring efforts. It further prevents "manoeuvres for positioning" among creditors and prevents one creditor from getting a "leg up" on others. The Court's jurisdiction in granting a stay extends to both preserving the *status quo* and facilitating a restructuring.

Canadian Airlines Corp. (Re), [2000] A.J. No. 1692 (Q.B.) at paras. 17-19

Stelco Inc. (Re), [2005] O.J. No. 1171 (C.A.) at para. 36

Chef Ready Foods Ltd. v. Hongkong Bank of Canada, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.) at para. 18

Timminco Ltd. (Re.), 2012 ONSC 2515, at para. 15

35. By its own terms, the Model Initial Order and the CCAA Stay in this case expressly applies to third parties. At the minimum, it applies to directors and officers, both current and former. As it applies to current directors and officers, the CCAA Stay serves the frequently-cited purpose of a stay of proceedings, being to allow management to focus its energies on the restructuring.

See e.g., *Timminco Re.*, 2012 ONSC 106 (Initial Order hearing) at para. 17

36. But the Model Order and the CCAA Stay in this case also extend to *former* directors and officers, and that rationale usually cannot apply to them (former directors or officers are not usually involved in the restructuring efforts). Instead, the reason for that provision is because former directors and officers would have indemnity claims against the debtor for most if not all such lawsuits, and the stay prevents some creditors from gaining potential advantages by pursuing directors when such claims could not be pursued against the company directly. This same rationale applies to extending the stay of proceedings to the Third Party Defendants, who can reasonably be expected to assert indemnity claims.

C. The Class Actions are "In Respect of" Sino-Forest

37. Class counsel cannot seriously argue that the Class Actions are not "in respect of" Sino-Forest. Every description of each of the Third Party Defendants in the Amended Statement of Claim in the Ontario Class Action explains those parties only by reference to their relationship to SFC (e.g., Ernst & Young was SFC's auditor since 2007, BDO was SFC's auditor from 2005 to 2007, the underwriters underwrote offerings made by SFC at various times, etc.).

38. Given that the phrase "in respect of" is to be given the "widest possible scope", it is respectfully submitted that the proceeding is clearly "in respect of" SFC, its business or property.

D. It Makes Sense for the CCAA Stay to Apply to these Third Parties

39. For all of the reasons set out by this Honourable Court in *Timminco*, it simply makes no sense for the Class Actions to proceed against the Third Party Defendants while it is stayed against SFC. This Court said in *Timminco*:

[I]t makes no sense to lift the stay only as against Photon and leave it in place with respect to the Timminco Entities. As counsel submits, the Timminco Entities have an interest in both the legal issues and the factual issues that may be advanced if Mr. Penneyfeather proceeds as against Photon, as any such issues as are determined in Timminco's absence may cause unfairness to Timminco. I am in agreement with counsel's submission that to make such an order would be prejudicial to Timminco's business and property. In addition, I accept the submission that it would also be unfair to Photon to require it to answer Mr. Penneyfeather allegations in the absence of Timminco as counsel has indicated that Photon will necessarily rely on documents and information produced by Timminco as part of its own defence.

I am also in agreement with the submission that it would be wasteful of judicial resources to permit the class proceedings to proceed as against Photon but not Timminco as, in addition to the duplicative use of court time, there would be the possibility of inconsistent findings on similar or identical factual and legal issues. For these reasons, I have concluded that it is not appropriate to lift the stay as against Photon.

Timminco Ltd. (Re.), 2012 ONSC 2515, at paras. 23-24

40. Just like in *Timminco*, here, the debtor has an interest in the legal and factual issues that may be addressed against the Third Party Defendants, and it would be unfair to have those matters determined in the absence of SFC. It would be equally unfair to the Third Party

Defendants to have those matters determined in the absence of SFC. Finally, it would be a waste of judicial resources to allow the class proceeding to proceed, given the possibility of inconsistent findings on similar or identical factual and legal issues.

E. Management's Time Should Be Spent on a Restructuring

41. Moreover, just like the management in *Timminco*, here, management is focussed on a sales process designed to determine whether there are market participants who view the assets of SFC as exceeding the amount owed to the Noteholders. Further, management is dedicated towards effecting a restructuring.

42. There is no basis upon which the Court could conclude that allowing the Class Actions to continue unabated would help to facilitate a restructuring. To the contrary, that diversion of management resources would be harmful to the company's restructuring efforts.

43. Moreover, the plaintiffs suffer no prejudice from the continued operation of the CCAA Stay. There is nothing pressing that needs to be resolved. No limitations issues arise, in light of SFC's willingness to extend the tolling agreement. All that the plaintiffs are seeking, both in their position relating to the scope of the stay and in their coordinate motions, is to increase leverage against SFC and other stakeholders. That is exactly the type of manoeuvring and posturing that the CCAA in general and the CCAA Stay in particular are designed to prevent.

F. Alternate Relief

44. As stated above, the words of the CCAA Stay expressly apply beyond the Applicant and as such, no further extension of the wording is necessary for it to apply to the Third Party

Defendants. That was the case in *Timminco* as well, where the CCAA stay was said to apply to Photon, and the Court declined to lift the stay as it related to Photon.

45. Nonetheless, to the extent that the CCAA Stay in this case needs to be extended to capture the Third Party Defendants, it is respectfully requested that such relief be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,


BENNETT JONES LLP

Lawyers for Sino-Forest Corporation

SCHEDULE "A" – AUTHORITIES CITED

1. *Sarvanis v. Canada*, 2002 SCC 28
2. *Canadian Airlines Corp. (Re)*, [2000] A.J. No. 1692 (Q.B.)
3. *Stelco Inc. (Re)*, [2005] O.J. No. 1171 (C.A.)
4. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.)
5. *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.)
6. *Timminco Ltd. (Re)*, 2012 ONSC 2515
7. *Timminco Ltd. (Re)*, 2012 ONSC 106

SCHEDULE B – STATUTORY REFERENCES

N/A

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

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

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(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**FACTUM OF THE APPLICANT
(Motion Returnable May 8, 2012)**

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

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant