

**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**

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

Proceeding under the *Class Proceedings Act, 1992*

**RESPONDING FACTUM OF THE AD HOC COMMITTEE OF PURCHASERS OF THE APPLICANT'S SECURITIES, INCLUDING THE CLASS ACTION PLAINTIFFS  
(Motion Returnable April 20, 2015)**

April 17, 2015

**KOSKIE MINSKY LLP**

900-20 Queen Street West  
Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert (LSUC#: 30942O)**

Tel: 416.595.2117/Fax: 416.204.2889

**Jonathan Ptak (LSUC#: 45773F)**

Tel: 416.595.2149/Fax: 416.204.2903

**SISKINDS LLP**

680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**A. Dimitri Lascaris (LSUC#: 50074A)**

Tel: 519.660.7844/Fax: 519.660.7845

**Charles M. Wright (LSUC#: 36599Q)**

Tel: 519.660.7753/Fax: 519.660.7754

**PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**

155 Wellington Street, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Ken Rosenberg (LSUC #21102H)**

**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 Class Action Plaintiffs

**TO: CLYDE & CO CANADA LLP**

Lawyers/Avocats  
Suite 2500  
401 Bay Street  
Toronto, ON M5H 2Y4

**Mary Margaret Fox**

**Paul Emerson**

Tel: (416) 366-4555

Fax: (416) 366-6110

Lawyers for the Applicant, Chubb Insurance Company of Canada

**AND TO: RICKETTS, HARRIS LLP**

Barristers and Solicitors  
Suite 816  
181 University Avenue  
Toronto, ON M5H 2X7

**Gary Luftspring**

**Sam Sasso**

Tel: (416) 364-6211

Fax: (416) 364-1697

Lawyers for Travelers Insurance Company of Canada

**AND TO: McMILLAN LLP**

Lawyers  
Suite 4400, Brookfield Place  
181 Bay Street  
Toronto, ON M5J 2T3

**Markus Koehnen**

Tel: (416) 865-7218

Fax: (416) 865-7048

Lawyers for George Ho, Alfred C.T. Hung, Albert Ip, and Simon Yeung

**AND TO: LERNERS LLP**

Lawyers  
Suite 2400  
130 Adelaide Street West  
Toronto, ON M5H 3P5

**William E. Pepall**

Tel: (416) 601-2352

Fax: (416) 867-2415

Lawyers for William P. Rosenfeld

**AND TO: BABIN BESSNER SPRY LLP**

Lawyers Suite 101  
65 Front Street East  
Toronto, ON M5E 1B5

**Edward J. Babin**

Tel: (416) 637-3294

Fax: (416) 637-3243

Lawyers for Kee Y. Wong

**AND 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 February 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. Sahnir 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 Villaincourt  
Tel: 416.360.8100  
Fax: 416.360.5960  
Email: dvillaincourt@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 **LENCZNER SLAGHT ROYCE SMITH  
TO: 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 **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 **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 **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@thompsonhinc.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 **WARDLE DALEY BERNSTEIN LLP**  
TO: 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: eplet@wdblaw.ca

Lawyers for David Horsley

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 **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.erskiner@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 **DAVIES WARD PHILLIPS &  
TO: VINEBERG LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Jay Swartz  
Tel: 416.863.5520  
Fax: 416.863.0871  
Email: [jswartz@dwpv.com](mailto:jswartz@dwpv.com)

James Doris  
Tel: 416.367.6919  
Fax: 416.863.0871  
Email: [jdoris@dwpv.com](mailto:jdoris@dwpv.com)

Canadian Counsel for the Plaintiff and the  
Proposed Class re New York action

**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](mailto:marymargaret.fox@clydeco.ca)

Paul Emerson  
Tel: 416.366.4555  
Email: [paul.emerson@clydeco.ca](mailto:paul.emerson@clydeco.ca)

Lawyers for ACE INA Insurance and Chubb  
Insurance Company of Canada

**TABLE OF CONTENTS**

PART I – OVERVIEW .....1

PART II – FACTS .....2

PART III – LAW AND ARGUMENT .....5

    A.    Plaintiffs’ Interest in the Policies .....5

    B.    This Court’s Supervisory Function .....6

PART IV – RELIEF REQUESTED .....8

## **PART I – OVERVIEW**

1. On this motion, Chubb<sup>1</sup> asks this Court to bless its payment of Defense Costs paid out of the Chubb Policy to date. It presumably requests this relief to protect itself from claims alleging that the Defense Costs did not constitute covered Loss and therefore its Limits of Liability had not been exhausted.<sup>2</sup>
2. The Ad Hoc Committee of Purchasers of the Applicant’s Securities, including the Class Action Plaintiffs (“Plaintiffs”) oppose the relief sought.
3. To date, Sino-Forest’s Insurance Tower has paid out over \$46 million from policies affording total coverage of \$62 million. The evidence on this motion suggests that approximately \$41 million was paid in respect of Defense Costs alone.
4. The Plaintiffs have a legal and beneficial interest in the policies in the Insurance Tower (the “Policies”). Under the Plan of Compromise and Reorganization of Sino-Forest Corporation under the CCAA, dated December 3, 2012 (“Plan”), certain claims of the Plaintiffs are limited to the proceeds of the Policies.
5. This Court cannot provide the blessing that Chubb requests based on the incomplete evidentiary record before it. Chubb, and the remainder of the Insurance Tower, must produce a full and detailed accounting of the monies spent to date such that the Court

---

<sup>1</sup> Unless otherwise defined or the context suggest otherwise, capitalized terms in this factum have the meanings ascribed to them in the Affidavit of Paula Kargas, sworn April 6, 2015 (“Kargas Affidavit”), Motion Record of Chubb Insurance (Motion Returnable April 20, 2015) (“Chubb MR”), Tab 2.

<sup>2</sup> July 3, 2014 letter, Exhibit “A” to the Affidavit of Serge Kalloghlian, sworn April 14, 2015 (“Kalloghlian Affidavit”), Responding Motion Record of the Ad Hoc Committee of the Purchasers of the Applicant’s Securities, Including the Class Action Plaintiffs (“Plaintiffs’ MR”), Tab 1A.



may inform itself as to the reasonableness of the Defense Costs payments in deciding whether to provide that blessing.

## **PART II – FACTS**

6. The events giving rise to these proceedings against Sino-Forest occurred in June 2011. On or around that time, certain Sino-Forest Insureds requested coverage from ACE (the first layer of the Insurance Tower) for various Claims made against them.<sup>3</sup>
7. The four policies in the Insurance Tower provide aggregate coverage to the Sino-Forest Insureds of \$62 million. By January 2014, ACE had paid out the ACE Limit of \$15 million in respect of Defense Costs, thereby exhausting Sino-Forest’s first layer of insurance.<sup>4</sup>
8. Since that time, Sino-Forest’s second layer (the Chubb Limit of \$15 million) has been exhausted (plus the Overpayment of approximately \$1 million), and its third layer (the Lloyd’s Limit of \$15 million) has been exhausted or nearly exhausted.<sup>5</sup> The only Indemnity Payment of which counsel to the Plaintiffs (“Class Counsel”) is aware is the \$5 million payment from the Chubb Policy in respect of the Horsley Settlement.<sup>6</sup> Accordingly, it appears that:
  - a. Approximately \$41 million has been paid out as Defense Costs from the Policies since the commencement of these proceedings;
  - b. Approximately \$26 million has been paid out as Defense Costs from the Policies since January 2014;

---

<sup>3</sup> Kargas Affidavit, para 8, Chubb MR, Tab 2.

<sup>4</sup> Kargas Affidavit, paras 4 and 9, Chubb MR, Tab 2; July 3, 2012 letter, Exhibit “A” to the Kalloghlian Affidavit, Plaintiffs’ MR, Tab 1A.

<sup>5</sup> Kargas Affidavit, paras 14 and 25, Chubb MR, Tab 2.

<sup>6</sup> Kalloghlian Affidavit, para 7, Plaintiffs’ MR, Tab 1.

- c. Approximately \$18 million has been paid out as Defense Costs from the Policies since July 2014 (i.e. approximately 10 months ago).<sup>7</sup>
9. It is Class Counsel's understanding that the Defense Costs of the following defendants to the Ontario class action have or are being paid been paid by the Insurance Tower:
- a. Sino-Forest, represented by Bennett Jones LLP;
  - b. W. Judson Martin, Peter Wang, Edmund Mak, and Simon Murray, represented by Bennett Jones LLP;
  - c. Allen T.Y. Chan; previously represented by Miller Thomson LLP, and now represented by Rueter Scargall Bennett LLP;
  - d. Kai Kit Poon, represented by Davis LLP;
  - e. David Horsley, represented by Wardle Daley Bernstein Bieber LLP; and
  - f. William E. Ardell, James P. Bowland, James M.E. Hyde, and Garry J. West, represented by Osler, Hoskin & Harcourt LLP.<sup>8</sup>
10. Although there is one set of responsive insurance policies, five separate law firms have been retained to defend the individual defendants. Bennett Jones LLP has been involved in three different roles in these and related proceedings: i) it advised the independent committee of the board of directors of Sino-Forest in its investigation following the Muddy Waters allegations; ii) it is defending Sino-Forest and certain directors in the class actions; and iii) it is counsel to the SFC Litigation Trust.<sup>9</sup>
11. To date, the only major motions in the Ontario class action have been the motions for certification and for leave to assert the right of action contained in Part XXIII.1 of the Ontario *Securities Act*.<sup>10</sup>

---

<sup>7</sup> As of July 3, 2014, approximately \$7 million remained payable under the Chubb Policy, and all amounts paid until that date related solely to Defense Costs: Kalloghlian Affidavit, para 8, Plaintiffs' MR, Tab 1

<sup>8</sup> Kalloghlian Affidavit, para 15, Plaintiffs' MR, Tab 1.

<sup>9</sup> Kalloghlian Affidavit, para 16, Plaintiffs' MR, Tab 1.

<sup>10</sup> Kalloghlian Affidavit, para 9, Plaintiffs' MR, Tab 1.

12. Certain defendants continued to oppose the relief sought on those motions despite the fact that they did not have a basis to contest such relief. Indeed, those motions ultimately proceeded almost entirely unopposed or on consent in January of 2015,<sup>11</sup> but only after the Plaintiffs were put to the cost and effort of preparing materials and conducting far-ranging cross examinations in a number of jurisdictions, and only after the defendants' counsel presumably billed the Insurance Tower for the time spent mounting a vigorous opposition to the relief that they ultimately consented to or did not oppose.<sup>12</sup>
  
13. As an example, counsel to Allen T.Y. Chan (Miller Thomson LLP) and Kai Kit Poon (Davis LLP) vigorously opposed the Plaintiffs' motion to strike certain affidavits filed by David Horsley in response to the Plaintiffs' motion for leave under the *Securities Act*. Ultimately, that motion was settled and the affidavits remained on the record. However, notwithstanding their vigorous opposition to the Plaintiffs' motion to strike, neither Mr. Chan nor Mr. Poon relied on any of these expert reports in their facts in response to the Plaintiffs' motion for leave.<sup>13</sup>
  
14. There are other examples of unnecessary time spent by defendants' counsel, presumably billed to the Insurance Tower. Certain defendants' counsel attended one or more of the approximately 19 cross examination (including as far away as Hong Kong) without asking any substantive questions, and one or more of the counsel (sometimes with multiple lawyers from each firm) attended the certification and leave hearing, and certain of the interlocutory motions, CCAA motions, and case conferences in the class

---

<sup>11</sup> Kalloghlian Affidavit, para 10, Plaintiffs' MR, Tab 1. Some of the proposed common issues were modified slightly following discussion with the defendants in advance of the motions.

<sup>12</sup>The only contested issue on the leave and certification motion was a legal issue raised only by Sino-Forest. Argument on that motion took less than half a day of court time: Kalloghlian Affidavit, para 14, Plaintiffs' MR, Tab 1.

<sup>13</sup> Kalloghlian Affidavit para 12, Plaintiffs' MR, Tab 1.

proceeding and CCAA proceeding without making any submissions and while having little or no stake in the matters being addressed.<sup>14</sup>

15. Notwithstanding these examples, Chubb seeks the following declaration from this Court:

A declaration that all funds paid out by Chubb under its policy no. 8209-4449 [...] constitute Loss [...] under the Policies.<sup>15</sup>

16. In the circumstances, Chubb's motion should be dismissed.

### **PART III – LAW AND ARGUMENT**

#### **A. Plaintiffs' Interest in the Policies**

17. There was significant negotiation and compromise prior to the voting and sanction of the Plan. As part of that negotiation and compromise, the Plaintiffs agreed to limit recovery in respect of certain claims to the proceeds of the Policies. Pursuant to s. 2.4(c) of the Plan, the insurers comprising the Insurance Tower “agree and acknowledge that they shall be obliged to pay any Loss payable pursuant to the terms and conditions of their respective [Policies].” In addition, those insurers consented to a direct right of action against them by the Plaintiffs:

[...]For greater certainty, the insurers agree and consent to a direct right of action against the insurers, or any of them, in favour of any plaintiff who or which has (a) negotiated a settlement of any Claim covered under any of the Insurance Policies, which settlement has been consented to in writing by the insurers or such of them as may be required or (b) obtained a final judgment against one or more of SFC and/or the Directors or Officers which such plaintiff asserts, in whole or in part, represents Loss covered under the Insurance Policies, notwithstanding that such plaintiff is not a

---

<sup>14</sup> Kalloghlian Affidavit paras 10-11, Plaintiffs' MR, Tab 1.

<sup>15</sup> Notice of Motion para 1, Chubb MR, Tab 1

named insured under the Insurance Policies and that neither SFC nor the Directors or Officers are parties to such action [...]<sup>16</sup>

18. As indicated, pursuant to section 2.4(c) of the Plan, the Plaintiffs have a direct interest in the Policies, including the right to commence an action directly against the insurers in respect of any amount representing Loss payable under the Policies. A critical element of the Plaintiffs' interest in the Policies is therefore the interpretation of the term "Loss," as any amount declared to be Loss (and which is not paid to the Plaintiffs) will reduce the amount that the Plaintiffs are able to ultimately collect under the Policies.

**B. This Court's Supervisory Function**

19. This Court has the inherent jurisdiction at common law, under the CCAA,<sup>17</sup> and under the *Class Proceedings Act*<sup>18</sup> to supervise the expenditures of counsel billing the Policies.
20. Moreover, by asking this Court for a declaration that the funds paid by it constitute Loss under the Policies, Chubb has invoked this Court's jurisdiction and supervisory role.
21. Chubb acknowledges that the defined terms "Defense Costs" and "Loss" in the Policies are relevant in this motion. "Loss" includes the payment of Defence Costs. "Defence Costs" means "**reasonable and necessary** costs, charges, fees and expenses incurred..."<sup>19</sup>
22. In order to provide the requested blessing of Chubb's payments to defendants' counsel, this Court must satisfy itself that the amounts paid out as Defence Costs are "reasonable and necessary costs, charges, fees and expenses incurred."

---

<sup>16</sup> Plan of Compromise and Reorganization of Sino-Forest Corporation under the CCAA, dated December 3, 2012, s. 2.4(c), Plaintiffs' Book of Authorities ("BOA"), Tab 1.

<sup>17</sup> *Companies' Creditors Arrangement Act*, s 11.

<sup>18</sup> *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s.12.

<sup>19</sup> Kargas Affidavit para 6, Chubb MR, Tab 2 [emphasis added].

23. This Court’s inquiry into determining whether the Defense Costs are “reasonable and necessary” is analogous to the inquiry on the passing of a receiver’s account and the same principles and procedure should be applied. In that context, the Court of Appeal for Ontario recently held that “in proceedings supervised by the court and particularly where the court is asked to give its *imprimatur* to the legal fees requested for counsel by its court officer, the court must ensure that the compensation sought is indeed fair and reasonable,”<sup>20</sup> words with application here.
24. In such context, there is an onus on the moving party “to prove that the compensation for which it seeks approval is fair and reasonable. This includes the compensation claimed on behalf of its counsel.”<sup>21</sup> The information provided to the Court in support of that relief “must disclose the total charges for each of the categories of services rendered,”<sup>22</sup> and “the focus of the fair and reasonable assessment should be on *what was accomplished, not on how much time it took.*”<sup>23</sup>
25. There is no evidence before the Court that could allow it to come to a conclusion that the Defence Costs paid to date are “reasonable and necessary.” On the contrary, the only evidence before the Court is that defendants’ counsel have billed a staggering \$41 million since the commencement of these proceedings, and that much unnecessary time was spent (and presumably billed to the Policies) opposing Plaintiffs’ motions for certification and leave, and needlessly attending cross examination and case conferences where their clients had little or no interest at stake. Based on that evidence, the only possible outcome of this motion is that it be dismissed.

---

<sup>20</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 45, BOA Tab 2

<sup>21</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 32, BOA Tab 2

<sup>22</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 32, BOA Tab 2

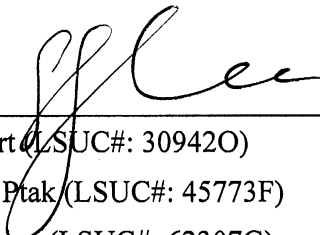
<sup>23</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 45, BOA Tab 2 [emphasis added].

26. In order to determine whether the amounts paid out as Defence Costs are “reasonable and necessary,” this Court requires an evidentiary record on which to base that conclusion. At a minimum, this motion must be adjourned so that Chubb, and the remainder of the Insurance Tower, be required to provide a full and detailed accounting of the amounts paid out to date in respect of Defense Costs.

**PART IV – RELIEF REQUESTED**

27. For the reasons set forth above, the Plaintiffs respectfully submits that the motion should be dismissed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED  
THIS 17<sup>th</sup> DAY OF APRIL, 2015**

 *for!*  
\_\_\_\_\_  
Kirk Baert (LSUC#: 309420)  
Jonathan Ptak (LSUC#: 45773F)  
Garth Myers (LSUC#: 62307G)

**SCHEDULE “A”  
LIST OF AUTHORITIES**

Plan of Compromise and Reorganization of Sino-Forest Corporation under the CCAA, dated December 3, 2012
------------------------------------------------------------------------------------------------------------

<i>Bank of Nova Scotia v Diemer</i> , 2014 ONCA 851
-----------------------------------------------------



**SCHEDULE “B”  
RELEVANT STATUTES**

***Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36, s 11.***

General Power of Court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

***Class Proceedings Act, 1992, S.O. 1992, c. 6, s.12.***

Court May Determine Conduct of Proceeding

12. The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate. 1992, c. 6, s. 12.

**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 File No.: CV-12-9667-00-CL  
Court File No.: CV-11-431153-00CP

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**RESPONDING FACTUM  
(Motion Returnable April 20, 2015)**

**KOSKIE MINSKY LLP**

900-20 Queen Street West  
Box 52

Toronto, ON M5H 3R3

**Kirk M. Baert (LSUC#: 309420)**

Tel: 416.595.2117/Fax: 416.204.2889

**Jonathan Ptak (LSUC#: 45773F)**

Tel: 416.595.2149/Fax: 416.204.2903

**SISKINDS LLP**

680 Waterloo Street

P.O. Box 2520

London, ON N6A 3V8

**A. Dimitri Lascaris (LSUC#: 50074A)**

Tel: 519.660.7844/Fax: 519.660.7845

**Charles M. Wright (LSUC#: 36599Q)**

Tel: 519.660.7753/Fax: 519.660.7754

**PALJARE ROLAND ROSENBERG**

**ROTHSTEIN LLP**

155 Wellington Street, 35<sup>th</sup> Floor

Toronto, ON M5V 3H1

**Ken Rosenberg (LSUC #21102H)**

**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 Class Action Plaintiffs