Court of Appeal File No. M42068
Superior 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

Applicant

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

FACTUM OF THE RESPONDENT, FTI CONSULTING CANADA INC., in its capacity as Monitor

---

February 22, 2013

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Derrick Tay (LSUC No. 21152A)
Tel: (416) 369-7330
Fax: (416) 862-7661

Clifton Prophet (LSUC No. 34845K)
Tel: (416) 862-3509
Fax: (416) 862-7661

Jennifer Stam (LSUC No. 46735J)
Tel: (416) 862-5697
Fax: (416) 862-7661

Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor

Court of Appeal File No.: M42068
Superior Court File No.: CV-12-9667-00-CL

COURT OF APPEAL OF 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

APPEALS SERVICE LIST
(as at January 22, 2013)

TO: **BENNETT JONES LLP**
3400 One First Canadian Place,
P.O. Box 130
Toronto, Ontario M5X 1A4

Robert W. Staley
Tel: 416.777.4857
Fax: 416.863.1716
Email: staleyr@bennettjones.com

Kevin Zych
Tel: 416.777.5738
Email: zychk@bennettjones.com

Derek J. Bell
Tel: 416.777.4638
Email: belld@bennettjones.com

Raj S. Sahni
Tel: 416.777.4804
Email: sahnir@bennettjones.com

Jonathan Bell
Tel: 416.777.6511
Email: bellj@bennettjones.com

Sean Zweig
Tel: 416.777.6254
Email: zweigs@bennettjones.com

Lawyers for the Applicant, Sino-Forest Corporation

AND TO: **GOWLING LAFLEUR HENDERSON LLP**
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Derrick Tay
Tel: 416.369.7330
Fax: 416.862.7661
Email: derrick.tay@gowlings.com

Clifton Prophet
Tel: 416.862.3509
Email: clifton.prophet@gowlings.com

Jennifer Stam
Tel: 416.862.5697
Email: jennifer.stam@gowlings.com

Ava Kim
Tel: 416.862.3560
Email: ava.kim@gowlings.com

Jason McMurtrie
Tel: 416.862.5627
Email: jason.mcmurtrie@gowlings.com

Lawyers for the Monitor

AND TO: **FTI CONSULTING CANADA INC.**
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 TO: **BAKER MCKENZIE LLP**
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 TO: **AFFLECK GREENE MCMURTY LLP**
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

Michelle E. Booth
Tel: 416.360.1175
Fax: 416.360.5960
Email: mbooth@agmlawyers.com

Lawyers for BDO

AND TO: **TORYS LLP**
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 TO: **LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**
Suite 2600, 130 Adelaide Street West
Toronto, Ontario M5H 3P5

Peter H. Griffin
Tel: 416.865.9500
Fax: 416.865.3558
Email: pgriffin@litigate.com

Peter J. Osborne
Tel: 416.865.3094
Fax: 416.865.3974
Email: posborne@litigate.com

Linda L. Fuerst
Tel: 416.865.3091
Fax: 416.865.2869
Email: lfuerst@litigate.com

Shara Roy
Tel: 416.865.2942
Fax: 416.865.3973
Email: sroy@litigate.com

Lawyers for Ernst & Young LLP

AND TO: **GOODMANS LLP**
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 TO: **OSLER, HOSKIN & HARCOURT LLP**
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 TO: **COHEN MILSTEIN SELLERS & TOLL PLC**
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 TO: **SISKINDS LLP**
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 TO: **KOSKIE MINSKY LLP**
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

Jonathan Bida
Tel: 416.595.2072
Fax: 416.204.2907
Email: jbida@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 TO: **COHEN MILSTEIN SELLERS & TOLL PLC**
88 Pine Street, 14th 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 TO: **WARDLE DALEY BERNSTEIN LLP**
2104 - 401 Bay Street, P.O. Box 21
Toronto Ontario M5H 2Y4

Peter Wardle
Tel: 416.351.2771
Fax: 416.351.9196
Email: pwardle@wdblaw.ca

Simon Bieber
Tel: 416.351.2781
Email: sbieber@wdblaw.ca

Erin Pleet
Tel: 416.351.2774
Email: epleet@wdblaw.ca

Lawyers for David Horsley

AND TO: **McCARTHY TETRAULT LLP**
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 TO: **MILLER THOMSON LLP**
Scotia Plaza, 40 King Street West
Suite 5800
Toronto, Ontario M5H 3S1

Emily Cole
Tel: 416.595.8640
Email: ecole@millerthomson.com

Joseph Marin
Tel: 416.595.8579
Email: jmarin@millerthomson.com

Lawyers for Allen Chan

AND TO: **THORNTON GROUT FINNIGAN LLP**
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

Kyle Plunkett
Tel: 416-304-7981
Fax: 416.304.1313
Email: kplunkett@tgf.ca

Lawyers for the Ontario Securities Commission

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
155 Wellington Street, 35th 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 TO: **CLYDE & COMPANY**
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 TO: **FASKEN MARTINEAU LLP**
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 TO: **DAVIS LLP**
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 TO: **KIM ORR BARRISTERS P.C.**
19 Mercer St., 4th Floor
Toronto, ON M5V 1H2

Won J. Kim
Tel: 416.349.6570
Fax: 416.598.0601
Email: wjk@kimorr.ca

James C. Orr
Tel: 416.349.6571
Fax: 416.598.0601
Email: jo@kimorr.ca

Michael C. Spenser
Tel: 416.349.6599
Fax: 416.598.0601
Email: mcs@kimorr.ca

Megan B. McPhee
Tel: 416.349.6574
Fax: 416.598.0601
Email: mbm@kimorr.ca

Yonatan Rozenszajn
Tel: 416.349.6578
Fax: 416.598.0601
Email: YR@kimorr.ca

Tanya Jemec
Tel: 416.349.6573
Fax: 416.598.0601
Email: TTJ@kimorr.ca

Lawyers for Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National De Retraite Batirente Inc.

FACTUM OF THE RESPONDENT, FTI CONSULTING CANADA INC.

PART I - OVERVIEW

1. This responding factum is submitted by FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**") appointed in connection with the *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings involving Sino Forest Corporation ("**SFC**" or the "**Company**"), in response to the motion for leave to appeal the Sanction Order (defined below) by the appellants, Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National de Retraite Bâtirente Inc. (collectively, the "**Appellants**").

2. The Monitor has participated in the Company's CCAA proceedings in accordance with its mandate pursuant to the CCAA and various court orders including with respect to the development of the Plan (defined below).

3. On December 10, 2012, the Ontario Superior Court of Justice (the "**CCAA Court**") granted an order (the "**Sanction Order**") approving the Company's plan of compromise and reorganization dated December 3, 2012 (as amended, the "**Plan**"). The Plan was approved in its entirety including Article 11 of the Plan. The Plan was implemented on January 30, 2013 and substantially all of the consideration under the Plan has now been distributed.

4. The Appellants seek leave to appeal on a limited basis. They say that they are only challenging the Sanction Order to the extent that it approves the Plan provisions which address the settlement involving Ernst & Young LLP and its

affiliates (the "**E&Y Settlement**" and "**E&Y**") and the plaintiffs in certain class actions.

5. It is the Monitor's view that the Sanction Order is the CCAA Court's approval of an integrated Plan whose provisions are not severable and that the Appellants cannot appeal (or seek leave) with respect to one aspect of the Sanction Order's effects.

6. It is the Monitor's further view that Morawetz, J. did not err in granting the Sanction Order and that the Appellants' motion for leave to appeal the Sanction Order should be dismissed.

PART II – THE FACTS

7. The Monitor adopts the facts summarized in the endorsement of Morawetz, J. released on December 10, 2012 (the "**Sanction Order Reasons**"). To the extent of any conflict between the facts as summarized in the Sanction Order Reasons and the facts stated on behalf of the Appellants, the Monitor disagrees with the facts set out in the Appellants' factum.

PART III – MONITOR'S POSITION RE: APPELLANTS' ISSUES

8. The Monitor submits that Morawetz, J. appropriately granted the Sanction Order for the reasons set out in the Sanction Order Reasons and that the Appellants' motion for leave to appeal should not be granted for the reasons set out in the following paragraphs.

9. From the outset of the CCAA proceedings, it was recognized by the Company and the CCAA Court that it was necessary to address the contingent litigation claims against the Company and the resulting indemnification claims by the other defendants in the context of the CCAA process itself. In that regard, numerous steps were taken by the Company and others including:

(a) Obtaining a claims bar order dated June 20, 2012 (the "**Claims Procedure Order**") which provided for, among other things:

(i) A call for all claims against the Company and its officers and directors, including equity claims;

(ii) A claims bar date of June 20, 2012 (the "**Claims Bar Date**"); and

(iii) That the plaintiffs (the "**Ontario Plaintiffs**") in the class action against the Company (and others) in Ontario bearing court file number CV-11-431153-00CP (the "**Ontario Class Action**") and the plaintiffs (the "**Quebec Plaintiffs**" and together with the Ontario Plaintiffs, the "**Plaintiffs**") in the class action against the Company (and others) in Quebec bearing court file number 200-06-000132-111 (the "**Quebec Class Action**" and together with the Ontario Class Action, the "**Canadian Class Actions**") were authorized to file representative claims in the claims process in respect of the

substance of the Ontario Class Action and the Quebec Class Action respectively;

(b) Obtaining a mediation order dated July 25, 2012 (the "**Mediation Order**") which provided for a mediation (the "**Mediation**") to be conducted on September 4, 5 and, if necessary, 10, 2012. Notably:

(i) The "mediation parties" included the Company, its insurers, the Monitor, the ad hoc committee of Noteholders, the Plaintiffs, the other defendants in the Canadian Class Actions (other than Pöyry (Beijing) Consulting Co. Ltd.) (the "**Third Party Defendants**");

(ii) The purpose of the Mediation was to mediate a full resolution of the claims of the Plaintiffs against not only the Company but also the Third Party Defendants (the "**Subject Claims**"); and

(iii) The Mediation Order directed the mediation parties to attend with representatives with full authority to settle the Subject Claims;

(c) Seeking direction and obtaining a decision and order (the "**Equity Claims Decision**") declaring that the claims of the Plaintiffs in respect of the purchase of securities and resulting indemnity claims of the Third Party Defendants constituted "equity claims" under section

> 2(1) of the CCAA. Certain of the Third Party Defendants subsequently appealed the Equity Claims Decision to this Court which appeal was dismissed on November 23, 2012.

10. In addition to the above, there was a tremendous amount of work done by the Company (and others) in the development and negotiation of the Plan and the Plan terms to ultimately reach a compromise that was either on consent or unopposed by all parties who had participated in the CCAA proceedings throughout the process. The only parties who opposed the Plan were the Appellants. Despite the very public nature of the CCAA proceedings, the Appellants waited until December 6, 2012, the day before the Sanction Hearing, to file a notice of appearance in the CCAA process.

11. The Plan was approved by over 98% (in both quantum and value) of voting creditors (who voted either in person or by proxy in accordance with the plan filing and meeting order dated August 31, 2012 which provided for amendments to the Plan to be made in accordance with the terms of such Order) and was sanctioned by the CCAA Court. The Plan reflected terms that were extensively negotiated by the Company (among others) in order to reach a compromise and reorganization acceptable to its creditors and other participants in the proceedings. It is clear that the Plan is a compromise in the true sense of the word and should be read as a whole. It is the Monitor's view that Morawetz, J. correctly held:

> The Plan was presented to the Meeting with Article 11 in place. This was the Plan that was the subject to the vote and this is the Plan that is the subject of this motion. The

> alternative proposed by the [Appellants] was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

12. Neither the Plan nor the Sanction Order, themselves, give effect to a third party release in favour of E&Y or any other "Named Third Party Defendant" under the Plan. As noted by Morawetz, J. in his Sanction Order Reasons, "it is apparent that approval of the E&Y Settlement is not before the court on this motion and no release is being provided to E&Y as a result of this motion." Instead, Morawetz, J. correctly noted that the E&Y release would only become effective if certain other conditions were met, including further court approval of the E&Y Settlement. In fact, since the granting of the Sanction Order Reasons, a motion was heard by Morawetz, J. on February 4, 2013 (the "**E&Y Settlement Approval Motion**") specifically seeking approval of the E&Y Settlement. The Appellants participated in and opposed the E&Y Settlement Approval Motion. Morawetz, J.'s decision on the E&Y Settlement Approval Motion is pending as of the date of this factum. Given that the public, including the Appellants, have had a separate opportunity to be fully heard on the issues of the E&Y Settlement including issues relating to opt out and releases, it cannot be said that there are issues of law (or fact) of such significance on this proposed appeal that leave should be granted.

13. On January 30, 2013, the Plan was implemented and substantially all of the consideration under the Plan was distributed. It is the Monitor's position that there is no basis on which to grant the Appellants' motion for leave to appeal the Sanction Order particularly in this case where, given the separate E&Y Settlement Approval

Motion (in which the Appellants participated) it cannot be said there is any prejudice to the Appellants and, on the other hand, the Plan, as a whole, has been approved by creditors, sanctioned by the CCAA Court and fully implemented.

14. As set out above, the Plan is an integrated whole. Its parts are not severable. Neither are the approvals implemented by the Sanction Order. Without the provisions addressing the E&Y Settlement, both the Plan and the positions of major stakeholder parties at the Sanction Order hearing would have been different. The Appellants cannot now seek to undue a part of these arrangements and decisions.

PART IV – ADDITIONAL ISSUES

15. The Monitor has no additional issues to raise in relation to this motion for leave to appeal.

PART V – ORDER REQUESTED

16. It is the Monitor's view that the Appellants' motion for leave to appeal the Sanction Order should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of February, 2013.

Derrick Tay

Clifton Prophet

Jennifer Stam

Of Counsel to the Monitor

SCHEDULE A

N/A

SCHEDULE B

N/A

Court of Appeal File M42068 / Court File No.: CV-12-9667-00CL

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)

FACTUM OF THE RESPONDENT, FTI CONSULTING CANADA INC., in its capacity as Monitor

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Derrick Tay (LSUC No. 21152A)
Tel: (416) 369-7330 / Fax: (416) 862-7661
Email: derrick.tay@gowlings.com

Clifton Prophet (LSUC No. 34845K)
Tel: (416) 862-3509 / Fax: (416) 862-7661
Email: clifton.prophet@gowlings.com

Jennifer Stam (LSUC No. 46735J)
Tel: (416) 862-5697 / Fax: (416) 862-7661
Email: jennifer.stam@gowlings.com

Lawyers for FTI Consulting Canada Inc.,
in its capacity as Monitor