

**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**

FIRST AMENDED NOTICE OF MOTION

TAKE NOTICE that the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the other plaintiffs (the "Ontario Plaintiffs") in the action commenced against Sino-Forest Corporation ("SFC" or the "Applicant") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Class Action"), will make a motion to a Judge of the Commercial List on April 13, 2012, at 10:00 a.m., 330 University Avenue, 8th Floor, Toronto, Ontario, or at such other time and place as the Court may direct.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order, if necessary, validating and abridging the time for service and filing of this notice of motion and motion record, and dispensing with any further service thereof;
2. The advice and direction of this court regarding the impact of the stay of proceedings imposed by the Initial Order dated March 30, 2012 (the "Initial Order") on the following proceedings in the Ontario Class Action:

- a. a motion to approve a litigation indemnity agreement, scheduled for April 17, 2012 (the "Funding Motion");
- b. a motion for approval of a settlement of the Ontario Class Action with Pöyry (Beijing) Consulting Company Limited, tentatively scheduled by the Ontario Plaintiffs for April 17, 2012 and a parallel motion in the corresponding class action brought in the Quebec Superior Court (the "Pöyry Settlement Motion"); and,
- c. motions for leave pursuant to Part XXIII.1 of the *Securities Act* (the "Leave Motion"), and certifying the Ontario Class Action pursuant to the *Class Proceedings Act* (the "Certification Motion"), scheduled to be heard together by the Honourable Justice Perell, after hearing argument, from November 21-30, 2012,

and, if necessary, lifting the stay of proceedings herein to permit the Pöyry Settlement Motion, the Funding Motion, the Leave Motion, and the Certification Motion to proceed;

3. An order appointing the Ontario Plaintiffs as representatives of the Class proposed in the Ontario Class Action, for the purposes of these proceedings and any related or ensuing receivership, bankruptcy or other insolvency proceeding that has or may be brought before this Court (the "Insolvency Proceedings"), substantially in accordance with the draft representation order appended hereto as Schedule "A";
4. ~~An order terminating these CCAA proceedings and appointing FTI Consulting Canada Inc. ("FTI"), or such other receiver as the court may direct, as receiver of the assets, undertakings and properties of the Applicant (the "Property"), substantially in accordance with the draft receivership order appended hereto as Schedule "B";~~

5. In the alternative to the relief sought in paragraph 4, above, an order:
- a. ~~terminating the appointments of the current board of directors and replacing the directors with individuals to be named, or, alternatively, granting the powers of the board to the Monitor;~~
 - b. declaring that:
 - i. this Court and the Monitor are not bound by, and these proceedings are not premised upon, the terms of the Restructuring Support Agreement dated March 30, 2012, between the Applicant, certain of its subsidiaries and certain of its noteholders (the "RSA");
 - ii. the Applicant remains at liberty to repudiate the RSA; and
 - iii. without limiting the generality of the foregoing, the Property may be sold independent of a plan of compromise or arrangement and in a manner that is otherwise inconsistent with the RSA;
 - c. directing a mediation of the claims in the Ontario Class Action and these proceedings (including, if necessary and without limitation, the allocation of value arising from any liquidation of the property, assets and undertakings of the Applicant and any of its wholly or partially owned subsidiaries) before a mediator acceptable to the Stakeholders, or such other mediator as the court may determine in consultation with the Monitor (the "Mediator") in accordance with a schedule and on such terms as are determined by the Mediator (the "Mediation");
 - d. directing the Monitor to create a data room accessible to the participants in the Mediation, upon execution of a non-disclosure agreement in form and substance acceptable to the Monitor and the Stakeholders, or as may be directed by the Mediator, to which the participants shall contribute such non-privileged information as the stakeholders may agree or as the Mediator may direct;

- e. directing the Monitor to work with the Ontario Plaintiffs to develop an alternative transaction to that contemplated by the Restructuring Support Agreement, which results in the transfer of assets other than the Excluded Assets (as defined in the Restructuring Support Agreement) to a company incorporated by participating noteholders in exchange for their debt, without a plan of arrangement and/or without releases in favour of the Applicant's directors and/or any third party;
 - f. amending the Initial Order so as to permit any stakeholder to have this Court issue an application for a bankruptcy order in respect of the Applicant;
 - g. an order directing the Monitor to send to the attached service list bi-weekly statements outlining the professional fees incurred in the prior two weeks and over the course of the proceedings, by each of the parties funded by the Applicant, broken down by party and by professional firm, and directing that such fees are subject to taxation by the Court, on reference to a Master, at the request of any stakeholder in these proceedings; and,
6. In the alternative to the relief sought in paragraphs 3, 4 and 5, above, an order declaring that the Plan in these proceedings shall not release any claims against any person who is or may be added as a defendant to Ontario Class Action, other than the uninsured portion of any claim against the directors and officers of SFC, to the extent permitted by the CCAA; and
 7. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. In addition to investigations by a number of securities regulators and police authorities, including the Royal Canadian Mounted Police and the Ontario Securities Commission (the "OSC"), SFC and its directors are the targets of the Ontario Class Action, which is brought by various pension funds on behalf of all persons and entities, wherever they may reside, who acquired SFC's securities

between March 19, 2007, to and including June 2, 2011 (the "Class Period"), by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter, and all persons and entities who acquired SFC's securities during the Class Period who are resident of Canada or were resident of Canada at the time of acquisition and who acquired SFC's securities outside of Canada, except certain excluded persons (the "Class").

2. The Ontario Class Action was commenced on July 20, 2011, and seeks damages of approximately \$9.18 billion.
3. The Ontario Plaintiffs are predominantly large multi-employer pension funds, and were awarded carriage of the Ontario Class Action to the exclusion of other claims commenced in Ontario by order of the Honourable Mr. Justice Perell dated January 6, 2012.
4. The following motions are pending in the Ontario Class Action:
 - a. the Funding Motion, returnable May 17, 2012, seeking approval of a litigation indemnity agreement;
 - b. the Pöyry Settlement Motion, tentatively scheduled by the Ontario Plaintiffs for May 17, 2012, seeking approval of a settlement of the Ontario Class Action with Pöyry (Beijing) Consulting Company Limited; and,
 - c. the Leave Motion and the Certification Motion, scheduled by the Honourable Justice Perell to be heard together from November 21-30, 2012, seeking leave to proceed with the secondary market claims pursuant to Part XXIII.1 of the *Securities Act* (the "Secondary Market Claims") and certification of the Ontario Class Action pursuant to the *Class Proceedings Act*.
5. The Ontario Plaintiffs have entered into a tolling agreement with the relevant defendants to the Ontario Class Action, extending the alleged limitation period in

respect of the Secondary Market Claims to February 28, 2013 (the "Alleged Limitation Date").

6. The Ontario Plaintiffs and the other members of the Class in the Ontario Class Action are at risk of having the claims barred in the event that the Leave Motion and Certification Motion are not decided prior to the Alleged Limitation Date.
7. After a lengthy hearing, the Leave Motion and the Certification Motion were scheduled by the Honourable Justice Perell so as to permit those motions to be decided prior to the Alleged Limitation Date.
8. On March 30, 2012, SFC filed for and obtained protection from its creditors under the CCAA.
9. As part of the Initial Order, this Court ordered that until and including April 29, 2012, no proceeding or enforcement process in any court or tribunal shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting SFC's business or property, except with written consent from SFC and the Monitor or with leave of this Court. Any proceedings currently under way against or in respect of the Applicant or affecting SFC's business or property were hereby stayed and suspended pending further Order of this Court.
10. The Ontario Plaintiffs have written to the defendants to the Ontario Class Action, including SFC, asking that the tolling agreement be extended, but to date no response has been received.
11. By its terms, the Initial Order does not have the effect of staying the Funding Motion, the Pöyry Settlement Motion, or the Ontario Class Action as against defendants other than SFC and its officers and directors.
12. Sound reasons exist to lift the stay of proceedings as it applies to the Ontario Class Action and the pending motions therein, including, among other things:
 - a. the Ontario Class Action raises serious claims having a real chance of success;

- b. material claims forming part of the Ontario Class Action are at risk of becoming statute barred as a result of the stay of proceedings herein;
 - c. any talk of a “restructuring”, whether by way of liquidation or otherwise, and suggestion that this CCAA process will address “the uncertainty created by the [Muddy Waters] Report”, is nothing but a façade—among other things:
 - i. nearly one year after the Muddy Waters Report was issued, and having spent tens of millions of dollars on investigations, SFC’s so-called independent directors have been unable to meaningfully respond to the allegations of fraud contained in that report;
 - ii. SFC has been unable to produce reliable financial statements and their auditor has resigned; and
 - iii. the OSC has given notice of its intention to commence formal enforcement proceedings against SFC and its directors;
 - d. The Ontario Class Action does not interfere with the restructuring—to the contrary it is necessary to bring light to SFC’s affairs and inform stakeholders’ positions.
13. SFC has no future interest to protect.
14. SFC’s current directors are operating under a material conflict of interest, and have not acted in good faith. The current directors are likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of SFC, and are acting or are likely to act improperly as a director in the circumstances.
15. These proceedings serve no societal or other useful purpose. SFC’s assets can be sold through a receivership process.
16. The representation of the interests of the Class by the Ontario Plaintiffs in any Insolvency Proceedings will serve to:

- a. ensure that a vulnerable group is properly represented in those proceedings;
 - b. facilitate the administration of the proceedings, negotiation and compromise;
 - c. increase efficiency and avoid a multiplicity of legal retainers.
17. An early-stage mediation is appropriate in the circumstances, given the CCAA policy objectives of balancing stakeholder interests, preserving value in the Debtor company, and facilitating the compromise of claims.
 18. Full and plain disclosure of information is necessary to facilitate the attainment of the objectives of these proceedings.
 19. Section 101 of the *Courts of Justice Act*;
 20. Sections 11, 11.02, 11.5, 23, 32 , *Companies' Creditors Arrangement Act*;
 21. Rules 1.04, 3.02, 10, 12, 16.08 and 37 of the *Rules of Civil Procedure*; and
 22. Such further grounds as counsel may advise and this Honourable Court may consider.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used on the hearing of the motion:

1. Affidavit of Daniel E. H. Bach, sworn April 11, 2012;
2. Affidavit of David Weir, sworn April 19, 2012;
3. Affidavit of Daniel Bach sworn April 26, 2012;
4. Affidavit of Nina Jhooti May 2, 2012;
5. The pleadings and proceedings herein;

TO: THE ATTACHED SERVICE LIST

**SCHEDULE A TO NOTICE OF MOTION
DRAFT REPRESENTATION ORDER**

(ATTACHED)

SCHEDULE "B"

DRAFT RECEIVERSHIP ORDER

**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**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

FIRST AMENDED NOTICE OF MOTION

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Lawyers for an Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action against the Applicant