Court of Appeal File No. M42068
Commercial List Court File No. CV-12-9667-00CL

COURT OF APPEAL FOR ONTARIO

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

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

FACTUM OF THE UNDERWRITERS

(responding to the motion for leave to appeal from the Sanction Order)

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PART I – OVERVIEW

1. The Underwriters[1] oppose the motion for leave to appeal from sections 40 and 41 of the order of the Honourable Mr. Justice Morawetz made December 10, 2012 in the CCAA proceedings of Sino-Forest and sanctioning the company's Plan. The proposed appeal by certain former Sino-Forest securityholders[2] focuses only on those sections of the Sanction Order that approved Article 11 of Sino-Forest's Plan. Article 11 provides a framework for court approval of prospective releases in favour of persons who are defendants in the Sino-Forest Class Actions and have been, or may be, designated under the Plan as Named Third Party Defendants (the "Framework Releases"). The Underwriters may be designated as Named Third Party Defendants if they ever seek to reach a settlement with the plaintiffs in the Class Actions.

2. The Underwriters had extensive claims against Sino-Forest, and against the non-insolvent Sino-Forest Subsidiary Companies who were not parties in the CCAA Proceedings. These valuable claims were extinguished pursuant to the Plan. In consideration for agreeing to give up their claims, and corresponding rights to distributions under the Plan, the Underwriters received the benefit of the Framework Releases. This consideration was an important part of the basis upon which the Underwriters provided their consent to the Sanction Order, without which consent the outcome of the CCAA Proceedings would have been uncertain.

3. Given the bargain struck by the Underwriters, and their reliance on the Plan being an integrated whole that included the Framework Releases, asking the Court of Appeal to sever

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[1] The Underwriters are: Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC. Capitalized terms in this factum, unless otherwise defined, have the meanings ascribed to them in Sino-Forest's plan of compromise and arrangement (the "Plan").

[2] The proposed Appellants are certain investors in Sino-Forest securities: Invesco Canada Ltd., Northwest & Ethical Investments L.P. and CoMite Syndical National de Retraite Batirente Inc.

provisions of the Plan at this late stage – in effect, asking this Court to re-write the Plan – could unfairly thwart the rights and expectations of the Underwriters.

4. The law on releases of claims against third-parties such as the Named Third Party Defendants in the context of CCAA plans of arrangement and compromise is well-settled in Ontario, in particular by this Court's 2008 decision in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*[3] In the CCAA Proceedings, Justice Morawetz sanctioned the Plan and approved the Framework Releases by applying that well-settled law to the facts of the case he supervised since it was commenced.

5. The motion for leave to appeal should be dismissed. First, the application of settled law and the fact-specific analysis undertaken by Justice Morawetz make the proposed appeal insignificant to the practice and *prima facie* non-meritorious. The Plan was overwhelmingly approved by the requisite majorities of Sino-Forest's creditors (99.96% in value and 98.81% in number) and sanctioned by the court and it has now been fully implemented. The proposed appeal is, therefore, insignificant to the CCAA Proceedings. In addition, the Sanction Order only provides a framework for the possible implementation of the Framework Releases at some future date and does not actually provide the requisite final court approval for such releases. Finally, the proposed appeal will constitute an additional, unnecessary judicial proceeding the only effect of which would be to undermine the CCAA Proceedings for the Underwriters who's consent to the granting of the Sanction Order was expressly predicated on the Framework Releases being a feature of the Plan.

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[3] *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) [*Metcalfe*]; leave to appeal refused (2008), 257 O.A.C. 400 (SCC), Underwriters' Brief of Authorities, Tab 1.

PART II – THE FACTS

6. In Part II of the Underwriters' Factum, we set out: (i) background relating to Sino-Forest and the Class Actions involving Sino-Forest; (ii) an overview of the CCAA Proceedings; and (iii) a summary of the motion below and the motion judge's decision.

A. Sino-Forest and the Class Action Proceedings

7. *Sino-Forest.* Before the Plan was implemented, Sino-Forest was a Canadian public holding company that held the shares of numerous subsidiaries, which, in turn, held, directly or indirectly, forestry assets located principally in the People's Republic of China.[4]

8. Sino-Forest had outstanding common shares listed on the Toronto Stock Exchange (since August 26, 2011, trading in Sino-Forest shares was ceased as a result of an order made by the Ontario Securities Commission). Sino-Forest also had outstanding approximately $1.8 billion in unsecured notes, issued in four series.[5]

9. *The Offerings.* Certain of the Underwriters provided underwriting services in connection with three separate Sino-Forest equity offerings in June 2007, June 2009 and December 2009, and four separate Sino-Forest note offerings in July 2008, June 2009, December 2009 and October 2010 (collectively, the "Offerings").[6]

10. In connection with the Offerings, Underwriters entered into agreements with Sino-Forest and certain of the Sino-Forest Subsidiary Companies providing that Sino-Forest and, with respect to certain Offerings of notes, the Sino-Forest Subsidiary Companies, agreed to indemnify

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[4] *Monitor's Pre-Filing Report*, Underwriters' Motion Record, Tab 6, pp. 1187-1188, paras. 12-13, Underwriters' Compendium of Evidence, Tab 1, paras. 12-13 (without appendices).

[5] *Monitor's Pre-Filing Report*, Underwriters' Motion Record, Tab 6, p. 1192, para. 20(d)(i), Underwriters' Compendium of Evidence, Tab 1, para. 20(d)(i) (without appendices).

[6] *Wise Affidavit*, Underwriters' Motion Record, Tab 4, p. 141, paras. 4 and 5, Underwriters' Compendium of Evidence, Tab 2, paras. 4 and 5.

and hold harmless the Underwriters in connection with an array of matters that could arise from the Offerings.[7]

11. *The Class Actions.* Sino-Forest and certain of its current and former officers, directors and employees, along with Sino-Forest's current and former auditors, technical consultants and the Underwriters were named as defendants in proposed Class Actions commenced in 2011 in Ontario, Quebec, Saskatchewan and New York.[8]

12. The Class Actions involve allegations that the public disclosure made by Sino-Forest contained misrepresentations, including in prospectus and offering memorandum disclosure relating to the Offerings, and in the company's quarterly and annual continuous disclosure. The plaintiffs in the Class Actions seek to represent classes of owners of debt and equity securities of Sino-Forest.

13. In order to succeed in a claim against the Underwriters, the plaintiffs will have to demonstrate (i) a misrepresentation in the Offering documents, and (ii) that the Underwriters were not duly diligent in respect of the Offering documents.

14. In addition to the Class Actions, the Ontario Securities Commission has commenced regulatory proceedings against Sino-Forest, certain of its directors, officers and auditors, but not against the Underwriters.

B. The CCAA Proceedings

15. *The commencement of the CCAA Proceedings.* On March 30, 2012, Sino-Forest commenced proceedings under the CCAA. Justice Morawetz granted the Initial Order and

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[7] *Wise Affidavit*, Underwriters' Motion Record, Tab 4, p. 141, para. 8 and Exhibits "A", "C" and "F", Underwriters' Compendium of Evidence, Tab 2, para. 8.

[8] *Fimio Affidavit*, Underwriters' Motion Record, Tab 5, p. 929, para. 2, Underwriters' Compendium of Evidence, Tab 3, para. 2.

appointed FTI Consulting Canada Inc. as the Monitor.[9] As part of the Initial Order made by the motions judge, the Class Actions were stayed.[10]

16. The principal creditors of Sino-Forest consisted of the holders of the company's shares and notes. The Underwriters' claims in the CCAA Proceedings consisted of significant claims (consisting of both equity claims and non-equity claims) for indemnification against Sino-Forest and Sino-Forest Subsidiary Companies.

17. *The Plan and the meeting of creditors*. Following the termination of a sales process that did not yield satisfactory expressions of interest, Sino-Forest proposed the Plan to its creditors, which sought to transfer substantially all of the assets to a newly formed entity to be owned by the noteholders and other creditors.[11]

18. Pursuant to the Meeting Order dated August 31, 2012, copies of the Plan were mailed to Sino-Forest's creditors. To address the Plan-related concerns of interested parties, including, the Underwriters, and to facilitate negotiations among interested parties, the meeting of creditors was postponed twice.[12] The meeting of creditors was finally held on December 3, 2012, at which the requisite majorities of creditors voted on, and overwhelmingly approved, the Plan.

19. *The Framework Releases*. The Plan approved by creditors and the Court includes the Framework Releases. The Framework Releases provide a framework for the potential release of certain claims against Class Action Defendants, including the Underwriters, subject to those parties entering into settlement agreements with the plaintiffs and obtaining court approval. The

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[9] *Initial Order*, Underwriters' Motion Record, Tab 12, p. 1286, para. 28, Underwriters' Compendium of Evidence, Tab 12, para. 28.

[10] *Initial Order*, Underwriters' Motion Record, Tab 12, pp. 1283-1285, paras. 17-20 and 24, Underwriters' Compendium of Evidence, Tab 4, paras. 17-20 and 24.

[11] *Monitor's Fourth Report*, Underwriters' Motion Record, Tab 7, pp. 1220-1221, paras. 23-24, Underwriters' Compendium of Evidence, Tab 5, paras. 23-24 (without appendices).

[12] *Monitor's Supplemental Report to the Thirteenth Report*, Underwriters' Motion Record, Tab 8, pp. 1239-1240, paras. 30-33, Underwriters' Compendium of Evidence, Tab 6, paras. 30-33 (without appendices).

Sanction Order provides only a framework for the potential implementation of the Framework Releases at some future date, and does not provide final approval, which would require a further hearing on notice to parties in interest.

C. The Sanction Order

20. *The company's motion.* On December 7, 2012, the motions judge heard Sino-Forest's motion seeking the Sanction Order. The Underwriters consented to the Sanction Order following the extensive negotiations described above.[13] The basis of their support was set out in the Underwriters' factum filed in connection with the Sanction Order.[14] Only the proposed appellants expressed any opposition to the Sanction Order, after appearing in the CCAA Proceedings at the very last moment, notwithstanding their counsel having acknowledged at the Sanction Hearing that they had been monitoring the CCAA Proceedings on behalf of their clients.[15]

21. *The motion judge's decision.* The motions' judge made the Sanction Order on December 10, 2012 and released reasons two days later. In granting the motion seeking the Sanction Order, Justice Morawetz declared that: (i) there had been strict compliance with all statutory requirements and adherence to the previous orders of the court; (ii) nothing had been done or was purported to have been done that was not authorized by the CCAA; and (iii) the Plan was fair and reasonable.[16]

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[13] *Monitor's Fifteenth Report*, Underwriters' Motion Record, Tab 9, p. 1255, para. 27, Underwriters' Compendium of Evidence, Tab 7, para. 27 (without appendices).

[14] *Factum of the Underwriters (Motion for a Sanction Order)*, Underwriters' Motion Record, Tab 11, pp. 1270-1275, para.3, Underwriters' Compendium of Evidence, Tab 8, para. 3.

[15] *Monitor's Fifteenth Report*, Underwriters' Motion Record, Tab 9, pp. 1256-1257, para. 29, Underwriters' Compendium of Evidence, Tab 7, para. 29 (without appendices).

[16] *Endorsement*, Underwriters' Motion Record, Tab 3, p. 138, para. 79, Underwriters' Compendium of Evidence, Tab 9, para. 79.

22. *The proposed appeal.* The proposed appellants seek leave to appeal from sections 40 and 41 of the Sanction Order approves Article 11 of the Plan. They seek to sever Article 11, in effect asking the Court of Appeal to re-write the bargain struck by the relevant parties, including the Underwriters, and approved by Justice Morawetz as an integrated whole.

23. *Plan implementation.* In an exchange of correspondence between the proposed appellants and Sino-Forest, the proposed appellants confirmed that they did not intend to seek a stay of the implementation of the Plan pending this proposed appeal.[17]

24. On January 30, 2013, the Monitor certified that the implementation of the Plan had occurred.[18]

PART III – LAW & ARGUMENT

A. Test for Leave to Appeal

25. Leave to appeal is granted sparingly in CCAA proceedings and only when there are serious and arguable grounds that are of real and significant interest to the practice and the parties.[19] An appeal lies only with leave of this Court, which is indicative of Parliament's intention that most decisions should be made by the supervising CCAA judge and that these decisions should only be interfered with in clear cases.[20]

26. Accordingly, in order to obtain leave, the proposed appellants must satisfy each part of the following test:

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[17] *Monitor's Fifteenth Report*, Underwriters' Motion Record, Tab 9, p. 1257, para. 30, Underwriters' Compendium of Evidence, Tab 7, para. 30 (without appendices).

[18] *Monitor's Certificate of Plan Implementation*, Underwriters' Motion Record, Tab 10, p. 1267, para. 2, Underwriters' Compendium of Evidence, Tab 10, para. 2.

[19] CCAA, sections 13 and 14, Schedule "B"; *Return on Innovation Capital Ltd v. Gandi Innovations Ltd.* (2012), 90 C.B.R. (5th) 141 at para. 6 (Ont. C.A.), Underwriters' Brief of Authorities, Tab 2.

[20] *Re Smoky River Coal Ltd.* (1999), 237 A.R. 326 at para. 61 (Ont. C.A.), Underwriters' Brief of Authorities, Tab 3; *Re Algoma Steel Inc.* (2001), 25 C.B.R. (4th) 194 at para. 8 (Ont. C.A.), Underwriters' Brief of Authorities, Tab 4.

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

(b) the point is of significance to the action;

(c) the appeal is *prima facie* meritorious or frivolous; and

(d) the appeal will not unduly hinder the progress of the action.[21]

27. As set out in the balance of Part III, the Underwriters submit that the proposed appellants have failed by a wide margin to satisfy any of the parts of the leave test.

B. The Issue is Insignificant to the Practice

28. The issue of the inclusion in CCAA plans of reorganization of third-party releases is not novel or significant to the practice. This Court has relatively recently had the opportunity to consider this issue in *Metcalfe*. Courts below have regularly relied on the test and considerations set out in *Metcalfe* when considering the approval of third-party releases in CCAA plans of arrangement and compromise, including in the present case, and where the particular facts of a case warrant the approval of third-party releases, judges regularly approve such releases.[22]

29. Accordingly, this Court has already provided guidance in connection with the issue of third-party releases, and that guidance is applied by CCAA courts when undertaking fact-specific analyses. Whether to approve these releases is a question of applying the correct legal principles to the facts of the particular CCAA proceedings. Absent an error in principle, there is no reason to second-guess the exercise by a motions judge of her or his consideration of third-party

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[21] CCAA, sections 13 and 14, Schedule "B"; *Re Stelco Inc.*, [2005] O.J. No. 1171 at para. 24 (Ont. C.A.), Underwriters' Brief of Authorities, Tab 5.

[22] See *Metcalfe, supra* note 3, Underwriters' Brief of Authorities, Tab 1; *Muscle Tech Research and Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]) [*Muscle Tech*], Underwriters' Brief of Authorities, Tab 6; *Canwest Global Communications Corp. Re* (2010), 70 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List]) [*Canwest*], Underwriters' Brief of Authorities, Tab 7; *Angiotech Pharmaceuticals Inc. Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers]) [*Angiotech*], Underwriters' Brief of Authorities, Tab 8; *AbitibiBowater Inc., Re* (2010), 72 C.B.R. (5th) 80 (Que. S.C.) [*Abitibi*], Underwriters' Brief of Authorities, Tab 9.

releases in a particular case. The hearing of the proposed appeal would not assist the practice with this issue, and, in any event, the granting and scope of any such releases will be the subject of a future order, not the Sanction Order.

C. The Issue is Insignificant in the CCAA Proceedings

30. The Plan, after having been approved overwhelmingly by the requisite majorities of Sino-Forest's creditors and approved by Justice Morawetz, has now been fully implemented. The proposed appeal, therefore, is insignificant to the CCAA Proceedings.

D. The Appeal is *Prima Facie* Without Merit

31. There must appear to be an error in principle or law, or a palpable and overriding error of fact to satisfy the merits part of the test for leave. The exercise of discretion by a supervising judge in a CCAA case, so long as it is exercised judicially, is not a matter for interference by an appellate court, even if the appellate court were inclined to decide the matter another way.[23]

32. Justice Morawetz made no error in principle in approving Article 11 of the Plan. The motions judge carefully considered *Metcalfe* and other cases on third-party releases and applied the principles correctly to the present case.[24] In any event, since no third party releases have yet been approved or granted, Justice Morawetz cannot have erred in respect to whether a Proposed Release is appropriate in respect of a particular person: it is only when such a release is, in fact, approved could there be any error of the kind asserted by the proposed appellants.

33. *The motion judge's conclusion was correct.* In *Metcalfe*, this Court considered the question of whether a CCAA plan or compromise or arrangement may contain a release of

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[23] *Re Canadian Airlines* Corp., 2000 ABCA 149, at paras. 35-36 [*Canadian*], Underwriters' Brief of Authorities, Tab 10; *Re Gauntlet Energy Corp.* (2004), 49 C.B,R. (4th) 225 (Alta. C.A.) at para.12, Underwriters' Brief of Authorities, Tab 11.

[24] *Endorsement*, Underwriters' Motion Record, Tab 3, pp. 137-138, paras. 70-78, Underwriters' Compendium of Evidence, Tab 9, paras. 70-78.

claims against third-parties (i.e., 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.[25]

34. As discussed above, courts have applied 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.[26] In so doing, 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.[27]

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[25] *Metcalfe*, *supra* note 3, at para. 43, Underwriters' Compendium of Evidence, Tab 1.

[26] See *Metcalfe*, *supra* note 3, Underwriters' Brief of Authorities, Tab 1; *Muscle Tech*, *supra* note 22, Underwriters' Brief of Authorities, Tab 6; *Canwest*, *supra* note 22, Underwriters' Brief of Authorities, Tab 7; *Angiotech*, *supra* note 22, Underwriters' Brief of Authorities, Tab 8; *Abitibi*, *supra* note 22, Underwriters' Brief of Authorities, Tab 9.

[27] *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 [*Metcalfe (Ont. Sup. Ct. J.)*]; aff'd (2008), 45 C.B.R. (5th) 163 (C.A.); leave to appeal refused (2008), 257 O.A.C. 400 (SCC), Underwriters' Brief of Authorities, Tab 12.

35. CCAA courts have approved third party releases in the context of plans of arrangement and settlement agreements where: (1) the releases are rationally related to a resolution of the debtors' claims; (2) the releases will benefit creditors generally; and (3) the releases are not overly broad. The following factors are considered in this analysis:

(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.[28]

No single factor listed above is considered determinative.[29]

36. The connection between the Framework Releases and the result to be achieved by the Plan warrants their inclusion in the Plan, as is evident with reference to the above-factors:

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[28] *Metcalfe (Ont. Sup. Ct. J.)*, *supra* note 27, 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, Underwriters' Brief of Authorities, Tab 12.

[29] *Re Kitchener Frame Ltd.* (2012), 85 C.B.R. (5th) 274 (Ont. Sup. Ct. J. [Commercial List]) at para. 82, Underwriters' Brief of Authorities, Tab 13.

(a) The Underwriters had significant claims against Sino-Forest and the non-insolvent Sino-Forest Subsidiary Companies and were involved in extensive negotiations concerning the Plan, making them necessary and essential to the restructuring of Sino-Forest. There was a very serious issue as to whether the Underwriters' claims against the Sino-Forest Subsidiary Companies could be compromised in the manner set out in the Plan, and the consent of the Underwriters to the Plan was therefore critical to its approval by Justice Morawetz.

(b) The principal creditors of Sino-Forest consisted of the holders of the company's shares and notes, as well as persons with indemnity claims triggered by the Class Actions, including the Underwriters, making it essential that the Plan deal with claims related to the Class Actions and the resulting indemnity claims.

(c) The Underwriters are contributing in a tangible and realistic way to the Plan. As a result of the Underwriters not being entitled to any distributions under the Plan, there are greater distributions available to other creditors of Sino-Forest. In addition, the Underwriters' claims against the non-insolvent Sino-Forest Subsidiary Companies were voluntarily released pursuant to the Plan, despite those companies not being applicants in the CCAA Proceedings, as set out above.

(d) The restructuring has succeeded in that the Plan was approved and sanctioned and Plan implementation has occurred and substantially all of Sino-Forest's assets, have been transferred to a newly formed entity to be owned by the former noteholders and other creditors.

(e) The Plan approved by an overwhelming majority of creditors and sanctioned by the Sanction Order included the Framework Releases.

(f) The Monitor believed that the Plan, including the provisions related to the Framework Releases, is fair and reasonable.[30]

37. In the motion below, Justice Morawetz was correct in finding that the Framework Releases were rationally related to a resolution of the debtors' claims, benefit creditors general and not overly broad. The proposed appeal is therefore without meritorious.

E. The Appeal Will Undermine the Action

38. Though the proposed appeal will constitute an additional, unnecessary judicial proceeding and undermines the CCAA Proceedings. The implementation of the Plan makes this proposed appeal moot.

39. In addition, the Underwriters' consent to the granting of the Sanction Order was expressly predicated on the Framework Releases being a feature of the Plan. As consideration for giving up their valuable claims against the Sino-Forest Subsidiary Companies and receiving no distributions under the Plans, the Underwriters received the benefit of the Framework Releases.

40. Given the bargain struck by the Underwriters and their reliance on the Plan being an integrated whole, to sever provisions of the Sanction Order and features of the Plan at this stage and re-write the Plan would deprive the Underwriters of the basis for their consent to the Sanction Order, and thwart the expectations of the Underwriters. Permitting this appeal to proceed undermines the integrity of the CCAA process.

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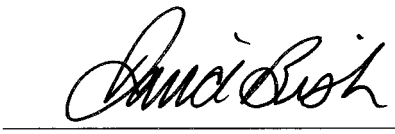
[30] *Monitor's Supplemental Report to the Thirteenth Report*, Underwriters' Motion Record, Tab 8, p. 1242, para. 41, Underwriters' Compendium of Evidence, Tab 6, para. 41 (without appendices).

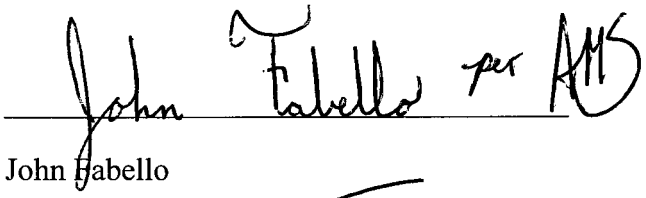
PART IV - RELIEF REQUESTED

41. For the reasons set out above, the Underwriters respectfully submit that the motion for leave to appeal the Sanction Order should be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



David Bish



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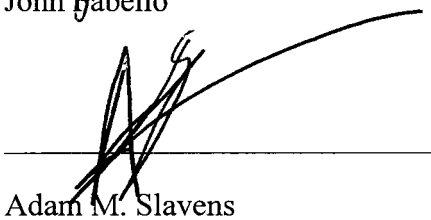

Adam M. Slavens

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.)

2. *Return on Innovation Capital Ltd v. Gandi Innovations Ltd.* (2012), 90 C.B.R. (5th) 141 (Ont. C.A.)

3. *Re Smoky River Coal Ltd.* (1999), 237 A.R. 326 (Ont. C.A.)

4. *Re Algoma Steel Inc.* (2001), 25 C.B.R. (4th) 194 (Ont. C.A.)

5. *Re Stelco Inc.*, [2005] O.J. No. 1171 (Ont. C.A.)

6. *Muscle Tech Research and Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List])

7. *Canwest Global Communications Corp. Re* (2010), 70 C.B.R. (5th) 59 (Ont. Sup. Ct. J. [Commercial List])

8. *Angiotech Pharmaceuticals Inc. Re* (2011), 76 C.B.R. (5th) 210 (B.C. S.C. [In Chambers])

9. *AbitibiBowater Inc., Re* (2010), 72 C.B.R. (5th) 80 (Que. S.C.)

10. *Re Canadian Airlines* Corp., 2000 ABCA 149

11. *Re Gauntlet Energy Corp.* (2004), 49 C.B,R. (4th) 225 (Alta. C.A.)

12. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J. [Commercial List])

13. *Re Kitchener Frame Ltd.* (2012), 85 C.B.R. (5th) 274 (Ont. Sup. Ct. J. [Commercial List])

SCHEDULE "B"

LEGISLATION

COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36

Leave to appeal

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

R.S., 1985, c. C-36, s. 13;
2002, c. 7, s. 134.

Court of appeal

14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

R.S., 1985, c. C-36, s. 14;
2002, c. 7, s. 135.

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 of Appeal File No. M42068
Commercial List Court File No. CV-12-9667-00CL

COURT OF APPEAL FOR ONTARIO

FACTUM OF THE UNDERWRITERS NAMED IN CLASS ACTIONS
(responding to the motion for leave to appeal from the Sanction Order)

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