S.C.C. File No. 35541

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

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 INC.

Applicants

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CERTIFICATE OF THE RESPONDENTS
(Pursuant to Rule 25(c) of the *Rules of the Supreme Court of Canada*)

I, Adam Slavens, counsel for 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), hereby certify that:

(a) there is no sealing of confidentiality order in effect in the file and no document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation;

(b) there is no order or legislation banning the publication of evidence or the names or identities of any parties or witnesses and no document filed includes information that is subject to such a ban; and

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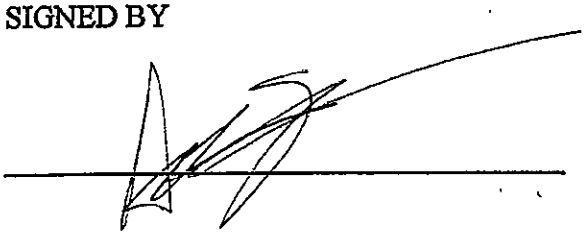
DATED at the City of Toronto, in the Province of Ontario this 23rd day of October, 2013.

SIGNED BY



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PART I – OVERVIEW OF POSITION AND FACTS

A. Overview

1. The Underwriters[1] adopt and repeat the facts and argument set out in the Memorandum of Argument of the Respondent, Ernst & Young LLP ("E&Y"). What follows is a supplement to the facts and argument of E&Y.

2. By this application, the Applicants seek to avoid being bound by portions of the *Companies' Creditors Arrangement Act* ("CCAA") plan of compromise and arrangement (the "Plan") concerning Sino-Forest Corporation ("Sino-Forest") that has been approved by creditors and sanctioned by the Ontario Superior Court of Justice. The Applicants submit that what is at issue here is their right to opt-out of the Sino-Forest Class Proceedings and they would have this Honourable Court view their application for leave to appeal through the lens of class action opt-out rights. However, that approach is invalid because the essential issue in this application is whether an approved and sanctioned CCAA plan of compromise and arrangement should be abrogated for the Applicants.

3. At its core, this application concerns third-party releases in the context of CCAA plans of compromise and reorganization. The features of the Plan pertinent to this application are the tangible contribution made by E&Y to settle certain class action proceedings (including, *inter alia*, the Ontario Class Action (as such term is defined below)) involving Sino-Forest (to which E&Y is a defendant) and the releases granted to E&Y in connection with those proceedings. The effect of the Plan was to compromise all such related claims of any claimant, including those of the Applicants. Importantly, this was accomplished within the framework of well-settled law that has been consistently applied by appellate courts across Canada and that was properly applied by the Ontario Superior Court of Justice in this instance. As such, this application for leave to appeal does not raise any novel legal issue, conflicting legal authority or any issue that needs to be revisited by this Honourable Court.

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[1] The Underwriters are 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.

4. The Underwriters respectfully submit that this application for leave to appeal does not raise any issue of national or public importance, and just as the Court of Appeal For Ontario denied these Applicants leave to appeal, so should this Honourable Court.

B. Facts

5. The Underwriters adopt the facts as set out in the Memorandum of Argument of E&Y in response to the within application for leave to appeal.

The Underwriters

6. The Underwriters are among the defendants in proposed class action lawsuits that have been filed in both the United States and Canada pertaining to certain equity and debt offerings by Sino-Forest. The proposed class proceedings include the Ontario class action proceeding (the "Ontario Class Action") consolidated pursuant to Justice Perell's January 6, 2012 Order.[2]

The E&Y Settlement and Production Protocol

7. The Ontario Class Action remains at an early stage of litigation. To date, it has not been certified and there may or may not be a subsequent trial. However, in the event that the Ontario Class Action is certified and proceeds to trial, it is foreseeable that key issues at any trial will be whether or not any of the defendants have any liability and the proportionate liability of E&Y. Under the portion of the Plan and related orders (the "E&Y Settlement Order") that deals with the settlement between E&Y and the Ontario Class Action plaintiffs (the "E&Y Settlement"), the plaintiffs are barred from claiming or collecting from the non-settling defendants (including the Underwriters) any damages caused by E&Y. Therefore, should the Ontario Class Action be certified and proceed to trial, the Underwriters' discovery rights and related rights to obtain evidence from E&Y for this purpose are important to the Underwriters.

8. Before Justice Morawetz, the Underwriters supported the approval of the E&Y Settlement on the condition that the E&Y Settlement Order was made at the same time as the order (the "Production Protocol Order") approving a production protocol (the "Production Protocol"), which codified the non-settling defendants' (including the Underwriters') important

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[2] Affidavit of Judson W. Martin, sworn November 29, 2012 at paras. 45-46, Underwriters' Response, Appendix A, Tab 2(A).

procedural rights, including discovery rights regarding E&Y. Absent the Production Protocol, certain of the non-settling defendants' discovery and other rights would have been compromised by the E&Y Settlement.

9. The Underwriters' factum filed in connection with the motion before Justice Morawetz included an express reservation of rights, which provided that in the event that the E&Y Settlement Order, in the form approved by the Underwriters, and the Production Protocol Order, substantially in the form attached to that factum, are not issued at the same time, the Underwriters reserve the right to take an alternate position, including opposing approval of the E&Y Settlement.[3]

PART II – QUESTION IN ISSUE

10. The issue in this application is whether this case raises an issue of national or public importance that ought to be decided by this Court. The Underwriters submit that it does not.

PART III – ARGUMENT

A. The Test for Leave

11. The CCAA allows any person who is "dissatisfied with an order or a decision made under this Act" to appeal the decision, but requires that person to obtain leave from the applicable provincial appellate court.[4] There is no dispute as to the test used by those courts in granting leave, which is well settled and consistently applied by appellate courts across Canada:

(a) whether the point on appeal is of significance to the practice;

(b) whether the point is of significance to the action;

(c) whether the appeal is prima facie meritorious or frivolous;

(d) whether the appeal will unduly hinder the progress of the action.[5]

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[3] Factum of the Underwriters filed in connection with the Ernst & Young LLP Settlement Approval and Certification Motion (Returnable February 4, 2013), Underwriters' Response, Appendix B, Tab 2(B).

[4] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ss. 13 and 14, Underwriters' Response, Part VII.

[5] Endorsement of the Court of Appeal for Ontario regarding leave to appeal dated June 26, 2013, 2013 ONCA 456 at para. 2, Applicants' Application, Tab 3(D), citing *Re Country Style Food Services Inc.*, [2002] O.J. No. 1377 (C.A.) at para. 15, Underwriters' Book of Authorities ("BOA"), Tab 4.

12. The authorities are also in agreement that leave to appeal in the CCAA context is granted sparingly.[6] Thus, a high threshold must be met before leave to appeal is granted "in order to justify the delay and other prejudicial effects on the proposed arrangements that would result from the commencement of an appeal."[7] The British Columbia Court of Appeal has explained the reason for this approach:

> ... [T]his court should exercise its powers sparingly when it is asked to intervene with respect to questions which arise under the C.C.A.A. ... In supervising a proceeding under the C.C.A.A. orders are made, and orders are varied as changing circumstances require. Orders depend upon a careful and delicate balancing of a variety of interests and of problems. In that context appellant proceedings may well upset the balance, and delay or frustrate the process under the C.C.A.A.[8]

13. The limitation on granting leave to appeal in CCAA cases so sparingly reflects the ongoing familiarity of Judges exercising a supervisory role under the CCAA and the discretionary nature of most orders made by supervising Judges in CCAA proceedings. In this case, the Court of Appeal considered the above factors and exercised its discretion to deny the applicants' application for leave to appeal.

14. This Court has confirmed it has jurisdiction to entertain an appeal from a provincial appellate court's decision denying leave, but has noted that it should "interfere with discretionary decisions on those rare occasions when it perceives legal principles or national, and more particularly constitutional, significance to be at stake".[9]

15. Justice Wilson, speaking for the Court on this issue, noted that "a certain amount of deference to the undoubted competence of intermediate appellate courts to control their own leave granting process is called for".[10]

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[6] *Re Consumers Packaging Inc.*, [2001] O.J. No. 3908 (C.A.) at para. 5, BOA, Tab 3. See also *Re Muscletech Research and Development Inc.*, [2006] O.J. No. 4583 (C.A.) at para. 2, BOA, Tab 7, *Totalline Transport Inc. v. Winnipeg Motor Express Inc. et al.*, 2008 MBCA 133 at para. 14, BOA, Tab 10, and *Re Blue Note Caribou Mines Inc.*, [2010] N.B.J. No. 267 (C.A.) at para. 11, BOA, Tab 2.

[7] *Houweling Nurseries Ltd. v. Amethyst Greenhouses Ltd.*, 2003 BCCA 347 at para. 12,BOA, Tab 5.

[8] *Re Pacific National Lease Holding Corp.* (1992), 15 C.B.R. (3d) 265 at 272 (B.C.C.A. [In Chambers]), BOA, Tab 8.

[9] *MacDonald v. Montreal (City)*, [1986] 1 S.C.R. 460 at 508, BOA, Tab 6.

[10] *MacDonald v. Montreal (City)*, [1986] 1 S.C.R. 460 at 508, BOA, Tab 6.

16. In any event, the existence of jurisdiction to hear an appeal does not in any way alter the general test for leave to this Court under section 40(1) of the *Supreme Court Act*.[11] The issues put forward by the Applicants are not of national or public importance that should be considered by this Court.

B. Leave to Appeal Should Not be Granted

17. The Underwriters agree with and adopt the submissions as set out in the E&Y Memorandum opposing this application for leave to appeal. The questions raised by the applicants are not of national importance and do not merit the attention of this Court.

18. The overriding issue in this appeal is whether the Plan, and in particular the granting of third-party releases, should be abrogated for the Applicants. The Plan was approved and sanctioned through the straightforward application by the Ontario Superior Court of Justice of the well-settled law in *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*[12] In already denying leave to appeal, the Court of Appeal for Ontario held that "there is no basis on which to interfere with [Justice Morawetz's] decision" and the issues raised on such appeal were "at their core, the very issues settled by [the Court of Appeal] in *ATB Financial*".[13] The *ATB Financial* case addressed releases in the context of CCAA plans of compromise and reorganization, and has been consistently applied by courts across Canada since 2008.

19. Leave to appeal should not be granted.

PART IV – SUBMISSIONS ON COSTS

20. The Underwriters request their costs of this application for leave to appeal, should the application be dismissed.

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[11] *R. v. Shea*, 2010 SCC 26 at para. 12, BOA, Tab 9.

[12] *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, 92 O.R. (3d) 513, leave to appeal refused, [2008] S.C.C.A. No. 337, BOA, Tab 1.

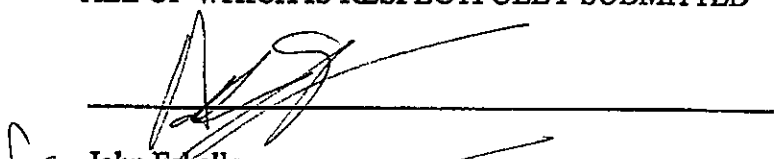
[13] Endorsement of the Court of Appeal for Ontario regarding leave to appeal dated June 26, 2013, 2013 ONCA 456 at para. 14, Applicants' Application, Tab 3(D).

PART V – ORDER REQUESTED

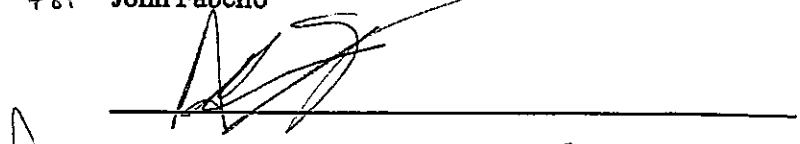
21. The Underwriters request an order dismissing the application for leave to appeal, with costs.

October 23, 2013

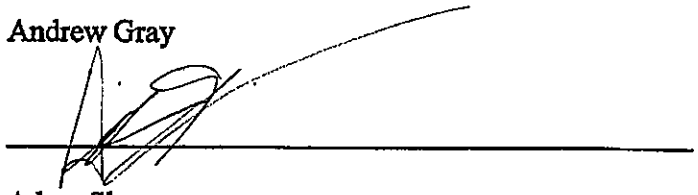
ALL OF WHICH IS RESPECTFULLY SUBMITTED



for John Fabello



for Andrew Gray



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PART VI – AUTHORITIES

Authority	*Paragraph(s)*
ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp., 2008 ONCA 587, 92 O.R. (3d) 513, leave to appeal refused, [2008] S.C.C.A. No. 337	18
Blue Note Caribou Mines Inc., Re, [2010] N.B.J. No. 267 (C.A.)	12
Consumers Packaging Inc., Re, [2001] O.J. No. 3908 (C.A.)	12
Country Style Food Services Inc., Re, [2002] O.J. No. 1377 (C.A.)	11
Houweling Nurseries Ltd. v. Amethyst Greenhouses Ltd., 2003 BCCA 347	12
MacDonald v. Montreal (City), [1986] 1 S.C.R. 460	14, 15
Muscletech Research and Development Inc., Re, [2006] O.J. No. 4583 (C.A.)	12
Pacific National Lease Holding Corp., Re, (1992), 15 C.B.R. (3d) 265 (B.C.C.A. [In Chambers])	12
R. v. Shea, 2010 SCC 26	16
Totalline Transport Inc. v. Winnipeg Motor Express Inc. et al., 2008 MBCA 133	12

PART VII – STATUTORY PROVISIONS

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36	**Loi sur les arrangements avec les créanciers des companies, L.R.C. (1985), ch. C-36**
13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.	**13.** Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge don't la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.
14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated. (2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.	**14.** (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procedure a pris naissance. (2) Tous ces appels sont régis autant que possible par la pratique suivie dans d'autres causes devant le tribunal saisi de l'appel; toutefois, aucun appel n'est recevable à moins que, dans le délai de vingt et un jours après qu'a été rendue l'ordonnance ou la décision faisant l'ob- jet de l'appel, ou dans le délai additionnel que peut accorder le tribunal dont il est interjeté appel ou, au Yukon, un juge de la Cour supreme du Canada, l'appelant n'y ait pris des procedures pour parfaire son appel, et à moins que, dans ce délai, il n'ait fait un dépôt ou fourni un cautionnement suffisant selon la pratique du tribunal saisi de l'appel pour garantir qu'il poursuivra dûment l'appel et payera les frais qui peuvent être adjugés à l'intimé et se conformera aux conditions relatives au cautionnement ou autres qu'impose le juge donnant la permission d'en appeler.

TAB A

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

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

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn November 29, 2012)

I, W. Judson Martin, of the City of Hong Kong, Special Administrative Region, People's Republic of China, **MAKE OATH AND SAY:**

1. I am the Vice-Chairman and Chief Executive Officer of Sino-Forest Corporation ("SFC"). I therefore have personal knowledge of the matters set out below, except where otherwise stated. Where I do not possess personal knowledge, I have stated the source of my information and I believe such information to be true. Where I indicate that I have been advised by counsel, that advice has been provided by Bennett Jones LLP, counsel for SFC in this proceeding.

2. Capitalized terms not defined in this affidavit are as defined in my affidavit sworn March 30, 2012 (the "Initial Order Affidavit") and the Thirteenth Report of the Monitor dated November 22, 2012 (the "Monitor's Thirteenth Report"). A copy of my Initial Order Affidavit (without exhibits) is attached as Exhibit "A".

3. All currency references in this affidavit refer to U.S. Dollars unless otherwise indicated.

4. This affidavit is sworn in support of a motion by SFC for an order (the "Sanction Order") under section 6(1) of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 (the "CCAA") sanctioning an amended plan of compromise and reorganization (the "Plan") between SFC and its creditors. I understand that a draft of the form of Sanction Order being sought was included in the Plan Supplement filed by SFC on November 21, 2012, and any further changes to the form of Sanction Order will be filed prior to the hearing.

5. This affidavit identifies a number of affidavits I have previously sworn along with Monitor's reports and other materials that SFC is relying on in support of the Sanction Order motion. Such materials will be filed in a separate brief prior to the hearing.

6. I am advised by counsel that if the Plan is approved, SFC and Newco (defined below) intend to rely on the Sanction Order for the purposes of relying on the exemption from the registration requirements of the United States Securities Act of 1933, as amended, pursuant to section 3(a)(10) thereof for the issuance of the Newco Shares, Newco Notes, and to the extent they may be deemed to be securities, the Litigation Trust Interest, and any other securities to be issued pursuant to the Plan.

I. BACKGROUND

7. As I explained in greater detail in the Initial Order Affidavit, SFC is an integrated forest plantation operator and forest products company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China

(the "PRC"). SFC's registered office is in Toronto and its principal business office is in Hong Kong.

A. Muddy Waters and SFC's Independent Committee

8. As a result of a report issued by short-seller Muddy Waters LLC ("Muddy Waters") on June 2, 2011, which alleged that SFC was a "near total fraud" and a "Ponzi scheme", SFC found itself embroiled in multiple class actions across Canada and in the U.S., investigations and regulatory proceedings with the Ontario Securities Commission (the "OSC"), the Hong Kong Securities and Futures Commission and the RCMP.

9. As I have described in prior affidavits filed with the Court and above, immediately after the allegations were made by Muddy Waters, the Board appointed an independent committee (the "IC") of the Board, which in turn engaged professionals in Ontario, Hong Kong and in the PRC to assist in investigating the allegations. The IC retained Osler Hoskin & Harcourt LLP in Canada, Mallesons (an international law firm with offices in Beijing, Shanghai and Hong Kong) and Jun He Law Offices (a PRC law firm). The IC also appointed PricewaterhouseCoopers to assist with the investigations.

10. The Board also retained new company counsel, Bennett Jones LLP, to assist and work with the IC and the IC's advisors, to assist management, to respond to class action claims against SFC and to respond on behalf of SFC to inquiries and demands from securities regulators.

11. The IC was active and met frequently to supervise professionals and receive reports about their progress.

12. The IC and its advisors worked to compile and analyze the vast amount of data required for their review of Sino-Forest's operations and business, the relationships between Sino-Forest and other entities, and Sino-Forest's ownership of assets. The IC supervised the investigation and preparation of three reports that addressed those aspects, described the extensive work of the IC and its advisors and the conclusions that could be reached from the work undertaken by them. Redacted versions of the IC reports were publicly disclosed.

13. The IC set out to address the issues raised by Muddy Waters in three core areas: (i) the verification of timber assets reported by Sino-Forest, (ii) the value of the timber assets held by Sino-Forest, and (iii) revenue recognition. In addition, in its First Interim Report, the IC's accounting advisors confirmed SFC's cash balances in specific account as at June 13, 2011, for accounts located inside and outside of the PRC. The results of the IC's efforts are described in greater detail in my Initial Order Affidavit.

B. Efforts to Obtain Audit Opinions

14. In late August 2011 the IC's efforts uncovered information that raised conduct issues about certain members of former management of Sino-Forest. This information was shared by the IC with staff of the OSC. This information resulted in the OSC imposing a temporary cease trade order (the "TCTO") on the securities of SFC on August 26, 2011, which order was later continued and continues in force.

15. Arising from these developments, certain former members of management were placed on administrative leave. The Board appointed me as Chief Executive Officer of SFC after Allen Chan resigned as Chairman, CEO and a Director, on August 28, 2011.

16. Following the events of late August, 2011, the IC continued its investigative work. From late August 2011 onward, under the Board's oversight, considerable effort was directed at determining if the issues identified by Muddy Waters and by investigative work to date could be resolved with sufficient time to allow SFC to become current in its financial reporting, and to obtain an audit opinion for 2011. Failure to issue quarterly results or to issue audited annual financial results could lead to the possible acceleration and enforcement of approximately $1.8 billion in notes issued by SFC and guaranteed by many of its Subsidiaries.

17. Notwithstanding considerable efforts by the Board, the IC, management and advisors, in mid-November 2011, SFC's Audit Committee recommended, and the Board agreed, that SFC should defer the release of SFC's third quarter 2011 financial statements until certain conduct issues could be resolved to the satisfaction of the Board and SFC's external auditor.

18. By December 2011, it appeared that it would not be possible to obtain an audit opinion for 2011 in sufficient time to avoid defaults under SFC's Note Indentures, nor would it be possible to issue third quarter 2011 financial results.

19. On December 16, 2011, the Board established a Special Restructuring Committee ("RC") of the Board, comprised exclusively of directors independent of management of SFC, for the purpose of supervising, analyzing and managing the strategic options available to SFC. Subsequent to its appointment, the RC has been fully engaged and active in supervising and supporting SFC's restructuring efforts.

C. Defaults under the Indentures and the Support Agreement

20. SFC's inability to file its third quarter 2011 financial statements ultimately resulted in a default under its note indentures. After extensive discussions with an ad hoc committee of Noteholders (the "Ad Hoc Noteholders"), Noteholders representing a majority in principal amount of SFC's senior notes agreed to waive the default arising from the failure to release the SFC 2011 third quarter results. While the waiver agreements prevented an acceleration of the note indebtedness as a result of SFC's failure to file its 2011 third quarter results, the waiver agreements would have expired on April 30, 2012 (or any earlier termination of the waiver agreements in accordance with their terms). In addition, SFC's pending failure to file its audited financial statements for its fiscal year ended December 31, 2011 by March 30, 2012, would have caused another potential acceleration and enforcement event, creating additional uncertainty around SFC's business.

21. Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business, and entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of SFC's Notes holding approximately 40% of the aggregate principal amount of the Notes.

22. As further discussed below, additional Consenting Noteholders subsequently executed joinder agreements to the Support Agreement, resulting in Noteholders representing more than 72% of the aggregate principal amount of the Notes agreeing to support the restructuring contemplated by the Support Agreement.

23. Throughout this process, the Board and certain members of SFC management engaged with the Ad Hoc Noteholders, both through counsel and directly on a principal-to-principal basis, to assist them in understanding the restructuring challenges faced by SFC and its stakeholders, and to provide information to the Ad Hoc Noteholders in connection with their due diligence efforts.

24. From a commercial perspective, the restructuring contemplated by the Support Agreement was intended to separate Sino-Forest's business operations from the problems facing the parent holding company outside of the PRC, with the intention of saving and preserving the value of SFC's underlying business. To this end, two possible transactions were contemplated:

(a) First, a court-supervised Sale Process being undertaken to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of a threshold amount of consideration (which was set at 85% of the amount outstanding under the Notes at the CCAA filing date), with the potential for excess above such threshold amount being directed to stakeholders subordinate to the Noteholders. The Sale Process was intended to ensure that SFC pursued all avenues available to it to maximize value for its stakeholders;

(b) Second, if the Sale Process was not successful, a transfer of the six immediate holding companies that own SFC's business to the Affected Creditors in compromise of their claims against SFC and the creation of a litigation trust (including funding) that would enable SFC's litigation claims against any Person not otherwise released within the CCAA proceedings to be preserved and pursued

for the benefit of SFC's stakeholders in accordance with the Support Agreement (the "Restructuring Transaction").

25. The decision to enter into the Support Agreement was given careful consideration by the Board of SFC. But for the negotiation and execution of the Support Agreement, SFC would have been unable to prevent the acceleration and enforcement of the rights of the Noteholders as soon as April 30, 2012, in which case SFC and Sino-Forest would have been unable to continue as a going concern.

26. The Support Agreement provided that SFC would make an application under the CCAA in order to implement the Sale Process and, failing receipt of a qualified bid, to implement the Restructuring Transaction.

27. Quite apart from the provisions of the Support Agreement, the circumstances facing SFC and its Subsidiaries (as described above and in the Initial Order Affidavit) necessitated the commencement of these CCAA proceedings in order to attempt to separate the business operations of Sino-Forest from the challenges facing the holding company parent in order to allow the business to be saved.

28. SFC applied to this Honourable Court and obtained an Initial Order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings was also granted in respect of the Subsidiaries. The stay of proceedings provided for in the Initial Order was subsequently extended by Orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended by the Court, will expire on February 1, 2013.

II. THE NATURE OF SFC'S ASSETS AND SFC'S EFFORTS TO MARKET THEM

A. SFC's Assets

29. As described in the Initial Order Affidavit, SFC is a holding company with six direct subsidiaries of SFC (the place of incorporation is indicated in parentheses): Sino-Panel Holdings Limited (BVI); Sino-Global Holdings Inc. (BVI); Sino-Panel Corporation (Canada); Sino-Wood Partners Limited (Hong Kong); Sino-Capital Global Inc. (BVI) and Sino-Forest International (Barbados) Corporation (Barbados) (collectively, the "Direct Subsidiaries"). SFC also holds all of the preference shares of Sino-Forest Resources Inc. (BVI).

30. In addition, SFC holds an indirect majority interest in Greenheart Group Limited (Bermuda), an investment holding company whose shares are listed on the Hong Kong Stock Exchange. Together with its subsidiaries, Greenheart owns certain rights and manages hardwood forest concessions in the Republic of Suriname and a radiata pine plantation on freehold land in New Zealand. Greenheart has its own distinct operations and financing arrangements and is not party to or a guarantor of the notes issued by SFC. Greenheart and SFC operate out of separate office buildings in Hong Kong.

31. Including SFC, Sino-Forest Resources Inc. and the Direct Subsidiaries, there are 137 entities that make up the Sino-Forest companies: 67 companies incorporated in the PRC (with 11 branch companies), 58 BVI incorporated entities, 7 Hong Kong incorporated entities, 2 Canadian entities and 3 entities incorporated in other jurisdictions. Greenheart and its subsidiaries are not included in the foregoing. A list of all of the SFC subsidiaries (the "Subsidiaries") is attached as Exhibit "**B**" (which does not include subsidiaries of Greenheart, but does contain SFC branch companies). The term "Sino-Forest" is used herein to refer to the global enterprise as a whole.

32. I understand that in addition to claims against SFC, numerous stakeholders have asserted claims against the Subsidiaries in respect of their claims against SFC. As has been apparent from the outset of these proceedings, in order to achieve the commercial objective of separating the Sino-Forest business from the parent holding company, any successful resolution to these proceedings must provide a "clean break" between SFC and the Subsidiaries. Accordingly, as further described below, the Plan provides for the transfer of SFC's assets, including the Direct Subsidiaries, to Newco for the benefit of all of SFC's Affected Creditors as well as a release of the Subsidiaries in respect of such claims.

B. The Sale Process

33. As discussed above, the Support Agreement contemplated the sale of the assets of SFC (i.e. its Subsidiaries) through a court-supervised sale process in which the assets of SFC were offered for an amount of consideration equal to a minimum required threshold as set out in the Support Agreement, which was set at 85% of the outstanding amount of the Notes as of the CCAA filing date.

34. SFC applied for and obtained an order from this Court on March 30, 2012 (the "Sale Process Order") approving the sale process procedures (the "Sale Process Procedures") and authorizing and directing SFC, the Monitor, and SFC's financial advisor, Houlihan Lokey ("Houlihan"), to do all things reasonably necessary to perform each of their obligations under the Sale Process Order.

35. Pursuant to the Sale Process Procedures, SFC, through Houlihan sought out potential qualified strategic and financial purchasers (including existing shareholders and noteholders) of

SFC's assets on a global basis and attempted to engage such potential purchasers in the Sale Process.

36. The Sale Process Procedures approved in the Sale Process Order were carried out by the applicable parties. In particular, as described in the Fourth Report of the Monitor:

(a) a notice was published in the Globe & Mail and the Wall Street Journal with respect to the Sale Process;

(b) a teaser letter was sent to 85 potentially interested parties; and

(c) fourteen confidentiality agreements were negotiated with parties who indicated an interest in the business.

37. The Sale Process Procedures provided SFC with up to 90 days from the day of the Sale Process Order to solicit letters of intent and, if qualified letters of intent were received within the required time period, a further 90 days to solicit qualified bids. As set out in the Sale Process Order, to constitute a Qualified Letter of Intent, the letter of intent must have, among other things, indicated that the bidder was offering to acquire SFC's assets for consideration not less than the Qualified Consideration. Qualified Consideration was defined in the Sale Process Procedures as:

> "Qualified Consideration" means cash consideration payable to SFC (or such other form of consideration as may be acceptable to SFC and the Initial Consenting Noteholders) in an amount equal to 85% of the aggregate principal amount of the Notes, plus all accrued and unpaid interest on Notes, at the regular rates provided therefor pursuant to the Note indentures, up to and including March 30, 2012.

38. A number of letters of intent were received by SFC on or about the June 28, 2012 deadline set out in the Sale Process Procedures. However, in accordance with the Sale Process Order, SFC, Houlihan and the Monitor determined that none of the letters of intent constituted a Qualified Letter of Intent, because none of them offered to acquire the assets of SFC for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sale Process and SFC's intention to proceed with the Restructuring Transaction.

III. SINO-FOREST'S STAKEHOLDERS

39. In order to move forward with its restructuring efforts in a timely manner, it was critical for SFC to ascertain all claims against SFC, its Subsidiaries and its directors and officers in order to assess what impact such claims may have with respect to its restructuring. Accordingly, SFC, in consultation with the Monitor, developed a claims process, which was approved by Order of this Honourable Court on May 14, 2012 (the "Claims Process Order"). The Claims Process Order was not appealed.

40. Under the Claims Process Order, Proofs of Claim and D&O Proofs of Claim were required to be filed with the Monitor on or before the Claims Bar Date (June 20, 2012), while Restructuring Claims were required to be filed on or before the Restructuring Claims Bar Date (the later of the Claims Bar Date and 30 days after a Person is deemed to receive a Proof of Claim Document Package). D&O Indemnity Proofs of Claim were also required to be filed with the Monitor on a date that was relative to when the director or officer received notice of a D&O Proof of Claim.

41. In order to identify the nature and extent of claims asserted against the Subsidiaries, the Claims Process Order required any claimant that had or intended to assert a right or claim against

one or more Subsidiaries relating to a purported claim made against SFC to so indicate on their Proof of Claim.

42. In its Thirteenth Report, the Monitor described the claims submitted pursuant to the Claims Process Order, certain of which are also discussed below.

A. The Noteholders

43. As indicated, at the date of filing, Sino-Forest had approximately $1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. There are four series of Notes issued and outstanding, as follows:

(a) *2017 Senior Notes:* There are $600 million in principal amount of guaranteed senior notes that were issued on October 21, 2010, bearing interest at a rate of 6.25% per annum, payable semi-annually (the "2017 Senior Notes"). These are supported by guarantees from 60 Subsidiaries and share pledges from ten of those same Subsidiaries.

(b) *2016 Convertible Notes:* There are $460 million in principal amount of convertible guaranteed notes that were issued on December 17, 2009, bearing interest at a rate of 4.25% payable semi-annually (the "2016 Convertible Notes"). These notes are supported by guarantees from 64 Subsidiaries.

(c) *2014 Senior Notes:* There are $399,517,000 in principal amount of senior notes that were issued on July 27, 2009, bearing interest at a rate of 10.25% per annum, payable semi-annually (the "2014 Senior Notes"). These notes are supported by

supported by guarantees from 60 Subsidiaries and share pledges from ten of those same Subsidiaries.

(d) *2013 Convertible Notes:* There are $345 million in principal amount of convertible guaranteed notes that were issued on July 23, 2008, bearing interest at a rate of 5% per annum, payable semi-annually (the "2013 Convertible Notes"). These notes are supported by guarantees from 64 Subsidiaries.

The 2017 Senior Notes, 2016 Convertible Notes, 2014 Senior Notes and 2013 Convertible Notes are collectively referred to herein as the "Notes" and holders of the Notes, the "Noteholders".

44. As of the date of the Support Agreement, the Initial Consenting Noteholders held approximately 40% of the aggregate principal amount of the four series of Notes. Pursuant to certain notice provisions established in the Initial Order, SFC continued to solicit additional Noteholder support and all Noteholders who wished to become Consenting Noteholders and participate in the Early Consent Consideration, (each as defined in the Support Agreement and described below) were given the opportunity to do so by the early consent deadline of May 15, 2012. As of May 15, 2012, Noteholders (including the Initial Consenting Noteholders) holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

B. Shareholders / Former Noteholders

45. As I explained in the Initial Order Affidavit, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and the Underwriters

(defined below) involved in prior equity and debt offerings, have been named as defendants in eight class action lawsuits.

46. Five of these class action lawsuits, commenced by three separate groups of counsel, were filed in the Ontario Superior Court of Justice on June 8, 2011, June 20, 2011, July 20, 2011, September 26, 2011 and November 14, 2011. A carriage motion in relation to these actions was heard on December 20 and 21, 2011, and by Order dated January 6, 2012, Justice Perell appointed Koskie Minsky LLP and Siskinds LLP as class counsel. As a result, Koskie Minsky LLP and Siskinds LLP discontinued their earliest action, and their other two actions have been consolidated and will move forward as one proceeding. The other two Ontario actions, commenced by other counsel, have been stayed.

47. Pursuant to Justice Perell's January 6, 2012 Order, Koskie Minsky LLP and Siskinds LLP have filed a fresh as amended Statement of Claim in the consolidated proceeding. A copy of that amended Statement of Claim is attached as Exhibit "C". The plaintiffs in the Ontario Class Action (the "Ontario Class Action Plaintiffs"), on behalf of current and former shareholders of SFC, seek damages against SFC and the other defendants in the Ontario Class Action in the amount of $6.5 billion for general damages, $174.8 million in connection with a prospectus issued in June 2007, $330 million in relation to a prospectus issued in June 2009, and $319.2 million in relation to a prospectus issued in December 2009. The market cap for SFC during the times of the alleged misrepresentations ranged from $546.5 million to $6.15 billion.

48. The Ontario Class Action Plaintiffs also assert claims on behalf of former holders of SFC's Notes in the amounts of $345 million for the 2013 Convertible Notes, $400 million for the 2014 Senior Notes, $460 million for the 2016 Convertible Notes, and $600 million for the 2017 Senior

Notes, for a total claim of approximately $1.8 billion. The first class action claim that asserted any claims on behalf of Noteholders was issued on September 26, 2011. The Noteholder component of this claim asserts, among other things, damages for loss of value in the Notes. In the months following the Muddy Waters report, the relevant Notes traded at a range of $53 to $64 per $100 amount of principal owing.

49. A similar class action was filed in Quebec. Attached as Exhibit "**D**" is a copy of the Quebec pleading. A third class action was filed in Saskatchewan. Attached as Exhibit "**E**" is a copy of the Saskatchewan Statement of Claim. While a Proof of Claim was filed by the plaintiffs in the Quebec class action, no Proof of Claim was filed by the plaintiffs in the Saskatchewan class action.

50. Additionally, on January 27, 2012, a class action was commenced against SFC and other defendants in the Supreme Court of the State of New York, U.S.A. The complaint alleges that the action is brought on behalf of persons who purchased SFC shares on the over-the-counter market and on behalf of non-Canadian purchasers of SFC debt securities. The quantum of damages sought is not specified in the complaint. Attached as Exhibit "**F**" is a copy of the most recent version of the Complaint in the New York proceeding. The plaintiffs in the New York proceeding have filed a Proof of Claim in this proceeding.

51. In this proceeding, an "Ad Hoc Committee of Purchasers of the Applicant's Securities" (the "Ad Hoc Securities Purchasers Committee") has appeared to represent the interests of shareholders and noteholders who have asserted class action claims against SFC and others. The Ad Hoc Securities Purchasers Committee is represented in this proceeding by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP. As indicated above, two of these

firms won the right to represent the plaintiffs in the Ontario class action, and the Siskind firm is plaintiff counsel in the Quebec class action.

52. On June 26, 2012, SFC brought a motion for an order directing that claims against SFC that arise in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims are "equity claims" as defined in section 2 of the CCAA, including the claims by or on behalf of current or former shareholders asserted in class action proceedings commenced against SFC. The equity claims motion did not purport to deal with the component of the class action proceedings that relate to debt claims.

53. The Ad Hoc Securities Purchasers Committee did not oppose the relief requested. The relief was opposed only by SFC's former auditors and the Underwriters.

54. In reasons released on July 27, 2012, a copy of which is attached as Exhibit "G", this Honourable Court granted the relief sought by SFC (the "Equity Claims Decision"), finding at paragraph 77 that "the claims advanced in the Shareholder Claims are clearly equity claims."

55. The Ad Hoc Securities Purchasers Committee did not appeal this decision. I am advised by counsel that none of the parties who later appealed the decision suggested that the Court's determination on the characterization of the shareholder claims against SFC was incorrect. As further discussed below, the Equity Claims Decision was affirmed by the Court of Appeal for Ontario on November 23, 2012.

56. Consistent with the Equity Claims Decision, shareholder claims against SFC are subordinated and not entitled to vote or receive distributions under the Plan.

57. On October 26, 2012, the Ad Hoc Securities Purchasers Committee stated that they would not directly or indirectly oppose the Plan, so long as no amendment is made to the Plan that in the opinion of the Ad Hoc Securities Purchasers Committee, in the good faith exercise of its discretion, would be materially prejudicial to the interests of the Ad Hoc Securities Purchasers Committee.

58. The Ad Hoc Securities Purchasers Committee will not oppose a Plan which provides that: (i) all shareholder claims against SFC will be subordinated as "Equity Claims" and released without consideration under the Plan; (ii) all former noteholder claims against SFC will be released without consideration under the Plan (other than a 25% interest in the Litigation Trust); and (iii) the quantum of the "Indemnified Noteholder Class Action Limit" in the Plan (as further discussed below) will be set at $150 million.

59. As discussed below, the Plan preserves all of the aforementioned claims against defendants to the Class Action Claims (present or future) other than SFC, the Subsidiaries, the Named Directors and Officers or the Trustees under the Notes (the "Third Party Defendants"), subject in the case of any Indemnified Noteholder Class Action Claims to the Indemnified Noteholder Class Action Limit.

60. SFC's existing shares will be cancelled pursuant to the Plan and the Plan Sanction Order.

C. Auditors

61. Since 2000 SFC has had two auditors: Ernst & Young LLP ("E&Y"), who acted as auditor from 2000 to 2004 and 2007 to 2012, and BDO Limited ("BDO"), who acted as auditor from 2005 to 2006.

62. I understand from counsel to SFC that the auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the shareholder class actions, with each of the auditors having asserted claims in excess of $6.5 billion. In addition the auditors have asserted claims for payment of professional fees associated with SFC after the release of the Muddy Waters report, and generalized claims for damage to reputation. A summary extract from E&Y's Proof of Claim is attached as Exhibit "H". A summary extract from BDO's Proof of Claim is attached as Exhibit "I".

63. In the Equity Claims Decision, the Court stated at paragraph 84 that "the claims of E&Y, BDO and the Underwriters constitutes an 'equity claim' within the meaning of the CCAA. Simply put, but for the Class Action Proceedings, it is inconceivable that claims of this magnitude would have been launched by E&Y, BDO and the Underwriters as against SFC."

64. The auditors and Underwriters appealed the decision to the Court of Appeal for Ontario. The hearing of that appeal was held on November 13, 2012. On November 23, 2012, the Court of Appeal dismissed the appeal. Attached as Exhibit "J" is a copy of the reasons of the Court of Appeal.

65. Consistent with the Equity Claims Decision and the Court of Appeal's dismissal of the appeal, the claims of the auditors for indemnity in respect of the shareholder class action claims are subordinated and are not entitled to vote or receive any distributions under the Plan. The auditors' claims for defence costs relating to the defence of shareholder class actions (which have not yet been determined to be equity or debt claims) are treated as Unresolved Claims under the Plan.

66. The auditors have also asserted indemnification claims in respect of the class action claims against them by the former Noteholders. As these indemnification claims have not been determined to be "equity claims", the Plan provides for these claims by placing Plan consideration in respect of the amount of these claims into the Unresolved Claims Reserve, to be distributed to the defendants if any of these claims become non-contingent Proven Claims. The amount of these potential indemnification claims has been limited to a global limit of $150 million by operation of the "Indemnified Noteholder Class Action Claim Limit" under the Plan, which limits the amount of the Indemnified Noteholder Class Action Claims against the Third Party Defendants to $150 million in the first instance. The Plan preserves the right to contest these indemnity claims, including the right to seek an order of the CCAA Court that these indemnification claims in respect of claims by former noteholders should be subordinated in the same manner as the indemnification claims in respect of the shareholders actions have been.

67. The auditors have also asserted claims against the Subsidiaries for, among other things, indemnification in connection with the shareholder class actions. Those claims have tended to treat SFC and the Subsidiaries interchangeably or as one collective entity. These claims are released under the Plan in the same manner as the Noteholders' guarantee claims against the Subsidiaries are released under the Plan.

D. Underwriters

68. In each instance where SFC has had a debt or equity public offering, such offering has been underwritten. The following firms have acted as SFC's underwriters and also have been named as defendants in the Ontario Class Action: Credit Suisse Securities (Canada) Inc., Credit Suisse Securities (USA) LLC, TD Securities Inc., Dundee Securities Corporation, RBC

Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Merill Lynch, Pierce, Fenner & Smith Incorporated, Canaccord Financial Ltd and Maison Placements Canada Inc. (the "Underwriters"). Certain of the Underwriters also are defendants in the New York class action.

69. Like the auditors, the Underwriters have filed claims against SFC seeking contribution and indemnity for the shareholder class actions. A copy of a representative sample of a proof of claim filed by one of the Underwriters is attached as Exhibit "K".

70. The Equity Claims Decision discussed above, upheld by the Court of Appeal for Ontario, applies equally to the Underwriters as it does to the auditors. Accordingly, the Underwriters' indemnity claims in respect of shareholder claims have been subordinated and are not entitled to vote or receive any distributions under the Plan. The Underwriters' claims for defence costs relating to the defence of shareholder class action, together with such claims of the auditors, are treated as Unresolved Claims under the Plan.

71. The Underwriters have also asserted indemnification claims in respect of the class action claims against them by the former Noteholders. For the same reasons and subject to the same terms as described above with respect to the auditors' indemnification claims, the Plan provides for these claims by placing Plan consideration in respect of the amount of these claims into the Unresolved Claims Reserve, limited to a global limit of $150 million by operation of the Plan.

72. Certain of the Underwriters have also asserted claims against the Subsidiaries in connection with the four Note offerings. Like all other SFC-related claims against the Subsidiaries, these claims are released under the Plan.

E. Ontario Securities Commission

73. On June 8, 2011, six days after the Muddy Waters report was released and the Board of SFC appointed the IC to investigate the allegations contained in that report, the OSC publicly announced that it was investigating matters related to SFC.

74. SFC believes that it has cooperated with the OSC. Under the supervision of the Board, SFC has made extensive production of documents, including documents sourced from jurisdictions outside of the OSC's power to compel production. Under the supervision of the Board, SFC also has facilitated interviews by the OSC with SFC and other Sino-Forest personnel. In circumstances where OSC staff sought to examine Sino-Forest personnel resident in the PRC, outside the OSC's jurisdiction to compel attendance at examination, SFC arranged to bring individuals to Hong Kong to be examined.

75. Absent cooperation from SFC, SFC was at risk that the OSC would seek to exercise additional powers in relation to SFC beyond imposing the TCTO. These additional powers could have extended to the appointment of a receiver over SFC. The Board's decision to inform the OSC of the results of the IC's investigative work, and to cooperate with the OSC's investigation, was important to preserving stakeholder value.

76. SFC has responded to extensive inquiries and has provided periodic oral briefings to OSC staff. The three reports prepared by the IC were provided to OSC staff on an unredacted basis. A significant portion of the professional costs incurred by SFC subsequent to June 2, 2011 relates to the production of documents and other information to OSC staff, and to producing Sino-Forest personnel for interviews with OSC staff.

77. In April 2012, SFC received an Enforcement Notice from OSC staff. Enforcement Notices typically are issued by OSC staff at or near the end of an investigation, identify issues that have been the subject of investigation, and advise that staff contemplate commencing formal proceedings in relation to those issues. Enforcement Notices afford recipients an opportunity to make representations before a decision is taken by staff of the OSC to commence formal proceedings. OSC staff asserted that the Enforcement Notice was protected from disclosure pursuant to sections 16 and 17 of the Ontario *Securities Act.*

78. On May 22, 2012, a Notice of Hearing and Statement of Allegations was issued by OSC staff against SFC, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung, and David Horsley. A copy of the Statement of Allegations is attached as Exhibit "L". OSC staff alleged in the Statement of Allegations that SFC and the other respondents, except David Horsley, had engaged in a complex fraudulent scheme to inflate the assets and revenue of SFC and made materially misleading statements in SFC's public disclosure record. It is further alleged by OSC staff that such conduct was contrary to the Ontario *Securities Act* and contrary to the public interest. No date has been set for a hearing on the merits.

79. On September 25, 2012, SFC received a second "Enforcement Notice" from OSC staff, which OSC staff again asserted was protected from disclosure. SFC issued a press release announcing the receipt of this Enforcement Notice on September 26, 2012, a copy of which is attached as Exhibit "M". The press release describes how the second Enforcement Notice includes a further allegation, which is similar in nature to the allegations in the Statement of Allegations discussed above.

80. By letter dated September 13, 2012, a copy of which is attached as Exhibit "N", counsel for OSC staff advised that OSC staff would not be seeking any monetary sanctions against SFC, and that they would not seek monetary sanctions against any of the directors and officers of SFC in excess of CAD$100 million. This amount was later reduced to CAD$84 million, as set out in a further letter dated October 25, 2012, a copy of which is attached as Exhibit "O".

F. Trade Creditors and Other Creditors

81. As SFC is a holding company whose business is substantially carried out through its subsidiaries in the PRC and Hong Kong, SFC has very few trade creditors. The Monitor's Thirteenth Report explains that only three trade claims have been filed pursuant to the Claims Process Order. Other than a claim filed by the former Chief Financial Officer of SFC arising from the termination of his employment, I am not aware of any other creditors of significance that have filed claims pursuant to the Claims Process Order.

IV. EFFORTS AND ACHIEVEMENTS IN ARRIVING AT A NEGOTIATED RESOLUTION

82. The fundamental component of SFC's proposed restructuring, being a complete separation of the Subsidiaries and the Sino-Forest business from SFC in compromise of the claims asserted against SFC, has not changed since the commencement of these proceedings.

83. As indicated above, SFC obtained the support of 72% of the Noteholders to its proposed restructuring at an early stage of this proceeding. On October 26, 2012, SFC also obtained the non-objection to the Plan of the Ad Hoc Securities Purchasers Committee. Significant efforts have been made to arrive at a consensual resolution with the other stakeholders described above.

84. On July 25, 2012, this Honourable Court issued a mediation order (the "Mediation Order"), on the consent of all parties, directing that a mediation take place on September 4 and 5, 2012.

85. In advance of the mediation, SFC established a confidential data room, as contemplated by the Mediation Order. That data room made available to those parties to the mediation who signed non-disclosure agreements with SFC approximately 18,000 documents that had been assembled in order to potentially make them available to participants in the Sale Process and additional documents that were requested by the Ad Hoc Securities Purchasers Committee.

86. The mediation took place on September 4 and 5, 2012. Justice Newbould acted as the mediator. While the mediation did not result in a global resolution, it is my understanding from counsel that all parties appeared to participate in good faith with a view to arriving at a consensual resolution. I am advised by counsel that there have been further discussions continuing among certain of the parties since the conclusion of the mediation, but those discussions have not resulted in a further settlement as at the date of the swearing of this affidavit. I am not aware of the specifics of the matters which may have been discussed by other parties to the mediation.

87. Following the mediation, SFC conducted extensive negotiations with the Ad Hoc Noteholders, with the participation of the Monitor and its counsel, to produce the draft plan that was filed with the Court on October 19, 2012 (the "October 19 Draft Plan"). On October 26, 2012, the Ad Hoc Securities Purchasers Committee confirmed that they would not object to the October 19 Draft Plan.

88. As discussed above, SFC's main creditors consist of (i) the Noteholders and (ii) the Third Party Defendants who claim indemnity from SFC and its subsidiaries on a contingent basis, the

contingency being whether or not they are ultimately found to be liable in the shareholder and noteholder class actions that are pending against them.

89. As a result of the Equity Claims Decision, the Third Party Defendants' indemnity claims in respect of shareholder class action claims are subordinated equity claims (leaving aside that they are contingent and contested in any event). With respect to the Third Party Defendants' indemnity claims in respect of the noteholder class action claims against them, these claims have now been limited to $150 million, collectively and in the aggregate for all Third Party Defendants, by operation of the Indemnified Noteholder Class Action Limit, which has limited the underlying claims by former noteholders against the Third Party Defendants to $150 million. As discussed, the Plan provides for these contingent, unresolved claims through the creation of the Unresolved Claims Reserve.

V. THE PLAN

A. Background and Overview

90. On August 28, 2012, SFC brought a motion for an order approving the filing of the Plan (the "Plan Filing and Meeting Order") and for calling a meeting of creditors to vote on the Plan. I swore an affidavit in connection with that motion, a copy of which is attached without exhibits as Exhibit "P".

91. On August 31, 2012, this Honourable Court issued the Plan Filing and Meeting Order as well as an endorsement stating that the Plan Filing and Meeting Order was made without any determination of (a) the test for approval of the Plan; (b) the validity or quantum of any claims; and (c) the classification of creditors for voting purposes. The endorsement also stated that the

Plan Filing and Meeting Order did not prevent or restrict any party from opposing the Sanction Order now being sought. A copy of the endorsement is attached as Exhibit "Q".

92. The Plan sets out to achieve the following purposes:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims;

(b) to effect the distribution of the consideration provided for herein in respect of Proven Claims;

(c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries, so as to enable the SFC Business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the Litigation Trustee.

93. SFC believes that the Plan represents the best available outcome in the circumstances and that those with an economic interest in SFC, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the business of Sino-Forest as a going concern than would result from a bankruptcy or liquidation of SFC and Sino-Forest. SFC also believes that the Plan reasonably takes into account the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders.

94. Given that the Sale Process was not successful, the Plan contemplates that a new company and a further subsidiary ("Newco" and "Newco II", respectively) will be incorporated and SFC will transfer substantially all of its assets to Newco in compromise and satisfaction of all claims made against it. The result will be that Newco will own, directly or indirectly, all of SFC's Subsidiaries and SFC's interest in Greenheart and its subsidiaries as well as any intercompany debts owed by the Subsidiaries to SFC. Pursuant to the Plan, as explained in further detail below, the shares of Newco will be distributed to the Affected Creditors.

95. The terms of the October 19 Draft Plan were described in greater detail in the Monitor's Thirteenth Report. This Plan was amended on November 28, 2012. Attached as Exhibit "R" is a copy of the Plan, as amended. Attached as Exhibit "S" is a blackline comparison of the Plan to the October 19 Draft Plan filed with the Court. Attached as Exhibit "T" is a copy of the Plan Supplement dated November 21, 2012 (the "Plan Supplement").

B. Distributions Under the Plan

96. The Plan contemplates the distribution of (1) Newco Shares, (2) Newco Notes, and (3) Litigation Trust Interests, each as further described below.

1. Newco Shares

97. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of 92.5% of the Newco Shares and Early Consenting Noteholders also entitled to their pro-rata share of 7.5% of the Newco Shares.

98. As set out in Exhibit C to the Plan Supplement, Newco will be incorporated as an exempt company under the laws of the Cayman Islands pursuant to the Plan. It will have a single class of voting shares, being the Newco Shares. Newco is not, and there is no current intention for

Newco to become, a reporting issuer in any jurisdiction of Canada or elsewhere and the Newco Shares will not be listed on any stock exchange or quotation service on the Plan Implementation Date. The board of directors of Newco will initially consist of up to five directors that will be satisfactory to the Initial Consenting Noteholders. Thereafter, directors will be elected by shareholders on an annual basis at Newco's annual general meeting. Certain shareholders holding large blocks of shares will be entitled to elect directors.

99. As set out in Exhibit C to the Plan Supplement, prior to the Plan Implementation Date, it is intended that Newco will organize Newco II as a wholly-owned subsidiary and an exempt company under the laws of the Cayman Islands, for the purpose of acquiring from Newco the SFC assets to be transferred by SFC to Newco on the implementation of the Plan. The purpose of this step is to organize Newco (namely, Newco II) in a tax and jurisdictionally efficient manner for purposes of any subsequent sale of all or substantially all of Newco's assets (for example, Newco II will own all of the Direct Subsidiaries in a single jurisdiction, rather than in four separate jurisdictions).

100. Newco will be named Evergreen China Holdings Ltd. and Newco II will be named Evergreen China Holdings II Ltd.

2. Newco Notes

101. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of the Newco Notes.

102. As set out in Exhibit D to the Plan Supplement (which defines the capitalized terms used in this paragraph), Newco Notes in the aggregate principal amount of US$300 million will be issued under an Indenture. They will be guaranteed by the Subsidiary Guarantors and secured by

pledges, mortgages and/or charges of the Collateral as described in Exhibit D to the Plan Supplement. Interest may be paid in cash or in PIK notes at rates prescribed in the Indenture and described in Exhibit D to the Plan Supplement. The Newco Notes will mature seven (7) years after the Original Issue Date, unless earlier redeemed pursuant to the terms thereof and the Indenture.

3. Litigation Trust Interests

103. Pursuant to the terms of the Plan, Affected Creditors with Proven Claims are entitled to their pro-rata share of 75% of the Litigation Trust Interests and the Noteholder Class Action Claimants are entitled to their pro-rata share of 25% of the Litigation Trust Interests.

104. The Litigation Trust will hold the Litigation Trust Claims (each as defined in the Plan), which include all claims and actions that have been or may be asserted by or on behalf of (i) SFC against any and all third parties, and (ii) the Note Indenture Trustees (on behalf of the Noteholders) against any and all persons in connection with the Notes; provided that Litigation Trust Claims will not include claims released under the Plan or claims advanced in the Class Actions.

105. The Litigation Trust will be governed by a Litigation Trust Agreement, a draft form of which was attached as Exhibit B to the Plan Supplement. The Litigation Trust will be funded by SFC with the Litigation Funding Amount, $1 million. Pursuant to the Plan, Newco may subsequently elect to advance additional funding to the Litigation Trust. The Litigation Trustee (who has not yet been selected) will be charged with the responsibility to preserve and enhance the value of the Litigation Trust Assets (as defined in the Litigation Trust Agreement), through the prosecution, compromise and settlement, abandonment or dismissal of all claims held by the

Litigation Trust. In addition, the Plan contemplates that, prior to the Plan Implementation Date, SFC and the Initial Consenting Noteholders may agree to exclude one or more claims from being transferred to the Litigation Trust in which case such claims will be released on the Plan Implementation Date.

106. I am advised by counsel that the Litigation Trust Claims will be transferred to the Litigation Trust subject to the equities, limitation defences and other defences that otherwise may be asserted against SFC, and none of those equities, litigation defences and other defences are purported to be compromised by the Plan.

107. SFC will also be transferring all respective rights, title and interests in and to any lawyer-client privilege, work product privilege or other privilege or immunity attaching to any documents or communications associated with the Litigation Trust Claims to the Litigation Trust for the benefit of the beneficiaries of the Litigation Trust.

C. Reserves Established Under the Plan

108. The Plan contemplates the establishment of the Administration Charge Reserve, the Unaffected Claims Reserve, the Unresolved Claims Reserve, and the Monitor's Post-Implementation Reserve. Notwithstanding that the Initial Order created a Directors' Charge of $3.2 million, the Named Directors and Officers have agreed to stand back from making any claims against the Directors' Charge as part of the comprehensive arrangements inherent in the Plan agreed to by the Initial Consenting Noteholders such that the Plan no longer provides for a Directors' Charge Reserve. The Monitor's Thirteenth Report also describes the purpose of each of these Reserves.

109. The amount of the Administration Charge Reserve is $500,000 or such other amount as may be agreed to by the Monitor and the Initial Consenting Noteholders. The amount of the Unaffected Claims Reserve will be established on the Plan Implementation Date and is estimated to be $1,800,000. The amount of the Monitor's Post-Implementation Reserve will initially be $5,000,000 or such other amount as may be agreed by SFC, the Monitor and the Initial Consenting Noteholders.

110. Any funds remaining in the Administration Charge Reserve or the Unaffected Claims Reserve will be transferred to the Monitor's Post-Implementation Reserve. The Monitor may, in its discretion, release excess cash from the Monitor's Post-Implementation Reserve to Newco. Once the Monitor determines that the cash remaining in the Monitor's Post-Implementation Reserve is no longer necessary for administering SFC, the Monitor shall transfer the remaining funds to Newco.

111. The Unresolved Claims Reserve will contain Newco Shares, Newco Notes, and Litigation Trust Interests in respect of any Unresolved Claims. It is expected that the Unresolved Claims as at the Plan Implementation Date will consist primarily of the contingent and unresolved indemnity claims against SFC by the Third Party Defendants in respect of (a) Class Action Indemnity Claims relating to the Indemnified Noteholder Class Action Claims, which have been limited to $150 million collectively and in the aggregate by operation of the consensual Indemnified Noteholder Class Action Limit; (b) $30 million in respect of unresolved claims for reimbursement of Defence Claim Costs; and (c) $500,000 in respect of unresolved claims filed by certain trade and other creditors, some of which have been accepted for voting purposes but not yet for distribution purposes.

112. Pursuant to the Plan and the Sanction Order, each of SFC, the Monitor, and the Initial Consenting Noteholders have reserved all rights to seek or obtain an Order at any time directing that any Unresolved Claims should be disallowed in whole or in part or should receive the same treatment as Equity Claims. The Plan and the Sanction Order provide that all parties with Unresolved Claims will have standing in respect of any proceeding to determine whether or not an Unresolved Claim constitutes a Proven Claim (in whole or in part) entitled to consideration under the Plan.

113. The Plan Supplement also describes the establishment of SFC Escrow Co., which will act as the Unresolved Claims Escrow Agent. Subject to the terms of the Plan, SFC Escrow Co. will hold distributions in respect of any Unresolved Claim in existence at the Plan Implementation Date in escrow until settlement or final determination of the Unresolved Claim in accordance with the Claims Process Order, the Meeting order, the Plan or otherwise, as applicable.

I. Indemnified Noteholder Class Action Claims

114. As I discussed above, there is a component of the class action claims that relates to the debt issuances and, in some respect, some of the class action plaintiffs are former noteholders. Section 4.4(a) of the Plan makes clear that those claims, as against SFC, the Subsidiaries or the Named Directors and Officers (other than those claims that are Section 5.1(2) D&O Claims, Conspiracy Claims or Non-Released D&O Claims) are fully, finally, irrevocably and forever compromised and released. However, these Noteholder Class Action Claims against Third Party Defendants are not compromised or released and may continue to proceed against the Third Party Defendants, provided that the Class Action Plaintiffs have agreed that the aggregate amount of such claims that may be asserted against Third Party Defendants in respect of

Indemnified Noteholder Class Action Claims shall not exceed the Indemnified Noteholder Class Action Limit, which has been established at a global amount of $150 million in the aggregate for all Third Party Defendants.

115. The Indemnified Noteholder Class Action Limit was established after extensive and difficult negotiations and discussion spanning many months among the Ad Hoc Securities Purchasers Committee, the Ad Hoc Noteholders and SFC. As a result of the limit, the maximum exposure of the Third Party Defendants with respect to Indemnified Noteholder Class Action Claims is, in the aggregate, $150 million. Accordingly, the maximum potential indemnity claims of such Third Party Defendants against SFC are likewise limited to $150 million in the aggregate. Such contingent indemnity claims are treated as Unresolved Claims under the Plan, and the potential Plan consideration that could be distributed in respect of any such indemnity claims that could become Proven Claims will be held in escrow in the Unresolved Claims Reserve.

2. Defence Costs

116. The Equity Claims Decision, as affirmed by the Court of Appeal, did not determine whether Defence Cost Claims of the auditors and Underwriters would be treated in the same manner as their indemnity claims against the company. Accordingly, the Plan treats Defence Cost Claims as Unresolved Claims, with the potential Plan consideration that could be distributed in respect of any such claims that could become Proven Claims to be held in the Unresolved Claims Reserve.

D. Releases Under the Plan

117. The Plan includes releases for certain parties (the "Released Parties"), including certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). The identification of the Named Directors and Officers and the scope of the releases were heavily negotiated among various constituents as part of the negotiation of the Plan and form a fundamental element of the commercial deal embodied in the Plan.

118. There are four main categories of claims against the Named Directors and Officers that will not be released pursuant to the Plan:

(a) Non-Released D&O Claims, being claims for fraud or criminal conduct;

(b) Conspiracy Claims;

(c) Section 5.1(2) D&O Claims; and

(d) Non-monetary remedies of the OSC.

119. The Plan contemplates that recovery in respect of claims against the Named Directors and Officers of SFC in respect of any Section 5.1(2) D&O Claims and any Conspiracy Claims shall be directed to insurance proceeds available from the insurance policies maintained by SFC.

120. SFC maintained director and officer insurance coverage in 2011 providing for a total of $60 million of coverage, which applies to both defence costs and any damages or settlements. The primary policy is provided by ACE INA Insurance with a policy limit of $15 million, with excess layers provided by Chubb, ERIS (Lloyds) and Travelers (collectively, the "2011 Insurance Policies"). Slightly in excess of $10 million of the $60 million limit has been paid out

on account of insured costs incurred by SFC and by other insured persons under the 2012 policies.

121. When the 2011 policies were not renewed after their expiry on December 31, 2011, SFC obtained coverage from other providers totalling $55 million for 2012 (the "2012 Insurance Policies"). The 2012 Insurance Policies contain a "prior acts" exclusion, and therefore are not available to respond to claims arising from the Muddy Waters allegations.

122. Both the 2011 Insurance Policies and 2012 Insurance Policies provide for three types of coverage: (a) director and officer liability; (b) corporate liability for indemnifiable loss; and (c) corporate liability arising from securities claims. The insurance policies are subject to a number of exclusions, and contain coverage and claims limits.

123. In addition to the release of the Named Directors and Officers, and advisors involved in these proceedings, the Plan provides for releases of all claims relating to claims against SFC that may be made against the Subsidiaries. As I explained in my Initial Order Affidavit, while SFC is a holding company, the "business" of SFC is conducted through the Subsidiaries (which are not CCAA applicants).

124. There can be no effective restructuring of SFC's business and separation from its Canadian parent (which SFC has said from the outset was the objective of the commencement of these proceedings) if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. Just as the claims of the Noteholders against the Subsidiaries are to be released under the Plan upon implementation, so are the other claims against the Subsidiaries which relate to claims asserted against SFC (as well as any claims that the Subsidiaries have against SFC).

VI. THE MEETING

125. The Plan Filing and Meeting Order sets out the procedure for the calling and conduct of the meeting of creditors to vote in respect of the Plan.

A. Meeting Materials, Notice, and Mailing

126. The Plan Filing and Meeting Order approved the forms of Information Circular, Notice to Affected Creditors, Ordinary Affected Creditors' Proxy, Noteholders' Proxy, Instructions to Ordinary Affected Creditors, Instructions to Registered Noteholders, Instructions to Unregistered Noteholders and Instructions to Participant Holders (collectively, the "Meeting Materials"). A copy of the Meeting Materials is attached as Exhibit "U".

127. The Mailing Date set out in the Plan Filing and Meeting Order was to be no later than September 20, 2012, provided that such date could be extended by the Monitor with the consent of SFC and the Initial Consenting Noteholders. The Mailing Date was ultimately set as October 24, 2012.

128. A separate order was obtained by the Monitor on October 24, 2012 (the "Revised Noteholder Mailing Process Order") to effect a more efficient process for the mailing of the Meeting Materials to the Noteholders. A copy of the Revised Noteholder Mailing Process Order is attached as Exhibit "V".

129. The Monitor has set out in its Thirteenth Report how the Plan Filing and Meeting Order was complied with and how notice was effected as required.

130. The Plan Filing and Meeting Order permits SFC, with the consent of the Monitor to amend, restate, modify and/or supplement any of such materials, subject to the terms of the Plan, provided that the Monitor, SFC or the Chair shall communicate the details of any such amendments, restatements, modifications and/or supplements to Affected Creditors present at the Meeting prior to any vote being taken at the meeting, among other things.

131. The Plan Supplement was distributed in accordance with the terms of the Plan Filing and Meeting Order to Affected Creditors. The Plan (as amended on November 28, 2012) was provided to the CCAA service list as well as posted on the Monitor's website on November 28, 2012.

132. Based on information provided to me by counsel and by the Monitor in its Thirteenth Report, I believe that SFC has complied with all requirements in the Plan Filing and Meeting Order with respect to the mailing of the Meeting Materials.

B. The Meeting

133. The Plan Filing and Meeting Order authorized SFC to call the Meeting and to hold and conduct the Meeting on the Meeting Date at the offices of Bennett Jones LLP, 3400 One First Canadian Place, Toronto, Ontario, for the purpose of seeking approval of the Plan by the Affected Creditors with Voting Claims at the Meeting in the manner set forth in the Plan Filing and Meeting Order.

134. The Meeting Date was set to be November 29, 2012, and this was communicated to Affected Creditors in the Meeting Materials. Further changes to the Plan resulted in the Meeting Date being extended to November 30, 2012. SFC issued a press release announcing this

extension, and the Monitor's counsel also communicated the fact of the extension by way of email to the Service List. The location of the Meeting was moved to the offices of Gowling Lafleur Henderson LLP, counsel to the Monitor, at 1 First Canadian Place, 100 King Street West, 16th Floor, Toronto, Ontario.

135. The outcome of the Meeting will be reported in a further report by the Monitor prior to the Sanction Order hearing.

C. Entitlement to Vote and Classification of Creditors

136. The voting process is described in some detail in the Monitor's Thirteenth Report. By way of general overview only, the Plan Filing and Meeting Order provides that the only Persons entitled to vote at the Meeting are the Beneficial Noteholders with Voting Claims that have beneficial ownership of one or more Notes as at the Voting Record Date (August 31, 2012), and Ordinary Affected Creditors with Voting Claims as at the Voting Record Date.

137. The Plan Filing and Meeting Order provides that each Affected Creditor with an Unresolved Claim could also attend the Meeting and is entitled to one vote at the Meeting in respect of such Unresolved Claim. The Monitor is required to keep a separate record of votes cast by Affected Creditors with Unresolved Claims and to report on such vote at the Sanction Hearing.

138. The Plan Filing and Meeting Order provides that each of the Third Party Defendants is entitled to vote as a member of the Affected Creditors Class in respect of any Class Action Indemnity Claim that it has properly filed in respect of the Indemnified Noteholder Class Action Claims, provided that the aggregate value of all such claims shall, for voting purposes, be

deemed to be limited to the amount of the Indemnified Noteholder Class Action Limit. The Monitor is required to keep a separate record of votes cast by the Third Party Defendants in respect of such Class Action Indemnity Claims and to report to the Court with respect thereto at the Sanction Hearing.

139. The Plan Filing and Meeting Order provides that the following Persons do not have the right to vote at the Meeting: Unaffected Creditors; Noteholder Class Action Claimants; Equity Claimants; any Person with a D&O Claim; any Person with a D&O Indemnity Claim (other than a D&O Indemnity Claim in respect of Defence Costs Claims or in respect of the Indemnified Noteholder Class Action Claims); any Person with a Subsidiary Intercompany Claim; and any other Person asserting Claims against SFC whose Claims do not constitute Affected Creditor Claims on the Voting Record Date.

VII. STEPS TAKEN AT THE OSC WITH RESPECT TO PLAN STEPS

140. The mailing of the Meeting Materials, the holding of the Meeting, and the steps contemplated to implement the Plan could have individually or collectively constituted an act in furtherance of a trade, which would have been contrary to the TCTO first made by the OSC on August 26, 2011.

141. To avoid that result, SFC sought and obtained two orders of the OSC to vary the TCTO. First, on September 18, 2012, the OSC issued an order varying the TCTO to permit the distribution of the Meeting Materials as contemplated by the Plan Filing and Meeting Order. A copy of the September 18, 2012 order is attached as Exhibit "W".

142. Second, on October 26, 2012, the OSC issued an order varying the TCTO to permit: (a) the holding of the Meeting; and (b) the CCAA Plan Trades and all acts in furtherance thereof, other than CCAA Plan Trades required to give effect to an Alternative Sale Transaction, provided that the requisite creditor approval is obtained, this Honourable Court issues a sanction order, and SFC has complied and is in compliance with the terms of all CCAA court orders. A copy of the October 26, 2012 order is attached as Exhibit "**X**".

143. As a result, except in the circumstances where an Alternative Sale Transaction was being pursued, there are no further regulatory requirements that relate to the OSC that are needed to effectuate the transactions contemplated in the Plan, other than an order from the OSC and other provincial securities regulators for a decision that SFC is not a reporting issuer effective as of the implementation date of the Plan. If granted, that order would result in SFC and Newco not being reporting issuers in Ontario or any other province in Canada following the implementation date of the Plan.

VIII. PLAN SANCTION

A. SFC Has Complied with the CCAA and the Orders Granted in these Proceedings

144. As I explained in my Initial Order Affidavit and as was found by this Honourable Court in its endorsement on the Initial Order, a copy of which is attached as Exhibit "Y", SFC is a "debtor company" under section 2 of the CCAA. It is a "company" continued under the CBCA that has debts far in excess of the CDN $5 million statutory requirement, and is insolvent with liabilities to creditors far exceeding CDN $1,000.

145. Since the commencement of these proceedings, SFC has complied with the provisions of the CCAA, the Initial Order and all subsequent Orders of the Court granted in these proceedings. I am not aware, and I am advised by counsel that they are unaware, of any steps taken by SFC that are not authorized by the CCAA.

146. This Honourable Court has been kept up to date with regular updates provided in affidavits that I have sworn and in reports of the Monitor that have been filed with the Court. In particular, SFC made full and timely disclosure of, among other things: (a) developments occurring at the OSC and with OSC Staff; (b) steps taken by SFC in response to various developments in SFC's business, including a number of departures of senior management personnel at SFC; (c) the efforts to negotiate a global resolution of issues among all stakeholders; (d) the efforts to market the assets of SFC pursuant to the Sale Process Order; and (e) developments in SFC's business, including the difficulties SFC has experienced in realizing upon and recovering receivables from third parties.

147. Accordingly, after consulting with counsel and reviewing the documents described above, I believe that all steps taken by SFC since the inception of this proceeding have been authorized by the CCAA.

B. The Plan is Fair and Reasonable

148. Since the Muddy Waters report was issued on June 2, 2011, SFC has expended considerable efforts and resources examining alternatives to find the best possible resolution to the issues facing the company described above.

149. Prior to filing for the protection under the CCAA, SFC did everything within its power to avoid the defaults that ultimately forced it to commence insolvency proceedings. However, as described above and in my Initial Order Affidavit, SFC was in default under certain of the Notes as a result of being unable to issue 2011 third quarter financial statements. While waivers of such defaults were obtained for a period of time, those waivers were set to expire at the end of April, 2012 and the Noteholders, with the guarantees and share pledges described above, would have been in a position to enforce their rights under the Note Indentures. Any alternative to the commencement of CCAA proceedings would have risked the immediate cessation of the Sino-Forest business resulting in significant detriment to SFC's stakeholders.

150. As previously discussed, following the commencement of these CCAA proceedings, SFC conducted a court supervised Sale Process to determine whether there was a potential purchaser willing to purchase the assets of SFC for the Qualified Consideration. With the assistance of Houlihan, the market was thoroughly canvassed and no such bidder could be found. In accordance with the Sale Process Procedures, SFC terminated the Sale Process and proceeded towards developing the Plan to implement the Restructuring Transaction.

151. The Plan that will ultimately be put to Affected Creditors at the Meeting was the subject of significant and extensive negotiations. In negotiating the Plan, the Board of SFC considered the interests of all stakeholders of SFC. Alternatives were explored throughout the negotiations, and the Plan was the product of such negotiations. I do not believe that there are other viable alternatives that would have been acceptable to SFC and its creditors. The Plan represents the best available alternative remaining in these proceedings, and provides a better result for SFC's creditors than could be achieve through a bankruptcy or liquidation.

152. As discussed above, SFC is a holding company and the Sino-Forest business is held through the Subsidiaries. To recover any value in a bankruptcy or liquidation scenario, creditors would need to realize upon the assets where they are resident. The majority of SFC's business operations are located in the PRC, and the majority of SFC's forest plantations are located in the southern and eastern regions of the PRC, primarily in inland regions suitable for large-scale replanting. Other jurisdictions where bankruptcy or liquidations would need to take place would be in Hong Kong or the British Virgin Islands (the "BVI").

153. Beyond the legal hurdles of effecting any bankruptcy or liquidation in these various jurisdictions, any of SFC's creditors seeking a liquidation in the PRC, Hong Kong or BVI, will be confronted with significant difficulties in collecting receivables as has been detailed by the Monitor in its earlier reports and which I described during my cross-examination on an earlier report and in dealing with the substantial claims that have been asserted against the Subsidiaries as identified in the claims process. Significant efforts have been expended by Sino-Forest over the past several months to recover its receivables, and notwithstanding long-standing relationships with many of the parties owing such amounts, SFC has largely been unsuccessful. The ability of third party creditors of a Canadian parent company (or a liquidator appointed outside of the PRC in respect of the Subsidiaries) to collect such receivables in these various regions is speculative, at best.

154. Any creditors in a bankruptcy or liquidation scenario in these various jurisdictions would also have significant challenges in monetizing any of the assets of the Subsidiaries, given the challenges in establishing title capable of being transferred to a buyer that have been described in the reports of the Independent Committee, my earlier affidavits and certain reports of the Monitor. Even if such assets were successfully monetized, insofar as such assets are located in

the PRC, creditors would be faced with the numerous legal and regulatory issues associated with removing funds from the PRC.

155. Any liquidation or bankruptcy of SFC, through its Subsidiaries, would result in loss of value to the creditors of SFC and its Subsidiaries as a going concern. As I have testified on a number of occasions, significantly greater value can be obtained through the Sino-Forest business continuing as a going concern than could be obtained through piecemeal dismantling of the enterprise through a bankruptcy or liquidation.

156. In developing the Plan, I do not believe that SFC or the Board has acted in a manner that unfairly disregards, or is unfairly prejudicial to, or oppresses the interests of any stakeholders. It is not unfair for shareholders to not receive any distribution under the Plan given that there are insufficient funds to satisfy the claims of SFC's creditors. The treatment of shareholder claims and related indemnity claims is fair and consistent with the Equity Claims Decision, as affirmed by the Court of Appeal. As I have described above, a sizeable majority of the Noteholders have agreed to support the Plan, and the Ad Hoc Securities Purchasers Committee and the Quebec Class Action Plaintiffs have stated that they will not oppose it. To the extent that certain claims are Unresolved Claims at the time of the Plan's implementation, such claims are provided for through the creation of the Unresolved Claims Reserve, which will preserve the potential Plan Consideration in respect of such claims, to the extent that any of them (or any part of any of them) becomes a Proven Claim.

157. SFC has stated from the outset of these proceedings that it is necessary to have a clean break for the Subsidiaries from SFC in order for these proceedings to be successful. The primary purpose of the CCAA proceeding was to extricate the business of Sino-Forest, through the

operation of SFC's Subsidiaries, from the cloud of uncertainty surrounding SFC. Accordingly, there is a clear and rational connection between the release of the Subsidiaries and the Plan and it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's Note indebtedness, for the benefit of the Affected Creditors (the Subsidiaries are not asserting against SFC for doing so, and in fact are releasing SFC from any such claims and guaranteeing the Newco Notes).

158. The Plan will enable SFC to achieve a going concern outcome for the business of Sino-Forest that fully and finally deals with debt issues and will extract the business of Sino-Forest from the uncertainties surrounding SFC. The Plan will provide stability for Sino-Forest's employees, suppliers, customers and other stakeholders, and provide a path for recovery of the debt owed to SFC's non-subordinated creditors.

159. The Plan preserves the rights of aggrieved parties, including SFC, to pursue those parties that are alleged to share some or all of the responsibility for the problems that caused SFC to file for CCAA protection in the first place. Releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

160. The Named Directors and Officers group consists principally of Board members and members of management who have been important to efforts to avoid note defaults and later to facilitate SFC's restructuring efforts. It also included some individuals formerly associated with SFC who, to SFC's knowledge, are not implicated in any conduct issues. The Named Directors and Officers are Andrew Agnew, William E. Ardell, James Bowland, Leslie Chan, Michael

Cheng, Lawrence Hon, James M.E. Hyde, Richard M. Kimel, R. John (Jack) Lawrence, Jay A. Lefton, Edmund Mak, Tom Maradin, Simon Murray, James F. O'Donnell, William P. Rosenfeld, Peter Donghong Wang, Garry West, Kee Y. Wong, and me.

161. I have described above the steps taken to investigate conduct issues, avoid note defaults and ultimately to facilitate the restructuring efforts. These efforts would not have been possible without the active participation of the Board and members of remaining management.

162. In addition to these positive efforts, the Board also dealt with conduct issues as facts came to light. As described above, certain individuals were placed on administrative leave following late August 2011. As described in prior affidavits, since the commencement of these CCAA proceedings, Allen Chan, Alfred Hung, George Ho, Simon Yeung, Albert Ip, and David Horsley have ceased to be employed by Sino-Forest. Other less senior employees also have ceased to be employed by Sino-Forest.

163. Finally, a release of the Named Directors and Officers is necessary to effect a greater recovery for SFC's creditors, rather than preserve indemnification rights and dilutive participation entitlements for the Named Directors and Officers.

164. For the reasons discussed above, SFC believes that the Plan provides a fair and reasonable balance among its stakeholders while providing the ability for the Sino-Forest to continue as a going concern for the benefit of stakeholders.

165. As I have explained in several prior affidavits, to achieve a going concern outcome for the business of Sino-Forest, SFC cannot remain in CCAA for much longer. There have already been considerable strains on Sino-Forest's business relationships and the company's ability to

collect very sizable accounts receivable have been significantly constrained by the fact of these insolvency proceedings. Moreover, as indicated by the Monitor's Thirteenth Report and the proposed cash flow forecast in the Monitor's Twelfth Report, while SFC has sufficient cash to exist to February 1, 2013, SFC's cash position is being rapidly depleted and SFC will likely have insufficient funds to continue operating in these CCAA proceedings for any extended period of time beyond February 1, 2013.

166. Subject to obtaining approval of the Plan by the requisite majority of Affected Creditors with Proven Claims at the Meeting, for the reasons stated above, I believe that the Plan is appropriate and should be sanctioned by this Honourable Court.

SWORN BEFORE ME at the City of Hong Kong, Special Administrative Region, People's Republic of China, this 29th day of November, 2012

W. Judson Martin

Chan Ching Yee
Solicitor
Reed Smith Richards Butler
20/F Alexandra House
Hong Kong SAR

A Commissioner of Oaths

DRAFT 10: November 28, 2012 #1

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

AFFIDAVIT OF W. JUDSON MARTIN
(Sworn November 29, 2012)

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Lawyers for the Applicant

TAB B

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

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

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 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

FACTUM OF THE UNDERWRITERS
Ernst & Young LLP Settlement Approval and Certification Motion
(Returnable February 4, 2013)

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PART I - OVERVIEW

1. On the condition that the Settlement Approval Order, in the form approved by the Underwriters[1], and an Order substantially in the form attached as Schedule "B" to this Factum (the "Production Protocol") are issued at the same time, the Underwriters do not oppose the approval of the proposed settlement between the Plaintiffs and the Defendant, Ernst & Young LLP ("E&Y") (the "Proposed Settlement"). Should either of those Orders not be issued then the Underwriters reserve the right to take an alternate position, including opposing approval of the settlement.

2. On November 29, 2012, the Plaintiffs settled their claim against E&Y. Pursuant to the terms of the Proposed Settlement, the action will be dismissed against E&Y and certain of the Underwriters' discovery and other rights will be extinguished. The Production Protocol preserves these rights. The Production Protocol is generally consistent with (a) the rights of non-settling defendants generally, as set out in relevant case law and (b) rights the Underwriters obtained pursuant to the settlement approved between the Plaintiffs and the Pöyry (Beijing) Consulting Company Limited and other Pöyry entities ("Pöyry").

3. It would be manifestly unfair for the court to approve the Proposed Settlement without at the same time issuing the Production Protocol. Approval of the Proposed Settlement absent the Production Protocol would deprive the Underwriters of their ability to obtain the evidence necessary to establish a key issue at trial – namely, the liability of E&Y, which under the Proposed Settlement the Plaintiffs are barred from claiming or collecting from the non-settling defendants (including the Underwriters).

PART II - FACTS

A. The Proposed Settlement and Production Protocol

4. E&Y began auditing the financial statements of Sino-Forest Corporation ("Sino") in 2007. It is available to the Underwriters' to argue at trial that E&Y was negligent in performing

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[1] 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.

its audits and related work, thereby making E&Y liable for the misrepresentation claims made pursuant to the statutory causes of action in the *Securities Act*.

5. From the Underwriters' perspective, the relevant aspects of the Proposed Settlement are as follows:

(a) it contemplates that the action will be dismissed against E&Y;

(b) it releases E&Y and provides that any recovery by the Plaintiffs at trial shall exclude the amount for which E&Y may be found liable; and

(c) it contemplates that the Underwriters' discovery rights and other rights to obtain evidence for trial will be extinguished.

6. The Underwriters' discovery rights and other rights to obtain evidence are of critical importance in order to prove E&Y's liability at trial. The Production Protocol is intended to preserve those important rights. In particular, the Production Protocol provides for the following:

(a) E&Y will preserve all documents in its power, possession or control which are relevant to the action ("Documents");

(b) E&Y will make the Documents available for inspection and, upon request, produce copies of the Documents;

(c) on a motion to this Court, the Underwriters may seek to enforce any pre-existing or subsequently acquired rights to obtain evidence from E&Y; and

(d) the Underwriters may obtain, on a motion to the Court, Orders for:

(1) documentary discovery and an affidavit of documents, to the extent that such rights are not otherwise provided for in the Production Protocol;

(2) oral discovery of a representative of E&Y, the transcript of which may be read in at trial;

(3) leave to serve a request to admit on E&Y in respect of factual matters; and

(4) an undertaking to produce an E&Y representative to testify at trial, with such witness to be subject to cross-examination by counsel for the non-settling defendants.

B. Similarities of Proposed Settlement to Pöyry Settlement

7. Shortly prior to the commencement of the *CCAA* proceeding, the Plaintiffs settled their claim with Pöyry, a forestry valuator that prepared expert forestry valuation reports for Sino during the class period (the "Pöyry Settlement"). The settlement was approved in Ontario on September 25, 2012.

> *Affidavit of Charles Wright sworn January 10, 2013* ("Wright Affidavit"), para. 51, Plaintiffs' Motion Record, p. 48

8. Like the Proposed Settlement, the Pöyry Settlement contemplated that the action would be dismissed against Pöyry and released Pöyry from any further claims. As a condition to its non-opposition to the Pöyry Settlement, the Underwriters negotiated a similar bundle of procedural rights to those which are set out in the E&Y Production Protocol, including the right to documentary discovery, oral discovery, leave to serve a request to admit and production of a Pöyry representative to testify at trial. Unlike the Production Protocol, however, each of these procedural rights under the Pöyry Settlement are absolute, in the sense that the Underwriters are not required to obtain a further court order in order to exercise these rights.

> Pöyry Settlement Approval Order, Exhibit "Y" to Wright Affidavit, Plaintiffs' Motion Record, pp. 697-711

PART III - LAW AND ARGUMENT

9. On the condition that the Settlement Approval Order, in the form approved by the Underwriters, and an Order substantially in the form of the Production Protocol are issued at the same time, the Underwriters do not oppose the approval of the Proposed Settlement. The Production Protocol preserves the Underwriters' important procedural rights, including discovery rights, which would otherwise be available to them under the *Rules of Civil Procedure*. The Production Protocol is consistent with both the rights obtained by the Underwriters pursuant to the Pöyry Settlement and with a number of recent cases that have considered this issue. If the Proposed Settlement is approved absent the Production Protocol, the settlement would be manifestly unfair to the Underwriters and will prevent the fair and proper adjudication of this matter in the event there is a trial.

A. Test on Settlement Approval Motions

10. Before approving a class action settlement, the court must be satisfied that in all the circumstances the settlement is fair, reasonable and in the best interests of all those affected by it. The court must balance all the relevant interests, including those of the plaintiffs, the settling defendants and the non-settling defendants.

> *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 at para. 30 (S.C.J.), aff'd (1998), 41 O.R. (3d) 1997 (C.A.), Brief of Authorities of the Underwriters, Tab 1
>
> *Airia Brands Inc. v. Air Canada*, 2011 ONSC 6286 at para. 62, Brief of Authorities of the Underwriters, Tab 2
>
> *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 at para. 69, Brief of Authorities of the Underwriters, Tab 3

11. Approving a settlement with only one or some parties cannot create an unfairness for non-settling defendants.

> *Lau v. Bayview Landmark Inc.* [2006] O.J. No. 600 (SCJ) at paras. 13 – 21, Brief of Authorities of the Underwriters, Tab 4

B. The Production Protocol is Necessary to Protect the Underwriters' Rights

12. Partial settlements should not deprive non-settling defendants of their right to obtain evidence to establish an element of proof essential to a just resolution of the action. A key issue in this case, should it proceed to trial, is the liability of E&Y. The Proposed Settlement – absent the Production Protocol – would deprive the Underwriters of their extant procedural rights to discover representatives of E&Y, to seek to obtain evidence by way of admission, and to cross-examine witnesses at trial. Absent these procedural rights, the Underwriters will be prejudiced in respect of proving the liability of E&Y, and the Court will be constrained in its ability to adjudicate this key issue.

> *Ontario New Home Warranty Program v. Chevron Chemical Co.*, *supra* at para. 66 per Wood J.A., *British Columbia Ferry Corp. v. T&N plc*, [1996] 4 W.W.R. 161 at 175-176 (B.C.C.A.)

13. In order to address the procedural objections of non-settling defendants, a number of recent class action settlement approval orders have essentially been conditional on the right of

the non-settling defendants to obtain, on a subsequent motion to the court, a bundle of procedural rights, including: (a) documentary discovery and an affidavit of documents, (b) oral discovery, (c) leave to serve a request to admit and (d) an undertaking to produce a representative to testify at trial. Absent any of these procedural rights, a settlement should not be approved by the court.

> *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 at para. 71, 77, Brief of Authorities of the Underwriters, Tab 3
>
> *Airia Brands Inc. v. Air Canada*, 2011 ONSC 6286 at para. 55, 58, 60, 62, Brief of Authorities of the Underwriters, Tab 2

14. The Production Protocol is consistent with the recent settlement approvals referred to in paragraph 13 above. The Underwriters are not seeking to obtain through the Production Protocol any novel procedural rights – they are simply seeking to preserve the rights necessary (and otherwise available to them) to obtain evidence to establish a key issue which is essential to the fair resolution of the action.

PART IV - CONCLUSION

15. For the reasons set out above, on the condition that the Settlement Approval Order, in the form approved by the Underwriters, and an Order substantially in the form of the Production Protocol are issued at the same time, the Underwriters do not oppose the approval of the proposed settlement between the Plaintiffs and E&Y. Should either of those Orders not be issued, the Underwriters reserve the right to take an alternate position, including opposing approval of the settlement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

John Fabello

Andrew Gray

Rebecca L. Wise

Lawyers for the Defendants, 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)

SCHEDULE "A"

AUTHORITIES

1. *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (S.C.J.), aff'd (1998), 41 O.R. (3d) 1997 (C.A.)

2. *Airia Brands Inc. v. Air Canada*, 2011 ONSC 6286

3. *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (S.C.J.)

4. *Lau v. Bayview Landmark Inc.*, [2006] O.J. No. 600 (S.C.J.)

SCHEDULE "B"

PRODUCTION PROTOCOL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE
	)	
MR. JUSTICE MORAWETZ	)	4TH DAY OF FEBRUARY, 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 February 4, 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 affidavits of Charles Wright, counsel to the plaintiffs, and the exhibits thereto, Joe Redshaw and the exhibits thereto, Frank C. Torchio and the exhibits thereto, Serge Kalloghlian and 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 Fourteenth and Fifteenth Reports of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants (in such capacity, the "Monitor") dated January 22 and 28, 2013 including any notices of objection received, and on hearing the submissions of counsel for the Ontario Plaintiffs, Ernst & Young LLP, the Ad Hoc Committee of Sino-Forest Noteholders and the Applicant, the Underwriters, BDO Limited, the Monitor and those other parties present, no one appearing for any other party

although duly served as appears from the affidavit of service of ● sworn ●, 2013 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 is properly returnable today 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 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 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 Honorable Court, seek to enforce any pre-existing or subsequently acquired rights to obtain evidence from Ernst & Young and may obtain on motion to this Honorable Court, as against Ernst & Young as a non-party, subject to Ernst & Young'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.

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 or 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;

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).*

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA et al.	v.	SINO-FOREST CORPORATION et al.	Court File No. CV-11-431153-00CP
Plaintiffs		Defendants	

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

FACTUM OF THE UNDERWRITERS
Ernst & Young LLP Settlement Approval and Certification Motion
(returnable February 4, 2013)

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