



Court File No. CV-12-9667-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE
MR. JUSTICE MORAWETZ) 26TH DAY OF MARCH, 2013

**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 AND
ARRANGEMENT OF SINO-FOREST CORPORATION**

Court File No.: CV-11-431153-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT
WONG**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON
MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES
P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER
WANG, GARRY J. WEST, PÖYRY (BEIJING) CONSULTING COMPANY
LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC.,
DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC.,
SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH
CANADA INC., CANACCORD FINANCIAL LTD., 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)**

Defendants

ORDER

THIS MOTION made by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation ("Sino-Forest") in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively), in their own and proposed representative capacities, for an order providing for the preservation and production of certain documents in the possession of Ernst & Young LLP.

WHEREAS the Ontario Plaintiffs and Ernst & Young (as defined in the Plan) entered into Minutes of Settlement dated November 29, 2012.

AND WHEREAS this Honourable Court issued the Sanction Order containing the framework and providing for the implementation of the Ernst & Young Settlement and the Ernst & Young Release, upon further notice and approval;

AND WHEREAS the Supervising CCAA Judge in this proceeding was designated on December 13, 2012 by Regional Senior Justice Then to hear this motion for settlement approval pursuant to both the CCAA and the *Class Proceedings Act, 1992*;

AND WHEREAS this Honourable Court approved the form of notice and the plan for distribution of the notice to any Person with an Ernst & Young Claim, as defined in the Plan, of this settlement approval motion by Order dated December 21, 2012 (the "Notice Order");

AND WHEREAS this Honourable Court approved the Ernst & Young Settlement and the Ernst & Young Release, as defined in the Plan, including the bar orders sought by Order dated March 20, 2013 (the "Settlement Order");

AND WHEREAS paragraph 12(c) of the Settlement Order provides that none of the plaintiffs in the Class Actions, as defined in the Settlement Order, shall be permitted to claim from any of the other defendants that portion of any damages that corresponds with the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement.

AND ON READING the Ontario Plaintiffs' Motion Record, including the affidavit and supplemental affidavit of Charles Wright, counsel to the plaintiffs, and the exhibits thereto, the affidavit of Joe Redshaw and the exhibits thereto, the affidavit of Frank C. Torchio and the exhibits thereto, the affidavit of Serge Kalloghlian and exhibits thereto, the affidavit of Adam Pritchard and the exhibits thereto, and the affidavit of Mike P. Dean and the exhibits thereto, and the affidavit of Judson Martin and the exhibits thereto and the Responding Motion Record of the Objectors to this motion (Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc, Gestion Férique and Montrusco Bolton Investments) including the affidavits of Eric J. Adelson and exhibits thereto, Daniel Simard and exhibits thereto and Tanya J. Jemec and the exhibits thereto, and on reading the Responding Motion Record of Poyry (Beijing) Consulting Company Limited including the affidavit of Christina Doria, and on reading the Fourteenth Report, the Supplement to the Fourteenth Report and the Fifteenth Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants (in such capacity, the "Monitor") dated January 22 and 28, 2013 and February 1, 2013 including any notices of objection received, and on reading such other material, filed, and on hearing the submissions of counsel for the Ontario Plaintiffs, Ernst & Young LLP, the Ad Hoc Committee of Sino-Forest Noteholders the Applicant, the Objectors to this motion, the Underwriters, Derek Lam and Senith Vel Kanagaratnam, the Underwriters, (Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd., 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)), BDO Limited, the Monitor and those other parties present, no one appearing for any other party although duly served and such other notice as required by the Notice Order,


1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and the Motion Record and the Fourteenth and Fifteenth Reports of the Monitor on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable February 4, 2013 in both proceedings set out in the styles of cause hereof.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this order shall have the meanings attributed to those terms in the Plan.
3. **THIS COURT ORDERS** that for the purposes of paragraph 12(c) in the Settlement Order made by this Honourable Court on today's date and commencing on the Ernst & Young Settlement Date, Ernst & Young LLP and all other parties to the Ontario Action shall be bound by the terms of the Production Protocol attached to this Order as **Appendix "A"**.
4. **THIS COURT ORDERS** that the document production as set out in the Production Protocol shall proceed pursuant to an agreement between the parties to the Ontario Class Action and Ernst & Young LLP in respect of a discovery plan pursuant to Rule 29.1.03(1) of the *Rules of Civil Procedure*, or failing such agreement, a further order of the court in respect of a discovery plan.
5. **THIS COURT ORDERS** that the non-settling parties may, on a motion to this Honourable Court, seek to enforce any pre-existing or subsequently acquired rights to obtain evidence from Ernst & Young LLP and may obtain on a motion to this Honourable Court, as against Ernst & Young LLP as a non-party, subject to Ernst & Young LLP's ability to resist a further order of the Court, Orders for:
 - a. documentary discovery and an affidavit of documents in accordance with the Rules of Civil Procedure from Ernst & Young LLP, to the extent it is not provided for in the Order or Appendix "A" thereto;
 - b. oral discovery of a representative of Ernst & Young LLP, the transcript of which may be read in at trial;
 - c. leave to serve a request to admit on Ernst & Young LLP in respect of factual matters; and
 - d. an undertaking to produce an Ernst & Young LLP representative to testify at trial, with such witness to be subject to cross-examination by counsel for the non-settling defendants.

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APPENDIX "A" PRODUCTION PROTOCOL

This document production protocol is intended to describe the process for obtaining production of documents from Ernst & Young LLP ("Ernst & Young") in Ontario Superior Court of Justice, Court File No. CV-11-431153CP (the "Action"). The protocol assumes that the Ernst & Young Settlement and Ernst & Young Release will have been finally approved by the courts, including the bar orders sought, and that confirmation to the Monitor in writing by Ernst & Young of the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder, and, where necessary, upon the recognition of these matters by appropriate courts in other jurisdictions all shall have occurred and/or been completed.

Ernst & Young has confirmed that to the best of its knowledge documents related to Sino-Forest Corporation and its subsidiaries ("Sino-Forest") in its power, possession and control have been preserved in response to a document preservation memorandum dated June 9, 2011 and will continue to be preserved until the Action has been finally resolved.

After all appeals or times to appeal from certification of the Action against the non-settling defendants have been exhausted, following the close of pleadings, following production of documents by the then parties (not including Ernst & Young) to the Action and following delivery of affidavits of documents by the parties (not including Ernst & Young) to the Action, and in accordance with the timetable set out in the Discovery Plan (referenced in paragraph 3 below):

- 1) Ernst & Young will identify and produce the documents relevant to the Action, as determined by reference to the pleadings in the Action, such relevance to be determined as if Ernst & Young were still a party to the Action, subject to the principles of proportionality and reasonableness and subject to privilege and other lawful confidentiality claims (the "Documents");

- 2) The Documents referred to in paragraph (1) hereof shall be made available to the parties for inspection upon request and, if requested, copies shall be produced to the parties to the Action;
- 3) Ernst & Young shall be consulted about the proposed schedule for production and discovery with respect to productions pursuant to this protocol before the finalization of the Discovery Plan pursuant to Rules 29.1.03(1) of the *Rules of Civil Procedure*. Ernst & Young shall thereafter make the Documents available for inspection in accordance with the established schedule. Any dispute with respect to the schedule as it affects Ernst & Young may be referred to the Ontario Superior Court pursuant to paragraph 9 hereof;
- 4) Ernst & Young shall be provided notice of all motions affecting Ernst & Young, including but not limited to any motion in respect of this Production Protocol, with service effective upon Peter H. Griffin, Lenczner Slaght LLP, for all motions or other proceedings contemplated by this protocol and the Order;
- 5) The parties to the Action will be permitted to access the aforementioned Documents for an agreed duration during which any such party may request copies of them;
- 6) Ernst & Young will arrange for copies of the Documents to be made and thereafter provided to, not only the party to the Action requesting copies of the documents, but also every other party to the Action. In the case of documents that are now in electronic form, production of such documents will be by electronic copies;
- 7) Any party to the Action that requests copies of documents pursuant to paragraphs 2 and 5 hereof agrees to pay all reasonable expenses relating to the copying or scanning of the requested documents incurred by Ernst & Young (including the costs incurred as a result of Ernst & Young retaining a third party vendor for such copying or scanning) for both the party requesting the documents and all other parties to the Action who are entitled to receive a duplicate copy, subject to the

rights of the parties to the Action to recover the same from the other parties to the Action as costs in the Action. Nothing in this paragraph is intended to prevent the parties to the Action from allocating the costs referred to among themselves in any way they agree is appropriate;

- 8) All other costs of Ernst & Young relating to the preparation for inspection and the production of documents shall be in the discretion of the Court pursuant to rule 30.10 of the *Rules of Civil Procedure* and s. 131 of the *Courts of Justice Act* and Ernst & Young or any party to the Action may refer the issue of the responsibility for payment of such costs to the Court pursuant to paragraph 9 hereof;
- 9) The parties to the Action and Ernst & Young may seek the assistance of the Ontario Superior Court, in case managing or resolving any issues that may arise during implementation of the abovementioned document production protocol, including the application and/or waiver of privilege, privilege generally, claims of confidentiality claims, the determination of relevance and the responsibility for costs incurred by Ernst & Young referred to in paragraph 8 hereof;
- 10) The deemed undertaking, as described in Rule 30.1 of the *Rules of Civil Procedure* shall apply to all documents made available for inspection or produced by Ernst & Young;
- 11) Nothing in this document protocol waives or prejudices the rights that the parties to the Action and Ernst & Young might have pursuant to Rules 30.10, 31.10 and 53.07 of the *Rules of Civil Procedure* and section 131 of the *Courts of Justice Act (Ontario)*.

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CORPORATION

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF SINO-FOREST CORPORATION, et al.
CENTRAL AND EASTERN CANADA, et al.

Plaintiffs

Court File No: CV-12-9667-00CL

Defendants

Court File No. CV-11-431153-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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**LAWYERS FOR AN AD HOC COMMITTEE OF
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