Court of Appeal File Numbers: M42068
Superior Court File No. CV-12-9667-00CL

COURT OF APPEAL FOR ONTARIO

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

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

RESPONDING FACTUM OF SINO-FOREST CORPORATION

(Motion for Leave to Appeal)

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TO: THE APPEALS SERVICE LIST

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I. OVERVIEW

1. The Applicant, Sino-Forest Corporation ("SFC"), opposes the motion brought by Invesco Canada Ltd., Northwest & Ethical Investment L.P., and Comité Syndical National de Retraite Batirente Inc. (collectively, the "Moving Parties"), for leave to appeal sections 40 and 41 of the order of the Honourable Justice Morawetz dated December 10, 2012 (the "Sanction Order").

2. This appeal is moot. As the factum of the Moving Parties makes clear, they made a conscious decision not to expedite their appeal nor seek a stay pending appeal. Instead, they allowed SFC's Plan of Compromise and Reorganization dated December 3, 2012 (as amended, the "Plan") to be implemented on January 30, 2013, a month and a half after the Sanction Order was made. Plan distributions have been made, the operating assets of SFC have been transferred to Newco for the benefit of creditors, the Board has resigned and SFC is a shell with almost no assets. This egg cannot be unscrambled. Case law interpreting the *Companies' Creditors*

Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA") makes clear that plan implementation renders moot an appeal from a sanction order.

3. The Sanction Order approved SFC's Plan. The Plan was the result of significant back and forth negotiations between SFC, the Monitor and SFC's stakeholders. It represented a compromise in the true sense and an overwhelming majority, more than 98%, of SFC's creditors voted in favour of the Plan in its entirety.

4. In granting the Sanction Order, Justice Morawetz correctly determined that the Plan was fair and reasonable to SFC's stakeholders. Justice Morawetz has overseen SFC's CCAA proceeding since the beginning and was uniquely positioned to consider the competing interests of SFC's stakeholders that have been compromised in the Plan.

5. Justice Morawetz's decision should be accorded significant deference and the Moving Parties have failed to establish any of the criteria required to be granted leave to appeal the Sanction Order. In any event, the proposed appeal is moot given that the Plan has been implemented and substantially all of the consideration under the Plan has already been distributed.

6. The Moving Parties represent a tiny fraction of SFC's security holders and are represented by counsel that lost a carriage fight to bring an Ontario class action on behalf of SFC's noteholders and shareholders against SFC and third party defendants, including SFC's auditors and underwriters. The Moving Parties never filed a proof of claim in SFC's CCAA proceeding. In fact, the Moving Parties' counsel did not file a notice of appearance in the proceeding until December 6, 2012, the day before the Sanction Order hearing.

7. After choosing not to participate in the lengthy negotiation process that led to the development of the Plan, the Moving Parties now seek to undermine the compromise that the Plan represents by seeking to appeal certain sections of the Sanction Order now that the distributions have been made.

8. Sections 40 and 41 of the Sanction Order sanction sections 11.1 and 11.2 of the Plan, which provide a framework for the settlement of class action claims in the various class actions that have been brought against SFC, its officers and directors, and third party defendants. Sections 40 and 41 of the Sanction Order provide that upon the satisfaction of certain conditions precedent, which include further court approval of any settlement agreement, the framework for releases that were negotiated between the various parties to the class actions shall be given effect.

9. Article 11 of the Plan, which the Moving Parties seek to remove from the Plan, is an important component of the Plan that helped resolve Ernst & Young's, BDO's and the Underwriters' (defined below) claims against SFC and all of these parties' objections to the Plan. In consideration for, among other things, Article 11 of the Plan, each of Ernst & Young, the Underwriters, and BDO either supported or did not oppose the Plan despite not being entitled to any distributions under the Plan, thus maximizing value for SFC's other stakeholders.

10. The Plan is an integrated whole. Its parts are not severable. Neither are the approvals implemented by the Sanction Order. Without the provisions that the Moving Parties seek to have removed, both the Plan and the positions of major stakeholder parties at the Sanction Order hearing would have been different.

11. Article 11 of the Plan significantly contributed to SFC's restructuring and the maximization of stakeholder recovery. It formed an integral part of the negotiated bargain that led to the overwhelming support of SFC's Plan. The Sanction Order represented Justice Morawetz's approval of an integrated Plan which has subsequently been implemented. The Moving Parties ought not be granted leave to appeal one aspect of the Sanction Order's effects, as doing so would undermine the negotiated agreement that the Plan represents between SFC and its stakeholders.

II. FACTS

12. As set out below, SFC disagrees with the characterization of the facts in the moving parties' factum.

A. Background

13. SFC was an integrated forest plantation operator and forest products company. Its principal businesses included the ownership and management of forest plantation trees, the sale of standing timber, wood logs and wood products, and the complementary manufacturing of downstream engineered-wood products. The majority of SFC's plantations were located in the southern and eastern regions of the Peoples Republic of China (the "PRC").

14. As a result of a report issued by short-seller Muddy Waters LLC ("Muddy Waters") on June 2, 2011, which alleged that SFC was a "near total fraud" and a "Ponzi scheme", SFC found itself embroiled in multiple class actions across Canada and the U.S., and investigations and

regulatory proceedings with the Ontario Securities Commission (the "OSC"), the Hong Kong Securities and Futures Commission and the RCMP.[1]

15. On March 30, 2012, Justice Morawetz of the Ontario Superior Court made the Initial Order granting a stay of proceedings against SFC and certain of its subsidiaries, and appointing FTI Consulting Canada Inc. as the Monitor in the CCAA proceedings.[2] The stay of proceedings was subsequently extended through February 1, 2013.[3]

B. Claims Process

16. On May 14, 2012, Justice Morawetz granted an order (the "Claims Procedure Order") which approved a claims process that was developed by SFC in consultation with the Monitor.[4]

17. In order to identify the nature and extent of claims asserted against SFC's subsidiaries, the Claims Procedure Order required any claimant that had or intended to assert a right or claim against one or more of the subsidiaries, relating to a purported claim made against SFC, to so indicate on their Proof of Claim.[5]

C. Claims Relevant to this Motion

18. As detailed below, the claims process established by the Claims Procedure Order gave rise to a number of claims that are relevant for purposes of this motion.

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[1] Affidavit of W. Judson Martin sworn November 29, 2012 (the "Martin November 29 Affidavit"), para 9, Motion Record of the Appellants, Tab 3(N), p. 289.
[2] Initial Order dated March 30, 2012, Responding Motion Record of Sino-Forest Corporation, Tab 1(A).
[3] Martin November 29 Affidavit, para. 28, Motion Record of the Appellants, Tab 3(N), p. 294.
[4] Martin November 29 Affidavit, para. 39, Motion Record of the Appellants, Tab 3(N), p. 298.
[5] Martin November 29 Affidavit, para. 41, Motion Record of the Appellants, Tab 3(N), pp. 298-299.

1. The Noteholders

19. At the date of filing, SFC had approximately $1.8 billion of principal amount of debt owing under notes, plus accrued and unpaid interest.[6]

2. The Shareholder / Former Noteholder Group

20. After the Muddy Waters report was released, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and the Underwriters (defined below) involved in prior equity and debt offerings, were named as defendants in a number of proposed class action lawsuits. Presently, there are active proposed class actions in four jurisdictions: Ontario, Quebec, Saskatchewan, and New York.[7]

21. The *Labourers v. Sino-Forest Corporation* class action (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP.[8] It has two components: (1) a shareholder claim, brought on behalf of current and former shareholders of SFC, seeking damages in the amount of $6.5 billion for general damages, $174.8 million in connection with a prospectus issued in June 2007, $330 million in relation to a prospectus issued in June 2009, and $319.2 million in relation to a prospectus issued in December 2009;[9] and (2) a noteholder claim, brought on behalf of former holders of SFC's notes in the amount of approximately $1.8 billion asserting, among other things, damages for loss of value in the notes.[10]

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[6] Martin November 29 Affidavit, para. 43, Motion Record of the Appellants, Tab 3(N), pp. 299-300.
[7] Martin November 29 Affidavit, paras. 45-50, Motion Record of the Appellants, Tab 3(N), pp. 300-302.
[8] Who succeeded in a carriage fight. See Smith v. Sino-Forest Corporation, 2012 ONSC 24, para. 233 ["I award carriage to Koskie Minsky and Siskinds in Labourers v. Sino-Forest. In the race for carriage of an action against Sino-Forest, I would have ranked Rochon Genova second and Kim Orr third."], Brief of Authorities of Sino-Forest Corporation, Tab 1.
[9] Martin November 29 Affidavit, para. 47, Motion Record of the Appellants, Tab 3(N), p. 301.
[10] Martin November 29 Affidavit, para. 48, Motion Record of the Appellants, Tab 3(N), pp. 301-302.

22. The Quebec class action was brought by Siskinds' office in Quebec, and is similar in nature to the Ontario Class Action. The New York complaint 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, but no quantum of damages is specified in the complaint.[11]

23. The Ontario, Quebec and New York class action plaintiffs all filed Proofs of Claim in the CCAA proceeding. The plaintiffs in the Saskatchewan claim did not file a Proof of Claim.[12] A few shareholders filed Proofs of Claim separately, but no Proof of Claim was filed by Kim Orr LLP who now represents the Moving Parties.

24. In this proceeding, an Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers' Committee") has appeared to represent the interests of shareholders and noteholders who have asserted class action claims against SFC and others. The Ad Hoc Securities Purchasers' Committee is represented by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP.[13]

3. Auditors

25. Since 2000, SFC has had two auditors: Ernst & Young, who acted as auditor from 2000 to 2004 and 2007 to 2012, and BDO Limited ("BDO"), who acted as auditor from 2005 to 2006.[14]

26. The auditors asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the shareholder class actions, with each of the auditors having

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[11] Martin November 29 Affidavit, para. 50, Motion Record of the Appellants, Tab 3(N), p. 302.
[12] Martin November 29 Affidavit, para. 49, Motion Record of the Appellants, Tab 3(N), p. 302.
[13] Martin November 29 Affidavit, para. 51, Motion Record of the Appellants, Tab 3(N), pp. 302-303.
[14] Martin November 29 Affidavit, para. 61, Motion Record of the Appellants, Tab 3(N), p. 304.

asserted claims in excess of $6.5 billion. In addition, the auditors asserted claims for payment of professional fees associated with SFC after the release of the Muddy Waters report, and generalized claims for damage to reputation.[15] The auditors also asserted indemnification claims against SFC in respect of the class action claims against them by the former noteholders.[16]

27. The auditors asserted claims against SFC's subsidiaries for, among other things, indemnification in connection with the shareholder class actions. Those claims tended to treat SFC and its subsidiaries interchangeably or as one collective entity.[17]

4. Underwriters

28. In each instance where SFC has had a debt or equity public offering, such offering has been underwritten. A total of eleven firms[18] (the "Underwriters") have acted as SFC's underwriters and have also been named as defendants in the Ontario Class Action. Certain of the Underwriters are also defendants in the New York class action.[19]

29. Like the auditors, the Underwriters filed claims against SFC seeking contribution and indemnity for the shareholder class actions.[20] The Underwriters also asserted indemnification claims in respect of the class action claims against them by the former noteholders.[21] Certain of the Underwriters also asserted claims against SFC's subsidiaries in connection with the four note offerings.[22]

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[15] Martin November 29 Affidavit, para. 62, Motion Record of the Appellants, Tab 3(N), p. 305.
[16] Martin November 29 Affidavit, para. 66, Motion Record of the Appellants, Tab 3(N), p. 306.
[17] Martin November 29 Affidavit, para. 67, Motion Record of the Appellants, Tab 3(N), p. 306.
[18] The full list of the underwriting firms is provided in the Martin November 29 Affidavit, para. 68, Motion Record of the Appellants, Tab 3(N), pp. 306-307.
[19] Martin November 29 Affidavit, para. 68, Motion Record of the Appellants, Tab 3(N), pp. 306-307.
[20] Martin November 29 Affidavit, para. 69, Motion Record of the Appellants, Tab 3(N), p. 307.
[21] Martin November 29 Affidavit, para. 71, Motion Record of the Appellants, Tab 3(N), p. 307.
[22] Martin November 29 Affidavit, para. 72, Motion Record of the Appellants, Tab 3(N), p. 307.

D. The Equity Claims Decision

30. On June 26, 2012, SFC brought a motion for an order directing that claims against SFC that arise in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims are "equity claims" as defined in section 2 of the CCAA, including the claims by or on behalf of shareholders asserted in the class action proceedings.[23] The equity claims motion did not purport to deal with the component of the class action proceedings relating to SFC's notes.[24]

31. In reasons released on July 27, 2012, Justice Morawetz granted the relief sought by SFC (the "Equity Claims Decision"), finding that "the claims advanced in the Shareholder Claims are clearly equity claims." The Ad Hoc Securities Purchasers' Committee did not oppose the motion and no issue was taken by any party with the Court's determination that the shareholder claims against SFC were "equity claims".[25] The Equity Claims Decision was affirmed by this Honourable Court on November 23, 2012.[26]

E. Efforts and Achievements in Arriving at a Negotiated Resolution

32. From shortly after SFC's CCAA proceeding was commenced, efforts were made to develop a path forward for SFC that could achieve the requisite creditor support.

33. There could be no effective restructuring of SFC's business and separation from the Canadian parent (which was the objective since the commencement of the CCAA proceedings) if the claims asserted against SFC's subsidiaries arising out of, or connected to, claims against SFC

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[23] Martin November 29 Affidavit, para. 52, Motion Record of the Appellants, Tab 3(N), p. 303.
[24] Martin November 29 Affidavit, para. 52, Motion Record of the Appellants, Tab 3(N), p. 303.
[25] Martin November 29 Affidavit, para. 53, Motion Record of the Appellants, Tab 3(N), p. 303.
[26] Martin November 29 Affidavit, para 54, Motion Record of the Appellants, Tab 3(N), p.303.

remained outstanding.[27] Therefore, the Plan had to provide for the release of claims against SFC's subsidiaries.

34. In addition, timing and delay were critical factors in this restructuring. Undue delays and the passage of time would have negatively impacted the value of SFC's assets and the recovery by stakeholders.[28]

35. Accordingly, it was critical to the success of the CCAA restructuring, to the maximization of value and to the preservation of assets, that the claims against SFC and SFC's subsidiaries be determined or resolved such that the assets held by the subsidiaries not be subject to these contingent claims, and that this be achieved as quickly as possible.[29]

36. It is for these reasons, among others, that SFC, supported by the noteholders, continued its efforts to advance this restructuring as soon as possible. SFC welcomed the initiative by 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 SFC and SFC's subsidiaries.[30]

37. On July 25, 2012, Justice Morawetz issued a mediation order (the "Mediation Order") on the consent of all parties.[31] For the reasons set out above, SFC welcomed the Mediation Order and the ensuing mediation. The Court-ordered mediation involving the parties to the Ontario Class Action, the noteholders and the Monitor was consistent with the direction and

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[27] Martin November 29 Affidavit, para. 124, Motion Record of the Appellants, Tab 3(N), p. 322.
[28] Affidavit of W. Judson Martin, sworn January 11, 2013 ("Martin January 11 Affidavit"), para. 11, Motion Record of Sino-Forest Corporation, Tab 1 (B), p. 37.
[29] Martin January 11 Affidavit, para. 12, Motion Record of Sino-Forest Corporation, Tab 1(B), p. 37.
[30] Martin January 11 Affidavit, para. 13, Motion Record of Sino-Forest Corporation, Tab 1 (B), p. 37.
[31] Martin November 29 Affidavit, para. 84, Motion Record of the Appellants, Tab 3(N), p. 311.

encouragement from Justice Morawetz that the principal stakeholders should focus their efforts on the resolution of claims.[32]

38. Paragraph 4 of the Mediation Order provided that the purpose of the mediation would be the resolution of the Ontario and Quebec class actions; paragraph 5 directed the parties, including the Ad Hoc Securities Purchasers' Committee, to attend the mediation with full authority to settle the class action claims. The mediation occurred in a context where the Court had the jurisdiction to settle the class actions, and yet the Moving Parties never attempted to participate in the mediation nor did they ever raise any objection to the mediation.

39. SFC established a confidential data room, containing approximately 18,000 documents, that was made available to parties to the mediation who signed non-disclosure agreements.[33]

40. The mediation took place on September 4 and 5, 2012. Justice Newbould acted as the mediator. While the mediation did not result in a global resolution, further discussions continued among certain of the parties after the conclusion of the mediation, and those discussions continued up to the meeting of SFC's creditors.[34]

41. As a result of these efforts, SFC obtained the support of and non-opposition to the Plan by significant participants in the CCAA proceedings prior to the creditors' meeting, namely: (1) noteholders representing a significant majority of the principal amount of outstanding notes agreed to support the proposed restructuring at an early stage of the proceeding; (2) shareholders and former noteholders, through the Ad Hoc Securities Purchasers Committee, agreed on October 26, 2012 to not oppose the Plan and agreed to the amendments embodied in the Plan as

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[32] Martin January 11 Affidavit, para. 14, Motion Record of Sino-Forest Corporation, Tab 1(B), p. 38.
[33] Martin November 29 Affidavit, para. 85, Motion Record of the Appellants, Tab 3(N), p. 311.
[34] Martin November 29 Affidavit, para. 86, Motion Record of the Appellants, Tab 3(N), p. 311.

approved; (3) Ernst & Young agreed to support the Plan; (4) the Underwriters agreed to support the Plan; and (5) BDO agreed not to oppose the Plan.

42. In the end, the only parties who opposed the Plan were the Moving Parties who must have been fully aware of the CCAA process, given the very public nature of the process and the active participation of the class action plaintiffs. Despite this, the Moving Parties waited until December 6, 2012, the day before the Sanction Hearing, to file a notice of appearance in the CCAA process.

F. The Ernst & Young Settlement

43. Following the mediation, Ernst & Young continued discussions with the Ontario Class Action Plaintiffs, ultimately resulting in the Minutes of Settlement which define the terms of the Ernst & Young Settlement.[35]

44. SFC was and remains of the view that the Ernst & Young Settlement was a positive development in its restructuring for the reasons expressed below. As a result, SFC was amenable to amending the draft Plan to provide for the mechanics and framework for the Ernst & Young Settlement and the release of Ernst & Young (the "Ernst & Young Release"), and the mechanism for future similar settlements, in order that it could be voted on at the meeting of creditors and sanctioned by Justice Morawetz.[36]

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[35] Martin January 11 Affidavit, para. 16, Motion Record of Sino-Forest Corporation, Tab 1(B), p. 38.
[36] Martin January 11 Affidavit, para. 17, Motion Record of Sino-Forest Corporation, Tab 1(B), p. 38.

45. The Ernst & Young Settlement provided significant benefit to SFC's restructuring proceedings:[37]

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

(b) Ernst & Young's support simplified and accelerated the Plan process:

(i) Ernst & Young agreed that its claims against SFC and its subsidiaries are released, which claims were significant as stated above;

(ii) the proofs of claim filed by Ernst & Young set out extensive claims that could be asserted directly against the SFC subsidiaries.

(iii) Ernst & Young agreed not to seek leave to appeal to the Supreme Court of Canada in respect of the dismissal by this Honourable Court of Ernst & Young's appeal of the Equity Claims Decision;

(iv) by agreeing to release all of its claims, Ernst & Young 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 claims were ultimately resolved in its favour and not subordinated; and

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[37] Martin January 11 Affidavit, para. 19, Motion Record of Sino-Forest Corporation, Tab 1(B), pp. 39-40.

(C) potentially extending the timelines to complete the restructuring of SFC;

(c) Ernst & Young agreed not to receive any distributions of any kind under the Plan in respect of the noteholder class action claims, as have the other third party defendants (as discussed below). Without that agreement, the Unresolved Claims Reserve (as defined in the Plan) 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 SFC will significantly increase the recovery to a class of stakeholders that otherwise would not have received any amount under the Plan.[38]

46. For these reasons, among others, 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.[39]

G. The Plan and the Treatment of Ernst & Young's, the Underwriters and Named Third Party Defendants' Claims

47. Pursuant to an Order of Justice Morawetz dated August 31, 2012 (the "Plan Filing and Meeting Order"), a creditor meeting was held on December 3, 2012 at which an overwhelming

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[38] Martin January 11 Affidavit, para. 19, Motion Record of Sino-Forest Corporation, Tab 1(B), pp. 39-40.
[39] Martin January 11 Affidavit, para. 21, Motion Record of Sino-Forest Corporation, Tab 1(B), p.40.

majority of SFC's affected creditors approved the Plan. The Plan was sanctioned by Justice Morawetz on December 10, 2012.

48. 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 SFC. The Plan 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 SFC's subsidiaries.[40]

49. Section 11.1 of the Plan provides a framework pursuant to which Ernst & Young could receive a broad release under the Plan if several conditions are met. The Plan (and section 40 of the Sanction Order) explicitly state that the Ernst & Young Release will only be granted if all conditions are met including further Court approval of the Ernst & Young Settlement.[41]

50. Section 11.2 of the Plan provides a framework pursuant to which a Named Third Party Defendant (which now includes the Underwriters, BDO, SFC's former CEO and Chairman of the Board Allen Chan, SFC's former CFO David Horsley and SFC's former president Kai Kit Poon) can obtain a release under the Plan in substantially the same form as contemplated for Ernst & Young.[42]

51. In return for sections 11.1 and 11.2, among other things, the Plan provides that none of Ernst & Young, the Underwriters or any other Named Third Party Defendant shall be entitled to

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[40] Martin January 11 Affidavit, para. 22, Motion Record of Sino-Forest Corporation, Tab 1(B), pp. 40-41.
[41] Subsection 8.2(z) of the Plan and section 11.1 of the Plan, Motion Record of the Appellants, Tab 4(A).
42 Subsections 11.2(b) and (c) of the Plan, Motion Record of the Appellants, Tab 4(A).

any distributions under the Plan and in fact none of them received distributions when the Plan was implemented on January 30, 2013.[43]

52. In summary, the Plan provides for the mechanics and framework for the Ernst & Young Settlement and 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 Ernst & Young, the Underwriters and the withdrawal of objections to the Plan by BDO.

H. Findings and Conclusions of Justice Morawetz

53. In issuing the Sanction Order and addressing the Moving Parties' request for an adjournment of the hearing of SFC's motion for the Sanction Order, Justice Morawetz correctly found that the Moving Parties' objections were premature and were more appropriately brought at the anticipated future hearing to consider whether the Ernst & Young Settlement (and any other settlement should one come to be):

> [22] Having reviewed these documents [the relevant provisions of the Plan], it is apparent that approval of the E&Y Settlement is not before the court on this motion and no release is being provide to E&Y as a result of this motion. In the event all of the pre-conditions are satisfied and if all of the required court approvals and orders are issued, the position of the Funds [the Moving Parties] could be affected. However, the Funds will have the opportunity to make argument on such hearings.
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> [23] I have also reviewed the form of Sanction Order being requested specifically paragraph 40. This provision provides that the E&Y Settlement and the release of the E&Y Claims pursuant to section 11.1 of the Plan shall become effective upon the satisfaction of certain conditions precedent, including court approval of the terms of the E&Y Settlement, the terms and scope

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[43] Subsections 7.1(m) (n) and (o) of the Plan, Motion Record of the Appellants, Tab 4(A).

> of the E&Y Release and the Settlement Trust Order and the granting of the Settlement Trust Order.
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> [24] Paragraph 41 of the draft Sanction Order also provides that any Named Third Party Defendant Settlement, Named Third Party Defendant Settlement Order and Named Third Party Defendant Release, the terms and scope of which remain in each case subject to further court approval in accordance with the Plan, shall only become effective after the Plan Implementation Date and upon the satisfaction of the conditions precedent, set forth in section 11.2 of the Plan.
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> [25] The requested Sanction Order confirms my view that the arguments put forth by counsel on behalf of the Funds are premature and can be addressed on the return of the motion to approve the specific settlements and releases.[44]

54. As is described below, Justice Morawetz was correct in concluding that the arguments put forward by the Moving Parties were premature and could be addressed on the return of the motion to approve the specific settlements and releases, and in fact, that is already exactly what has happened.

I. Status of the SFC CCAA

55. Given SFC's increasingly diminished financial resources (as described above), the Plan was implemented on January 30, 2013. Substantially all of the consideration under the Plan has now been distributed. The operating assets of SFC have been transferred to Newco for the benefit of creditors and the Board of SFC subsequently resigned. As such, SFC is a shell with almost no assets.

J. Motion to Approve the Ernst & Young Settlement

56. On February 4, 2013, Justice Morawetz heard a motion seeking approval of the Ernst & Young Settlement. The Moving Parties opposed the motion, arguing that the Ernst & Young

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[44] Sanction Order Endorsement, December 10, 2012, Motion Record of the Appellants, Tab 5.

Settlement was not fair and reasonable. Any issues relating to the Ernst & Young Settlement, including its fairness, continuing discovery rights in the Ontario or Quebec class actions, or opt-out rights, were properly dealt with at that hearing. Justice Morawetz has reserved his decision.

57. The motion heard February 4, 2013 was the forum that Justice Morawetz contemplated to properly address the Moving Parties' concerns.

III. LAW AND ARGUMENT

A. Leave to Appeal

58. Leave to appeal an order made in a CCAA proceeding can only be granted where:

(a) the point on appeal is of significance to the practice;

(b) the point on appeal is of significance to the underlying parties;

(c) the appeal is *prima facie* meritorious and not frivolous; and

(d) the appeal will not hinder the progress of the action.[45]

59. The four part test for granting leave to appeal requires that all four elements be satisfied; the failure to establish any one of the requirements will result in a dismissal of the application.[46] In this case, the moving parties have failed to satisfy at least three of the four requirements.

60. The moving parties carry a heavy burden in order to obtain leave in a CCAA proceeding, and courts have emphasized that such an application will only be granted sparingly because of, among other things, the "real time" dynamic of CCAA proceedings and the discretionary nature

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[45] *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.) at para. 24, Brief of Authorities of Sino-Forest Corporation, Tab 2; *Timminco Ltd. (Re)*, 2012 ONCA 552 at para. 2, Brief of Authorities of Sino-Forest Corporation, Tab 3.

[46] *Statoil Canada Ltd. (Arrangement relatif a)*, 2012 QCCA 665 at paras. 4 & 7, Brief of Authorities of Sino-Forest Corporation, Tab 4.

of orders made by supervising CCAA judges. In one of the oft-cited cases on this issue, Justice MacFarlane stated:

> ...I am of the view that this Court should exercise its powers sparingly when it is asked to intervene with respect to questions which arise under the CCAA. The process of management which the Act has assigned to the trial Court is an ongoing one...A colleague has suggested that a judge exercising a supervisory function under the CCAA is more like a judge hearing a trial, who makes orders in the course of that trial...In supervising a proceeding under the CCAA, orders are made, and orders are varied as changing circumstances require. Orders depend upon a careful and delicate balancing of a variety of interests and of problems. In that context appellate proceedings may well upset the balance, and delay or frustrate the process under the CCAA. I do not say that leave will never be granted in a CCAA proceeding. But the effect upon all parties concerned will be an important consideration in deciding whether leave ought to be granted.[47]

61. As described in detail below, the Moving Parties have failed to satisfy the four part test for granting leave to appeal. In addition, such appeal would be moot in any event given that the Plan has already been substantially implemented and cannot be undone.

1. An Appeal Would be Moot

62. In addition to failing to meet the test for leave to appeal, the issue of mootness is also dispositive against the granting of leave to appeal. Where an applicant cannot be granted the remedy it seeks even if it succeeds on appeal, the appeal becomes moot and leave to appeal must be denied. In this case, the Plan has been implemented and it cannot be undone. Where a CCAA plan has almost been fully implemented, the Court cannot rewrite the plan nor can it remit the matter back to the CCAA judge for such a purpose.

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[47] *Statoil Canada Ltd. (Arrangement relatif a), supra* at para. 4, Brief of Authorities of Sino-Forest Corporation, Tab 4; *Timminco Ltd. (Re), supra* at para. 2, Brief of Authorities of Sino-Forest Corporation, Tab 3; *Stelco Inc.*, [2005] O.J. No. 4883 (C.A.) at paras 15 & 18, Brief of Authorities of Sino-Forest Corporation, Tab 5; *Pacific National Lease Holding Corp. (Re)* (1992), 19 B.C.A.C. 134 at paras. 28-30, Brief of Authorities of Sino-Forest Corporation, Tab 6.

> If the proposed appeal were allowed, this Court cannot rewrite the Plan; nor could it remit the matter back to the CCAA supervising judge for such purpose. It must either uphold or set aside the approval of the Plan granted by the court below. In effect, if Resurgence succeeded on appeal, the Plan would be vacated. However, that remedy is no longer possible, at minimum, because the certificate issued by the Registrar cannot be revoked. As stated in Norcan, an appellate court cannot order a remedy which could have no effect. This Court cannot order that the Plan be undone in its entirety.
>
> ...On every ground proposed by the applicant, it appears that the response of this Court can only be to either uphold or set aside the approval of the court below. Setting aside the approval is no longer possible since essential elements of the Plan have been implemented, and are now irreversible. Thus, the applicant cannot be granted the remedy it seeks. No prospective benefit can accrue to the applicant even if it succeeded on appeal. The appeal, therefore, is moot.[48]

In this case, the remedy sought by the Moving Parties is no longer possible because the implementation of the Plan cannot be undone. As the Court cannot order a remedy which would leave the Plan unaffected, the appeal is moot.[49]

63. The irreversible nature of a Plan, once it is implemented, is further demonstrated by the recognized "reliance that parties place on the finality of a Sanction Order [which] is such that it would only be in extraordinary circumstances of a clear mistake, operative misrepresentation or fraud that would permit variation without re-opening the whole process."[50] In this case, the whole process can no longer be re-opened as the parties have already acted upon the Plan which has been implemented. The Moving Parties knew that the Plan, in its current form, was going to be implemented and they did not seek a stay of the Sanction Order or the implementation of the Plan. The Plan has been implemented, and substantially all of the consideration under the Plan has now been distributed. The effects of the Sanction Order can no longer be undone.

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[48] *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 238 at paras. 30,32, Brief of Authorities of Sino-Forest Corporation, Tab 7.

[49] *Resurgence Asset Management LLC v. Canadian Airlines Corp., supra*, at paras. 20-32, Brief of Authorities of Sino-Forest Corporation, Tab 7.

[50] *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017 at para. 109, Brief of Authorities of Sino-Forest Corporation, Tab 8.

2. Point on appeal is not of significance to the practice

64. The point on appeal is not of significance to the practice. The Moving Parties' complaint is essentially that the Ernst & Young Settlement is not fair and improperly denies them opt-out rights. Justice Morawetz correctly determined that he need not address those issues when he granted the Sanction Order and that such issues were properly addressed at the hearing regarding the court's approval of the Ernst & Young Settlement.

65. In paragraph 44 of their factum, the Moving Parties incorrectly characterize the point on appeal as "The parameters governing how the CCAA may be used (or abused) to influence the ultimate assignment of liability among various parties for injuries suffered in [complex litigation cases]." With respect, this characterization mischaracterizes the purpose of Article 11 of the Plan. Nothing in Article 11 dictates the ultimate assignment of liability among various parties. The parties themselves have to do that by entering into a settlement agreement; Article 11 simply provides a framework for granting releases, if and only if, the parties enter into a settlement agreement that is ultimately approved by the Court.

66. Contrary to the Moving Parties' submission (at paragraph 45 of their factum), Article 11 does not provide releases that would operate to extinguish claims asserted in a related class action against "third-party" professionals who allegedly bear legal liability for losses suffered related to the reasons SFC became insolvent. Article 11 only provides releases to those "third-party" professionals who settle with the plaintiffs in those related class actions. Article 11 does not "extinguish" claims, it merely provides releases once those claims have settled and have received Court approval. There is a significant difference.

67. The Moving Parties also misinterpret and misapply subsections 5.1(2) and 19(2) of the CCAA. On their face, these provisions do not apply to the claims contemplated by the Moving Parties. Subsection 5.1(2), which provides that certain claims against directors may not be compromised, has been narrowly interpreted to only apply to releases against directors "in respect of unpaid obligations of the company and other contract-type claims where the law imposes liability" on the directors.[51] In other words, it would only apply to claims where the director either agrees to assume what would otherwise be an obligation of the company or where legislation imposes an obligation of the company on the director. These types of claims are not being asserted by the Moving Parties.

68. Subsection 19(2) is also not applicable as it only applies to claims against the debtor company, not third parties. Subsection 19(2) provides that a compromise "in respect of a debtor company may not deal with any claim" that relates to certain debts or liabilities. "Claim" is a defined term in the CCAA that is defined by reference to the term "claim provable within the meaning of the *Bankruptcy and Insolvency Act*". Under section 121 of the *Bankruptcy and Insolvency Act*, a provable claim in bankruptcy is a claim which can be asserted against the bankrupt, not against a third party. Subsection 19(2) only contemplates claims against the debtor company, not a third party, and is not applicable to the third party claims contemplated by the Moving Parties.

69. However, even if these provisions were potentially applicable in this case, they are still not applicable to Article 11 of the Plan. Subsection 5.1(2) provides that the compromise of claims against directors may not include certain claims. Subsection 19(2) sets out claims that

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[51] *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017 at para. 51, Brief of Authorities of Sino-Forest Corporation, Tab 8

cannot be compromised unless the claim's compromise is explicitly provided for and the creditor in relation to that debt has voted for the acceptance of the compromise. Article 11 does not trigger subsection 5.1(2) or subsection 19(2) as it does not compromise any prohibited claims. Rather, it merely provides a framework for releases if such claims ever settle and that settlement is subsequently approved by a court. These provisions do not purport to limit the ability of a plan to facilitate settlements between parties in relation to such claims, which is the actual effect of Article 11. There is no point on appeal that is significant to the practice

3. Point on appeal is not of significance to the underlying parties

70. As discussed above, the Moving Parties claim that the Ernst & Young Settlement is not fair and reasonable because it deprives them of meaningful opt-out rights. That is an argument that they are fully entitled to make (and did make) at the hearing for the motion to approve the Ernst & Young Settlement. If the court agrees with the Moving Parties and refuses to approve the Ernst & Young Settlement, no release will be provided pursuant to Article 11. The same is true for any subsequent settlement agreement negotiated between the class action plaintiffs and any of the Named Third Party Defendants.

71. The Moving Parties are always free to contest the fairness of any settlement agreement prior to the granting of any Article 11 release. There is accordingly no prejudice to the Moving Parties in denying them leave to appeal the Sanction Order.

4. Appeal is not *prima facie* meritorious

72. The Alberta Court of Appeal has held that in order for this requirement to be satisfied, "on first impression, there must appear to be an error in principle of law or a palpable and overriding error of fact. Exercise of discretion by a supervising judge, so long as it is exercised

judicially, is not a matter for interference by an appellate court, even if the appellate court were inclined to decide the matter another way."[52]

73. Courts have recognized and reiterated the large amount of deference that must be afforded to decisions made by the supervising judge in a CCAA proceeding.[53] Justice Morawetz has been overseeing this process since the beginning and is uniquely situated with respect to the facts of this case; his decision was based upon an intimate understanding of the issues facing SFC and its stakeholders and therefore this requirement is only satisfied if the moving parties can demonstrate that, *prima facie*, there was a palpable and overriding error.

74. No order under the CCAA better represents the careful and delicate balancing of a variety of interests and problems than the granting of a sanction order, which requires the judge who is intimately involved with the facts of the proceeding to determine if a plan is fair and reasonable. It is a question over which this Honourable Court has held that the application judge "exercises a large measure of discretion."[54]

75. Although unnecessary given the deference it is to be given, a review of Justice Morawetz's decision demonstrates that no error, let alone a palpable and overriding error, exists.

(a) The Plan is Fair and Reasonable

76. When determining whether a plan is fair and reasonable, the court does not require perfection. Rather:

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52 Resurgence Asset Management LLC v. Canadian Airlines Corp., 2000 ABCA 149 at para. 35, Brief of Authorities of Sino-Forest Corporation, Tab 9.

53 Ravelston Corp. (Re), 2007 ONCA 268 at *para.* 14, Brief of Authorities of Sino-Forest Corporation, Tab 10; *Resurgence Asset Management, supra* at para. 28, Brief of Authorities of Sino-Forest Corporation, Tab 9.

[54] *Metcalfe & Mansfield Alternative Investment II Corp. (Re)* (2008), 92 O.R. (3d) 513 at para. 107 Brief of Authorities of Sino-Forest Corporation, Tab 11.

> The court's role on a sanction hearing is to consider whether the plan fairly balances the interests of all stakeholders. Faced with an insolvent organization, its role is to look forward and ask: does this plan represent a fair and reasonable compromise that will permit a viable commercial entity to emerge? It is also an exercise in assessing current reality by comparing available commercial alternatives to what is offered in the proposed plan.[55]

77. These considerations are to be informed by the objectives of the CCAA, "namely, to facilitate the reorganization of a debtor company, its creditors, shareholders, employees and in many instances, a much broader constituency of affected persons."[56]

78. There is a heavy onus on persons who seek to displace a plan that the required majority has supported – particularly where, as here, the plan has received overwhelming support. In general, the court will not second-guess the business judgment of the stakeholders as expressed by their majority vote:

> A Plan under the CCAA is a compromise; it cannot be expected to be perfect. It should be approved it is fair, reasonable and equitable. Equitable treatment is not necessarily equal treatment. Equal treatment may be contrary to equitable treatment. One must look at the creditors as a whole (i.e., generally) and to objecting creditors (specifically) and see if rights are compromised in an attempt to balance interests (and have the pain of the compromise equitably shared) as opposed to a confiscation of rights. [...]
>
> Those voting on the Plan (and I noted there was a very significant "quorum" present at the meeting) do so on a business basis. As Blair J. said at p. 510 of *Olympia & York Developments Ltd.*:
>
> > As the other courts have done, I observe it is not my function to second guess the business people with respect to the "business" aspects of the Plan, descending into the negotiating arena and substituting my own view of what is a fair and reasonable compromise or arrangement for that

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[55] *Canadian Airlines, supra* at para. 3, Brief of Authorities of Sino-Forest Corporation, Tab 12, as adopted in *Canwest Global*, 2010 ONSC 4209 at para. 19, Brief of Authorities of Sino-Forest Corporation, Tab 13.

[56] *Canwest Global, supra* at para. 20, Brief of Authorities of Sino-Forest Corporation, Tab 13.

> of the business judgment of the participants. The parties themselves know best what is in their interests in those areas.
>
> The court should be appropriately reluctant to interfere with the business decisions of creditors reached as a body. There was no suggestion that these creditors were unsophisticated or unable to look out for their own best interests.[57]

79. There is no evidence that, *prima facie*, Justice Morawetz made a palpable and overriding error in determining that the Plan was fair and reasonable. The only time that Article 11 releases will ever be granted is after a court concludes that the settlement agreement in question is fair and reasonable and the Moving Parties (and any other objectors to that settlement agreement) have exhausted their rights of appeal. Accordingly, Article 11 can only release defendants after they have entered settlement agreements that Ontario's courts have found to be fair and reasonable for all affected parties. How can that be unfair or unreasonable?

80. The fact that the Plan provides a framework for releases that may facilitate settlements that are ultimately subject to further court approval cannot be said to be *prima facie* unfair or unreasonable given the competing interests that were before Justice Morawetz in granting the Sanction Order.

(b) The Plan is an Integrated Whole

81. The Plan was approved by over 98% (in both quantum and value) of voting creditors (who voted either in person or by proxy in accordance with the plan filing and meeting order

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[57] *Re T. Eaton Co.*, [1999] O.J. No. 5322 (S.C.J. (Comm. List)), at para. 5, Brief of Authorities of Sino-Forest Corporation, Tab 14; See similarly, *Canadian Airlines, supra*, at para. 97, Brief of Authorities of Sino-Forest Corporation, Tab 11; *Re Sammi Atlas* (1998), 3 C.B.R. (4th) 171 at paras. 4-5, Brief of Authorities of Sino-Forest Corporation, Tab 15; *Algoma Steel (Re.)*(2002), 30 C.B.R. (4th) 1, Brief of Authorities of Sino-Forest Corporation, Tab 16; *Metcalfe & Mansfield, supra* at para. 61, Brief of Authorities of Sino-Forest Corporation, Tab 11; and *Muscletech Research and Developement Inc. (Re.)*, (2007), 30 C.B.R. (5th) 59 (Ont. S.C.J.) at para. 18, Brief of Authorities of Sino-Forest Corporation, Tab 17.

dated August 31, 2012 and in accordance with the form directions) and was sanctioned by Justice Morawetz. The Plan reflected terms that were extensively negotiated by SFC, the Monitor and its stakeholders in order to reach a compromise and reorganization acceptable to its creditors and other participants in the proceedings. It is clear that the Plan is a compromise in the true sense of the word and should be read as a whole. As Justice Morawetz correctly held:

> The Plan was presented to the Meeting with Article 11 in place. This was the Plan that was the subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the [Moving Parties] was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.[58]

82. The Plan is an integrated whole. Its parts are not severable. Neither are the approvals implemented by the Sanction Order. Without the provisions addressing the Ernst & Young Settlement, both the Plan and the positions of major stakeholders at the Sanction Order hearing would have been different. The Moving Parties cannot now seek to undo a part of these arrangements and decisions. To sever or vary part of the Plan now that it has been approved and implemented would undermine the overwhelming voice of SFC's creditors as well as Justice Morawetz's careful balancing of the interests involved in deciding that the Plan was fair and reasonable.

83. As described above, to the extent that the Moving Parties have any basis for opposing the Ernst & Young Settlement (or any other settlement that may ultimately be entered into between the class action plaintiffs and another defendant), they will be (and have been) accorded an opportunity to raise those objections at another hearing where such objections are appropriate.

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[58] Sanction Hearing Endorsement of Justice Morawetz dated December 12, 2012 at para. 78, Motion Record of the Appellants, Tab 7.

IV. RELIEF SOUGHT

84. SFC respectfully requests that the Moving Parties' motion for leave to appeal the Sanction Order be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

BENNETT JONES LLP

Lawyers for Sino-Forest Corporation

SCHEDULE "A" – AUTHORITIES CITED

Jurisprudence

1. *Smith v. Sino-Forest Corporation*, 2012 ONSC 24
2. *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.)
3. *Timminco Ltd. (Re)*, 2012 ONCA 552
4. *Statoil Canada Ltd. (Arrangement relatif a)*, 2012 QCCA 665
5. *Stelco Inc.* (2005), 78 O.R. (3d) 241 (C.A.)
6. *Pacific National Lease Holding Corp. (Re)* (1992), 19 B.C.A.C. 134
7. *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 238
8. *Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017
9. *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 149
10. *Ravelston Corp. (Re)*, 2007 ONCA 268
11. *Metcalfe & Mansfield Alternative Investment II Corp. (Re)* (2008), 92 O.R. (3d) 513 (C.A.)
12. *Canadian Airline (Re)*, 2000 ABQB 442
13. *Canwest Global Communications (Re)*, 2010 ONSC 4209
14. *T. Eaton Co. (Re)* (1999), 15 C.B.R. (4^{th}) 311 (S.C.J. (Comm. List))
15. *Sammi Atlas Inc. (Re)* (1998), 3 C.B.R. (4^{th}) 171 (Gen. Div. (Comm. List))
16. *Algoma Steel (Re)* (2002), 30 C.B.R. (4^{th}) 1 (S.C.J. (Comm. List))
17. *Muscletech Research and Developement Inc. (Re)* (2007), 30 C.B.R. (5^{th}) 59 (Ont. S.C.J.)

SCHEDULE "B" – STATUTORY REFERENCES

***Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36**

Definitions

2. (1) In this Act,

...

"claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the Bankruptcy and Insolvency Act.

PART I- COMPROMISES AND ARRANGEMENTS

...

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

...

Claims that may be dealt with by a compromise or arrangement

19. (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

***Bankruptcy And Insolvency Act*, R.S.C., 1985, c. B-3**

Part V- Administration Of Estates

CLAIMS PROVABLE

Claims provable

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Debts payable at a future time

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Family support claims

(4) A claim in respect of a debt or liability referred to in paragraph 178(1)(b) or (c) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse, former common-law partner or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

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 of Appeal File Numbers: M42068
Court File No. CV-12-9667-00CL

COURT OF APPEAL FOR ONTARIO

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