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

FACTUM OF THE AD HOC COMMITTEE OF NOTEHOLDERS OF SINO-FOREST CORPORATION
(on Motion for Plan Sanction Order)

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FACTUM OF THE AD HOC COMMITTEE OF NOTEHOLDERS OF SINO-FOREST CORPORATION

I OVERVIEW

1. This factum is submitted by the ad hoc committee of Noteholders (the "**Ad Hoc Noteholders**", which is comprised of the Initial Consenting Noteholders) in support of the motion by Sino-Forest Corporation (the "**Applicant**", "**SFC**" or the "**Company**") for an order (the "**Plan Sanction Order**") approving the Plan of Compromise and Reorganization (including all schedules thereto) dated December 3, 2012, concerning, affecting and involving SFC (as modified, amended, varied or supplemented in accordance with its terms, the "**Plan**") in accordance with section 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. The Plan is fair and reasonable, as evidenced by, among other reasons described in detail herein, the fact that Affected Creditors with Voting Claims representing 99% in number and nearly 100% in value have voted to approve the Plan.

3. The Plan and its sanction by the Court are supported by the Company, the Monitor, the Company's board of directors (the "**Board**") the Ad Hoc Noteholders, the Underwriters, Ernst & Young and BDO, and are not opposed by the Ontario Class Action Plaintiffs or the Quebec Plaintiffs.

4. For purposes of this Factum, all capitalized terms not otherwise defined herein have the meaning ascribed to them in the Plan and in the Thirteenth Report of FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor (the "**Monitor**") dated November 22, 2012 (the "**Monitor's Thirteenth Report**").

II THE FACTS

A. SINO-FOREST'S DETERIORATING BUSINESS AND THE URGENCY OF THE CCAA PROCEEDING

5. SFC sought relief under the CCAA on March 30, 2012 in order to restructure its business as soon as possible for the benefit of its stakeholders.

6. SFC is a holding company whose assets and business are comprised entirely of its subsidiaries. Under the Initial Order dated March 30, 2012, a stay of proceedings was granted in respect of SFC and its subsidiaries. Under the Expanded Powers Order dated April 20, 2012, the powers of the Monitor were expanded to allow for more direct access to and involvement with the subsidiaries of SFC. Under the Claims Procedure Order dated May 14, 2012, a claims process was instituted in respect of all claims against SFC and its Directors and Officers, and claimants were required to indicate any related claims they may have against the subsidiaries of SFC.

Sixth Report of the Monitor dated August 10, 2012 ("**Monitor's Sixth Report**") at paras. 22 and 32.

Affidavit of W. Judson Martin sworn August 14, 2012 (the "**August Affidavit**") at para. 32.

7. The Company and the Monitor have reported on several occasions that the majority of SFC's business in the People's Republic of China has come to a virtual standstill. The Monitor's Sixth and Tenth Reports describe in detail SFC's deteriorating business across multiple fronts due to the ongoing uncertainty regarding the Company's affairs. The Monitor concluded that a court supervised process was necessary for any chance of resolving the stalemate that the business finds itself in, and that absent a restructuring, the SFC business had little chance of viability.

Monitor's Sixth Report at paras. 12, 35-41.

Pre-Filing Report of the Monitor dated March 30, 2012 ("**Monitor's Pre-Filing Report**") at para. 65.

Tenth Report of the Monitor dated October 18, 2012 ("**Monitor's Tenth Report**") at paras. 14, 17-56.

Affidavit of W. Judson Martin sworn March 30, 2012 ("**March Affidavit**") at paras. 20-22.

8. The Company and the Monitor have repeatedly noted the urgency of this CCAA Proceeding. The Monitor has stated in its reports the need to complete this proceeding as soon as possible to preserve the value of the SFC business.

Second Report of the Monitor dated April 30, 2012 ("**Monitor's Second Report**") at para. 25.

Fifth Report of the Monitor dated July 16, 2012 ("**Monitor's Fifth Report**") at para. 33.

Monitor's Sixth Report at paras. 35 and 81.

Seventh Report of the Monitor dated August 17, 2012 ("**Monitor's Seventh Report**") at para. 56.

Monitor's Tenth Report at para. 14.

B. SALE PROCESS

9. Pursuant to the Initial Order and the Sale Process Order dated March 30, 2012 (and consistent with the Restructuring Support Agreement dated March 30, 2012 between SFC and the Initial Consenting Noteholders (as amended, the "**Support Agreement**")), SFC was authorized to commence a court-supervised sale process through its financial advisor, Houlihan Lokey, for the sale of all or substantially all of its business and assets.

10. As confirmed by the Monitor, the market was thoroughly canvassed through the Sale Process, but no purchaser was found who was willing to offer the minimum Qualified Consideration (which was set at 85% of the outstanding amount of the Notes).

Monitor's Thirteenth Report at para. 100.

11. On July 10, 2012, SFC issued a press release announcing that none of the letters of intent received pursuant to the Sale Process were Qualified Letters of Intent and, therefore, with the consent of the Monitor and the Initial Consenting Noteholders, SFC was terminating the Sale Process and proceeding with the alternative Restructuring Transaction contemplated by the Support Agreement.

Fourth Report of the Monitor dated July 10, 2012 ("**Monitor's Fourth Report**") at paras. 16, 17 and 23.

Monitor's Thirteenth Report at paras. 24-25.

C. MEDIATION

12. On July 25, 2012, this Honourable Court granted a Mediation Order, pursuant to which a mediation took place among the Mediation Parties (as defined in the Mediation Order) on September 4, 2012 and September 5, 2012, with a view to resolving the claims of the Plaintiffs in the Class Actions against SFC and the Third Party Defendants. The mediation terminated on September 5, 2012 without a successful resolution.

> Eighth Report of the Monitor dated September 25, 2012 (the "**Monitor's Eighth Report**"), at para. 17.

D. PLAN AND CREDITORS' MEETING

13. Since the commencement of these proceedings, SFC has been working on a "dual track" to develop a CCAA plan alongside the Sale Process in order to advance the Restructuring Transaction in the event the Sale Process was not successful.

14. On August 14, 2012, consistent with the terms of the Support Agreement, the Company filed the initial Plan, and on August 27, 2012, filed a revised Plan. On August 31, 2012, the Court granted the Plan Filing and Meeting Order (the "**Meeting Order**"), which, among other things, approved the filing of the Plan by the Company and approved the calling of a meeting of SFC's creditors (the "**Creditors' Meeting**") for the purpose of voting on the Plan.

> Monitor's Eighth Report, at paras. 21-22.

15. A further revised Plan was filed on October 19, 2012 and mailed out to creditors for their review and consideration on October 24, 2012, along with additional Plan

materials, including the Notice of Meeting and Meeting Information Statement, in accordance with the Meeting Order and the Revised Noteholder Noticing Process Order, and the Creditors' Meeting was scheduled for November 29, 2012. On November 21, 2012, copies of the Plan Supplement containing additional information concerning Newco (including the terms of the Newco Shares and the Newco Notes) and draft copies of the Litigation Trust Agreement and Plan Sanction Order were mailed out to creditors in accordance with the Meeting Order and the Revised Noteholder Noticing Process Order.

Monitor's Thirteenth Report, at paras. 35-37, 84-85.

16. On November 28, 2012, a further revised Plan was distributed by the Monitor to the parties on the service list for these proceedings and posted on the Monitor's website in accordance with the Meeting Order. The Creditors' Meeting scheduled for November 29, 2012 was adjourned to November 30, 2012.

17. On November 30, 2012, the Creditors' Meeting was further adjourned to December 3, 2012 to allow for further discussions to take place among the parties concerning the Plan. In accordance with the Meeting Order, the Monitor provided notice of the postponements to the parties on the service list in these proceedings and posted notices on the Monitor's website.

18. On December 3, 2012, following additional discussions among the parties regarding the Plan, a revised Plan was distributed by the Monitor to the parties on the service list for these proceedings and posted on the Monitor's website in accordance with

the Meeting Order. On December 3, 2012, the Plan was approved by Affected Creditors of SFC at the Creditors' Meeting.

> Supplemental Report to the Thirteenth Report of the Monitor dated December 4, 2012 (the "**Monitor's Supplemental Report**"), at paras. 20-22.

19. As discussed in greater detail in the Monitor's Supplemental Report, the amendments made to the October 19th version of the Plan that was mailed to creditors in the December 3rd versi on of the Plan that was approved at the Creditors' Meeting, include, *inter alia*: (i) amounts for the reserves established under the Plan and for the Litigation Funding Amount; (ii) provisions relating to the creation of Newco II in connection with the implementation of the Restructuring Transaction; (iii) granting standing to Persons with Unresolved Claims in proceedings in respect of the determination of such claims; (iv) extension of the due diligence condition in favour of the Initial Consenting Noteholders to the Plan Implementation Date; (v) provisions relating to the foreign recognition of the Plan and Plan Sanction Order; (vi) provisions relating to the Underwriters' claims; (vii) provisions relating to Ernst & Young's claims and the settlement among Ernst & Young and the Ontario Class Action Plaintiffs; and (viii) a mechanism providing a framework for the Underwriters and BDO to obtain releases on similar terms to the proposed release provisions concerning the Ernst & Young Settlement.

> Monitor's Supplemental Report, at paras. 4-10.

20. The Plan was developed with the benefit of the information obtained from the claims process (which called for claims against SFC and the Directors and Officers of

SFC, and required claimants to indicate any related claims they may have against the subsidiaries of SFC) and the decision of this Honourable Court dated July 27, 2012 regarding the status of "equity claims" in these proceedings (the "**Equity Claims Decision**"), as affirmed by the Court of Appeal on November 23, 2012.

> *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 4.
>
> *Sino-Forest Corporation (Re)*, 2012 ONCA 816; Ad Hoc Noteholders' Book of Authorities, Tab 5.

21. At the Creditors' Meeting held on December 3rd, 250 Affected Creditors with Voting Claims (representing 99% in number of Affected Creditors) holding $1,465,766,204 in Voting Claims (representing nearly 100% in value of Voting Claims) voted in favour of the Plan. Only three Affected Creditors with Voting Claims holding $414,087 in Voting Claims voted against the Plan at the Creditors' Meeting. Pursuant to the Meeting Order, the Monitor also recorded the votes of Affected Creditors with Unresolved Claims, the results of which would not have affected the approval of the Plan had such Unresolved Claims constituted Voting Claims.

> Monitor's Supplemental Report, at para. 31.

22. The remaining deadlines under the Support Agreement require Court sanction of the Plan by no later than December 17, 2012 and implementation of the Plan by January 15, 2013. These deadlines are premised on the business reality that, as confirmed by the Monitor, SFC must complete its restructuring as soon as possible if the value of the SFC business is to be preserved and maximized for the benefit of its stakeholders.

23. It is the view of SFC and the Monitor that the Plan is fair and reasonable and ought to approved by this Honourable Court in order to facilitate the completion of the CCAA Proceeding as soon as possible for the benefit of SFC's stakeholders. The Ad Hoc Noteholders support this position.

Monitor's Thirteenth Report, at paras. 110-112.

Monitor's Supplemental Report, at para. 41.

Affidavit of W. Judson Martin sworn November 29, 2012 (the "**November Affidavit**") at paras. 164-166.

III THE LAW

A. THE REQUIREMENTS FOR PLAN APPROVAL HAVE BEEN MET

24. Pursuant to section 6(1) of the CCAA, the Court has the discretion to sanction a plan of compromise or arrangement where the requisite double majority of creditors has approved the plan. The effect of the Court's approval is to bind the company and its creditors.

CCAA, section 6(1); Ad Hoc Noteholders' Book of Authorities, Tab 1.

25. The general requirements for court approval of a CCAA plan are well established:

a. there must be strict compliance with all statutory requirements;

b. all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorized by the CCAA; and

c. the plan must be fair and reasonable.

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)) at para. 17; Ad Hoc Noteholders' Book of Authorities, Tab 6.

Canadian Airlines Corp., Re (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 60, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

Canwest Global Communications Corp., Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 14; Ad Hoc Noteholders' Book of Authorities, Tab 8.

i) There has been Strict Compliance with Statutory Requirements

26. The first and second requirements of the test for the sanction of a plan of compromise or arrangement under the CCAA relate to compliance with the procedural requirements of the CCAA and of court orders granted during the CCAA proceedings. With respect to the first part of the test, factors that may be considered by the courts include whether:

a. the applicant comes within the definition of "debtor company" under section 2 of the CCAA;

b. the applicant has total claims in excess of $5 million;

c. the notice calling the creditors' meeting was sent in accordance with the order of the court;

d. the creditors were properly classified;

e. the meeting of creditors was properly constituted;

f. the voting was properly carried out; and

g. the plan was approved by the requisite double majority.

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)) at paras. 19-21; Ad Hoc

Noteholders' Book of Authorities, Tab 6.

Canadian Airlines Corp., Re (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 62-63, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

27. Since the commencement of the CCAA Proceeding, SFC has complied with the procedural requirements of the CCAA, the Initial Order and the subsequent Orders granted by the Court during the CCAA Proceeding. In particular:

a. at the granting of the Initial Order, this Honourable Court found that SFC met the statutory requirements for relief under the CCAA given that it is a CBCA company that is insolvent with debts in excess of $5 million;

b. the Plan was filed in accordance with the Meeting Order;

c. the notices of the Creditors' Meeting were delivered and posted on the Monitor's website in accordance with the terms of the Meeting Order and the Revised Noteholder Noticing Process Order;

d. the classification of the Affected Creditors in one class for the purpose of voting on the Plan is appropriate in the circumstances (as further discussed below);

e. the Creditors' Meeting was properly constituted and the voting was properly carried out in accordance with the Meeting Order; and

f. the Plan was approved by 99% of the Affected Creditors with Voting Claims in number representing nearly 100% in value.

Sino-Forest Corporation (Re), 2012 ONSC 2063 (Sup. Ct. J. [Commercial List]) at para. 29; Ad Hoc Noteholders' Book of Authorities, Tab 9.

Monitor's Thirteenth Report at paras. 35-37, and 85-86.

November Affidavit at paras. 144-145.

Monitor's Supplemental Report, at paras. 25, 31, and 33.

28. Sections 6(3), 6(5) and 6(6) of the CCAA provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning crown claims, employee claims and pension claims. Section 4.2 of the Plan provides that Unaffected Claims, including Government Priority Claims and Employee Priority Claims, will be paid in full from the Unaffected Claims Reserve. SFC does not have any registered pension plans, so the provisions of section 6(6) of the CCAA do not apply.

CCAA, sections 6(3), 6(5) and 6(6); Ad Hoc Noteholders' Book of Authorities, Tab 1.

Plan, section 4.2.

Canwest Global Communications Corp., Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 16; Ad Hoc Noteholders' Book of Authorities, Tab 8.

29. Furthermore, in accordance with section 6(8) of the CCAA and the Equity Claims Decision, as affirmed by the Court of Appeal, the Plan provides that Equity Claimants and holders of Equity Shares and Equity Interests will not receive any consideration or distributions under the Plan in respect thereof.

CCAA, section 6(8); Ad Hoc Noteholders' Book of Authorities, Tab 1.

Sino-Forest Corp., Re (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 4.

Sino-Forest Corporation (Re), 2012 ONCA 816; Ad Hoc Noteholders' Book of Authorities, Tab 5.

Plan, sections 4.5 and 4.15.

30. The Monitor in its Thirteenth Report stated that it "is not aware of any Claims that are being compromised under the Plan which are prohibited from being compromised pursuant to the CCAA."

Monitor's Thirteenth Report at para. 109.

31. Accordingly, it is submitted that the statutory requirements for the sanction of the Plan under section 6 of the CCAA have been satisfied.

ii) Nothing has been Done or Purported to be Done that is Not Authorized by the CCAA

32. With respect to the second part of the test for sanction of a plan of compromise or arrangement under the CCAA, courts ought to rely on the reports of the Monitor and on other parties in assessing whether anything has been done or purported to have been done that is not authorized by the CCAA.

Canadian Airlines Corp, Re. (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 64, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

Canwest Global Communications Corp., Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 17; Ad Hoc Noteholders' Book of Authorities, Tab 8.

33. SFC has kept the Court apprised of ongoing developments throughout the CCAA proceeding by way of several affidavits filed with the Court.

November Affidavit at paras. 146-147.

34. The Monitor has also made regular reports to the Court and has made no reference to any conduct or action by SFC that is not authorized by the CCAA. In connection with

motions for extensions of the Stay Period, the Monitor has reported on several occasions that in its view SFC has been acting in good faith and with due diligence throughout the course of these proceedings.

> First Report of the Monitor dated April 11, 2012 ("**Monitor's First Report**") at para. 35.
>
> Third Report of the Monitor dated May 25, 2012 ("**Monitor's Third Report**") at para. 42.
>
> Monitor's Eight Report at para. 31.
>
> Ninth Report of the Monitor dated October 3, 2012 ("**Monitor's Ninth Report**") at para. 29.
>
> Twelfth Report of the Monitor dated November 16, 2012 (the "**Monitor's Twelfth Report**") at para. 26.

35. Accordingly, it is submitted that the second part of the plan sanction test has been met.

iii) The Plan is Fair and Reasonable

36. When considering whether a plan is fair and reasonable, the Court does not require perfection. Rather the Court will measure the fairness and reasonableness of a plan against the available commercial alternatives, weigh the equities and balance the relative degrees of prejudice that would flow from granting or refusing the relief being sought under the CCAA:

> The court's role on a sanction hearing is to consider whether the plan fairly balances the interests of all the 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.
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> *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)) at para. 29; Ad Hoc

Noteholders' Book of Authorities, Tab 6.

Canadian Airlines Corp., Re (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 3 and 179, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

Canwest Global Communications Corp., Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 19; Ad Hoc Noteholders' Book of Authorities, Tab 8.

37. In assessing the fairness and reasonableness of a plan of compromise or arrangement, the Court's discretion ought to be guided by the purpose of the CCAA – namely "to enable compromises to be made for the common benefit of the creditors and of the company, particularly to keep a company in financial difficulties alive and out of the hands of liquidators." Parliament has recognized that reorganization, if commercially feasible, is in most cases preferable to liquidation.

Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.) at para. 27; Ad Hoc Noteholders' Book of Authorities, Tab 10.

Anvil Range Mining Corp., Re (2002), 34 C.B.R. (4th) 157 (Ont. C.A.) at para. 32; Ad Hoc Noteholders' Book of Authorities, Tab 11.

Canadian Airlines Corp., Re (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 95, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

Canwest Global Communications Corp., Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 20; Ad Hoc Noteholders' Book of Authorities, Tab 8.

38. Factors considered by the courts in considering whether a plan is fair and reasonable in the circumstances of a particular case have included:

a. classification of creditors and creditor approval;

b. what creditors would receive on liquidation or bankruptcy compared to the plan;

c. alternatives to the plan and bankruptcy;

d. oppression;

e. unfairness to shareholders; and

f. the public interest.

> *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at paras. 96, 137, 143, 145 and 179, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.
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> *Canwest Global Communications Corp., Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 21; Ad Hoc Noteholders' Book of Authorities, Tab 8.

39. A plan need not necessarily provide equal treatment to all parties in order to be equitable. In fact, equal treatment may at times be contrary to equitable treatment. Courts have approved plans of arrangement with differing treatment among creditors where any differences have been disclosed.

> *Keddy Motor Inns Ltd., Re* (1992), 13 C.B.R. (3d) 245 (N.S. C.A.) at para. 37 and 49; Ad Hoc Noteholders' Book of Authorities, Tab 12.
>
> *Sammi Atlas Inc., Re* (1998), 3 C.B.R. (4th) 171 (Ont. Gen. Div. [Commercial List]) at para. 4; Ad Hoc Noteholders' Book of Authorities, Tab 13.
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> *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 179, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.
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> *Central Guaranty Trustco Ltd., Re* (1993), 21 C.B.R. (3d) 139 (Ont. Gen. Div. [Commercial List]) 139 at para. 8-9; Ad Hoc Noteholders' Book of Authorities, Tab 14.
>
> *Canwest Global Communications Corp., Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at paras. 22-24; Ad Hoc Noteholders' Book of Authorities, Tab 8.

40. An important measure of whether a plan is fair and reasonable is the level of approval by creditors. Creditor support for a plan creates an inference that the plan is a fair and reasonable and economically feasible.

> *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)) at para. 36; Ad Hoc Noteholders' Book of Authorities, Tab 6.
>
> *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) at para. 97, leave to appeal refused 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal refused [2001] S.C.C.A. No. 60; Ad Hoc Noteholders' Book of Authorities, Tab 7.

41. The Court ought not to second guess the business decisions reached by stakeholders as a body when considering whether a plan of compromise is fair and reasonable by "descending into the negotiating arena and submitting [the court's] own view of what is a fair and reasonable compromise or arrangement for that of the business judgment of the participants." The courts have noted that a vote by sophisticated parties "speaks volumes as to fairness and reasonableness" and, accordingly, there is a heavy onus on parties objecting to a plan that has been approved by the required majority of creditors.

> *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)) at para. 37; Ad Hoc Noteholders' Book of Authorities, Tab 6.
>
> *Central Guaranty Trustco Ltd., Re* (1993), 21 C.B.R. (3d) 139 (Ont. Gen. Div. [Commercial List]) at paras. 3-4; Ad Hoc Noteholders' Book of Authorities, Tab 14.
>
> *Muscletech Research & Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]) at para. 18; ; Ad Hoc Noteholders' Book of Authorities, Tab 15.

42. It is submitted that the Plan is fair and reasonable in the circumstances given:

a. the Plan represents a sophisticated compromise among SFC and the Affected Creditors resulting from lengthy negotiations among SFC, the Ad Hoc Noteholders, the Board, the Ontario Class Action Plaintiffs, the Underwriters, Ernst & Young, and their respective advisors, and the involvement of the Monitor and its counsel;

b. the Plan provides a global resolution of all claims against SFC and related claims against its Subsidiaries, absent which it would not be possible for the business to continue as a going concern;

c. the appropriate class of Affected Creditors for the purposes of voting on the Plan is the Affected Creditors Class (as further discussed below), of which 99% in number representing nearly 100% in value voted to approve the Plan at the Creditors' Meeting;

d. the Plan is economically feasible;

e. failure of the Plan would result in detrimental consequences to stakeholders given there is no realistic alternative to the Plan:

i. the Monitor has stated that liquidation is not a realistic option given that it is not clear that a liquidation could even be achieved in the circumstances, and any liquidation would be unlikely to result in any value realized by the Company;

ii. SFC, with the assistance of Houlihan Lokey, pursued a court-supervised sale process in accordance with the Sale Process Order to determine whether there was a potential purchaser willing to purchase the assets of SFC for the Qualified Consideration, and after a thorough canvassing of the market, no such bidder was found;

f. in the event that an alternative transaction that is superior to the transaction contemplated by the Plan should become available prior to the Plan Implementation Date, the Plan maintains flexibility in that regard by allowing the Company, subject to the consent of the Initial Consenting Noteholders, to complete the sale of the SFC Assets pursuant to such alternative sale transaction, provided it is approved by the Court pursuant to section 36 of the CCAA on notice to the service list in this CCAA Proceeding;

g. the Plan treats Affected Creditors fairly and provides for the same distribution to all Affected Creditors (with an additional distribution of Newco Shares to Consenting Noteholders who executed the Support Agreement by the applicable deadline);

h. the Early Consent Consideration available to Consenting Noteholders was disclosed to all parties on the first day of the CCAA Proceeding and, in accordance with the notice provisions established by the Initial Order, Noteholders were advised of their ability to receive such consideration if they became Consenting Noteholders prior to the May 15, 2012 consent deadline;

i. Unaffected Creditors' Claims, which include, *inter alia*, government and employee priority claims, lien claims, and certain trade payables, will be paid in full pursuant to the Plan;

j. reserves of Plan consideration will be established on the Plan Implementation Date in respect of any Unresolved Claims in the event that any such claims are subsequently determined to be Proven Claims, and all parties are given standing in respect of such determinations;

k. the cap on indemnity claims in respect of Noteholder Class Action Claims is appropriate given that Noteholder Class Action Claims for which any Person may have a valid and enforceable Class Action Indemnity Claim

against the Company have been limited to the Indemnified Noteholder Class Action Limit (which has been agreed to by the Company, the Ontario Class Action Plaintiffs, and the Ad Hoc Noteholders);

l. the treatment of Equity Claims under the Plan is consistent with the Equity Claims Decision, as affirmed by the Court of Appeal;

m. the elimination of Equity Shares and Equity Interests under the Plan is a function of the insolvency of SFC, and not of oppressive conduct;

n. the releases provided under the Plan are appropriate in the circumstances, as further discussed below;

o. the Plan serves the public interest and the broader purpose of the CCAA by allowing SFC to avoid bankruptcy/liquidation and continue as a going concern for the future benefit of stakeholders; and

p. the Plan is supported by the Company, the Monitor, the Board, the Ad Hoc Noteholders, the Underwriters, Ernst & Young and BDO, and is not opposed by the Ontario Class Action Plaintiffs.

Monitor's Pre-Filing Report dated March 30, 2012, at paras. 38(b), 42(a), 46, 64 and 66.

Fourth Report of the Monitor dated July 10, 2012, at paras. 17 and 23.

Monitor's Thirteenth Report at paras. 24, 25, 61(b), 62(h), 105.

November Affidavit at paras. 150-166.

Plan, sections 4.1, 4.2, 4.3 and 10.1.

B. THE PROPOSED CLASSIFICATION OF CREDITORS FOR VOTING PURPOSES IS APPROPRIATE

i) Creditors with a Commonality of Interest Should Be Placed in the Same Class for Voting Purposes

43. Section 22(1) of the CCAA provides that:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.
>
> *CCAA*, section 22(1); Ad Hoc Noteholders' Book of Authorities, Tab 1.

44. Section 22(2) of the CCAA further provides that, for the purposes of section 22(1), creditors with a "commonality of interest" may be included in the same class.

> *CCAA*, section 22(2); Ad Hoc Noteholders' Book of Authorities, Tab 1.

45. Creditors must be classified with the underlying purpose of the CCAA in mind – to facilitate successful restructurings. A fragmentation of classes that would render it excessively difficult to obtain approval of a CCAA plan would be contrary to the purpose of the CCAA and ought to be avoided.

> *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta Q.B.) at paras. 32-47, Ad Hoc Noteholders' Book of Authorities, Tab 16.
>
> *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1990), 8. C.B.R. (3d) 312 (Ont. Ct. J. (Gen. Div.) [Commercial List]) at para. 13; Ad Hoc Noteholders' Book of Authorities, Tab 17.
>
> *Atlantic Yarns Inc. (Re)* (2008), 42 C.B.R. (5th) 107 (N.B. Q.B.) at para. 55; Ad Hoc Noteholders' Book of Authorities, Tab 18.

46. The Ontario Court of Appeal in *Stelco* upheld the lower court's conclusion that absent a valid reason to have separate classes of creditors, it is "reasonable, logical,

rational and practical" to have all of the unsecured debt placed in one class. The lower court noted that this approach avoids fragmentation, which could occur with as few as two classes.

> *Stelco Inc, Re.* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at paras. 13-14, affirming *Stelco Inc., Re* (2005), 15 C.B.R. (5th) 297 ((Ont. S.C.J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 19.

47. Case law dealing with the classification of creditors for the purposes of voting on a plan indicates that while a class must be confined to those persons whose legal rights in relation to the debtor company are not so dissimilar as to make it impossible for them to consult together with a view to their common interest, classification must not be so fine that it renders plan approval impossible.

> *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta Q.B.) at paras. 44 and 46; Ad Hoc Noteholders' Book of Authorities, Tab 16.
>
> *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1990), 8. C.B.R. (3d) 312 (Ont. Ct. J. (Gen. Div.) [Commercial List]) at paras. 13-14; Ad Hoc Noteholders' Book of Authorities, Tab 17.
>
> *SemCanada Crude Co., Re* (2009), 57 C.B.R. (5th) 205 (Alta Q.B.) at paras. 20-21; Ad Hoc Noteholders' Book of Authorities, Tab 20.

48. Prior to the 2009 amendments to the CCAA, the Ontario Court of Appeal endorsed the following principles for assessing commonality of interest:

a. commonality of interest should be viewed on the basis of a "non-fragmentation" test, not on an "identity of interest" test;

b. the interests to be considered are the legal interest that the creditor holds *qua* creditor in relationship to the debtor, prior to and under the plan as well as on liquidation;

c. the commonality of these interests is to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if possible;

d. in placing the broad and purposive interpretation on the CCAA, the Court should be careful to resist classification approaches that might jeopardize viable plans;

e. absent bad faith, the motivations of creditors to approve or disapprove a plan are irrelevant; and

f. the requirement that creditors can consult together means they can assess their legal entitlements as creditors before or after the plan in a similar manner.

> *Stelco Inc, Re.* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at paras. 23-24, citing *Re Canadian Airlines Corp.* (2000), 19 C.B.R.) (4th) 12 (Alta Q.B.), application for leave to appeal dismissed (2000), 19 C.B.R. (4th) 33 (Alta C.A.); Ad Hoc Noteholders' Book of Authorities, Tab 19.
>
> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J. [Commercial List]) at para. 73; aff'd, *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.); Ad Hoc Noteholders' Book of Authorities, Tab 21.

49. The Ontario Court of Appeal in *Stelco* cautioned that the very flexibility at the heart of the CCAA precludes the adoption of fixed rules governing classification and held that the circumstance of the individual case needed to be considered:

> It is clear that classification is a fact-driven exercise, dependent upon the circumstances of each particular case. Moreover, given the nature of the CCAA process and the underlying flexibility of that process – a flexibility which is its genius – there can be no fixed rules that apply in all cases.
>
> *Re Stelco Inc.* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.) at para. 22; Ad Hoc Noteholders' Book of Authorities, Tab 19.
>
> *SemCanada Crude Co., Re* (2009), 57 C.B.R. (5th) 205 (Alta Q.B.) at para. 18; Ad Hoc Noteholders' Book of Authorities, Tab 20.

50. The factors to be considered in determining whether creditors have a "commonality of interest" have been codified in section 22(2) of the CCAA. These factors do not change in any material way or exclude the factors that were articulated in the case law prior to the amendments:

> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) any further criteria, consistent with those set out in paragraphs (*a*) to (*c*), that are prescribed.
>
> *CCAA*, section 22(1); Ad Hoc Noteholders' Book of Authorities, Tab 1.
>
> *SemCanada Crude Co., Re* (2009), 57 C.B.R. (5th) 205 (Alta Q.B.) at paras. 44 and 45; Ad Hoc Noteholders' Book of Authorities, Tab 20.

ii) The Noteholders Have a Commonality of Interest and Should Be Placed in the Same Class for Voting Purposes

51. The Noteholders of all four series of SFC's Notes have a commonality of interest and should be placed in the same class for voting purposes. In particular:

a. Noteholders of all four series of SFC's Notes have claims against SFC for the repayment of principal and interest due on the Notes;

b. Noteholders of all four series of SFC's Notes have claims against subsidiaries of SFC that provided guarantees under the Note Indentures for the repayment of principal and interest due on the Notes;

c. the Plan contemplates that all Noteholders will receive the same distribution under the Plan in respect of their claims against SFC and its Subsidiaries (with an additional distribution of Newco Shares to Consenting Noteholder eligible for Early Consent Consideration under the Support Agreement);

d. Noteholders representing at least 72% of the aggregate principal amount of the Notes outstanding signed the Support Agreement and agreed to vote together in favour of the Plan as a single class.

Plan, sections 4.1 and 4.3.

Monitor's Thirteenth Report, at paras. 26, 48-49.

52. Accordingly, it is appropriate for the Noteholders of the four series of Notes to vote in the same class as they have a commonality of interest and any differences that may exist between the claims of the Noteholders of the various series of Notes are not of a degree that warrants separate classification.

iii) The Ordinary Affected Creditors and Noteholders Have a Commonality of Interest and Should Be Placed in the Same Class for Voting Purposes

53. The Affected Creditor Class is comprised of creditors with "Noteholder Claims" and creditors with "Ordinary Affected Creditor Claims", that include valid and enforceable indemnification claims that the Third Party Defendants may have (and that are not Equity Claims), subject to the Indemnified Noteholder Class Action Limit. The Noteholders and the Ordinary Affected Creditors have a commonality of interest and should be placed in the same class for voting purposes. In particular:

a. the Noteholders have claims against SFC and guarantee claims against subsidiaries of SFC for the repayment of principal and interest due on the Notes;

b. the defendants to the class actions claim to have contingent indemnity obligations owed to them by SFC and certain of the same Subsidiaries that provided guarantees under the Notes;

c. pursuant to the Plan, all of the Affected Creditors, being Noteholders and Ordinary Affected Creditors, are entitled to the same distribution;

d. all of the Affected Creditors will have their claims against SFC and the Subsidiaries released in exchange for the consideration provided under the Plan.

Plan, section 4.1.

54. The Plan is put forward in the expectation that the parties with an economic interest in SFC, including Noteholders and Ordinary Affected Creditors, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the SFC business as a going concern than would result from a bankruptcy or liquidation of SFC.

Plan, section 2.1.

August Affidavit at para. 3.

Atlantic Yarns Inc. (Re) (2008), 42 C.B.R. (5th) 107 (N.B. Q.B.) at para. 49; Ad Hoc Noteholders' Book of Authorities, Tab 18.

55. As the Affected Creditors have substantially similar claims *against* SFC (and its subsidiaries), and as the Affected Creditors will all receive the same consideration *from* SFC (and its subsidiaries), the Affected Creditors all share a commonality of interest and should be classified together for purposes of voting on the Plan.

56. The classification proposed by SFC is neither prejudicial nor unfair to any creditor, and any minor distinctions that may exist among the creditors do not negate the

underlying commonality of interest or render a single class inappropriate. Rather, the proposed class structure addresses the classification standards for commonality of interest and is intended to facilitate the viable restructuring of SFC.

iv) It is Appropriate for the Noteholder Class Action Claimants to Be Prohibited from Voting on the Plan

57. The Meeting Order and the Plan provide that Noteholder Class Action Claimants are not entitled to vote on the Plan at the Meeting in their capacity as former Noteholders of SFC.

Plan, section 4.4(a).

58. The one debt outstanding under each of the Note Indentures is the applicable principal and interest owing thereunder. Accordingly, only the current Noteholders (who are Affected Creditors) are entitled to seek recovery against SFC and its subsidiaries for amounts owing in respect of the Notes and the guarantees thereof.

59. If approved, all Noteholder Class Action Claims against SFC, the Subsidiaries and/or the Named Directors or Officers (other than any Noteholder Class Action Claims against the Named Directors or Officers that are section 5.1(2) claims or claims for conspiracy, fraud or criminal conduct) will be released under the Plan. Subject to the Ernst & Young Settlement, and any other settlements that may be reached between Named Third Party Defendants and the Ontario Class Action Plaintiffs, the Plan does not compromise Noteholder Class Action Claims against the Third Party Defendants under the Plan and Noteholder Class Action Claims against the Third Party Defendants will be permitted to continue (subject to those Noteholder Class Action Claims for which any

such Third Party Defendants have a valid and enforceable Class Action Indemnity Claim against SFC being limited, in the aggregate, to $150 million, as agreed to among the Company, the Ontario Class Action Plaintiffs and the Ad Hoc Noteholders). The Ontario Class Action Plaintiffs, who have represented the former Noteholders in these proceedings, do not oppose the Plan.

Plan, section 4.4.

Plan Supplement, Exhibit F.

November Affidavit at paras. 114-115.

v) It is Appropriate for the Equity Claimants to Be Prohibited from Voting on the Plan

60. Pursuant to section 22.1 of the CCAA, equity claimants are prohibited from voting on a plan, unless the Court orders otherwise.

CCAA, section 22.1; Ad Hoc Noteholders' Book of Authorities, Tab 1.

61. Section 6(8) of the CCAA provides expressly for the subordination of equity claims and prohibits a distribution to equity claimants prior to payment in full of all non-equity claims.

CCAA, section 6(8); Ad Hoc Noteholders' Book of Authorities, Tab 1.

62. Consistent with the provisions of the CCAA and the Equity Claims Decision, as affirmed by the Court of Appeal, the Plan provides that Equity Claimants will not receive any consideration or distributions under the Plan and will not be entitled to vote on the Plan at the Creditors' Meeting. The Plan also releases SFC and its subsidiaries from all equity claims.

Plan, sections 3.2(b) and 4.5.

63. An "Equity Claimant" under the Plan is "any Person having an Equity Claim, but only with respect to and to the extent such Equity Claim". Consistent with the endorsement of the Equity Claims Decision, as affirmed by the Court of Appeal, the Plan defines "Equity Claim" as follows:

> "Equity Claim" means a Claim that meets the definition of "equity claim" in section 2(1) of the CCAA and, for greater certainty, includes any of the following:
>
> (a) any claim against SFC resulting from the ownership, purchase or sale of an equity interest in SFC, including the claims by or on behalf of current or former shareholders asserted in the Class Actions;
>
> (b) any indemnification claim against SFC related to or arising from the claims described in sub-paragraph (a), including any such indemnification claims against SFC by or on behalf of any and all of the Third Party Defendants (other than for Defence Costs, unless any such claims for Defence Costs have been determined to be Equity Claims subsequent to the date of the Equity Claims Order); and
>
> (c) any other claim that has been determined to be an Equity Claim pursuant to an Order of the Court.
>
> Plan, section 1.1.
>
> *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 4.

64. In the Equity Claims Decision, this Honourable Court held that "the claims against SFC resulting from the ownership, purchase or sale of equity interests in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the [Class Actions] are 'equity claims' as defined in s. 2 of the CCAA, being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest."

> *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]) at paras. 77, 80 and 96; Ad Hoc Noteholders' Book of Authorities, Tab 4.

65. This Honourable Court further held that "any indemnification claim against SFC related to or arising from the Shareholder Claims, including, without limitation, by or on behalf of any of the other defendants to the [Class Actions] are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim."

> *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]) at paras. 80, 97; Ad Hoc Noteholders' Book of Authorities, Tab 4.

66. On November 23, 2012, the Ontario Court of Appeal affirmed the Equity Claims Decision finding that "the appellants' claim for contribution and indemnity are clearly equity claims" given that:

> In our view, in enacting s.6(8) of the CCAA, Parliament intended that a monetary loss suffered by a shareholder (or other holder of an equity interest) in respect of his or her equity *not* diminish the assets of the debtor available to general creditors in a restructuring. If a shareholder sues auditors and underwriters in respect of his or her loss, in addition to the debtor, and the auditors or underwriters assert claims of contribution or indemnity against the debtor, the assets of the debtor available to general creditors would be diminished by the amount of contribution and indemnity.
>
> *Sino-Forest Corp., Re*, 2012 ONCA 816 at paras. 37, 56 and 59-61; Ad Hoc Noteholders' Book of Authorities, Tab 5.

67. Accordingly, the Equity Claimants are not entitled to vote on, or to receive any distribution pursuant to, the Plan and all Equity Claims will be released under the Plan. In the Monitor's Seventh Report, the Monitor states that: "The Monitor believes that this

approach to classification and related relief...regarding the Equity Claims is consistent with the Equity Order and is appropriate in these circumstances."

Monitor's Seventh Report at para. 27.

68. Subject to the Ernst & Young Settlement, and any other settlements that may be reached between Named Third Party Defendants and the Ontario Class Action Plaintiffs, and subject to the releases provided for the Named Directors and Officers discussed above, the Plan does not affect any Class Action Claims against the Third Party Defendants that relate to the purchase, sale or ownership of Existing Shares or Equity Interests, and such claims will be permitted to continue as against the Third Party Defendants.

Plan, sections 4.5 and 7.5.

69. As previously mentioned, the Underwriters, Ernst & Young, BDO and the Ontario Class Action Plaintiffs, each with significant Equity Claims, support or do not oppose the Plan, as applicable.

70. Consistent with the Equity Claims Decision, the Plan treats any claims for defence costs in connection with an indemnity as Unresolved Claims and provides a reasonable reserve for such claims as part of the Unresolved Claims Reserve.

vi) It is Appropriate that Unresolved Claims Not Be Counted Towards the Required Majority Unless and Until they are Determined to be Voting Claims

71. Pursuant to the Meeting Order, Affected Creditors with Unresolved Claims as at the Voting Record Date were entitled to attend and vote at the Creditors' Meeting in

respect of their Unresolved Claims; however, such votes were not counted towards the calculation of the Required Majority.

72. The Monitor kept a separate record of votes cast by Affected Creditors with Unresolved Claims and has reported that the results of such votes would not have affected the approval of the Plan had such Unresolved Claims constituted Voting Claims. In particular, the Monitor reported that the overall impact on the approval of the Plan if all Unresolved Claims (including Defence Costs Claims) and the entire $150 million of the Indemnified Noteholder Class Action Limit (even though 4 of the 5 creditors with Class Action Indemnity Claims voted in favour of the Plan) had been included as votes against the Plan would have been that 98.5% of Affected Creditors representing 90.7% in value would have voted to approve the Plan.

Monitor's Supplemental Report, at para. 31.

C. THE THIRD PARTY RELEASES ARE APPROPRIATE IN THE CIRCUMSTANCES

73. Canadian courts have on several occasions approved plans containing broad third party releases.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at paras. 74-75; leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Applicant's Book of Authorities, Tab 22.

MuscleTech Research and Development Inc., Re (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 15.

Canwest Global Communications Corp. Re (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]); Ad Hoc Noteholders' Book of Authorities, Tab 8.

> *Angiotech Pharmaceuticals Inc. Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]); Ad Hoc Noteholders' Book of Authorities, Tab 23.
>
> *AbitibiBowater Inc., Re* (2010), 72 C.B.R. (5th) 80 (Que. S.C.); Ad Hoc Noteholders' Book of Authorities, Tab 24.

74. In the *MuscleTech* proceedings, Ground J. noted that it is "not uncommon in CCAA proceedings, in the context of a plan of compromise or arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made." After review of U.S. and Canadian authorities, Ground J. further found that it appeared that "the jurisdiction of the courts to grant Third Party Releases has been recognized both in Canada and the U.S.".

> *MuscleTech Research and Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]) at paras. 23 and 26; Ad Hoc Noteholders' Book of Authorities, Tab 15.
>
> *MuscleTech Research and Development Inc., Re* (2006), 25 C.B.R. (5th) 231 (Ont. Sup. Ct. J.) at para. 8-9; Ad Hoc Noteholders' Book of Authorities, Tab 25.

75. In the 2008 *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (*"**Metcalfe**"*) decision, the Ontario Court of Appeal considered the question of whether a plan of compromise or arrangement under the CCAA would contain a release of claims against parties other than the debtor company or its directors and found that:

> On a proper interpretation, in my view, the CCAA permits the inclusion of third party releases in a plan of compromise or arrangement to be sanctioned by the court where those releases are reasonably connected to the proposed restructuring. I am led to this conclusion by a combination of (a) the open-ended, flexible character of the CCAA itself, (b) the broad nature of the term "compromise or arrangement" as used in the Act, and (c) the express statutory effect of the "double-majority" vote and court sanction which render the plan binding on *all* creditors, including those unwilling to accept certain portions of it. The first of these signals a flexible approach to the application of the Act in new and evolving situations, an active judicial role in its

> application and interpretation, and a liberal approach to that interpretation. The second provides the entrée to negotiations between the parties affected in the restructuring and furnishes them with the ability to apply the broad scope of their ingenuity in fashioning the proposal. The latter afford necessary protection to unwilling creditors who may be deprived of certain of their civil and property rights as a result of the process.
>
> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 43; leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Ad Hoc Noteholders' Book of Authorities, Tab 22.

76. The courts have adopted the findings in the *Metcalfe* decision on several occasions, approving plans of compromise or arrangement in CCAA proceedings containing releases of claims against third parties.

> *Canwest Global Communications Corp. Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at paras. 28-30; Ad Hoc Noteholders' Book of Authorities, Tab 8.
>
> *Angiotech Pharmaceuticals Inc. Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]) at paras. 12-15; Ad Hoc Noteholders' Book of Authorities, Tab 23.
>
> *AbitibiBowater Inc., Re* (2010), 72 C.B.R. (5th) 80 (Que. S.C.) at para. 73; Ad Hoc Noteholders' Book of Authorities, Tab 24.

77. In considering the appropriateness of the terms and scope of third party releases, the courts will take into account the particular circumstances of a case and the purpose of the CCAA:

> The concept that has been accepted is that the Court does have jurisdiction, taking into account the nature and purpose of the CCAA, to sanction the release of third parties where the factual circumstances are deemed appropriate for the success of a Plan.
>
> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J. [Commercial List]) at para. 66; aff'd (2008), 45 C.B.R. (5th) 163 (C.A.); leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Applicant's Book of Authorities, Tab 21.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at paras. 70-71, 73; leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Applicant's Book of Authorities, Tab 22.

78. CCAA courts have approved third party releases in the context of plans of arrangement and settlement agreements where the releases are rationally related to a resolution of the debtors' claims, the releases will benefit creditors generally, and the releases are not overly broad. Factors considered by courts in determining whether to approve third party releases include:

a. whether the parties to be released are necessary and essential to the restructuring of the debtor;

b. whether the claims to be released are rationally related to the purpose of the plan and necessary for it;

c. whether the plan would fail without the releases;

d. whether the parties who are to have claims against them released are contributing in a tangible and realistic way to the plan;

e. whether the plan would benefit not only the debtor companies but creditors generally;

f. whether the creditors voting on the plan had knowledge of the nature and effect of the releases; and

g. whether the releases are fair and reasonable and not overly broad.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J. [Commercial List]) at para. 143; aff'd (2008), 45 C.B.R. (5th) 163 (C.A.); leave to appeal refused [2008] S.C.C.A. No. 337; Applicant's Book of Authorities, Tab 21.

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 70-1; leave to

appeal refused (2008), 257 O.A.C. 400 (SCC); Applicant's Book of Authorities, Tab 22.

Nortel Networks Corporation, Re (2010), 63 C.B.R. (5th) 44 (Ont. Sup. Ct. J. [Commercial List]) at paras. 79-82; Applicant's Book of Authorities, Tab 26.

79. No single factor listed above is considered determinative, and the Court's analysis must take into account the circumstances of each applicable claim.

Kitchener Frame Ltd., Re (2012), 85 C.B.R. (5th) 274 (Ont. Sup. Ct. J. [Commercial List]) at para. 82; Applicant's Book of Authorities, Tab 27.

80. The third party releases provided under the Plan protect the Released Parties from potential claims that may be made in the future based on conduct prior to the implementation of the Plan. The Plan does not release any Released Party for fraud or criminal conduct. As described below, there is a reasonable connection between the releases contemplated by the Plan and the restructuring to be achieved by the Plan to warrant inclusion of such releases in the Plan.

Plan, section 7.1.

81. Included among the Released Parties under the Plan are, *inter alia*, the Named Directors and Officers and the Subsidiaries of SFC. The other Released Parties are: SFC, Newco, Newco II, the directors and officers of Newco, the directors and officers of Newco II, the Noteholders, members of the *ad hoc* committee of Noteholders, the Trustees, the Transfer Agent, the Monitor, FTI Consulting Canada Inc., FTI HK, counsel for the current Directors of SFC, counsel for the Monitor, counsel for the Trustees, the SFC Advisors, the Noteholder Advisors, and each and every member (including members of any committee or governance council), partner or employee of any of the foregoing.

Plan, Section 1.1, Article 7.

82. The releases of the Named Directors and Officers contained in the Plan are appropriate in the circumstances given:

a. the identification of the Named Directors and Officers to be released was determined as part of the negotiations of the Plan;

b. the Named Directors and Officers group consists principally of the current members of the Board and management who have been involved in SFC's restructuring and certain other individuals formerly associated with SFC who, to SFC's knowledge, are not implicated in any of the conduct issues that have emerged;

c. claims against the Named Directors and Officers for fraud, criminal conduct and the tort of civil conspiracy and claims referred to in section 5.1(2) of the CCAA are carved out of the releases provided in the Plan;

d. any indemnities that the Named Directors and Officers may have against SFC and the Subsidiaries will be released under the Plan in exchange for the releases that the Named Directors and Officers are receiving under the Plan, thereby effecting a greater recovery for SFC's creditors;

e. the Named Directors and Officers' contribution to this process, including their agreement to the Plan that will release their indemnification claims against SFC and the Subsidiaries when they remain exposed to potential claims, constitutes a meaningful and tangible contribution on the part of the Named Directors and Officers that warrants the terms of the releases sought in their favour;

f. full disclosure of the releases was made to creditors in the Plan, the Information Statement, the Monitor's Seventh and Thirteenth Reports and

the affidavits of the Company filed in connection with the hearings for the Plan Filing and Meeting Order and this Plan Sanction Order;

g. the releases provided to the Named Directors and Officers are sufficiently broad to accomplish their purpose of facilitating the implementation of the Plan without being overly broad or offending public policy; and

h. the Monitor considers the releases contained in the Plan to be fair and reasonable in the circumstances.

Plan, sections 4.9, 7.1, 7.2.

August Affidavit at paras. 29- 31.

November Affidavit at paras. 160-163.

Monitor's Thirteenth Report at para. 106, 108.

83. The releases of the Subsidiaries contained in the Plan are appropriate in the circumstances given:

a. SFC is a holding company and the "business" of Sino-Forest is conducted through its Subsidiaries;

b. SFC and the Monitor have maintained from the outset of the CCAA Proceeding that a successful restructuring would require a global resolution of all claims against SFC and its Subsidiaries, and in this regard a number of Orders affecting the Subsidiaries have been granted by this Honourable Court, including, *inter alia*:

i. the Initial Order dated March 30, 2012, which, in addition to granting a stay of proceedings in respect of SFC and its Business and Property (each as defined in the Initial Order), stayed all proceedings against the subsidiaries of SFC that are Subsidiary Guarantors (as defined in the Initial Order) by any noteholder, indenture trustee or security trustee;

ii. the Expanded Powers Order dated April 20, 2012, pursuant to which the powers of the Monitor were expanded to allow for more direct access to and involvement with the Subsidiaries; and

iii. the Claims Procedure Order granted May 14, 2012, which required persons who intended to assert a right or claim against one or more Subsidiaries that related to a claim against SFC to so indicate on their proof of claim form;

c. there can be no effective restructuring of Sino-Forest's business and separation from its Canadian parent, which is the objective of the CCAA Proceeding, if the claims asserted against the Subsidiaries arising from or connected to claims against SFC remain outstanding;

d. the assets of the Subsidiaries are effectively being contributed to the assets available for transfer to Newco to satisfy their obligations under the guarantees of the Notes for the benefit of not only Noteholders but also of any other Affected Creditors with Proven Claims;

e. just as claims of the Noteholders are being released against the Subsidiaries upon implementation of the Plan, so are other claims against the Subsidiaries which relate to claims asserted against SFC;

f. full disclosure of the releases was made to creditors in the Plan, the Information Statement, the Monitor's Seventh and Thirteenth Reports and the affidavits of the Company filed in connection with the hearings for the Plan Filing and Meeting Order and this Plan Sanction Order;

g. the releases provided to the Subsidiaries are sufficiently broad to accomplish their purpose of facilitating the implementation of the Plan without being overly broad or offending public policy;

h. the Monitor considers the releases contained in the Plan to be fair and reasonable in the circumstances; and

i. the releases are a necessary and incidental part of the Plan's success – without the releases the Plan cannot succeed.

Plan, section 7.1.

August Affidavit at para. 32.

November Affidavit at para. 157.

Monitor's Thirteenth Report at paras. 106-108.

84. The Plan also provides for a framework for the potential release of all Ernst & Young Claims in connection with the Ernst & Young Settlement between Ernst & Young and the Ontario Class Action Plaintiffs. The terms and scope of the Ernst & Young Settlement, the Ernst & Young Release and the Settlement Trust Order each remain subject to future court approval in accordance with the Plan and shall only become effective after the Plan Implementation Date and upon the satisfaction of the conditions precedent to the Ernst & Young Settlement Date and the filing of the Monitor's Ernst & Young Settlement Certificate, all as set forth in the Plan.

Plan, section 11.1.

Proposed Plan Sanction Order, para. 40.

85. The proposed Plan Sanction Order does not approve the Ernst & Young Settlement at this time or make any finding with respect to its fairness or reasonableness. Any such finding would be part of the Settlement Trust Order to be entered by the applicable court after notice and a hearing.

86. The provisions of the Plan that provide for a potential release of the Ernst & Young Claims are appropriate given that:

a. the release remains subject to the completion of the Ernst & Young Settlement which will require separate court approval;

b. pursuant to the Ernst & Young Settlement, Ernst & Young will pay a settlement amount to the Settlement Trust for the benefit of claimants to be determined in a separate claims process to be approved by the court(s);

c. Ernst & Young is not entitled to any distributions under the Plan;

d. Named Third Party Defendants are provided with a similar opportunity to obtain such potential releases under the Plan upon, among satisfying certain other conditions, entering into settlement agreements with the Ontario Class Action Plaintiffs and obtaining court approval; and

e. the Monitor believes that the Plan, including the provisions that provide for these potential releases, is fair and reasonable.

Monitor's Supplemental Report at para. 7, 8, 22, 27 and 41.

87. The Plan represents a compromise that balances the rights and sacrifices of different participants, while bringing resolution to the disputes surrounding the Sino-Forest business. It is submitted that the releases contained therein are appropriate in the circumstances and that this Court ought to approve the Plan.

D. THE TREATMENT OF SECTION 5.1(2) CLAIMS UNDER THE PLAN IS APPROPRIATE

88. Although the Plan provides for releases of the Named Directors and Officers, the Plan does not release any claims of the kind listed in section 5.1(2) of the CCAA or claims for fraud, criminal conduct or the tort of conspiracy in respect of any Director or Officer.

> Plan, sections 4.9 and 7.2.

89. Section 5.1(2) of the CCAA prohibits the *compromise* of claims against directors 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 conduct or oppressive conduct by directors.

> CCAA, section 5.1(2); Ad Hoc Noteholders' Book of Authorities, Tab 1.

90. The Ontario Court of Appeal has held that a "compromise" is not necessarily the same as an "arrangement":

> "Arrangement" is broader than "compromise" and would appear to include any scheme for reorganizing the affairs of the debtor: Houlden & Morawetz, *Bankruptcy and Insolvency Law of Canada*, loose-leaf, 3rd ed., vol. 4 (Toronto: Thomson Carswell) at 10A-12.2, N§10.
>
> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 60; leave to appeal refused (2008), 257 O.A.C. 400 (SCC); Applicant's Book of Authorities, Tab 22.

91. Consistent with section 5.1(2) of the CCAA, the Plan does not compromise section 5.1(2) claims (or claims for conspiracy) against Directors and Officers of SFC.

Such claims are affected by the terms of the Plan only to the extent that section 4.9(e) of the Plan arranges, or directs, recovery in respect of such claims against the Named Directors and Officers to insurance proceeds payable in respect of such claims under the insurance policies held by SFC. Claims against the Named Directors and Officers in respect of fraud or criminal conduct are not limited to recovery against insurance proceeds, nor are there any limitations of any kind (other than the Indemnified Noteholder Class Action Limit) under the Plan in respect of recovery for any claims against the Other Directors and Officers.

Plan, section 4.9(e).

92. The Ontario Court has previously approved a plan of arrangement that directed claims to a debtor's insurance thereby preserving and protecting a recovery pool for creditors or other stakeholders who may benefit directly or derivatively from such insurance.

Allen-Vanguard Corp., Re, Sanction Order granted December 16, 2009 Toronto CV-09-00008502-00CL, (Ont. Sup. Ct. J) at para. 27; Ad Hoc Noteholders' Book of Authorities, Tab 28.

93. These provisions of the Plan, that properly carve-out and protect claims of the kind referred to in section 5.1(2) of the CCAA, arrange for recovery in respect of such claims from SFC's available insurance, and carve-out and protect claims for fraud and criminal conduct with no limitation as to recovery, are appropriate provisions in the circumstances and ought to be approved by the Court.

E. THE COURT HAS THE JURISDICTION TO APPROVE AMENDMENTS OF A DEBTOR COMPANY'S CONSTATING DOCUMENTS TO EXTINGUISH SHAREHOLDERS' INTERESTS

94. The Plan contemplates the cancellation of all Existing Shares and Equity Interests and certain related steps under section 191 of the CBCA, subject to the receipt of any required approvals from the OSC with respect to any trades in securities contemplated by the Plan.

Plan, sections 4.15 and 6.5.

95. The Court has the jurisdiction to approve, and has approved, plans of arrangement and compromise that effected fundamental changes to an applicant's constating documents, including changes that resulted in the extinguishment of the rights of the applicant's shareholders and others holding equity interests.

Stelco Inc. Re. (2006), 17 C.B.R. (5th) 78 (Ont. Sup. Ct. J.) at paras. 14-17; Ad Hoc Noteholders' Book of Authorities, Tab 29.

Laidlaw, Re (2003), 39 C.B.R. (4th) 239 (Ont. Sup. Ct. J.) at para. 9; Ad Hoc Noteholders' Book of Authorities, Tab 30.

Beatrice Foods Inc., Re. (1996), 43 C.B.R. (4th) 10 (Ont. Ct. J. (Gen. Div.)[Commercial List]) at paras. 12-14; Ad Hoc Noteholders' Book of Authorities, Tab 31.

Algoma Steel Inc., Re (2001), 30 C.B.R. (4th) 1 (Ont. Sup. Ct. J. [Commercial List]) at para. 7; Ad Hoc Noteholders' Book of Authorities, Tab 32.

96. These fundamental changes have been approved and effected without any shareholder vote pursuant to provisions such as section 191 of the CBCA or section 186 of the *Ontario Business Corporation Act*, R.S.O. 1990, c. B-16 (the "**OBCA**"). Those sections provide that the Court may grant an order in the CCAA proceedings amending an applicant's articles of incorporation without a vote of the shareholders despite that

such amendments would normally require a special resolution. Fundamental changes have also been effected in a CCAA without a shareholder vote through the arrangement provisions under the CBCA and the OBCA.

> CBCA, sections 191, 192; Ad Hoc Noteholders' Book of Authorities, Tab 2.
>
> OBCA, sections 182, 186; Ad Hoc Noteholders' Book of Authorities, Tab 3.
>
> *Stelco Inc. Re.* (2006), 17 C.B.R. (5th) 78 (Ont. Sup. Ct. J.) at paras. 14-17; Ad Hoc Noteholders' Book of Authorities, Tab 29.
>
> *Masonite International Inc., Re (*2009), 56 C.B.R. (5th) 42 (Ont. Sup. Ct. J. [Commercial List]) at paras. 7-8, 16, 21; Ad Hoc Noteholders' Book of Authorities, Tab 33.
>
> *Canwest Global Communications Corp. Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at paras. 34-37; Ad Hoc Noteholders' Book of Authorities, Tab 8.

97. The 2009 amendments reinforce the power of the Court to grant an order extinguishing the rights of holders of equity interests. Section 6(2) of the CCAA now expressly provides that if the Court sanctions a compromise or arrangement, it may also order that the debtor's constating instrument be amended in accordance with the compromise or arrangement.

> *CCAA*, section 6(2); Ad Hoc Noteholders' Book of Authorities, Tab 1.
>
> *Canwest Global Communications Crop., Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]) at paras. 35-37; Ad Hoc Noteholders' Book of Authorities, Tab 8.
>
> *Angiotech Pharmaceuticals Inc., Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]) at para. 11; Ad Hoc Noteholders' Book of Authorities, Tab 23.

98. The Court in *Angiotech* dispensed with the calling of a meeting of existing shareholders in order to amend the articles of the applicant, finding that "the CCAA

prohibits a plan that calls for distribution to pay an equity claim where non-equity claims cannot be paid in full" and further finding that even if "the combined effect of ss. 6(8) and 6(2) of the CCAA do not remove the requirement for a shareholders' meeting, I am satisfied that the requirement should be dispensed with in the circumstances of this case. To do otherwise, so that a meeting is held, would cause persons who no longer have an economic interest in the company to acquire a functional veto."

> *Angiotech Pharmaceuticals Inc., Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]) at para. 11; Ad Hoc Noteholders' Book of Authorities, Tab 23.

99. It is submitted that this Honourable Court has the jurisdiction to approve the amendments to SFC's articles of incorporation that are contemplated by the Plan and that a shareholder vote is not required in connection therewith.

IV CONCLUSION

100. The Plan was approved at the Creditors' Meeting by 99% of Affected Creditors representing nearly 100% in value, and has the support of the Company, the Monitor, the Board, the Ad Hoc Noteholders, the Underwriters, Ernst & Young and BDO, and is not opposed by the Ontario Class Action Plaintiffs.

101. The statutory requirements under the CCAA and the terms of the Orders granted in these CCAA proceedings have all been complied with.

102. SFC and the Monitor submit that the Plan is fair and reasonable. The Ad Hoc Noteholders support this position.

103. As it is critical that these CCAA proceedings be completed as soon as possible and given that the Plan has been approved by an overwhelming majority of SFC's creditors, the Ad Hoc Noteholders respectfully submit that it is appropriate for this Court to grant the Plan Sanction Order at this time so that SFC can proceed to implement the Plan and pursue the completion of these restructuring proceedings as expeditiously as possible for the benefit of its stakeholders.

104. ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of December, 2012.

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Noteholders of Sino-Forest Corporation

SCHEDULE "A" - LIST OF AUTHORITIES

1.	*Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99 (Ont. Sup. Ct. J. [Commercial List]).
2.	*Sino-Forest Corporation (Re)*, 2012 ONCA 816.
3.	*Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.)).
4.	*Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.).
5.	*Canwest Global Communications Corp., Re* (2010), 70 C.B.R. (5th) 1 (Ont. Sup. Ct. J. [Commercial List]).
6.	*Sino-Forest Corporation (Re)*, 2012 ONSC 2063 (Sup. Ct. J. [Commercial List]).
7.	*Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada* (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.).
8.	*Anvil Range Mining Corp., Re* (2002), 34 C.B.R. (4th) 157 (Ont. C.A.).
9.	*Keddy Motor Inns Ltd., Re* (1992), 13 C.B.R. (3d) 245 (N.S. C.A.).
10.	*Sammi Atlas Inc., Re* (1998), 3 C.B.R. (4th) 171 (Ont. Gen. Div. [Commercial List]).
11.	*Central Guaranty Trustco Ltd., Re* (1993), 21 C.B.R. (3d) 139 (Ont. Gen. Div. [Commercial List]).
12.	*Muscletech Research & Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]).
13.	*Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.* (1988), 72 C.B.R. (N.S.) 20 (Alta Q.B.).
14.	*Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1990), 8. C.B.R. (3d) 312 (Ont. Ct. J. (Gen. Div.) [Commercial List]).
15.	*Atlantic Yarns Inc. (Re)* (2008), 42 C.B.R. (5th) 107 (N.B. Q.B.).
16.	*Stelco Inc, Re.* (2005), 15 C.B.R. (5th) 307 (Ont. C.A.).
17.	*SemCanada Crude Co., Re* (2009), 57 C.B.R. (5th) 205 (Alta Q.B.).
18.	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J. [Commercial List]).
19.	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.).

20.	*Angiotech Pharmaceuticals Inc. Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]).
21.	*AbitibiBowater Inc., Re* (2010), 72 C.B.R. (5th) 80 (Que. S.C).
22.	*MuscleTech Research and Development Inc., Re* (2006), 25 C.B.R. (5th) 231 (Ont. Sup. Ct. J.).
23.	*Nortel Networks Corporation, Re* (2010), 63 C.B.R. (5th) 44 (Ont. Sup. Ct. J. [Commercial List]).
24.	*Kitchener Frame Ltd., Re* (2012), 85 C.B.R. (5th) 274 (Ont. Sup. Ct. J. [Commercial List]).
25.	*Allen-Vanguard Corp., Re*, Sanction Order granted December 16, 2009 Toronto CV-09-00008502-00CL, (Ont. Sup. Ct. J).
26.	*Stelco Inc. Re.* (2006), 17 C.B.R. (5th) 78 (Ont. Sup. Ct. J.).
27.	*Laidlaw, Re* (2003), 39 C.B.R. (4th) 239 (Ont. Sup. Ct. J.).
28.	*Beatrice Foods Inc., Re.* (1996), 43 C.B.R. (4th) 10 (Ont. Ct. J. (Gen. Div.)[Commercial List]).
29.	*Algoma Steel Inc., Re* (2001), 30 C.B.R. (4th) 1 (Ont. Sup. Ct. J. [Commercial List]).
30.	*Masonite International Inc., Re* (2009), 56 C.B.R. (5th) 42 (Ont. Sup. Ct. J. [Commercial List]).

SCHEDULE "B" - LEGISLATION

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, sections 5.1(2), 6, 22, 22.1.

2. *Canada Business Corporation Act*, R.S.C. 1985, c. C-44, sections 191, 192.

3. *Ontario Business Corporation Act*, R.S.O. 1990, c. B-16, sections 182, 186.

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-12-9667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST

Proceeding commenced at TORONTO

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