

**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

Applicant

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

**FACTUM OF RESPONDENT ERNST & YOUNG LLP
(Motion Approving Plan Filing and Meeting Order returnable August 28, 2012)**

August 27, 2012

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TO: **THE SERVICE LIST**

FACTUM OF ERNST & YOUNG LLP

PART I - OVERVIEW

1. The Applicant, Sino-Forest Corporation (“Sino-Forest”, the “Company” or the “Applicant”), brings a motion seeking the court’s approval of the filing of a draft Plan of Compromise and Reorganization (the “Plan”), classification of the creditors set out therein for the purposes of voting on the Plan and certain relief in respect of a meeting of its Affected Creditors, as defined in the Plan and proposed meeting order (the “Meeting Order”).

2. Ernst & Young LLP (“E&Y”) opposes the motion on the basis that it is premature, contrary to the provisions of the *Companies Creditors’ Arrangement Act*, R.S.C. 1985 c. C-36 (“CCAA”) and not in accordance with the Orders of this Court in this proceeding. In particular:

- (a) The Plan does not in fact reorganize the business of the Applicant, Sino-Forest;
- (b) The Plan does not serve the public interest;
- (c) The classification of creditors is premature:
 - (i) E&Y and the other Third Party Defendants have sought leave to appeal this Honourable Court’s “Equity Claims Order”; and
 - (ii) The Monitor and the Company have not completed the process under the Claims Procedure Order;
- (d) In the absence of a completed claims process, the Plan and Meeting Order:

- (i) Invalidate E&Y's non-indemnification claims asserted against Sino-Forest and the Directors and Officers;
 - (ii) Assert that E&Y's claims in respect of defence costs are "Unresolved Claims" without reference to their terms;
 - (iii) Limit Unresolved Claims to one vote, regardless of quantum and contrary to the statutory voting provisions of the CCAA (paragraph 20(2)); and
 - (iv) Purport to limit or disallow entirely E&Y's indemnity claims (and preserve Sino-Forest's right) in respect of noteholder claims against Sino-Forest despite specifically excluding noteholder claims and claims against the subsidiaries from the Company's "Equity Claims" motion;
- (e) The Plan and Meeting Order include an astonishing number of material items that are "to be determined" after the Court approves the filing of the Plan; and
- (f) The Plan proposes a release for the subsidiaries and other non-Applicant parties (including the management, directors and officers, and advisors to Sino-Forest's subsidiaries), despite specifically excluding claims against subsidiaries from any claims-related relief sought to date and without any evidentiary record as to the appropriateness of those releases.
3. E&Y opposes the relief sought.
4. E&Y also seeks to have a document preservation provision added to the Plan or, alternatively, reserves its rights to seek such an order at a Sanction Hearing.

PART II - THE FACTS

Background

5. During the periods relevant to the class action proceedings, E&Y was retained as Sino-Forest's auditor – from 2007 until it resigned on April 4, 2012.

Reference Affidavit of W. Judson Martin sworn April 23, 2012 (“April 23 Martin Affidavit”), Motion Record of Sino-Forest Corporation returnable May 8, 2012, at para. 13, Tab 2

6. On June 2, 2011, a short-seller, Muddy Waters LLC, issued a report which purported to reveal alleged fraud at the Company and cast various aspersions on the Company's advisors. In the wake of that report, Sino-Forest's share price plummeted and Muddy Waters profited handsomely from its short position.

Reference Affidavit of W. Judson Martin sworn March 30, 2012, at para. 114 (“March 30 Martin Affidavit”) attached as Exhibit A to Affidavit of W. Judson Martin sworn April 23, 2012, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2

7. E&Y was served with a multitude of class action claims in numerous jurisdictions including Ontario and Quebec (the “Class Actions”). In Ontario alone, E&Y was served with four competing proposed class actions. Following a carriage motion, an uneasy peace was brokered between two law firms and a number of proposed representative plaintiffs were absorbed into what is now the Ontario Class Action.

Reference April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012 at paras. 7-8, Tab 2
Smith v. Sino-Forest Corporation, 2012 ONSC 24 attached as Exhibit D to the Affidavit of Daniel Bach sworn April 11, 2012, Motion Record of the Proposed Representative Plaintiffs, Tab 2

8. The plaintiffs in the Ontario Class Action claim damages in the aggregate, and against all defendants, of \$9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)*, R.S.O. 1990, c.S-5 and at common law, in negligence and negligent misrepresentation. The central claim is that Sino-Forest made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and in particular that E&Y's audit did not comply with Canadian generally accepted auditing standards. Similar claims are advanced in the Quebec and U.S. actions, (together with the Ontario Class Action, the "Class Actions").

Reference Schedule "A2" to Exhibit A to the Affidavit of Christina Shiels sworn June 21, 2012 ("June 21 Shiels Affidavit"), Motion Record of E&Y returnable June 26, 2012, paras 11-13, Tab 1

9. On March 30, 2012, this Honourable Court granted the Initial Order, which stayed the proceedings (the "Stay"). On April 13, 2012, this Court extended the Stay until June 1, 2012, and on May 31, 2012 extended the stay to September 28, 2012. On May 8, 2012 this Court ordered that the Stay extends to the third party defendants to the Ontario Class Action, including E&Y. Sino-Forest was and remains the only Applicant. Contrary to Sino-Forest's factum on this Motion, the focus of the Initial Order and the Company's submissions when it was sought was the sale of the business, not the separation of the assets from the Canadian parent company.

Reference April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2, at para. 5

Affidavit of W. Judson Martin sworn May 2, 2012, ("May 2 Martin Affidavit"), Motion Record of Sino-Forest Corporation returnable May 8, 2012, at paras. 4-6 Tab 2

10. On April 17, 2012, following an OSC investigation and the issuance of OSC enforcement notices to the Applicant and certain directors and officers of the Applicant and its subsidiaries, the Applicant issued a press release announcing the resignation and/or termination of the individuals in question. On April 20, 2012, this Court granted the Expanded Powers Order, which provided the Monitor with direct access and involvement in the Sino-Forest Subsidiaries, as opposed to only the Applicant itself.

Reference Third Report of the Monitor dated May 25, 2012 at paragraphs 16, 19, 20 and Appendix A thereof.

11. The Expanded Powers Order provided for the establishment of processes and protocols for the review, consultation and, if necessary, the Monitor's consent in relation to disbursements and transactions, for the monitoring of the receipts and disbursements of the Sino-Forest Subsidiaries, for the Monitor to assist in the performance of duties that the Applicant's chief financial officer previously performed, and for the attendance by the Monitor at meetings conducted by the Applicant or the Sino-Forest Subsidiaries with any third party.

Reference Third Report of the Monitor dated May 25, 2012 at paragraphs 16, 19, 20 and Appendix A thereof.

12. On May 14, 2012, this Honourable Court granted the Claims Procedure Order. The motion, brought by the Company, proceeded on an unopposed basis following extensive discussions amongst the stakeholders including the Company, E&Y, the Class Action plaintiffs and the other third party defendants, among others, which permitted that to occur.

Reference Affidavit of Judson Martin, sworn August 14, 2012 ("August 14 Martin Affidavit"), Motion Record of Sino-Forest Corporation returnable August 28, 2012, at para. 4, Tab 2

13. E&Y filed with the Monitor, in accordance with the Claims Procedure Order, a Proof of Claim against Sino-Forest and a Proof of Claim against the directors and officers of Sino-Forest. E&Y also set out its claims against the SFC subsidiaries, as required under the Claims Procedure Order.

Reference June 21 Shiels Affidavit, Motion Record of E&Y returnable June 26, 2012, at paras. 2-3, Tab 1

14. Prior to the claims bar date, the Applicant brought a motion to have presumed claims of indemnification that related to shareholders' claims against E&Y and the other third party defendants declared "equity claims". By way of Endorsement dated July 26, 2012 and Order dated July 27, 2012, this Court granted certain relief requested by the Company, including that E&Y's claims for indemnification related to shareholders' claims are "equity claims" under the CCAA. Leave has been sought to appeal that Order by the third party defendants, including E&Y.

Reference Equity Claims Order of Justice Morawetz dated June 27, 2012; Endorsement of Justice Morawetz dated July 26, 2012, attached as Exhibit H to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, Tab 2

Notice of Motion (Motion for Leave to Appeal) of E&Y dated August 16, 2012, Motion Record of E&Y on Motion for Leave to Appeal, Tab 1

15. The claims process has not been completed and E&Y has received no notices of revision or disallowance.

Reference Sixth Report of the Monitor dated August 10, 2012 at para. 24

August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at para. 11, Tab 2

The Terms of the Meeting Order Sought and Proposed Plan

16. The proposed Meeting Order and Plan contain the following elements, which E&Y submits are unfair, contrary to the policy behind and provisions of the CCAA and run afoul of certain Orders of this Court:

- (a) The Plan proposes to cancel the outstanding shares and notes of Sino-Forest and incorporate a Newco in the Cayman Islands or such other jurisdiction as is acceptable to Sino-Forest and the Initial Consenting Noteholders. It appears therefore that Sino-Forest will cease to have any connection to Canada;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 1.1, Tab 2A

- (b) The Affected Creditors (defined to include only the noteholders as this stage, subject to certain reserves) will receive a pro-rata number of Newco shares, notes and interest in a Litigation Trust;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 4.1, Tab 2A

- (c) The Plan does not propose to reorganize the business of Sino-Forest below the share and note-ownership level of the Applicant, which is a holding company with three (3) employees;

Reference Sixth Report of the Monitor, dated August 10, 2012 at paras. 44-48 and 60

Affidavit of W. Judson Martin sworn March 30, 2012, at para. 94 (“March 30 Martin Affidavit”) attached as Exhibit A to Affidavit of W. Judson Martin sworn April 23, 2012, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2

- (d) The Plan does not address how the “restructuring” proposed serves the public interest, by preserving goods or services crucial to the health of the economy or saving large numbers of jobs. It clearly does not accomplish those goals in Canada and there is little evidence in respect of other jurisdictions. This is especially true since 3,550 of the 3,553 employees of Sino-Forest are employed by its subsidiaries outside of Canada. The overwhelming majority of those 3,550 employees work in the manufacturing segment of the business in the PRC. Manufacturing accounted for approximately 3.6% of Sino-Forest’s revenue as at December 31, 2010. The Monitor reports that Sino-Forest’s insolvency has had no significant impact in this business segment;

Reference Sixth Report of the Monitor, dated August 10, 2012 at paras. 78-80

March 30 Martin Affidavit at para. 93, attached as Exhibit A to Affidavit of W. Judson Martin sworn April 23, 2012, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2

- (e) The Plan and Meeting Order provide that all creditors of Sino-Forest and the subsidiaries form one Class for the purposes of voting on the Plan, regardless of security (which only the Senior Noteholders assert they hold at the subsidiary-

level), determination or quantification of the claims (other than the Noteholder claims);

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 3, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, paras. 6, 14-16, at Tab 3

- (f) The Plan and Meeting Order rely upon this Honourable Court's "Equity Claims" Order, for which E&Y and the other Third Party Defendants have sought leave to appeal. Until leave and the attendant appeal are determined, the Plan and Meeting Order are premature. E&Y is willing to expedite its leave motion and the appeal, if leave is granted;
- (g) The Plan and Meeting Order treat E&Y's (and the other Third Party Defendants') non-indemnification claims against Sino-Forest (being E&Y's claims for breach of contract, negligent and fraudulent misrepresentation, injury to reputation and vicarious liability) as "equity claims". These claims have not been determined or quantified through the process established by the Claims Procedure Order (and E&Y has not received any notices of revision or disallowance) and the Court has not been asked to make any order in respect of those claims;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1, 4.7, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, paras. 6, 14-16 at Tab 3

Endorsement of Justice Morawetz dated July 26, 2012, attached as Exhibit H to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, Tab 2 at para. 93

- (h) The Plan and Meeting Order treat E&Y's (and the other Third Party Defendants') indemnification and non-indemnification claims against the subsidiaries as "equity claims" despite the Company's specific acknowledgement that it was not seeking this relief on the motion returnable before this Court on June 26, 2012. That determination should be made prior to classification and voting, not after, and the Company has provided no reason for why it has not subsequently sought such relief;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1, 4.7, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, paras. 6, 14-16 at Tab 3

- (i) The Plan reserves the rights of the Company and the Monitor to seek to have E&Y's indemnity claims in respect of noteholder claims declared "equity claims". That determination should be made prior to classification and voting, not after. The Company specifically acknowledged that it was not seeking this relief on the motion returnable before this Court on June 26, 2012 and has provided no reason

for why it has not subsequently sought such relief. It is also unclear why the Applicant or the Monitor would take such a position on an inter-creditor issue;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 4.4, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, para. 51 at Tab 3

- (j) In the absence of such a determination, the Plan provides that the class action noteholder claims (and attendant E&Y and other Third Party Defendant claims for indemnification) shall be capped at an amount to be determined by the Company, the Monitor, the noteholders and the class action plaintiffs. That cap is determinative for the purposes of voting. E&Y has no voice in the process. The Plan also provides E&Y's and the Third Party Defendants' claims for indemnification are not determined or quantified as part of the claims process, but are subject to proof at some later stage, and potentially only following a finding by the Court that they are valid and enforceable. This places a huge burden on the Third Party Defendants;

Reference The Plan, attached as Exhibit "A" to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 4.4, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, para. 51 at Tab 3

- (k) The Plan and Meeting Order provide that E&Y's and the Third Party Defendants' claims for defence costs are "Unresolved Claims". E&Y has clear contractual rights to its defence costs, which can and should be determined and quantified through the claims process prior to the vote. The Plan purports to insert conditions precedent into E&Y's contractual rights, including that E&Y's defence of itself must be successful – thereby requiring E&Y to adjudicate all claims against it before it can recover defence costs. These requirements are unfair, heavy-handed and do not reflect the Company's contractual obligations;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 4.8, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, paras. 6, 14-16 at Tab 3

- (l) The Plan and Meeting Order propose to limit the voting of "Unresolved Claims" to one (1) vote per creditor, regardless of quantification, contrary to the provisions of the CCAA;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1, 6.3, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, para. 49, Tab 3

- (m) All other claims of E&Y shall not be entitled to any votes at this time;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1, 4, Tab 2A

Draft Plan Filing and Meeting Order, Motion Record of Sino-Forest Corporation returnable August 28, 2012, para. 40, Tab 3

- (n) The Plan proposes to release the 136 non-Applicant subsidiaries of Sino-Forest and other non-Applicant parties (including the management, directors and officers, and advisors to Sino-Forest's subsidiaries) from any and all claims of the Third Party Defendants without any evidentiary record as to the appropriateness of those releases;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at section 7, Tab 2A

- (o) The Plan contains a number of material uncertainties, including:

- (i) the quantum of the Litigation Trust;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1.1, 6.3(n) and 6.3(o), Tab 2A

- (ii) the quantum and terms of the Newco notes, including what if any pledges or guarantees may be granted by the subsidiaries;

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 1.1 and 2.1, Tab 2A

- (iii) The quantum of the Indemnified Noteholder Class Action Claims (as set out in paragraph 15(j) above); and

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation

returnable August 28, 2012, at section 1.1 and 4.4(b),
Tab 2A

- (iv) Implementation of the Plan, presuming and following sanction by the Court, is subject to due diligence by the Initial Consenting Noteholders.

Reference The Plan, attached as Exhibit A to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012, at sections 9.1(jj), Tab 2A

17. This Plan does not accord with the policy objectives of the CCAA nor its express terms and ignores the various Orders of this Honourable Court. Although the Plan as currently framed (and given the classifications assigned to the various creditors) is certain to receive overwhelming support at a vote, it should not be approved by this Court.

18. The same objectives for which the Company seeks to use the Court's discretion under the CCAA could be accomplished through the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and would result in a fairer outcome for the creditors of Sino-Forest.

19. E&Y will be substantially prejudiced by this Meeting Order and Plan, not only vis-à-vis its claims against the Company and subsidiaries, but also in defending itself the various proceedings pending and threatened against it. E&Y seeks a preservation order from this Court in respect of all documents relevant to the class action proceedings. Such an order should also be part of any Plan, such that the documents are preserved by the Applicant, Newco, the subsidiaries and other parties who should be bound by such an order and obligation.

PART III - ISSUES AND THE LAW

A. Objections to the Plan and Meeting Order are Properly Raised at this Time

20. E&Y's concerns are properly raised on this motion to seek approval of the Meeting Order and classification of creditors.

21. The courts have cited the lack of objection to or appeal of a proposed Plan and/or Meeting Order prior to a Sanctions Hearing as evidence that the creditors approved of the Plan and that it was fair and reasonable.

Reference *Re. Canwest Global Communications*, [2010] O.J. No. 3233 at paras. 12-15 (S.C.J.), E&Y Brief of Authorities at Tab 1

Quality Dino Entertainment Ltd., [1998] O.J. No. 414 at para. 2 (Gen. Div.), E&Y Brief of Authorities at Tab 2

B. The Plan Does not Meet the Policy Objectives of the CCAA

22. In *Century Services Inc. v. Canada (Attorney General)*, Justice Deschamps for the majority of the Supreme Court of Canada set out the background to and policy objectives of the CCAA:

Early commentary and jurisprudence also endorsed the CCAA's remedial objectives. It recognized that companies retain more value as going concerns while underscoring that intangible losses, such as the evaporation of the companies' goodwill, result from liquidation (S. E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act" (1947), 25 *Can. Bar Rev.* 587, at p. 592). Reorganization serves the public interest by facilitating the survival of companies supplying goods or services crucial to the health of the economy or saving large numbers of jobs (*ibid.*, at p. 593). Insolvency could be so widely felt as to impact stakeholders other than creditors and employees. Variants of these views resonate today, with reorganization justified in terms of rehabilitating companies that are key elements in a

complex web of interdependent economic relationships in order to avoid the negative consequences of liquidation. [emphasis added]

Reference *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379 at para 18 [*Century*], E&Y Brief of Authorities at Tab 3

23. Relief under the CCAA is discretionary and should only be granted where appropriate, sought in good faith and with requisite due diligence:

“[T]he requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. [emphasis added]

Reference *Century*, supra at para 70 , E&Y Brief of Authorities at Tab 3

24. Fairness to all stakeholders is a key component to a successful restructuring. Where the Plan benefits only a few stakeholders or serves the main purpose of confiscating the rights of stakeholders, it will not be considered fair.

Reference *Century*, supra at para 70, E&Y Brief of Authorities at Tab 3

Re Ursel Investments Ltd. (1990), 2 C.B.R. (3d) 260 (Sask. Q.B.) at paras. 34 and 57, rev'd on other grounds (1991), 89 D.L.R. (4th) 246 (Sask C.A.), E&Y Brief of Authorities at Tab 4

C. The Proposed Meeting Order Violates the CCAA and the Orders of this Court

25. The proposed meeting order (and underlying Plan) does not conform to the provisions of the CCAA.

26. In order for a Plan to be sanctioned by the Court, it must meet the following criteria:

- (a) there must be strict compliance with all statutory requirements;
- (b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
- (c) the Plan must be fair and reasonable.

Reference *Re: Canadian Airlines Corp.*, 2000 ABQB 442 at para. 60, leave to appeal denied 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to S.C.C. refused July 12, 2001, [2001] S.C.C.A. No 60, E&Y Brief of Authorities at Tab 5

27. The Plan as proposed is not in compliance with statutory requirements. Certain critical procedures carried out in furtherance of the Plan are not authorized by the CCAA and for the reasons outlined below, the Plan is not fair and reasonable.

28. Where the Plan, the attendant Meeting Order and the procedures carried out in furtherance thereof do not (on their face) comply with the statutory requirements of the CCAA, the court should not exercise its discretion to issue a Meeting Order. It does not further the objectives of the CCAA to engage in a redundant process.

29. The Plan and Meeting Order also violate the Claims Procedure Order issued by this Court. The Plan and Meeting Order classify the claims of E&Y and other creditors without any of the process set out in paragraph 31 of the Claims Procedure Order having been followed. E&Y is not aware that any of the steps set out therein have been followed by the Monitor to allow, revise or disallow any of the claims of E&Y against the Applicant or any other party. Until that process is complete, this motion is premature.

Reference Claims Procedure Order of Justice Morawetz, dated May 14, 2012, attached as Exhibit F to the August 14 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable August 28, 2012 at Tab 2

D. The Plan is Not Fair and Reasonable Because of the Breadth of the Proposed Releases

30. The draft Plan and Meeting Order propose that the subsidiaries of Sino-Forest be released along with the Applicant upon sanctioning of the Plan, along with various other third parties. Such relief is extraordinary, unprecedented and unwarranted. E&Y reserves all its rights to argue that the releases are overly broad at a Sanctions Hearing.

31. The proposed releases are relevant to this stage of the proceeding as they render the Plan unfair.

32. The subsidiaries have specifically avoided attorning to this Court's jurisdiction and have not sought to be made applicants under the CCAA. Subsidiaries released in the significant precedents in the case-law have been applicants in the CCAA proceeding in question and/or have been subject to the jurisdiction of another bankruptcy court in a cross-border proceeding. Although non-Applicants have been released by the courts as part of a CCAA restructuring, these have generally been third parties who made a tangible, substantial and clearly-defined contributions to the Plan. In most cases the claims in question have been adjudicated, negotiated and/or mediated, and the salient factors justifying a release have been established.

33. The cases cited by the Applicants and the Ad Hoc Committee of Noteholders in their facta are readily distinguishable on their facts.

Reference *Muscletech Research & Development Inc.* (2007), 30 C.B.R. (5th) 59, (Ont. S.C.J.), Ad Hoc Committee of Noteholders Book of Authorities at Tab 13

Muscletech Research & Development Inc. (2007), 25 C.B.R. (5th) 231, (Ont. S.C.J.), Ad Hoc Committee of Noteholders Book of Authorities at Tab 14

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 43 C.B.R. (5th) 269 (Ont. S.C.J.), SFC Book of Authorities at Tab 18

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 45 C.B.R. (5th) 163 (Ont. C.A.), Ad Hoc Committee of Noteholders Book of Authorities Book of Authorities at Tab 15

Canwest Global Communications Corp. (2010), 70 CBR (5th) 1 (Ont. C.A.), Ad Hoc Committee of Noteholders Book of Authorities Book of Authorities at Tab 16

Angiotech Pharmaceuticals Inc., Re (2011), 76 C.B.R. (5th) 210 (B.C.S.C.), Ad Hoc Committee of Noteholders Book of Authorities at Tab 17

AbitibiBowater Inc., Re, 72 CBR (5th) 80 (Que. S.C.), Ad Hoc Committee of Noteholders Book of Authorities Book of Authorities at Tab 18

34. The Sino-Forest subsidiaries have not made tangible, substantial and clearly-defined contributions to the Plan. The only proposed restructuring of the business (other than the subsidiary releases) is proposed to occur at the holding company level. In the circumstances, a release of the subsidiaries is unfair and will prejudice their creditors.

E. The Meeting Order is Premature

Potential Prejudice to Pending Mediation

35. This Meeting Order is sought on the eve of a Court-ordered mediation. The Monitor has said in its Seventh Report that it intends to select a mailing date following September 10, 2012, the last date of the mediation. This motion could easily be made returnable following the mediation, which is scheduled to take place the week following the return date selected by the Applicant. It would not significantly delay the Meeting or prejudice the Applicant.

Reference Seventh Report of the Monitor, dated August 17, 2012,
at para. 54

36. Approval of the Meeting Order, which will undoubtedly be construed by some stakeholders as the Court's implicit approval of the draft Plan, prior to the mediation could negatively impact the willingness of stakeholders to engage in constructive discussions at the pending mediation.

Pending Appeal of Equity Claims Order

37. In any event, E&Y (along with BDO and the Underwriters) have sought leave to appeal the "equity claims" Order of this Honourable Court dated July 27, 2012. Until the leave motion and appeal have been determined, the Applicant's classification of claims for the purposes of a meeting and vote are premature. E&Y is amenable to seeking to expedite its leave motion and attendant appeal.

38. Sino-Forest has indicated that it may contest the validity of the indemnification claims of E&Y in respect of noteholder claims and/or seek to have those claims declared “equity claims”. Unless and until that issue is decided, the meeting and vote are premature.

39. The claims of E&Y that have not been determined to be Equity Claims and that are not in respect to Indemnified Noteholder Class Action Claims have yet to be properly dealt with in accordance with the Claims Procedure Order and should not be dealt with in the context of this Meeting Order (paragraph 16), since a proper consideration of same has not been made by the Monitor and this Court. To allow a meeting order to determine the validity of a claim without the claimant having the ability to appeal or otherwise seek to have the determination reviewed is utterly contrary to the consensual Claims Procedure Order and is a matter of fairness.

PART IV - ORDER REQUESTED

40. E&Y requests that this Court dismiss the Applicant's motion.

41. E&Y requests a preservation order for all documents in the possession of Sino-Forest, the subsidiaries and/or the noteholders relevant to the various class action and other proceedings brought and threatened against E&Y.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August, 2012.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Re. Canwest Global Communications*, [2010] O.J. No. 3233 (S.C.J.)
2. *Quality Dino Entertainment Ltd.*, [1998] O.J. No. 414 (Gen. Div.)
3. *Century Services Inc. v. Canada (Attorney General)*, [2010] 2 S.C.R. 379 (SCC)
4. *Re Ursel Investments Ltd.*, (1990), 2 C.B.R. (3d) 260 (Sask. Q.B.), rev'd on a different point (1991) 89 D.L.R. (4th) 246 (Sask C.A.)
5. *Re: Canadian Airlines Corp.*, 2000 ABQB 442, leave to appeal denied 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to S.C.C. refused July 12, 2001, [2001] S.C.C.A. No 60

SCHEDULE "B"

LIST OF LEGISLATION

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

An Act to facilitate compromises and arrangements between companies and their creditors

...

Determination of amount of claims

20. (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, to be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act prevents a

secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

...

Classes of Creditors

Company may establish classes

22. (1) 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.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (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.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

Class — creditors having equity claims

22.1 Despite subsection 22(1), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

**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-12-9667-00-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

RESPONDING PARTY'S FACTUM

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