

*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 AND  
ARRANGEMENT OF SINO-FOREST CORPORATION**

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N :

**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  
ROBERT WONG, DAVIS NEW YORK VENTURE FUND, INC. and DAVIS SELECTED  
ADVISERS L.P.**

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, 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

Proceeding under the *Class Proceedings Act, 1992*

**REPLY FACTUM OF THE PLAINTIFFS  
DEALERS SETTLEMENT APPROVAL  
(Returnable May 11, 2015)**

May 7, 2015

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900

Toronto, ON M5H 3R3

Kirk Baert

Jonathan Ptak

Tel: 416.977.8353 / Fax: 416.977.3316

**PALIARE ROLAND ROSENBERG**

**ROTHSTEIN LLP**

250 University Avenue, Suite 501

Toronto, ON M5H 3E5

Ken Rosenberg

Massimo Starnino

Tel: 416.646.4300 / Fax: 416.646.4301

**SISKINDS LLP**

680 Waterloo Street

London, ON N6A 3V8

A. Dimitri Lascaris

Tel: 519.672.2121 / Fax: 519.672.6065

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

**TO : THE ATTACHED SERVICE LIST**

**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**

**SERVICE LIST  
(as at April 2015)**

<b>TO: BENNETT JONES LLP</b> 3400 One First Canadian Place, P.O. Box 130 Toronto, Ontario M5X 1A4	<b>AND GOWLING LAFLEUR HENDERSON LLP</b> <b>TO:</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario M5X 1G5
Robert W. Staley Tel: 416.777.4857 Fax: 416.863.1716 Email: staleyr@bennettjones.com	Derrick Tay Tel: 416.369.7330 Fax: 416.862.7661 Email: derrick.tay@gowlings.com
Kevin Zych Tel: 416.777.5738 Email: zychk@bennettjones.com	Clifton Prophet Tel: 416.862.3509 Email: clifton.prophet@gowlings.com
Derek J. Bell Tel: 416.777.4638 Email: belld@bennettjones.com	Jennifer Stam Tel: 416.862.5697 Email: jennifer.stam@gowlings.com
Raj S. Sahni Tel: 416.777.4804 Email: sahnir@bennettjones.com	Ava Kim Tel: 416.862.3560 Email: ava.kim@gowlings.com
Jonathan Bell Tel: 416.777.6511 Email: bellj@bennettjones.com	Lawyers for the Monitor
Sean Zweig Tel: 416.777.6254 Email: zweigs@bennettjones.com	
Lawyers for the Applicant, Sino-Forest Corporation	

AND **FTI CONSULTING CANADA INC.**  
TO: T-D Waterhouse Tower  
79 Wellington Street West  
Toronto-Dominion Centre, Suite 2010,  
P.O. Box 104  
Toronto, Ontario M5K 1G8

Greg Watson  
Tel: 416.649.8100  
Fax: 416.649.8101  
Email: greg.watson@fticonsulting.com

Jodi Porepa  
Tel: 416.649.8070  
Email: Jodi.porepa@fticonsulting.com

Monitor

AND **BAKER MCKENZIE LLP**  
TO: Brookfield Place  
2100-181 Bay Street  
Toronto, Ontario M5J 2T3

John Pirie  
Tel: 416.865.2325  
Fax: 416.863.6275  
Email: john.pirie@bakermckenzie.com

David Gadsden  
Tel: 416.865.6983  
Email: david.gadsden@bakermckenzie.com

Lawyers for Poyry (Beijing) Consulting  
Company Limited

AND **AFFLECK GREENE MCMURTY LLP**  
TO: 365 Bay Street, Suite 200  
Toronto, Ontario M5H 2V1

Peter Greene  
Tel: 416.360.2800  
Fax: 416.360.8767  
Email: pgreene@agmlawyers.com

Kenneth Dekker  
Tel: 416.360.6902  
Fax: 416.360.5960  
Email: kdekker@agmlawyers.com

David Vaillancourt  
Tel: 416.360.8100  
Fax: 416.360.5960  
Email: dvaillancourt@agmlawyers.com

Lawyers for BDO

AND **TORYS LLP**  
TO: 79 Wellington Street West  
Suite 3000, Box 270  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1N2

John Fabello  
Tel: 416.865.8228  
Fax: 416.865.7380  
Email: jfabello@torys.com

David Bish  
Tel: 416.865.7353  
Email: dbish@torys.com

Andrew Gray  
Tel: 416.865.7630  
Email: agray@torys.com

Lawyers for the Underwriters named in Class  
Actions

AND **LINKLATERS LLP**  
TO: 10<sup>th</sup> Floor, Alexandra House  
18 Chater Road  
Hong Kong China

Melvin Sng  
Tel: 852 2901 5234  
Fax: 852 2810 8133  
Email: Melvin.Sng@linklaters.com

Lawyers for Sino-Forest Corporation (Hong Kong)

AND **GOODMANS LLP**  
TO: 333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Benjamin Zarnett  
Tel: 416.597.4204  
Fax: 416.979.1234  
Email: bzarnett@goodmans.ca

Robert Chadwick  
Tel: 416.597.4285  
Email: rchadwick@goodmans.ca

Brendan O'Neill  
Tel: 416.979.2211  
Email: boneill@goodmans.ca

Caroline Descours  
Tel: 416.597.6275  
Email: cdescours@goodmans.ca

Lawyers for Ad Hoc Committee of Bondholders

AND **MERCHANT LAW GROUP LLP**  
TO: Saskatchewan Drive Plaza  
100-2401 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H8

E.F. Anthony Merchant, Q.C.  
Tel: 306.359.7777  
Fax: 306.522.3299  
tmerchant@merchantlaw.com

Lawyers for the Plaintiffs re Saskatchewan action

AND **ONTARIO SECURITIES COMMISSION**  
TO: Suite 1900, 20 Queen Street West  
Toronto, Ontario M5H 3S8

Hugh Craig  
Senior Litigation Counsel  
Tel: 416.593.8259  
Email: hcraig@osc.gov.on.ca

AND **OSLER, HOSKIN & HARCOURT LLP**

TO: 1 First Canadian Place  
100 King Street West  
Suite 6100, P.O. Box 50  
Toronto, Ontario M5X 1B8

Larry Lowenstein  
Tel: 416.862.6454  
Fax: 416.862.6666  
Email: llowenstein@osler.com

Edward Sellers  
Tel: 416.862.5959  
Email: esellers@osler.com

Geoffrey Grove  
Tel: (416) 862-4264  
Email: ggrove@osler.com

Lawyers for the Board of Directors of Sino-  
Forest Corporation

AND **SISKINDS LLP**

TO: 680 Waterloo Street  
P.O. Box 2520  
London, Ontario N6A 3V8

A. Dimitri Lascaris  
Tel: 519.660.7844  
Fax: 519.672.6065  
Email: dimitri.lascaris@siskinds.com

Charles M. Wright  
Tel: 519.660.7753  
Email: Charles.wright@siskinds.com

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

AND **COHEN MILSTEIN SELLERS & TOLL PLC**

TO: 1100 New York, Ave., N.W.  
West Tower, Suite 500  
Washington, D.C. 20005

Steven J. Toll  
Tel: 202.408.4600  
Fax: 202.408.4699  
Email: stoll@cohenmilstein.com

Matthew B. Kaplan  
Tel: 202.408.4600  
Email: mkaplan@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed Class  
re New York action

AND **KOSKIE MINSKY LLP**

TO: 20 Queen Street West, Suite 900  
Toronto, Ontario M5H 3R3

Kirk M. Baert  
Tel: 416.595.2117  
Fax: 416.204.2899  
Email: kbaert@kmlaw.ca

Jonathan Ptak  
Tel: 416.595.2149  
Fax: 416.204.2903  
Email: jptak@kmlaw.ca

Garth Myers  
Tel: 416.595.2102  
Fax: 416.977.3316  
Email: gmyers@kmlaw.ca

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

AND **COHEN MILSTEIN SELLERS & TOLL**  
TO: **PLC**

88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10005

Richard S. Speirs  
Tel: 212.838.7797  
Fax: 212.838.7745  
Email: rspeirs@cohenmilstein.com

Stefanie Ramirez  
Tel: 202.408.4600  
Email: sramirez@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed  
Class re New York action

AND **THOMPSON HINE LLP**  
TO: 335 Madison Avenue – 12<sup>th</sup> Floor  
New York, New York 10017-4611

Yesenia D. Batista  
Tel: 212.908.3912  
Fax: 212.344.6101  
Email: yesenia.batista@thompsonhine.com

Irving Apar  
Tel: 212.908.3964  
Email: irving.apar@thompsonhine.com

Curtis L. Tuggle  
3900 Key Center, 127 Public Square  
Cleveland, Ohio 44114  
Tel: 216.566.5904  
Fax: 216.566.5800  
Email: Curtis.tuggle@thompsonhine.com

Lawyers for Senior Note Indenture Trustee

AND **LAW DEBENTURE TRUST COMPANY OF**  
TO: **NEW YORK**

400 Madison Avenue – 4<sup>th</sup> Floor  
New York, New York 10017

James D. Heaney  
Tel: 646-747-1252  
Fax: 212-750-1361  
Email: james.heaney@lawdeb.com

Senior Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: Global Corporate Trust

101 Barclay Street – 4<sup>th</sup> Floor East  
New York, New York 10286

David M. Kerr, Vice President  
Tel: 212.815.5650  
Fax: 732.667.9322  
Email: david.m.kerr@bnymellon.com

Convertible Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: 320 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario M5H 4A6

George Bragg  
Tel: 416.933.8505  
Fax: 416.360.1711 / 416.360.1737  
Email: George.bragg@bnymellon.com

Convertible Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: 12/F Three Pacific Place  
1 Queen's Road East, Hong Kong

Marelize Coetzee, Vice President  
Relationship Manager, Default Administration  
Group – APAC  
Tel: 852.2840.6626  
Mobile: 852.9538.5010  
Email: marelize.coetzee@bnymellon.com

Grace Lau  
Email: grace.lau@bnymellon.com

Convertible Note Indenture Trustee

AND **LINKLATERS LLP**  
TO: 10<sup>th</sup> Floor, Alexandra House  
18 Chater Road  
Hong Kong China

Hyung Ahn  
Tel: 852 2842 4199  
Fax: 852 2810 8133  
Email: hyung.ahn@linklaters.com

Samantha Kim  
Tel: 852.2842 4197  
Email: Samantha.Kim@Linklaters.com

Jon Gray  
Tel: 852.2842.4188  
Email: Jon.Gray@linklaters.com

Lawyers for Sino-Forest Corporation (U.S.)

AND **APPLEBY GLOBAL**  
TO: Jayla Place, Wickham's Cay 1  
P.O. Box 3190, Road Town  
Tortola VG1110 BVI

Eliot Simpson  
Tel: 284.852.5321  
Fax: 284.494.7279  
Email: esimpson@applebyglobal.com

Andrew Willins  
Tel: 284 852 5323  
Email: awillins@applebyglobal.com

Andrew Jowett  
Tel: 284 852 5316  
Email: ajowett@applebyglobal.com

Lawyers for Sino-Forest Corporation (BVI)

AND **KING AND WOOD MALLESONS**  
TO: 9th Floor, Hutchison House  
Central, Hong Kong Island  
Hong Kong (SAR)

Helena Huang  
Tel: 852.2848.4848  
Email: Helena.huang@kingandwood.com

Tata Sun  
Tel: 852.2848.4848  
Email: tata.sun@kingandwood.com

Lawyers for Sino-Forest Corporation (PRC)

AND **THORNTON GROUT FINNIGAN LLP**  
TO: Suite 3200, 100 Wellington Street West  
P. O. Box 329, Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

James H. Grout  
Tel: 416.304.0557  
Fax: 416.304.1313  
Email: jgrout@tgf.ca

Lawyers for the Ontario Securities Commission



AND **McCARTHY TETRAULT LLP**  
TO: Suite 2500, 1000 De La Gauchetiere St.  
West  
Montreal, Québec, H3B 0A2

Alain N. Tardif  
Tel: 514.397.4274  
Fax : 514.875.6246  
Email: atardif@mccarthy.ca

Mason Poplaw  
Tel: 514.397.4155  
Email: mpoplaw@mccarthy.ca

Céline Legendre  
Tel: 514.397.7848  
Email: clegendre@mccarthy.ca

Lawyers for Ernst & Young LLP

AND **CHAITONS LLP**  
TO: 5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

Harvey G. Chaiton  
Tel: 416.218.1129  
Fax: 416.218.1849  
Email: Harvey@chaitons.com

Lawyers for the Law Debenture Trust  
Company of New York

AND **RUETER SCARGALL BENNETT LLP**  
TO: 250 Yonge Street  
Suite 2200  
Toronto, Ontario M5B 2L7

Robert Rueter  
Tel: 416.869-3363  
Email: robert.rueter@rslawyers.com

Sara J. Erskine  
Tel: 416.597-5408  
Email: sara.erskine@rslawyers.com

Jason Beitchman  
Tel: 416.597.5416  
Email: Jason.beitchman@rslawyers.com

Lawyers for Allan Chan

AND **PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**  
TO: 155 Wellington Street, 35<sup>th</sup> Floor  
Toronto, Ontario M5V 3H1

Ken Rosenberg  
Tel: 416.646.4304  
Fax: 416.646.4301  
Email: ken.rosenberg@paliareroland.com

Massimo (Max) Starnino  
Tel: 416.646.7431  
Email: max.starnino@paliareroland.com

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

AND **ERNST & YOUNG LLP**  
TO: 222 Bay Street, P.O. Box 251  
Toronto, Ontario M5K 1J7

Mike P. Dean  
Tel: 416-943-2134  
Fax: 416-943-3300  
Email: Mike.P.Dean@ca.ey.com

AND **FASKEN MARTINEAU LLP**  
TO: 333 Bay Street, Suite 2400,  
Bay-Adelaide Centre, Box 20  
Toronto, Ontario M5H 2T6

Stuart Brotman  
Tel: 416.865.5419  
Fax: 416.364.7813  
Email: sbrotman@fasken.com

Conor O'Neill  
Tel: 416 865 4517  
Email: coneill@fasken.com

Canadian Lawyers for the Convertible Note  
Indenture Trustee (The Bank of New York  
Mellon)

AND **LAPOINTE ROSENSTEIN**  
TO: **MARCHAND MELANÇON,**  
**S.E.N.C.R.L.**

1250, boul. René-Lévesque Ouest, bureau  
1400  
Montréal (Québec) Canada H3B 5E9

Bernard Gravel  
Tel: 514.925.6382  
Fax: 514.925.5082  
Email: bernard.gravel@lrmm.com

Bruno Floriani  
Tel: 514.925.6310  
Email: bruno.floriani@lrmm.com

Québec counsel for Pöyry (Beijing)  
Consulting Company Ltd.

AND **DAVIS LLP**  
TO: 1 First Canadian Place, Suite 6000  
PO Box 367  
100 King Street West  
Toronto, Ontario M5X 1E2

Susan E. Friedman  
Tel: 416.365.3503  
Fax: 416.777.7415  
Email: sfriedman@davis.ca

Bruce Darlington  
Tel: 416.365.3529  
Fax: 416.369.5210  
Email: bdarlington@davis.ca

Brandon Barnes  
Tel: 416.365.3429  
Fax: 416.369.5241  
Email: bbarnes@davis.ca

Lawyers for Kai Kat Poon

AND **CLYDE & COMPANY**  
TO: 390 Bay Street, Suite 800  
Toronto, Ontario M5H 2Y2

Mary Margaret Fox  
Tel: 416.366.4555  
Fax: 416.366.6110  
Email: marymargaret.fox@clydeco.ca

Paul Emerson  
Tel: 416.366.4555  
Email: paul.emerson@clydeco.ca

Lawyers for ACE INA Insurance and Chubb  
Insurance Company of Canada

AND **RICKETTS, HARRIS LLP**  
TO: Suite 816, 181 University Ave  
Toronto ON M5H 2X7

Gary H. Luftspring  
Tel: 647.288.3362  
Fax: 647.260.2220  
Email: GLuftspring@rickettsharris.com

Lawyers for Travelers Insurance Company of  
Canada

AND **CLYDE & COMPANY**  
TO: 390 Bay Street, Suite 800  
Toronto, Ontario M5H 2Y2

Mary Margaret Fox  
Tel: 416.366.4555  
Fax: 416.366.6110  
Email: marymargaret.fox@clydeco.ca

Paul Emerson  
Tel: 416.366.4555  
Email: paul.emerson@clydeco.ca

Lawyers for ACE INA Insurance and Chubb  
Insurance Company of Canada

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

*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 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  
ROBERT WONG, DAVIS NEW YORK VENTURE FUND, INC. and DAVIS SELECTED  
ADVISERS L.P.**

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, 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

Proceeding under the *Class Proceedings Act, 1992*

**REPLY FACTUM OF THE PLAINTIFFS  
SETTLEMENT APPROVAL  
(Returnable May 11, 2015)  
TABLE OF CONTENTS**

	PAGE
PART I - OVERVIEW .....	1
PART II - ISSUES AND THE LAW .....	2
A. The Monitor Has Not Taken a Position On This Motion .....	2
B. The Litigation Trustee’s Absolute Position is Incorrect.....	3
C. The Litigation Trustee Has Not Made Any Request or Demand for Monetary or Non-Monetary Compensation.....	4
D. The Litigation Trust Has Not Identified Any Claims Against the Dealers.....	3
E. Third Party Releases Provided as Part of <i>Quid Pro Quo</i> to Compensate Contributions Made in Restructuring.....	5
F. Overlap Between Litigation Trust Beneficiaries and Claimants in the Dealers Settlement .....	6
SCHEDULE “A” LIST OF AUTHORITIES .....	8
SCHEDULE “B” RELEVANT STATUTES .....	9

## PART I - OVERVIEW

1. The Ad Hoc Committee of Purchasers of the Sino-Forest Corporation's Securities (the "Ad Hoc Committee") repeats and relies upon its submissions in its factum dated April 24, 2015. The Ad Hoc Committee provides the following reply to the new arguments raised by the Litigation Trustee in its factum filed May 5, 2015:

- (a) **The Monitor has not taken a position on this motion:** The Litigation Trust erroneously states that the Monitor is opposing this motion. This is incorrect. The Monitor has advised that it is not opposing or taking any position on this motion.
- (b) **The Litigation Trustee has no litigation claims against the Dealers:** The Litigation Trust, which stands in the shoes of Sino-Forest, does not have or has released any claims against the Dealers. The Litigation Trust is not entitled to any portion of the Dealers Settlement.
- (c) **The Litigation Trustee's absolutist position is incorrect:** The Litigation Trust argues that it has an absolute right to withhold its acceptance of the Dealers Settlement under all circumstances. This is not correct. The Litigation Trust has confirmed that it has no litigation claim against the Dealers. The Litigation Trustee's absolutist position that it can in all circumstances veto a fair settlement is contrary to the purpose of the CCAA, the Litigation Trust's obligation to act in good faith and reasonably, and its discretion granted by the Court-approved Litigation Trust Agreement.
- (d) **The Litigation Trustee has not requested any changes to the order:** Notwithstanding efforts by the Ad Hoc Committee to engage the Litigation Trust in discussions, the Litigation Trust has not proposed, either formally or informally, any changes to the order that would provide it any non-monetary benefits. This stands in contrast to other non-settling defendants in this and prior settlements who have objected on the basis of a lack of discovery rights.
- (e) **Overlap between beneficiaries of the Litigation Trust and the class action claimants:** There is overlap between the beneficiaries of the Litigation Trust and the securities claimants on behalf of whom claims are advanced in the class actions. Those overlapping class members have made claims in the Ernst & Young settlement, and are entitled to make claims and receive compensation in the Dealers Settlement.
- (f) **Third party releases provided as part of *quid pro quo* for contributions in restructuring:** The Litigation Trustee acknowledges that the third party release is intended to compensate participants in the market for contributions made in the restructuring. The Ad Hoc Committee and the Dealers provided considerable contributions and gave up rights in Sino-Forest's restructuring and have now

agreed to make a considerable contribution to Sino-Forest's creditors in exchange for the availability of the release.

2. In the circumstances, the Dealers Settlement should be approved.

## PART II - ISSUES AND THE LAW

### A. The Monitor Has Not Taken a Position On This Motion

3. The Monitor set out its position on this motion in an email dated February 19, 2015 from Derrick Tay, counsel to the Monitor, to Messrs. Staley and Bish, counsel to the Litigation Trust and the Dealers, respectively.<sup>1</sup> In its factum, the Litigation Trust erroneously states that the Monitor opposes the settlement, and quotes only one passage from the Monitor's email. This is not correct. The Monitor's position is explicitly set out in the passages of Mr. Tay's email that are omitted from the Litigation Trust's factum:

If the Litigation Trust's consent is not obtained and the underwriters propose to seek relief, from the CCAA court, from the provisions of the Plan requiring such consent, it will be up to the parties to convince the court one way or the other and the Monitor will not be taking any position on such a motion other than to say that if the court were to grant such relief, it should also, in that case, direct the Monitor to issue the certificate that is required under the Plan to make the third party release effective.

To be absolutely clear on the issue, the Monitor has no view and takes no position on how the proceeds of the settlement should be shared as amongst the parties and would encourage parties to come to a mutually satisfactory arrangement.<sup>2</sup> [emphasis added]

4. Contrary to the Litigation Trustee's assertion, the Monitor has clearly and unequivocally stated that it is not taking a position on this motion and is not opposing the settlement.

---

<sup>1</sup> Email from Derrick Tay to David Bish and Rob Staley dated February 19, 2015, Exhibit "Q" to the affidavit of Cosimo Borrelli sworn April 26, 2015, Responding Motion Record of SFC Litigation Trust, Tab 1, pp. 684-685.

<sup>2</sup> Email from Derrick Tay to David Bish and Rob Staley dated February 19, 2015, Exhibit "Q" to the affidavit of Cosimo Borrelli sworn April 26, 2015, Responding Motion Record of SFC Litigation Trust, Tab 1, pp. 684-685.

**B. The Litigation Trust Has No Claim Against the Dealers**

5. The Litigation Trust has no claim against the Dealers. In contrast, the Litigation Trustee Cosimo Borrelli has provided a lengthy affidavit outlining the steps he has taken to advance the Litigation Trust's interest against other defendants in the class actions. For example, the Litigation Trust has taken steps to advance claims against:

- (a) Allen Chan and David Horsley, Sino-Forest's former CEO and CFO, certain former employees and members of Sino-Forest's former management, and certain former advisers;
- (b) John Zeng, Sino-Forest's former lawyer, and the Kaitong Law Firm;
- (c) Sino-Forest's former forestry consultants Poyry (Beijing) Consulting Company Limited and affiliated entities and individuals; and
- (d) BDO, Sino-Forest's former auditor.<sup>3</sup>

6. The Litigation Trust has no claim against the Dealers and has taken no steps to assert any such claim. Any payment that the Litigation Trustee is seeking in exchange for its acceptance of the Dealers Third Party Release is not connected to the release of any claim.

**C. The Litigation Trustee's Absolute Position is Incorrect**

7. Throughout its factum, the Litigation Trustee repeatedly states that he has an absolute right to withhold his acknowledgement of the Dealers Settlement under any circumstance. For example, the Litigation Trustee states that it has "an absolute right to grant or withhold consent" and "unfettered discretion."<sup>4</sup>

8. This is not correct. If the Litigation Trustee's argument were correct, by way of example the Litigation Trustee would be perfectly within his rights to insist that it must receive 99.9% of

---

<sup>3</sup> Affidavit of Cosimo Borrelli sworn April 26, 2015, paras. 22-23, Responding Motion Record of SFC Litigation Trust, Tab 1, pp. 7-8

<sup>4</sup> Litigation Trustee's Factum, paras. 51, 54, pp. 19, 21.

the Dealers Settlement, notwithstanding the absence of any valid claim by the Litigation Trust against the Dealers. This would render the Court-approved Plan release for which the class action plaintiffs and the Dealers gave up considerable rights completely illusory. The Litigation Trustee's absolutist position is inconsistent with:

- (a) the purpose of the CCAA and the Plan which are designed to facilitate compromise and recovery by the applicant's stakeholders;
- (b) the Litigation Trustee's good faith and reasonableness obligations under the Plan and the common law; and
- (c) the discretion afforded to the Litigation Trust under the Litigation Trust Agreement.

9. The Litigation Trustee relies on the settlement with David Horsley, Sino-Forest's former CFO, in support of his argument that his consent can be withheld under any circumstance.<sup>5</sup> The circumstances of the Horsley settlement were materially different. The Litigation Trust had a valid claim against Mr. Horsley that was pursued by way of court action. The Litigation Trust therefore had a valid basis for which to negotiate a settlement since its valid claim would be compromised. In those circumstances, the Litigation Trust favoured a settlement over the alternative of litigating its claim. Here, no such claims are advanced or can be advanced against the Dealers, and there is therefore no rational basis on which to base any negotiations between the Ad Hoc Committee, the Dealers and the Litigation Trust. In these circumstances, the Litigation Trustee's discretion must be constrained.

**D. The Litigation Trustee Has Not Demanded Any Non-Monetary or Procedural Benefits in the Order**

10. The Ad Hoc Committee has inquired of the Litigation Trustee whether it has a demand that would satisfy him and resolve his objection to the settlement. No demand has been received,

---

<sup>5</sup> Litigation Trustee's Factum, para. 33, p. 12.



either formally or informally. In contrast, in this settlement and in previous settlements, non-settling defendants have submitted objections outlining their demands for non-monetary compensation such as discovery rights, which were negotiated and ultimately incorporated into the settlement approval orders. For example, BDO, a defendant in the class proceeding, has objected to the Dealers Settlement on the basis of a lack of discovery rights available to them. Likewise, when approval was sought of the Ernst & Young settlement, the Dealers sought the incorporation of certain language to protect their discovery rights in the order approving the settlement. Language was negotiated to address these concerns and ultimately, the Dealers did not oppose settlement approval. To date, no such demand has been received from the Litigation Trustee, either formally or informally.<sup>6</sup>

**E. Third Party Releases Provided as Part of *Quid Pro Quo* to Compensate Contributions Made in Restructuring**

11. The Litigation Trust relies on *ATB Financial v. Metcalfe & Mansfield Alternative Trust Investments II Corp.* in support of the principle that “third party releases [...] are generally provided as part of a *quid pro quo* intended to compensate participants in the market for contributions made in the insolvency.”<sup>7</sup> This is precisely the case here. The Plan compromised and released various claims and rights of both the Dealers and the Ad Hoc Committee with no distribution to these parties under the Plan. The Dealers and the Ad Hoc Committee agreed to vote on the Plan and consented or did not oppose the Sanction Order. The Dealers Settlement will also provide \$32.5 million of compensation to Sino-Forest’s creditors with valid claims. The Plan releases are the compensation provided for the Ad Hoc Committee and the Dealers in

---

<sup>6</sup> Affidavit of Charles Wright sworn May 6, 2015, paras. 4-7, Reply Motion Record of the Plaintiffs to SFC Litigation Trust (Settlement Approval), Tab 1, pp. 2-3.

<sup>7</sup> Litigation Trustee’s Factum, para. 39, p. 14.

exchange for their compromises in facilitating Sino-Forest's restructuring. In the circumstances, the Litigation Trustee's acceptance may not be withheld.

**F. Overlap Between Litigation Trust Beneficiaries and Claimants in the Dealers Settlement**

12. Pursuant to Article 4.11 of Sino-Forest's Plan of Compromise and Reorganization (the "Plan"), Litigation Trust Interests (as defined in the Plan) are allocated to, *inter alia*, Affected Creditors. "Affected Creditors" include the beneficial owners of notes at the time of Plan implementation.<sup>8</sup> The noteholders as of Plan implementation included some noteholders who purchased their notes from the Dealers in the primary market. These noteholders will be entitled to make a claim in the Dealers Settlement in respect of their valid litigation claims, and as a result, those beneficiaries of the Litigation Trust will receive some compensation.

---

<sup>8</sup> The Plan provides the following definitions:

"**Affected Creditor**" means a Person with an **Affected Creditor Claim**, but only with respect to and to the extent of such Affected Creditor Claim.

"**Affected Creditor Claim**" means any Ordinary Affected Creditor Claim or **Noteholder Claim**.

"**Noteholder Claim**" means any Claim by a **Noteholder** (or a Trustee or other representative on the Noteholder's behalf) in respect of or in relation to the Notes owned or held by such Noteholder, including all principal and Accrued Interest payable to such Noteholder pursuant to such Notes or the Note Indentures, but for greater certainty does not include any Noteholder Class Action Claim.

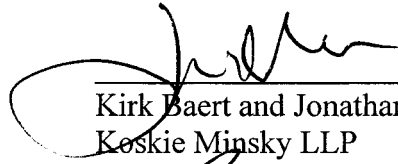
"**Noteholders**" means, collectively, the beneficial owners of Notes as of the **Distribution Record Date** and, as the context requires, the registered holders of Notes as of the Distribution Record Date, and "Noteholder" means any one of the Noteholders.

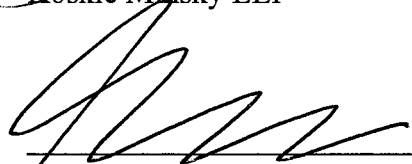
"**Distribution Record Date**" means the **Plan Implementation Date**, or such other date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

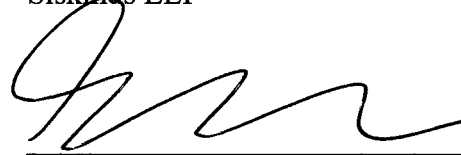
"**Plan Implementation Date**" means the Business Day on which this Plan becomes effective, which shall be the Business Day on which the Monitor has filed with the Court the certificate contemplated in section 9.2 hereof, or such other date as SFC, the Monitor and the Initial Consenting Noteholders may agree.

Plan of Compromise and Reorganization, Article 1.1, Exhibit "C" to the affidavit of Heather Palmer sworn April 9, 2015, Plaintiffs' Motion Record (Settlement Approval), Tab 5(C), pp. 338, 342, 352, 353.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

  
\_\_\_\_\_  
Kirk Baert and Jonathan Ptak  
Koskie Minsky LLP

  
\_\_\_\_\_  
A. Dimitri Lascaris  
Siskinds LLP

  
\_\_\_\_\_  
Ken Rosenberg and Massimo Starnino  
Paliare Roland Rosenberg Rothstein LLP

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

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

N/A

**SCHEDULE "B"**  
**RELEVANT STATUTES**

N/A

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

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

The Trustees of the Labourer's Pension Fund  
of Central and Eastern Canada, et al.

and

Sino-Forest Corporation, et al.

Superior Court File No: CV-10-414302

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

Proceeding under the *Class Proceedings Act, 1992*  
Proceeding commenced at Toronto

**REPLY FACTUM OF THE PLAINTIFFS  
Dealers Settlement Approval  
(Returnable May 11, 2015)**

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

Kirk Baert (LSUC# 30942O)  
Jonathan Ptak (LSUC#: 45773F)  
Tel: (416) 595-2117 / Fax: (416) 204-2889

**SISKINDS LLP**

680 Waterloo Street  
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)  
Charles M. Wright  
Tel: (519) 660-7844 / Fax: (519) 660-7845

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

250 University Avenue, Suite 501  
Toronto, ON M5H 3E5

Ken Rosenberg (LSUC#: 21101H)  
Massimo Starnino (LSUC#: 41048G)  
Tel: (416) 646-4300 / Fax: (416) 646-4301

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