

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

B E T W E E N:

**INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂIRENTE INC., MATRIX ASSESSMENT MANAGEMENT INC., GESTION FÉRIQUE, and MONTRUSCO BOLTON INVESTMENTS INC.**

**APPLICANTS**  
(Moving Parties)

- and -

**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, SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, KAI KIT POON, DAVID J. HORSLEY, 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) and PÖYRY (BEIJING) CONSULTING COMPANY LIMITED**

**RESPONDENTS**  
(Plaintiffs/Defendants)

Proceeding under the *Class Proceeding Act, 1992*

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(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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S.C.C. Court 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.**

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Respondents  
(Respondents)

Proceeding under the *Class Proceedings Act, 1992*

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**NOTICE OF NAME**

(Pursuant to Rule 25(1)(b) of the *Rules of the Supreme Court of Canada*)

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TAKE NOTICE that Ernst & Young LLP is registered in accordance with the *Business Names Act*, R.S.O. 1990, c. B.17 under the name Ernst & Young LLP, in English, and Ernst & Young S.R.L./S.E.N.C.R.L., in French.

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S.C.C. Court 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  
(Moving Parties/Appellants)

and

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED  
(formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN,  
KAI KIT POON, DAVID J. HORSLEY, 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),  
THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL  
AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL  
UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR  
OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID  
GRANT, ROBERT WONG and PÖYRY (BEIJING) CONSULTING  
COMPANY LIMITED**

Respondents  
(Respondents)

Proceeding under the *Class Proceedings Act, 1992*

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**CERTIFICATE OF COUNSEL FOR THE RESPONDENT, ERNST & YOUNG LLP**

(Pursuant to Rule 25(c) of the *Rules of the Supreme Court of Canada*)

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I, Peter H. Griffin, counsel for the Respondent, Ernst & Young LLP, hereby certify that:

- (a) there is no sealing or confidentiality order in effect in the file from a lower Court 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 name or identity of a party or witness and no document filed includes information that is subject to such a ban; and
- (c) there is no confidential information or document filed that includes such information that is subject to limitations on public access by virtue of specific legislation.

DATED at Toronto, Ontario this 23<sup>rd</sup> day of October, 2013.



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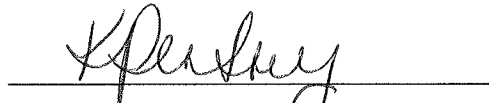
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S.C.C. Court File No. 35541

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

B E T W E E N:

**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  
(Moving Parties/Appellants)

and

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED  
(formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN,  
KAI KIT POON, DAVID J. HORSLEY, CREDIT SUISSE SECURITIES  
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INCORPORATED (successor by merger to Banc of America Securities LLC),  
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COMPANY LIMITED**

Respondents  
(Respondents)

**MEMORANDUM OF ARGUMENT OF THE RESPONDENT,  
ERNST & YOUNG LLP**

(Pursuant to Rule 27(1) of the *Rules of the Supreme Court of Canada*, S.O.R./2002-15(6))

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## PART I - OVERVIEW AND FACTS

### (A) OVERVIEW

1. The Applicants (representing only 1.6% of the equity of Sino-Forest Corporation) seek leave to appeal to this Honourable Court from two orders of the Court of Appeal for Ontario that:

- (a) denied leave to appeal, for lack of sufficient merit, under sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "CCAA"); and

**Reference**      *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, Application for Leave to Appeal of the Applicants ("Application Record"), Volume II, Tab 1A.

- (b) quashed the purported appeal for lack of standing to bring it as of right under section 30 of the *Class Proceedings Act, 1992* (the "CPA").

**Reference**      *Class Proceedings Act*, S.O. 1992, c. 6, Application Record, Volume II, Tab 1D.

2. This Honourable Court has granted leave only sparingly where the court below has denied leave to the appellant. This is not one of those extraordinary cases where this Honourable Court should exercise its inherent jurisdiction to grant leave. The Applicants have failed to meet the necessary test for leave.

3. The Applicants' assertion that their procedural fairness rights have been compromised is far-fetched and tenuous. It does not rise to the level of national or public importance.

4. The Superior Court of Justice for Ontario, the Court of Appeal for Ontario and this Honourable Court have all considered whether a third party non-applicant may, in contributing to a Plan, receive a release within an insolvency proceeding.

**Reference**      *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265 (S.C.J.), Respondent's Book of Authorities ("BOA"), Tab 1, appeal dismissed, [2008] O.J. No. 3164 at para. 78 (C.A.), BOA, Tab 2, leave to appeal dismissed, *Jean Coutu Group (PJC) Inc. v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] S.C.C.A. No. 337, BOA, Tab 3, ("*ATB Financial*").

**See also** *Re Nortel Networks Corp.*, [2010] O.J. No. 1232 at paras. 70-71 (S.C.J.), BOA, Tab 14.

*Re Muscletech Research & Development Inc.*, [2007] O.J. No. 695 at para. 26 (S.C.J.), BOA, Tab 13.

*Re Grace Canada Inc.*, [2008] O.J. No. 4208 at para. 78 (S.C.J.), BOA, Tab 12.

*Re Allen-Vanguard Corp.*, 2011 ONSC 5017, BOA, Tab 9.

5. A plan of compromise and arrangement (“Plan”) in the context of a restructuring under the CCAA necessarily requires a compromise of all stakeholders. The Applicants are no exception.
6. This Application should be dismissed for the following reasons:
  - (a) The issues raised by the Applicants are the very ones settled by the Court of Appeal for Ontario in *ATB Financial v. Metcalf and Mansfield Alternative Investments Corp.*, from which an application for leave to appeal to this Honourable Court was dismissed;

**Reference**      *ATB Financial, supra*, BOA, Tab 2.
  - (b) The proposed appeal is without merit. The Applicants’ procedural fairness rights have not been denied on account of being denied standing or an appeal as of right under the CPA. Rights of appeal are created entirely by statute, and in this context, the governing statute provides that class members (such as the Applicants) require leave to appeal. The Applicants exercised their right to seek leave to appeal in two motions before the Court of Appeal, which motions were properly heard and dismissed with reasons. Moreover, the Applicants lacked any standing, having failed to object to numerous steps and orders in the CCAA proceeding which affected the rights they belatedly sought to assert;
  - (c) At the original hearing, the Honourable Justice Morawetz, sitting as both CCAA judge and CPA judge, properly applied the test as set out in *Robertson v. ProQuest Information and Learning Co.*, as well as that set out in *ATB Financial* to approve the settlement with Ernst & Young LLP (the “E&Y Settlement”) and the release of

Ernst & Young LLP (the “E&Y Release”). On a full factual record, Justice Morawetz found that the E&Y Settlement and the E&Y Release:

- (i) were fair and reasonable;
- (ii) represented a substantial contribution to the stakeholders involved (\$117 million and a release of claims against Sino-Forest and its subsidiaries);
- (iii) facilitated the restructuring of the CCAA applicant Sino-Forest Corporation (“Sino-Forest”) as a viable operating entity; and
- (iv) were consistent with the purpose and spirit of the CCAA and CPA.

A unanimous panel of the Court of Appeal for Ontario saw no basis on which to interfere with his decision; and

- (d) The proposed appeal is moot. The Plan (which includes the framework of the E&Y Settlement) has been implemented. Sino-Forest has been restructured on the terms sanctioned by the Honourable Justice Morawetz.

7. The Applications for leave to appeal should be dismissed.

## **(B) THE FACTS**

### **A. THE CLASS PROCEEDINGS AND THE CCAA PROCEEDINGS**

8. Sino-Forest was a forestry company with most of its business and assets in the People’s Republic of China. Sino-Forest’s shares were listed for trading on the Toronto Stock Exchange and traded in small part on other exchanges. Sino-Forest also issued a series of notes, which traded mainly on the Over-the-Counter market in the United States.

**Reference** Affidavit of Charles Wright sworn January 10, 2013 at paras. 11-12, Responding Record, Tab J.

9. During the relevant periods, Ernst & Young was retained as Sino-Forest’s auditor – from 2007 until it resigned on April 5, 2012.

**Reference** Endorsement of Morawetz J. re: Equity Claims dated July 27, 2012 at para. 31, Responding Record, Tab E.

10. On June 2, 2011, a short-seller, Muddy Waters LLC, issued a report which purported to reveal alleged fraud at the Company and cast various aspersions on the Company's advisors. In the wake of that report, Sino-Forest's share price plummeted.

**Reference** Affidavit of W. Judson Martin sworn November 29, 2012 at para. 8, Responding Record, Tab I.

11. In June and July 2011, Sino-Forest, Ernst & Young and a variety of other parties were served with a multitude of class action claims in Ontario, Quebec and New York (the "Class Actions"). Three proposed class proceedings were commenced in Ontario relating to Sino-Forest. Kim Orr PC acted for the plaintiffs in one of the Ontario actions and now acts for the Applicants (the "Objectors").

**Reference** Reasons for Decision of Perell J. dated January 6, 2012, Responding Record, Tab A.

12. In December 2011, a carriage motion was argued to determine which of the three actions in Ontario should be permitted to proceed and which should be stayed. By Order dated January 6, 2012, the Honourable Justice Perell granted carriage to the Plaintiffs and stayed the other actions, including an action brought by Kim Orr PC.

**Reference** Carriage Order of Perell J. dated January 6, 2012, Responding Record, Tab B.

Reasons for Decision of Perell J. dated January 6, 2012, *supra*, Responding Record, Tab A.

13. On March 30, 2012, due primarily to the claims in the Class Actions, Sino-Forest sought and obtained protection from its creditors pursuant to the CCAA. The Ontario Plaintiffs participated throughout the CCAA proceedings. Various steps were taken in the CCAA proceedings, including: a stay of proceedings against the Applicant Sino-Forest and other third party defendants; a claims process; and a court-ordered mediation. Numerous CCAA orders directly affect the Objectors and impact the rights they now belatedly seek to assert. The Objectors were aware of but elected not to participate in any of these steps.

**Reference** Fifteenth Report of the Monitor dated January 28, 2013 at paras. 15, 16 and 18, Responding Record, M.

Affidavit of Charles Wright sworn January 10, 2013 at para. 49, Responding Record, Tab J.

14. The Claims Procedure Order provided that any person who did not file a proof of claim in accordance with the order was barred from making or enforcing such claim as against any other person who could claim contribution or indemnity from the Ad Hoc Securities Purchasers Committee. This includes claims against Ernst & Young LLP for which Ernst & Young LLP could claim indemnity from Sino-Forest.

**Reference** Claims Procedure Order of Morawetz J. dated May 14, 2012 at para. 17, Responding Record, Tab C.

15. The stay of the class proceedings and the subsequent equity claims motion was the attempt by Sino-Forest, recognized by the Court, to capture all potential claims over against Sino-Forest and its subsidiaries. As long as those claims for contribution and indemnity were outstanding, the re-organization (the objective of every CCAA proceeding) could not be completed.

**Reference** Reasons for Decision of Morawetz J. dated March 20, 2013 at para. 13, Application Record, Volume I, Tab 3C.

## **B. THE ERNST & YOUNG SETTLEMENT**

16. In the wake of a court-ordered global mediation process, Ernst & Young and the Ontario Plaintiffs entered into a settlement agreement on November 29, 2012. Following the execution of the Minutes of Settlement, Ernst & Young negotiated with Sino-Forest and a group of the major secured creditors, the Ad Hoc Committee of Noteholders, for the inclusion in the Plan of the framework for the E&Y Settlement and the E&Y Release.

**Reference** Affidavit of W. Judson Martin, *supra*, at paras. 61-72, Responding Record, Tab I.

17. Prior to the meeting of creditors on December 3, 2012, a Plan incorporating the framework for the E&Y Settlement and a broad release of Ernst & Young (at Article 11) was distributed to the major stakeholders and made publicly available. The Plan was approved by an overwhelming majority of stakeholders and supported by the Applicant Sino-Forest and its senior creditors. The issue of proxies inserted into the Objectors' argument is a red-herring. Voting creditors could appoint any proxy to vote on their behalf (including themselves) in the event of changes to the Plan

following the submission of their ballot. The Objectors did not file a claim in the claims process (despite being on notice) and in any event were ineligible to vote on the Plan as former equity holders. Their claim is captured by the Plaintiffs' proof of claim.

**Reference**      Fifteenth Report of the Monitor, *supra*, Responding Record, Tab N.

18.      The Objectors suggest that the E&Y Settlement was a last minute and contrived add-on to the Plan engineered by Ernst & Young and the Ontario Plaintiffs. They are wrong:

- (a)      the E&Y Settlement was the result of a process that began early in the CCAA process, when the participating parties consented to (or did not oppose) a Mediation Order dated July 25, 2012, which:
  - (i)      required the Mediation Parties to attend “with full authority to settle the Subject Claims”. The Subject Claims were defined as the claims of the Plaintiffs against Sino-Forest and the Third Party Defendants as set out in the statements of claim in the Ontario Class Action and the Quebec Class Action and any and all related claims; and
  - (ii)     created confidence amongst the Mediation Parties that should they reach a settlement, it would be resolved in the context of the CCAA;
- (b)      the inclusion of the framework for the E&Y Settlement and the E&Y Release into the Plan required further and strenuous arm's length negotiations with Sino-Forest and the Ad Hoc Committee of Noteholders;
- (c)      in addition to the agreement to pay \$117 million, the E&Y Settlement required Ernst & Young to agree:
  - (i)      to support the Plan;
  - (ii)     that its claims against Sino-Forest and the Sino-Forest Subsidiaries were released, which claims were significant and material;

- (iii) to waive any leave to appeal to the Supreme Court of Canada in respect of the dismissal by the Court of Appeal for Ontario of its appeal of the Equity Claims Order; and
  - (iv) not to receive any distributions of any kind under the Plan.
- (d) the E&Y Settlement was fully supported by Sino-Forest, the Ad Hoc Committee of Noteholders and the Court-appointed Monitor;
  - (e) the E&Y Settlement was approved by an overwhelming majority vote of the creditors of Sino-Forest;
  - (f) the E&Y Settlement was not objected to by any institutional investors other than the Objectors, who represent 1.6% of the outstanding shares of Sino-Forest as at June 2, 2011 and did not file a proof of claim in the CCAA process; and
  - (g) the total number of additional outstanding objections to the E&Y Settlement constituted 0.24% of 34,177 Sino-Forest beneficial shareholders as of April 29, 2011.

<b>Reference</b>	Endorsement of Morawetz J. dated March 20, 2013 at paras. 32 and 33, Application Record, Volume I, Tab 3B.
	Mediation Order of Morawetz J. dated July 25, 2012, Responding Record, Tab D.
	Fifteenth Report of the Monitor, <i>supra</i> , Responding Record, Tab N.
	Affidavit of W. Judson Martin sworn January 11, 2013, Responding Record, Tab K.
	Supplemental Affidavit of Charles Wright sworn January 22, 2013 at paras. 11-15, Responding Record, Tab L.

19. As a result of Ernst & Young's support of the Plan, the Applicant Sino-Forest and its creditors were able to avoid: (a) the expense and delay that would otherwise have been incurred in litigating its claims against the assets subject to the Plan, and (b) the dilution of the estate of Sino-Forest by virtue of distributions that would have otherwise been made to Ernst & Young. The Applicant Sino-Forest and the Monitor confirmed that these contributions were significant.

<b>Reference</b>	Reasons for Decision of Morawetz J. dated March 20, 2013 at para. 56, Application Record, Volume I, Tab 3C.
	Affidavit of W. Judson Martin sworn January 11, 2013 at paras. 19 (b) and 21, Responding Record, Tab K.
	Fifteenth Report of the Monitor, <i>supra</i> , at paras. 42 and 44, Responding Record, Tab N.

### C. THE OBJECTORS

20. Following the meeting of creditors, the Objectors sought standing for the first time in the CCAA proceedings and objected to the E&Y Settlement. They appeared at the Sanction hearing and the E&Y Settlement approval motion.

<b>Reference</b>	Supplemental Affidavit of Charles Wright, <i>supra</i> , at paras. 11-15, Responding Record, Tab L.
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21. The Objectors were the only institutional shareholders who, on an improper and conditional basis, “opted out” of the Ontario Class Action. The other opt outs were a small number of individual retail investors.

<b>Reference</b>	Supplemental Affidavit of Charles Wright, <i>supra</i> , at paras. 16-19, Responding Record, Tab L.
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22. Each opt out form filed by the Kim Orr Objectors contained the following statement they added on:

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by [name of Objector]. Otherwise, this opt-out right would be wholly illusory.

<b>Reference</b>	Opt out forms filed by Invesco Canada and Comité Syndical National de Retraite Batirente Inc. (“Kim Orr Objectors”) dated January 11, 2013, Responding Record, Tab L.
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### D. PLAN SANCTION

23. In his decision dated December 10, 2013, Justice Morawetz found that the applicable test under the CCAA had been met. He sanctioned the Plan, which included a framework for the E&Y Settlement and the E&Y Release.



**Reference** Endorsement of Morawetz J. re: Plan Sanction dated December 12, 2012, Application Record, Volume I, Tab 3B.

24. In sanctioning the Plan, Justice Morawetz recognized that the Plan (and the settlement framework at Article 11) was a negotiated document between sophisticated parties and was approved by an overwhelming majority of creditors:

[I]t is necessary to provide brief comment on the alternative argument of the Funds [Objectors], namely, the Plan be altered to remove Article 11 “Settlement of Claims against Third Party Defendants”. The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the Funds [Objectors] was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

**Reference** Endorsement of Morawetz J. re: Plan Sanction dated December 12, 2012 at para. 78, Application Record, Volume I, Tab 3B.

#### **E. APPROVAL OF THE ERNST & YOUNG SETTLEMENT**

25. For the purposes of the settlement approval hearing, Justice Morawetz sat as both CCAA judge and CPA judge in accordance with the Direction of Regional Senior Justice Then.

**Reference** Direction of Then, R.S.J. dated December 13, 2012, Application Record, Volume III, Tab 7.

Reasons for Decision of Morawetz J. dated March 20, 2013 at paras. 49 and 58-80, Application Record, Volume I, Tab 3C.

26. In approving the E&Y Settlement, Justice Morawetz considered:

- (a) whether the settlement was fair and reasonable;
- (b) whether it provided substantial benefit to the other stakeholders (including the Ontario Plaintiffs and the Objectors); and
- (c) whether it was consistent with the purposes and spirit of the CCAA.

**Reference** Reasons for Decision of Morawetz J. dated March 20, 2013 at paras. 49 and 58-80, Application Record, Volume I, Tab 3C.

*Robertson, supra*, at paras. 27 and 34, BOA, Tab 20.

27. In approving the E&Y Release, Justice Morawetz applied the “nexus test”:
- (a) are the claims to be released rationally related to the purposes of the Plan?
  - (b) are the claims to be released necessary for the Plan?
  - (c) are the parties who have the claims released against them contributing in a tangible and realistic way? and
  - (d) will the Plan benefit the debtor and creditors generally?

**Reference**           Reasons for Decision of Morawetz J. dated March 20, 2013  
at paras. 50 and 58-80, Application Record, Volume I, Tab  
3C.

*ATB Financial, supra*, at para. 71 (C.A.), BOA, Tab 2.

28. Justice Morawetz made the following findings of fact which were amply supported by the record:

- (a) the voting creditors approved the Plan with knowledge of the nature and effect of the E&Y Release;
- (b) the Applicant Sino-Forest supported the E&Y Settlement and the E&Y Release and submitted that Ernst & Young’s support of the Plan enabled Sino-Forest to emerge as Newco/NewcoII in a timely way and with potential viability;
- (c) the \$117 million to be paid by Ernst & Young was substantial (and tangible). Moreover, it was the only monetary contribution to the Plan;
- (d) the claims released against Ernst & Young, including the claims of the Objectors, were intertwined and related to the claims against the Applicant Sino-Forest and the

purpose of the Plan. In reaching this factual finding, Justice Morawetz relied upon his “Equity Claims Decision”, which was upheld by the Court of Appeal<sup>1</sup>;

- (e) without approval of the E&Y Settlement, the objectives of the Plan would remain unfulfilled, including the inability to distribute the settlement funds as well as the circular nature of the claims against Ernst & Young (including those of the Objectors), resulting in contribution and indemnity claims against the Applicant Sino-Forest; and
- (f) in the particular context and reality of Sino-Forest’s insolvency, the Settlement was necessary to the Plan.

<b>Reference</b>	Reasons for Decision of Morawetz J. dated March 20, 2013 at paras. 56-70, Application Record, Volume I, Tab 3C.
	Endorsement of Morawetz J. re: Equity Claims dated July 27, 2012, Responding Record, Tab E.
	Reasons for Decision of the Court of Appeal re: Equity Claims Appeal dated November 23, 2012, Responding Record, Tab F.

29. In the result, Justice Morawetz held that the E&Y Settlement was fair and reasonable, provided substantial benefit to the stakeholders and was consistent with the purpose and spirit of the CCAA. In separately considering the E&Y Release, Justice Morawetz held that it was fair and reasonable and not overly broad.

<b>Reference</b>	Reasons for Decision of Morawetz J. dated March 20, 2013 at paras. 65 and 66, Application Record, Volume I, Tab 3C.
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30. Justice Morawetz held that the Objectors should not be permitted to opt out in the context of the CCAA proceedings. He also considered that they elected not to participate in the CCAA proceedings and did not, among other things, file any claim in that process. In any event, Justice

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<sup>1</sup> The Equity Claims Decision did not resolve claims made by Ernst & Young and the other Third Party Defendants related to noteholder (non-equity) claims or claims by Ernst & Young and the other Third Party Defendants against the Sino-Forest subsidiaries related to both shareholder (equity) and noteholder (non-equity) claims. That these claims might be reserved while the Plan was initially implemented would not resolve the claims and the claims would remain to be dealt with.

Morawetz properly found that the Objectors could not opt out conditionally as they had attempted to do.

**Reference**        Reasons for Decision of Morawetz J. dated March 20, 2013  
at para. 75-78, 80, Application Record, Volume I, Tab 3C.

## **F. DECISIONS OF THE COURT OF APPEAL**

31.     The Objectors sought to appeal Justice Morawetz's decisions sanctioning the Plan and approving the E&Y Settlement, pursuant to the provisions of the CCAA, which permit an appeal with leave from the Court to whom appeal is made.

**Reference**        CCAA, *supra*, ss. 13 and 14, Application Record, Volume  
II., Tab 1A.

32.     The Objectors also brought a purported appeal as of right, as absent class members, under the CPA. Ernst & Young and the Class Action Plaintiffs brought a motion to quash the Objectors' purported appeal as of right, arguing that:

- (a)     section 30 of the CPA did not permit a class member to appeal a decision approving a negotiated settlement; and
- (b)     the Objectors' procedural fairness rights were amply protected by their ability to seek leave to appeal from the Court of Appeal for Ontario under the CCAA.

**Reference**        CPA, *supra*, s. 30, Application Record, Volume II, Tab 1D.

33.     The Objectors' leave motions were combined and heard in writing the week of June 24, 2013. The motions to quash were scheduled by the Court for the Friday of that week, providing an opportunity for oral questions from the Panel on the leave motions.

**Reference**        Endorsement of Simmons J. re: Directions for  
Administrative Matters dated May 1, 2013, Responding  
Record, Tab G.  
  
Order of Simmons J. dated May 1, 2013, Responding  
Record, Tab H.

34.     The Court of Appeal released its endorsement denying leave in respect of both of the Objectors' motions on June 25, 2013, three days before oral argument on the motions to quash.

The Court of Appeal held that that there was no basis on which to interfere with Justice Morawetz's decisions. In any event, the Court of Appeal found the Objectors' motion for leave in respect of the Plan sanction was moot, as the Plan had been implemented.

**Reference**           Reasons for Decision of the Court of Appeal dated June 26, 2013 at para. 12, Application Record, Volume I, Tab 3D.

35.     In respect of the decision of Justice Morawetz approving the E&Y Settlement, the Court of Appeal held that he applied the appropriate test to approve the settlement. The Court of Appeal further held that the “[t]he issues raised on this proposed appeal are, at their core, the very issues settled by this court in *ATB Financial*”.

**Reference**           Reasons for Decision of the Court of Appeal dated June 26, 2013 at paras. 13 and 14, Application Record, Volume I, Tab 3D.

36.     In an endorsement dated July 29, 2013, the Court of Appeal granted the motion to quash the Objectors' purported appeal as of right, finding that the Objectors did not fall within the provisions of section 30 of the CPA.

**Reference**           Reasons for Decision of the Court of Appeal dated June 26, 2013 at para. 4, Application Record, Volume I, Tab 3D.

## **PART II - STATEMENT OF QUESTIONS IN ISSUE**

37.     The Applicants submit that the proposed appeal raises the following issues of national or public importance:

- (a)     When, in a class action, it is permissible for a settling defendant and counsel for the class plaintiffs to agree on a no opt out provision as part of a proposed settlement, and for the Court to approve such a provision;
- (b)     Whether a CCAA insolvency proceeding pending against a company that is a defendant in a class action gives the CCAA court jurisdiction or discretion to provide non-opt out releases to other (non-applicant, solvent) defendants; and
- (c)     Whether absent class members lack standing under the CPA to appeal an Order approving a settlement which includes a no opt out provision.

38. The first issue does not arise on the facts of this case. It ignores the intersection of the CPA and the CCAA, including in the terms of settlement.

39. As set out below, the other two issues have arisen in prior cases, and have been properly disposed of by the Court of Appeal for Ontario and this Honourable Court. This appeal raises no novel issues of law, and is not of national or public importance. This Honourable Court has denied leave in just such circumstances.

40. The Applicants' request for leave to appeal should be dismissed.

### PART III - STATEMENT OF ARGUMENT

41. This case does not raise issues of national or public importance and, on the facts, is not an appropriate case for leave. The legal issues raised by the Applicants have been settled. The factual context in which the E&Y Settlement was negotiated, approved by the majority of stakeholders and sanctioned by the Court weighs against the Applicants' request for leave. Leave has been denied to the Court of Appeal for Ontario. This is not an extraordinary case where this Court should exercise its inherent jurisdiction to grant leave. Indeed, this Honourable Court has held that leave should only be granted sparingly where it has been denied by the lower Court.

**Reference**            *MacDonald v. Montreal (City)*, [1986] 1 S.C.R. 460 at para. 132, BOA, Tab 7.

***(a) The Very Issues Raised by the Applicants are Well Settled: This Appeal Does Not Raise Novel Issues or Issues of National and Public Importance***

42. As this Honourable Court has recognized previously, the CCAA is a "flexible statute" which affords courts broad jurisdiction to make orders which give effect to the objects and purposes of the Act. Indeed, this Court has held that judicial discretion "must of course be exercised in furtherance of the CCAA's [remedial] purposes".

**Reference**            *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 19 and 59, BOA, Tab 4.

**See also** *Re Nortel Networks Corp.*, *supra*, at paras. 66-70, BOA, Tab 14.

*Re Canadian Red Cross Society*, [1998], O.J. No. 3306 at paras. 43 and 45 (Ct. of J.), BOA, Tab 10.

*Elan Corp. v. Comiskey*, [1990] O.J. 2180, 1 O.R. (3d) 289 at paras. 57 and 60 (Q.L.) (C.A.), BOA, Tab 5.

43. It is well established in Ontario that class proceedings can be settled in a CCAA proceeding.

**Reference**      *Robertson, supra*, at para. 8, BOA, Tab 20.

*Re Nortel Networks Corp, supra*, at paras. 70-71, BOA, Tab 14.

*Re Muscletech Research, supra*, BOA, Tab 13.

*Re Grace Canada, supra*, at para. 34, BOA, Tab 12.

*Re Allen-Vanguard Corp., supra*, BOA, Tab 9.

44. Moreover, the Court of Appeal for Ontario has confirmed that the inclusion of a third party release in a settlement is justified where it forms part of a comprehensive compromise:

I believe the open-ended CCAA permits third-party releases that are reasonably related to the restructuring at issue because they are encompassed in the comprehensive terms “compromise” and “arrangement” and because of the double-voting majority and court sanctioning mechanism that makes them binding on unwilling creditors.

**Reference**      *ATB Financial, supra*, at para. 78 (C.A.), BOA, Tab 2.

45. This Honourable Court refused leave to appeal in *ATB Financial*, which provided third party releases in the context of contributions to a Plan, both big and small. That decision was referenced by this Honourable Court in *Century Services Inc. v. Canada (Attorney General)*, noting that creative and flexible approaches are often necessary in complex restructurings, even where some noteholders object:

The CCAA has also been used to release claims against third parties as part of approving a comprehensive plan of arrangement and compromise, even over the objections of some dissenting creditors (see *Metcalf & Mansfield*)...

**Reference**      *Jean Coutu Group, supra*, BOA, Tab 3.

*Century Services Inc., supra*, at para. 62, BOA, Tab 4.

46. The Objectors do not challenge the tests for settlement approval or for approval of the release applied by Justice Morawetz.

**Reference**      *Robertson, supra*, at para. 22 BOA, Tab 20.

*ATB Financial, supra*, at para. 70 (C.A.), BOA, Tab 2.

47. In undertaking this analysis, the Court is required to balance the parties' interests in an equitable – though not necessarily equal – fashion. A Plan necessarily includes a compromise to effect the purposes of the restructuring; to that end, a balancing of individual interests for the good of the whole is required. As is evident from Justice Morawetz's extensive reasons and review by the Court of Appeal of Ontario, Justice Morawetz properly considered and weighed these factors.

**Reference**      Reasons for Decision of Morawetz, J. dated March 20, 2013  
at paras. 49-66, Application Record, Volume I, Tab 3C.

Reasons for Decision of the Court of Appeal dated June 26,  
2013 at paras. 13-14, Application Record, Volume I, Tab  
3D.

***(b) No Procedural Fairness Rights have been Denied, as the Applicants Exercised Their Right to Seek Leave to Appeal under the CCAA, which was Properly Dismissed***

48. The Applicants argue that the motion judge erred in using his powers under the CCAA to release their claims without the ability to opt out so that they could pursue their own actions against Ernst & Young. The Applicants further argue that the Court of Appeal erred in (a) refusing them standing to appeal as of right under the CPA; and (b) dismissing their applications for leave to appeal. They assert that their procedural fairness rights were denied as a result.

49. It is well settled that a right of appeal is solely created by statute: it is only available to the extent specifically provided for in the applicable legislation.

**Reference**      *Kourtessis v. Canada (Minister of National Revenue-  
M.N.R.)*, [1993] 2 S.C.R. 53 at para. 15, BOA, Tab 6.

50. The E&Y Release (and by extension the absence of a right to opt out) is a function of the exercise of the Court's power under the CCAA. Accordingly, any right of appeal the Applicants have must derive from the CCAA.

51. The Applicants argue that they should be granted standing to appeal under the CPA, or alternatively, that they should be able to appeal as of right under the CPA. Appeals as of right



under the CPA are strictly proscribed. An appeal from the Settlement Approval Order is not provided for on any reading of the CPA.

52. The Court of Appeal for Ontario held in *Dabbs v. Sun Life Assurance Co. of Canada* that an individual class member does not have an independent right of appeal under s. 6(1)(b) of the *Courts of Justice Act*. Subsection 30(3) of the CPA takes precedence over and excludes that provision of general application. Under s. 30(5) of the CPA, a class member requires leave to be appointed as the representative party of the class in circumstances where the representative plaintiff does not appeal from a judgment on common issues. The class member must demonstrate that s/he would adequately represent the interests of the class, in the face of the representative plaintiff's inaction.

**Reference**      *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 3622 (C.A.) ("*Dabbs*"), Application Record, Volume II, Tab 1AA.

*Courts of Justice Act*, R.S.O. 1990, c.C-4, s. 6(1)(b), Application Record, Volume II, Tab 1B.

CPA, *supra*, ss. 30(3) and (5), Application Record, Volume II, Tab 1D.

53. In this case, the Court of Appeal, relying on *Dabbs*, found that the Objectors are not parties to the class proceeding and therefore have no right of appeal under s. 30(3) of the CPA. Only under s. 30(5) might a class member have any right to appeal and then only with leave on an appeal from a judgment on common issues under s. 24. The Court of Appeal found, rightly, that the E&Y Settlement was not a judgment on common issues.

**Reference**      *Dabbs, supra*, at para. 13, Application Record, Volume II, Tab 1AA.

54. The Applicants exercised their procedural rights and sought leave to appeal the Settlement Approval Order under s. 13 of the CCAA.

55. In the context of CCAA proceedings, leave to appeal must be sought and is "granted sparingly and only where there are serious and arguable grounds that are of real and significant interest to the parties". The Applicants failed to satisfy this stringent test, and the Court of Appeal properly dismissed their requests for leave. They were not denied access or procedural fairness.

<b>Reference</b>	<i>Statoil Canada Ltd. (Arrangement relatif à)</i> , 2012 QCCA 665 at para. 4, BOA, Tab 21.
	<i>Re Timminco Ltd.</i> , 2012 ONCA 552 at para. 2, BOA, Tab 17.
	<i>Re Stelco Inc.</i> , [2005] O.J. No. 4883, 78 O.R. (3d) 241 at paras. 15 and 18 (Q.L.) (C.A.), BOA, Tab 16.
	<i>Re Pacific National Lease Holding Corp.</i> , [1992] B.C.J. No. 2309 at paras. 28-30 (C.A.), BOA, Tab 15.

56. The Applicants' assertion that Justice Morawetz lacked jurisdiction to approve the Settlement is untenable: Justice Morawetz was appointed by Regional Senior Justice Then to hear the Settlement Approval motion under both the CCAA and the CPA. He was acting in furtherance of this very purpose and in accordance with his explicit grant of jurisdiction.

***(c) The Proposed Appeal is Without Merit, as the Proper Test was Employed and Relevant Factors Considered in Approving the Settlement***

57. As noted by Justice Morawetz in the Settlement Approval Order, third party releases are not an uncommon feature of complex restructurings under the CCAA, and such releases have been held to be justified where they form part of a comprehensive compromise.

<b>Reference</b>	Reasons for Decision of Morawetz J. dated March 20, 2013 at para. 46, Application Record, Volume I, Tab 3C.
	<b>See also</b> <i>ATB Financial, supra</i> , at paras. 69-78 (C.A.), BOA, Tab 2.
	<i>Re Nortel Networks, supra</i> , at paras. 77-80, BOA, Tab 14.
	<i>Re Muscle Tech Research, supra</i> , at paras. 23-26, BOA, Tab 13.
	<i>Re Grace Canada Inc., supra</i> , at para. 40, BOA, Tab 12.
	<i>Re Allen-Vanguard Corporation, supra</i> , BOA, Tab 9.

58. In deciding to approve the Settlement, Justice Morawetz made a number of factual findings, including:

- (a) in the particular context and reality of Sino-Forest's insolvency, E&Y Settlement was necessary to the Plan;

- (b) the voting creditors approved the Plan with knowledge of the nature and effect of the E&Y Release;
- (c) the E&Y Release itself was fair and reasonable and not overly broad; and
- (d) the E&Y Settlement overall was fair and reasonable, provided substantial benefit to the stakeholders and was consistent with the purpose and spirit of the CCAA.

**Reference**            Reasons for Decision of Morawetz J. dated March 20, 2013  
at paras. 62-66, Application Record, Volume I, Tab 3C.

59. In a unanimous judgment, the Court of Appeal upheld this decision on the basis that the proper test was followed and the relevant considerations and governing authorities were taken into account. Accordingly, the Court of Appeal found that there was “no basis on which to interfere with his decision”.

**Reference**            Reasons for Decision of the Court of Appeal dated June 26,  
2013 at para. 14, Application Record, Volume I, Tab 3D.

60. These findings were well rooted in the facts and establish that the proper legal test was applied by Justice Morawetz. The Court of Appeal rightly decided that the law in this area is well settled and was properly applied to the facts. There is no reason to interfere with either decision.

***(d) The Proposed Appeal is Moot as the Plan has been Implemented, and the Court Cannot Grant a Remedy without Effect***

61. To provide for much-needed stability to the Sino-Forest business and protect what was left of the quickly eroding values, it was necessary for the Plan to be implemented as quickly as possible.

62. At the time the Applicants sought leave to appeal to the Court below, they confirmed they were neither seeking a stay nor to prevent implementation of the Plan. Accordingly, the Plan was implemented on January 30, 2013.

63. A number of binding and irrevocable steps were undertaken on that date. The Applicants now ask this Honourable Court to do what is no longer possible: amend a Plan that has been

implemented. The Applicants therefore ask this Court to grant a remedy with no effect, which is improper. The proposed appeal is moot.

**Reference**      *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 238 at para. 30, BOA, Tab 18, leave to appeal dismissed, [2001] S.C.C.A. No. 60, BOA, Tab 19.

Re *Crystallex International Corp.*, 2012 ONCA 404 at para. 62, BOA, Tab 11.

Re *1078385 Ontario Ltd.*, [2004] O.J. No. 6050 at para. 43 (C.A.), BOA, Tab 8.

64. The amendment of the Plan to remove or alter the E&Y Settlement cannot be undertaken without fundamentally altering the bargain struck between the parties. To allow this Application for leave to appeal would be to severely prejudice Ernst & Young and other major stakeholders. That would be a most improper outcome, especially in light of a negotiated agreement.

#### **PART IV - SUBMISSIONS CONCERNING COSTS**


65. The Respondent respectfully requests its costs on this leave Application.

#### **PART V - ORDER SOUGHT**

66. The Respondent respectfully requests that this Application for leave to appeal be dismissed, with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of October, 2013.

  
Peter H. Griffin

  
Peter J. Osborne

  
Shara N. Roy

## PART VI - TABLE OF AUTHORITIES

Tab	Cases	Paragraph(s)
1.	<i>ATB Financial v. Metcalf and Mansfield Alternative Investments Corp.</i> , [2008] O.J. No. 2265 (S.C.J.), appeal dismissed, 2008 ONCA 587, leave to appeal dismissed, <i>Jean Coutu Group (PJC) Inc. v. Metcalfe &amp; Mansfield Alternative Investments II Corp.</i> , [2008] S.C.C.A. No. 337	4, 6, 27, 35, 44, 45, 46, 57
2.	<i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60	42, 45
3.	<i>Dabbs v. Sun Life Assurance Co. of Canada</i> , [1998] O.J. No. 3622 (C.A.)	52, 53
4.	<i>Elan Corp. v. Comiskey</i> , [1990] O.J. 2180, 1 O.R. (3d) 289 (C.A.)	42
5.	<i>Kourtessis v. Canada (Minister of National Revenue-M.N.R.)</i> , [1993] 2 S.C.R. 53	49
6.	<i>MacDonald v. Montreal (City)</i> , [1986] 1 S.C.R. 460	41
7.	<i>Re 1078385 Ontario Ltd.</i> , [2004] O.J. No. 6050 (C.A.)	63
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10.	<i>Re Crystallex International Corp.</i> , [2012] O.J. No. 2651 (C.A.)	63
11.	<i>Re Grace Canada Inc.</i> , [2008] O.J. No. 4208 (S.C.J.)	4, 43, 57
12.	<i>Re Muscle Tech Research and Development Inc.</i> , [2007] O.J. No. 695 (S.C.J.)	4, 43, 57
13.	<i>Re Nortel Networks Corp.</i> , [2010] O.J. No. 1232 (S.C.J.)	4, 42, 43, 57
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15.	<i>Re Stelco Inc.</i> , [2005] O.J. No. 4883 (C.A.)	55
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17.	<i>Resurgence Asset Management LLC v. Canadian Airlines Corp.</i> 2000 ABCA 238, leave to appeal dismissed, [2001] S.C.C.A. No. 60	63
18.	<i>Robertson v. ProQuest Information and Learning Co.</i> , 2011 ONSC 1647	6, 26, 43, 46
19.	<i>Statoil Canada Ltd. (Arrangement relatif à)</i> , 2012 QCCA 665	55

## PART VII - STATUTORY PROVISIONS

### *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*

#### **Leave to appeal**

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.

R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134.

#### **Court of appeal**

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.

#### **Practice**

(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.

R.S., 1985, c. C-36, s. 14; 2002, c. 7, s. 135.

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#### **Permission d'en appeler**

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 dont 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.

L.R. (1985), ch. C-36, art. 13; 2002, ch. 7, art. 134.

## **Cour d'appel**

14. (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procédure a pris naissance.

## **Pratique**

(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'objet 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 suprême du Canada, l'appelant n'y ait pris des procédures 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.

L.R. (1985), ch. C-36, art. 14; 2002, ch. 7, art. 135.

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## ***Class Proceedings Act, 1992, S.O. 1992, c. 6***

### **Appeals**

#### **Appeals: refusals to certify and decertification orders**

**30.** (1) A party may appeal to the Divisional Court from an order refusing to certify a proceeding as a class proceeding and from an order decertifying a proceeding. 1992, c. 6, s. 30 (1).

#### **Appeals: certification orders**

(2) A party may appeal to the Divisional Court from an order certifying a proceeding as a class proceeding, with leave of the Superior Court of Justice as provided in the rules of court. 1992, c. 6, s. 30 (2); 2006, c. 19, Sched. C, s. 1 (1).

#### **Appeals: judgments on common issues and aggregate awards**

(3) A party may appeal to the Court of Appeal from a judgment on common issues and from an order under section 24, other than an order that determines individual claims made by class members. 1992, c. 6, s. 30 (3).

#### **Appeals by class members on behalf of the class**

(4) If a representative party does not appeal or seek leave to appeal as permitted by subsection (1) or (2), or if a representative party abandons an appeal under subsection (1) or (2), any class member may make a motion to the court for leave to act as the representative party for the purposes of the relevant subsection. 1992, c. 6, s. 30 (4).

#### **Idem**

(5) If a representative party does not appeal as permitted by subsection (3), or if a representative party abandons an appeal under subsection (3), any class member may make a



motion to the Court of Appeal for leave to act as the representative party for the purposes of subsection (3). 1992, c. 6, s. 30 (5).

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## **Appels**

### **Appel en cas de refus de certifier et d'ordonnance annulant l'ordonnance certifiant un recours collectif**

**30.** (1) Une partie peut interjeter appel devant la Cour divisionnaire d'une ordonnance refusant de certifier qu'une instance est un recours collectif ou d'une ordonnance annulant l'ordonnance certifiant un recours collectif. 1992, chap. 6, par. 30 (1).

### **Appel en cas d'ordonnance certifiant un recours collectif**

(2) Une partie peut interjeter appel devant la Cour divisionnaire d'une ordonnance certifiant qu'une instance est un recours collectif avec l'autorisation de la Cour supérieure de justice comme le prévoient les règles de pratique. 1992, chap. 6, par. 30 (2); 2006, chap. 19, annexe C, par. 1 (1).

### **Appel relatif aux questions communes**

(3) Une partie peut interjeter appel devant la Cour d'appel d'un jugement rendu sur les questions communes et d'une ordonnance rendue aux termes de l'article 24, à l'exclusion d'une ordonnance qui décide les demandes individuelles présentées par les membres du groupe. 1992, chap. 6, par. 30 (3).

### **Appel par les membres du groupe au nom du groupe**

(4) Si le représentant n'interjette pas appel ou ne demande pas l'autorisation d'interjeter appel en vertu du paragraphe (1) ou (2) ou s'il se désiste de l'appel visé au paragraphe (1) ou (2), un membre du groupe peut demander au tribunal, par voie de motion, l'autorisation d'agir comme représentant pour l'application du paragraphe pertinent. 1992, chap. 6, par. 30 (4).

### **Idem**

(5) Si le représentant n'interjette pas appel en vertu du paragraphe (3) ou s'il se désiste de l'appel visé au paragraphe (3), un membre du groupe peut demander à la Cour d'appel, par voie de motion, l'autorisation d'agir comme représentant pour l'application du paragraphe (3). 1992, chap. 6, par. 30 (5).

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***Courts of Justice Act, R.S.O. 1990, c.C-4, s. 6(1)(b)***

**Court of Appeal jurisdiction**

6.(1) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;
- (b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;
- (c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 6 (1); 1994, c. 12, s. 1; 1996, c. 25, s. 9 (17).

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**Compétence de la Cour d'appel**

6. (1) Est du ressort de la Cour d'appel, l'appel :

- a) d'une ordonnance de la Cour divisionnaire sur une question qui n'est pas une question de fait seulement, avec l'autorisation de la Cour d'appel prévue dans les règles de pratique;
- b) d'une ordonnance définitive d'un juge de la Cour supérieure de justice, à l'exception de celle visée à l'alinéa 19 (1) a) ou d'une ordonnance qui fait l'objet d'un appel qui est du ressort de la Cour divisionnaire aux termes d'une autre loi;
- c) d'un certificat de liquidation des dépens délivré dans le cadre d'une instance devant la Cour d'appel, s'il porte sur une question à l'égard de laquelle une objection a été signifiée aux termes des règles de pratique. L.R.O. 1990, chap. C.43, par. 6 (1); 1994, chap. 12, art. 1; 1996, chap. 25 par. 9 (17).

CITATION: Smith v Sino-Forest Corporation, 2012 ONSC24  
 COURT FILE NO.: 11-CV-428238CP  
 COURT FILE NO.: 11-CV-431153CP  
 COURT FILE NO.: 11-CV-435826CP  
 DATE: January 6, 2012

ONTARIO  
 SUPERIOR COURT OF JUSTICE

BETWEEN:

Douglas Smith and Zhongjun Goa

Plaintiffs

- and -

Sino-Forest Corporation, Allen T.Y. Chan, James M.E. Hyde, Edmund Mak, W. Judson Martin, Simon Murray, Peter D.H. Wang, David J. Horsley, Ernst & Young LLP, BDO 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., and Maison Placements Canada Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND BETWEEN:

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario

Plaintiffs

- and -

Sino-Forest Corporation, Ernst & Young LLP, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, Kai Kit Poon, David J. Horsley, 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., and Maison Placements Canada Inc.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AND BETWEEN:**

**Northwest & Ethical Investments L.P., Comité Syndical National de Retraite  
Bâtirente Inc.**

Plaintiff's

- and -

**Sino-Forest Corporation, Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon,  
David J. Horsley, Hua Chen, Wei Mao Zhao, Alfred C.T. Hung, Albert Ip, George  
Ho, Thomas M. Maradin, William F. Ardell, James M.E. Hyde, Simon Murray,  
Garry J. West, James P. Bowland, Edmund Mak, Peter Wang, Kee Y. Wong, The  
Estate of John Lawrence, Simon Yeung, Ernst & Young LLP, BDO Limited,  
Pöyry Forest Industry PTE Limited, Pöyry (Beijing) Consulting Company  
Limited, JP Management Consulting (Asia-Pacific) PTE Ltd., Dundee Securities  
Corporation, UBS Securities Canada Inc., Haywood Securities Inc., Credit Suisse  
Securities (Canada), Inc., TD Securities Inc., RBC Dominion Securities Inc., Scotia  
Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada, Inc. Canaccord  
Financial Ltd., Maison Placements Canada Inc., Morgan Stanley & Co.  
Incorporated, Credit Suisse Securities (USA), LLC, Merrill Lynch, Pierce, Fenner  
& Smith, Inc.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**COUNSEL:**

- J.P. Rochon, J. Archibald, and S. Tambakos for the Plaintiff's in 11-CV-428238CP
- K.M. Baert, J. Bida, and C.M. Wright for the Plaintiff's in 11-CV-431153CP
- J.C. Orr, V. Paris, N. Mizobuchi, and A. Fafan for the Plaintiff's in 11-CV-435826CP
- M. Eizonga for the defendant Sino-Forest Corporation
- P. Osborne and S. Roy for the defendant Ernst & Young LLP
- E. Cole for the defendant Allen T.Y. Chan
- J. Pabello for the defendant underwriters

**HEARING DATES:** December 20 and 21, 2011

**PERELL, J.**

**REASONS FOR DECISION****A. INTRODUCTION**

[1] This is a carriage motion under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. In this particular carriage motion, four law firms are rivals for the carriage of a class action against Sino-Forest Corporation. There are currently four proposed Ontario class

actions against Sino-Forest to recover losses alleged to be in the billions of dollars arising from the spectacular crash in value of its shares and notes.

[2] Practically speaking, carriage motions involve two steps. First, the rival law firms that are seeking carriage of a class action extoll their own merits as class counsel and the merits of their client as the representative plaintiff. During this step, the law firms explain their tactical and strategic plans for the class action, and, thus, a carriage motion has aspects of being a casting call or rehearsal for the certification motion.

[3] Second, the rival law firms submit that with their talent and their litigation plan, their class action is the better way to serve the best interests of the class members, and, thus, the court should choose their action as the one to go forward. No doubt to the delight of the defendants and the defendants' lawyers, which have a watching brief, the second step also involves the rivals hardheartedly and toughly reviewing and criticizing each other's work and pointing out flaws, disadvantages, and weaknesses in their rivals' plans for suing the defendants.

[4] The law firms seeking carriage are: Rochon Genova LLP; Koskie Minsky LLP; Siskinds LLP; and Kim Orr Barristers P.C., all competent, experienced, and veteran class action law firms.

[5] For the purposes of deciding the carriage motions, I will assume that all of the rivals have delivered their Statements of Claim as they propose to amend them.

[6] Koskie Minsky and Siskinds propose to act as co-counsel and to consolidate two of the actions. Thus, the competition for carriage is between three proposed class actions; namely:

- *Smith v. Sino-Forest Corp.* (11-CV-428238CP) ("*Smith v. Sino-Forest*") with Rochon Genova as Class Counsel
- *The Trustees of Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.* (11-CV-431153CP) ("*Labourers v. Sino-Forest*") with Koskie Minsky and Siskinds as Class Counsel (This action would be consolidated with "*Grant v. Sino-Forest*" (CV-11-439400-00CP))
- *Northwest & Ethical Investments L.P. v. Sino-Forest Corp.* (11-CV-435826CP) ("*Northwest v. Sino-Forest*") with Kim Orr as Class Counsel.

[7] It has been a very difficult decision to reach, but for the reasons that follow, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I grant carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*.

[8] I also grant leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim, which may include the joinder of the plaintiffs and the causes of action set out in *Grant v. Sino-Forest*, *Smith v. Sino-Forest*, and *Northwest v. Sino-Forest*, as the plaintiffs may be advised.

[9] This order is without prejudice to the rights of the Defendants to challenge the Fresh as Amended Statement of Claim as they may be advised. In any event, nothing in

these reasons is intended to make findings of fact or law binding on the Defendants or to be a pre-determination of the certification motion.

## **B. METHODOLOGY**

[10] To explain my reasons, first, I will describe the jurisprudence about carriage motions. Second, I will describe the evidentiary record for the carriage motions. Third, I will describe the factual background to the claims against Sino-Forest, which is the principal but not the only target of the various class actions. Fourth, deferring my ultimate conclusions, I will analyze the rival actions that are competing for carriage under twelve headings and describe the positions and competing arguments of the law firms competing for carriage. Fifth, I will culminate the analysis of the competing actions by explaining the carriage order decision. Sixth and finally, I will finish with a concluding section.

[11] Thus, the organization of these Reasons for Decision is as follows:

- Introduction
- Methodology
- Carriage Orders Jurisprudence
- Evidentiary Background
- Factual Background to the Claims against Sino-Forest
- Analysis of the Competing Class Actions
  - The Attributes of Class Counsel
  - Retainer, Legal and Forensic Resources, and Investigations
  - Proposed Representative Plaintiffs
  - Funding
  - Conflicts of Interest
  - Definition of Class Membership
  - Definition of Class Period
  - Theory of the Case against the Defendants
  - Joinder of Defendants
  - Causes of Action
  - The Plaintiff and the Defendant Correlation
  - Prospects of Certification
- Carriage Order
  - Introduction
  - Neutral or Non-Determinative Factors
  - Determinative Factors
- Conclusion

## **C. CARRIAGE ORDERS JURISPRUDENCE**

[12] There should not be two or more class actions that proceed in respect of the same putative class asserting the same cause(s) of action, and one action must be selected: *Vitapharm Canada Ltd. v. F. Hoffman-Laroche Ltd.*, [2000] O.J. No. 4594

[66] The OSC named Chan, Ho, Hung, Ip, and Yeung as respondents in the proceedings before the Commission. Sino-Forest placed Messrs. Hung, Ho and Young on administrative leave. Mr. Ip may only act on the instructions of the CEO.

[67] Having already downgraded its credit rating for Sino-Forest's securities, Standard & Poor withdrew its rating entirely, and Moody's reduced its rating to "junk" indicating a very high credit risk.

[68] On September 8, 2011, after a hearing, the OSC continued its cease-trading order until January 25, 2012, and the OSC noted the presence of evidence of conduct that may be harmful to investors and the public interest.

[69] On November 10, 2011, articles in the *Globe and Mail* and the *National Post* reported that the RCMP had commenced a criminal investigation into whether executives of Sino-Forest had defrauded Canadian investors.

[70] On November 13, 2011, at a cost of \$35 million, Sino-Forest's Independent Committee released its Second Interim Report, which included the work of the committee members, PWC, and three law firms. The Report refuted some of the allegations made in the Muddy Waters Report but indicated that evidence could not be obtained to refute other allegations. The Committee reported that it did not detect widespread fraud, and noted that due to challenges it faced, including resistance from some company insiders, it was not able to reach firm conclusions on many issues.

[71] On December 12, 2011, Sino-Forest announced that it would not file its third-quarter earnings' figures and would default on an upcoming interest payment on outstanding notes. This default may lead to the bankruptcy of Sino-Forest.

[72] The chart attached as Schedule "A" to this judgment shows Sino-Forest's stock price on the TSX from January 1, 2004, to the date that its shares were cease-traded on August 26, 2011.

## F. ANALYSIS OF THE COMPETING CLASS ACTIONS

### 1. The Attributes of Class Counsel

#### Smith v. Sino-Forest

[73] Rochon Genova is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It is currently class counsel in the CIBC subprime litigation, which seeks billions in damages on behalf of CIBC shareholders for the bank's alleged non-disclosure of its exposure to the U.S. subprime residential mortgage market. It is currently the lawyer of record in *Fischer v. ICI Investment Management Ltd* and *Frank v. Harlie Turner*, both securities cases, and it is acting for aggrieved investors in litigation involving two multi-million dollar Ponzi schemes. It acted on behalf of Canadian shareholders in relation to the Nortel securities litigation, as well as, large scale products liability class actions involving Baycol, Prepsid, and Maple Leaf Foods, among many other cases.

[74] Rochon Genova has a working arrangement with Lief Cabrasser Heimann & Bernstein, one of the United States' leading class action firms.

[75] Lead lawyers for *Smith v. Sino-Forest* are Joel Rochon and Peter Jervis, both senior lawyers with considerable experience and proficiency in class actions and securities litigation.

*Labourers v. Sino-Forest*

[76] Koskie Minsky is a Toronto law firm of 43 lawyers with a diverse practice including bankruptcy and insolvency, commercial litigation, corporate and securities, taxation, employment, labour, pension and benefits, professional negligence and insurance litigation.

[77] Koskie Minsky has a well-established and prominent class actions practice, having been counsel in every sort of class proceeding, several of them being landmark cases, including *Hollick v Toronto (City)*, *Cloud v The Attorney General of Canada*, and *Caputo v Imperial Tobacco*. It is currently representative counsel on behalf of all former Canadian employees in the multi-billion dollar Nortel insolvency.

[78] Siskinds is a London and Toronto law firm of 70 lawyers with a diverse practice including bankruptcy and insolvency, business law, and commercial litigation. It has an association with the Québec law firm Siskinds, Desmeules, avocats.

[79] At its London office, Siskinds has a team of 14 lawyers that focus their practice on class actions, in some instances exclusively. The firm has a long and distinguished history at the class actions bar, being class counsel in the first action certified as a class action, *Bendall v. McGhan Medical Corp.* (1993), 14 O.R. (3d) 734, and it has almost a monopoly on securities class actions, having filed approximately 40 of this species of class actions, including 24 that advance claims under Part XXX.1 of the *Ontario Securities Act*.

[80] As mentioned again later, for the purposes of *Labourers' Fund v. Sino-Forest*, Koskie Minsky and Siskinds have a co-operative arrangement with the U.S. law firm, Kessler Topaz Meltzer & Check LLP ("Kessler Topaz"), which is a 113-lawyer law firm specializing in complex litigation with a very high profile and excellent reputation as counsel in securities class action lawsuits in the United States.

[81] Lead lawyers for *Labourers' v. Sino-Forest* are Kirk M. Baert, Jonathan Ptak, Mark Ziegler, and Michael Mazzuca of Koskie Minsky and A. Dimitri Lascarís of Siskinds, all senior lawyers with considerable experience and proficiency in class actions and securities litigation.

*Northwest v. Sino-Forest*

[82] Kim Orr is a boutique litigation firm in Toronto focusing primarily on class action litigation, including securities class actions. It also has considerable experience on the defence side of defending securities cases.

[83] As I described in *Sharma v. Timminco Ltd.*, *supra*, where I choose Kim Orr in a carriage competition with Siskinds in a securities class action, Kim Orr has a fine pedigree as a class action firm and its senior lawyers have considerable experience and proficiency in all types of class actions. It was comparatively modest in its self-promotional material for the carriage motion, but I am aware that it is currently class



counsel in substantial class actions involving claims of a similar nature to those in the case at bar.

[84] Kim Orr has an association with Milberg, LLP, a prominent class action law firm in the United States. It has 75 attorneys, most of whom devote their practice to representing plaintiffs in complex litigations, including class and derivative actions. It has a large support staff, including investigators, a forensic accountant, financial analysts, legal assistants, litigation support analysts, shareholder services personnel, and information technology specialists.

[85] Michael Spencer, who is a partner at Milberg and called to the bar in Ontario, offers counsel to Kim Orr.

[86] Lead lawyers for *Northwest v. Sino-Forest* are James Orr, Won Kim, and Mr. Spencer.

## 2. Retainer, Legal and Forensic Resources, and Investigations

### *Smith v. Sino-Forest*

[87] Following the release of the Muddy Waters Report, on June 6, 2011, Mr. Smith contacted Rochon Genova. Mr. Smith, who lost much of his investment fortune, was one of the victims of the wrongs allegedly committed by Sino-Forest. Rochon Genova accepted the retainer, and two days later, a notice of action was issued. The Statement of Claim in *Smith v. Sino-Forest* followed on July 8, 2011.

[88] Following their retainer by Mr. Smith, Rochon Genova hired Mr. X (his name was not disclosed), as a consultant. Mr. X, who has an accounting background, can fluently read, write, and speak English, Cantonese, and Mandarin. He travelled to China from June 19 to July 3, 2011 and again from October 31 to November 18, 2011. The purpose of the trips was to gather information about Sino-Forest's subsidiaries, its customers, and its suppliers. While in China, Mr. X secured approximately 20,000 pages of filings by Sino-Forest with the provincial branches of China's State Administration for Industry and Commerce (the "SAIC Files").

[89] In August 2011, Rochon Genova retained Froese Forensic Partners Ltd., a Toronto-based forensic accounting firm, to analyze the SAIC files.

[90] Rochon Genova also retained HAIBU Attorneys at Law, a full service law firm based in Shenzhen, Guangdong Province, China, to provide a preliminary opinion about Sino-Forest's alleged violations of Chinese accounting and taxation laws.

[91] Exclusive of the carriage motion, Rochon Genova has already incurred approximately \$350,000 in time and disbursements for the proposed class action.

### *Labourers v. Sino-Forest*

[92] On June 3, 2011, the day after the release of the Muddy Waters Report, Siskinds retained the Dacheng Law Firm in China to begin an investigation of the allegations contained in the report. Dacheng is the largest law firm in China with offices throughout China and Hong Kong and also offices in Los Angeles, New York, Paris, Singapore, and Taiwan.

because they may be difficult to litigate and it does not abandon class members who may not be assured of success or who comprise a small portion of the class.

[231] Kim Orr submits that *Northwest v. Sino-Forest* is comprehensive and also cohesive and corresponds to the factual reality. It submits that the theories of the competing actions do not capture the wrongdoing at Sino-Forest for which many are culpable and who should be held responsible. It submits that its approach will meet the challenges of certification and yield an optimum recovery for the class.

[232] Rochon Genova submits that *Smith v. Sino-Forest* is much more cohesive than the other actions. It submits that the more expansive class definitions and causes of action in *Labourers v. Sino-Forest* and *Northwest v. Sino-Forest* will present serious difficulties relating to manageability, preferability, and potential conflicts of interest amongst class members that are not present in *Smith v. Sino-Forest*. Rochon Genova submits that it has developed a solid, straightforward theory of the case and made a great deal of progress in unearthing proof of Sino-Forest's wrongdoing.

## G. CARRIAGE ORDER

### 1. Introduction

[233] With the explanation that follows, I stay *Smith v. Sino-Forest* and *Northwest v. Sino-Forest*, and I award carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*. In the race for carriage of an action against *Sino-Forest*, I would have ranked Rochon Genova second and Kim Orr third.

[234] This is not an easy decision to make because class members would probably be well served by any of the rival law firms. Success in a carriage motion does not determine which is the best law firm, it determines that having regard to the interests of the plaintiffs and class members, to what is fair to the defendants, and to the policies that underlie the class actions regime, there is a constellation of factors that favours selecting one firm or group of firms as the best choice for a particular class action.

[235] Having regard to the constellation of factors, in the circumstances of this case, several factors are neutral or non-determinative of the choice for carriage. In this group are: (a) attributes of class counsel; (b) retainer, legal, and forensic resources; (c) funding; (d) conflicts of interest; and (e) the plaintiff and defendant correlation.

[236] In the case at bar, the determinative factors are: definition of class membership, definition of class period, theory of the case, causes of action, joinder of defendants, and prospects of certification.

[237] Of the determinative factors, the attributes of the representative plaintiffs is a standalone factor. The other determinative factors are interrelated and concern the rival conceptualizations of what kind of class action would best serve the class members' need for access to justice and the policies of fairness to defendants, behaviour modification, and judicial economy.

H. CONCLUSION

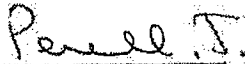
[329] For the above Reasons, I grant carriage to Koskie Minsky and Siskinds with leave to the plaintiffs in *Labourers v. Sino-Forest* to deliver a Fresh as Amended Statement of Claim.

[330] In granting leave, I grant leave generally and the plaintiffs are not limited to the amendments sought as a part of this carriage motion. It will be for the plaintiffs to decide whether some amendments are in order to respond to the lessons learned from this carriage motion, and it is not too late to have more representative plaintiffs.

[331] I repeat that a carriage motion is without prejudice to the defendants' rights to challenge the pleadings and whether any particular cause of action is legally tenable.

[332] I make no order as to costs, which is in the usual course in carriage motions.

Released: January 6, 2012

  
Perell, J.

**CITATION:** Smith v Sino-Forest Corporation, 2012 ONSC24  
**COURT FILE NO.:** 11-CV-428238CP  
**COURT FILE NO.:** 11-CV-431153CP  
**COURT FILE NO.:** 11-CV-435826CP  
**DATE:** January 6, 2012

**ONTARIO  
 SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Douglas Smith and Zhongjun Goa**

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

**AND BETWEEN:**

**The Trustees of the Labourers' Pension Fund  
 of Central and Eastern Canada and the  
 Trustees of the International Union of  
 Operating Engineers Local 793 Pension Plan  
 for Operating Engineers in Ontario**

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

**AND BETWEEN:**

**Northwest & Ethical Investments L.P., Comité  
 Syndical National de Retraite Bâtirente Inc.**

Plaintiff

- and -

**Sino-Forest Corporation et al.**

Defendants

---

**REASONS FOR DECISION**

---

**Perell, J.**

Court File No. 11-CV-431153CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
JUSTICE PERELL

).. FRIDAY THE 6<sup>th</sup> DAY  
) OF JANUARY, 2012

BETWEEN:

**THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA and THE TRUSTEES OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING  
ENGINEERS IN ONTARIO**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ERNST & YOUNG LLP, 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.,  
BUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC.,  
SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH  
CANADA INC., CANACCORD FINANCIAL LTD.  
and MAISON PLACEMENTS CANADA INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-439400CP

BETWEEN:

**DAVID C. GRANT and ROBERT WONG**

Plaintiffs

- and -

-2-

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (fka BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, 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 BANC OF AMERICA SECURITIES LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-435826CP

BETWEEN:

NORTHWEST & ETHICAL INVESTMENTS L.P.;  
COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

Plaintiffs

and

SINO-FOREST CORPORATION;

ALLEN T.Y. CHAN; W. JUDSON MARTIN; KAI KIT POON; DAVID J. HORSLEY;  
HUA CHEN; WEI MAO ZHAO; ALFRED C.T. HUNG; ALBERT IP; GEORGE HO;  
THOMAS M. MARADIN; WILLIAM E. ARDELL; JAMES M.E. HYDE; SIMON  
MURRAY; GARRY J. WEST; JAMES P. BOWLAND; EDMUND MAK; PETER  
WANG;

KEE Y. WONG; THE ESTATE OF JOHN LAWRENCE; SIMON YEUNG;

ERNST &amp; YOUNG LLP;

BDO LIMITED;

PÖYRY FOREST INDUSTRY PTE LIMITED;  
PÖYRY (BEIJING) CONSULTING COMPANY LIMITED;  
JP MANAGEMENT CONSULTING (ASIA-PACIFIC) PTE LTD.;

DUNDEE SECURITIES CORPORATION; UBS SECURITIES CANADA INC.;  
HAYWOOD SECURITIES INC.; CREDIT SUISSE SECURITIES (CANADA) INC.;  
TD SECURITIES INC.; RBC DOMINION SECURITIES INC.; SCOTIA CAPITAL INC.;  
CIBC WORLD MARKETS INC.; MERRILL LYNCH CANADA, INC.;

-3-

**CANACCORD FINANCIAL LTD.; MAISON PLACEMENTS CANADA INC.;  
MORGAN STANLEY & CO. INCORPORATED;  
CREDIT SUISSE SECURITIES (USA), LLC; BANK OF AMERICA MERRILL LYNCH;  
MERRILL LYNCH, PIERCE, FENNER, & SMITH, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AND

Court File No. 11-CV-428238CP

BETWEEN:

**DOUGLAS SMITH and ZHONGJUN GOA**

Plaintiffs

- and -

**SINO-FOREST CORPORATION, ALLEN T.Y. CHAN, JAMES M.E. HYDE, EDMUND  
MAK, W. JUDSON MARTIN, SIMON MURRAY, PETER D.H. WANG, DAVID J.  
HORSLEY, ERNST & YOUNG LLP, BDO 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., and MAISON PLACEMENTS CANADA INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THESE MOTIONS, made:**

- a) by the plaintiffs in the action commenced by The Trustees Of The Labourers' Pension Fund Of Central and Eastern Canada and The Trustees Of The International Union of Operating Engineers Local 793 Pension Plan For Operating Engineers in Ontario, being Court File No. 11-CV-431153CP, (the "*Labourers' Action*") for an order staying the action commenced by Douglas Smith and Zhongjun Goa, being Court File No. 11-CV-428238CP (the "*Smith Action*") and for an order staying the action commenced by Northwest & Ethical Investments L.P. and Comité syndical national de

-4-

retraite Bâtirente Inc., being Court File No. 11-CV-435826CP (the "*Northwest Action*") and a declaration that no other actions may be commenced in Ontario without leave of the court in respect of Sino-Forest Corporation ("Sino-Forest") securities without leave of the court;

b) by the plaintiffs in the *Smith Action* for an order for carriage of the class action, an order staying the *Labourers' Action*, the action commenced by David C. Grant and Robert Wong, being Court File No. 11-CV-439400CP (the "*Grant Action*") and the *Northwest Action* as they relate to purchasers of Sino-Forest shares, a declaration that no other proposed class proceeding may be commenced in Ontario on behalf of purchasers of Sino-Forest shares without leave of the court, and an order amending the statement of claim; and,

c) by the plaintiffs in the *Northwest Action* for an order for carriage of the class action, an order staying the *Smith Action* and the *Labourers' Action*, an order appointing Kim Orr Barristers P.C. as plaintiffs' counsel in the class proceeding in respect of the subject matter of this action, a declaration that no other proposed class proceeding may be commenced within Ontario with respect to the subject matter of this action without leave of the Court, an order removing Bank of America Merrill Lynch as a defendant, an order amending the title of proceedings, and an order amending the statement of claim;

were heard together on December 20 and 21, 2011 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON HEARING the submissions of counsel for the plaintiffs in each action, and on reading the material filed,

1. **THIS COURT ORDERS** that the motion for carriage made by the plaintiffs in the *Labourers' Action* be and hereby is granted;
2. **THIS COURT ORDERS** that Koskie Minsky LLP and Siskinds LLP be and hereby are appointed as class counsel in this action;



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3. **THIS COURT ORDERS** that the *Smith Action* and the *Northwest Action* be and hereby are stayed;
4. **THIS COURT ORDERS** that no other class actions may be commenced in Ontario in respect of the subject matter of this action without leave of this court;
5. **THIS COURT ORDERS** that Sjunde AP-Fonden, David C. Grant and Robert Wong be and hereby are added as plaintiffs to this action and that the title of proceedings be amended accordingly;
6. **THIS COURT ORDERS** that BDO Limited (formerly known as BDO McCabe Lo Limited), Credit Suisse Securities (USA) LLC and Banc of America Securities LLC be and hereby are added as defendants to this action and that the title of proceedings be amended accordingly;
7. **THIS COURT ORDERS** that the title of proceedings in this action be amended and shall be as follows:

Court File No. 11-CV-431153CP

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

v.

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 Banc of America Securities LLC

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8. **THIS COURT ORDERS** that the plaintiffs be and hereby are granted leave to deliver a Fresh As Amended Statement of Claim, substantially in the form attached as Schedule "A", which may include such additional representative plaintiffs and such amendments to the proposed class definition as they may be advised; and,
9. **THIS COURT ORDERS** that there will be no costs for the motions.

*Perell J.*  
\_\_\_\_\_  
PERELL J.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.:

JAN 24 2012

PER / PAR: *JB*

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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Labourers' Pension Fund of Central and Eastern  
Canada et al. v. Sino-Forest Corporation et al.*,  
Court File No. 11-CV-431153CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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Court File No. 11-CV-431153CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*,  
1992

**ORDER**

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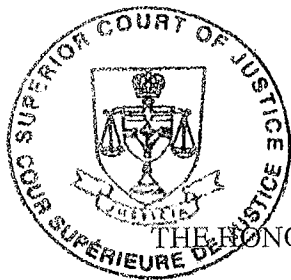
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Lawyers for the Plaintiffs

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



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE MR.  
 JUSTICE MORAWETZ

)  
 )  
 )

MONDAY, THE 14th  
 DAY OF MAY, 2012

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

**CLAIMS PROCEDURE ORDER**

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order establishing a claims procedure for the identification and determination of certain claims was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion, the affidavit of W. Judson Martin sworn on May 2, 2012, the Second Report of FTI Consulting Canada Inc. (the "Monitor") dated April 30, 2012 (the "Monitor's Second Report") and the Supplemental Report to the Monitor's Second Report dated May 12, 2012 (the "Supplemental Report"), and on hearing the submissions of counsel for the Applicant, the Applicant's directors, the Monitor, the *ad hoc* committee of Noteholders (the "Ad Hoc Noteholders"), and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Monitor's Second Report and the Supplemental Report is hereby abridged and

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Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and without limitation, neither the Monitor nor the Applicant shall have any obligation to send notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons (including Known Claimants) shall be bound by any notices published pursuant to paragraphs 12(a) and 12(d) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

15. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Applicant or the Monitor of any liability of the Applicant or any Director or Officer to any Person.

#### **CLAIMS BAR DATES**

##### *Claims and D&O Claims*

16. THIS COURT ORDERS that (i) Proofs of Claim (but not in respect of any Restructuring Claims) and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date, and (ii) Proofs of Claim in respect of Restructuring Claims shall be filed with the Monitor on or before the Restructuring Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim was commenced prior to the Filing Date.

17. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant; (c) shall not be entitled to vote such Claim at the Creditors' Meeting in respect of the

-16-

Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such Claim.

18. THIS COURT ORDERS that any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Directors or Officers, and all such D&O Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Directors or Officers; (c) shall not be entitled to vote such D&O Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such D&O Claim.

*D&O Indemnity Claims*

19. THIS COURT ORDERS that any Director or Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of receipt of the D&O Proof of Claim by such Director or Officer pursuant to paragraph 12(g) hereof (with respect to each D&O Indemnity Claim, the "D&O Indemnity Claims Bar Date").

20. THIS COURT ORDERS that any Director or Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the D&O Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant; and (c) shall not be entitled to vote such D&O Indemnity Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Indemnity Claim.



**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

**ORDER**

**BENNETT JONES LLP**  
One First Canadian Place  
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Kevin Zych (LSUC #33129T)  
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Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant



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

*ONTARIO*  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST

THE HONOURABLE MR. )

WEDNESDAY, THE 25<sup>th</sup>

JUSTICE MORAWETZ )

DAY OF JULY, 2012

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

**ORDER**  
 (Mediation)

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as monitor (the "Monitor") of Sino-Forest Corporation (the "Applicant") for a consent order concerning mediation and related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Monitor's Notice of Motion dated July 13, 2012 and the Fifth Report of the Monitor dated July 13, 2012 (the "Fifth Report"), the Responding Motion Record of the Applicants and the Responding Motion Record of Pöyry Beijing (as defined below), and on hearing the submissions of counsel for the Applicant, the Monitor, the ad hoc committee of Noteholders (the "Ad Hoc Noteholders"), the ad hoc group of purchasers of the Applicant's securities (the "Plaintiffs") and the other defendants in the Ontario Class Action and the Quebec Class Action (the "Third Party Defendants") and those other parties present, no one appearing for any of the other parties served with the Monitor's Motion Record, although duly served as appears from the affidavit of service of Alma Cano sworn July 13, 2012, filed.

## SERVICE AND INTERPRETATION

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record, including the Fifth Report, is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fifth Report.

## MEDIATION

3. THIS COURT ORDERS that the parties eligible to participate in the Mediation pursuant to paragraph 5 of this Order are the Applicant, the Plaintiffs, the Third Party Defendants (which shall be read to include Pöyry (Beijing) Consulting Company Limited ("Pöyry Beijing")), the Monitor, the Ad Hoc Noteholders and any insurers providing coverage in respect of the Applicant and the Third Party Defendants (collectively, the "Mediation Parties").
4. THIS COURT ORDERS that the subject matter of the Mediation shall be the resolution of the claims of the Plaintiffs against the Applicant and the Third Party Defendants as set out in the statements of claim in the Ontario Class Action and the Quebec Class Action and any and all related claims (the "Subject Claims"), provided that for the purpose of the Mediation, the Plaintiffs shall not seek contribution from any of the Mediation Parties with respect to amounts that could have been sought by the Plaintiffs from Pöyry Beijing had the Plaintiffs not reached a settlement with Pöyry Beijing (the "Pöyry Settlement") and provided that the Plaintiffs shall provide to the Mediation Parties, within 10 days of the date of this Order or such further time as this Court may direct, a written summary of evidence proffered by Pöyry Beijing pursuant to the Pöyry Settlement, which summary shall be treated in the same manner as material in the Data Room (as defined below) pursuant to this Order.
5. THIS COURT ORDERS that, where practicable, the Mediation Parties shall participate in the Mediation in person and with representatives present with full authority to settle the Subject Claims (including any insurer providing coverage), provided that, where not practicable, the Mediation Parties may participate in the Mediation through counsel or other representatives, subject to those counsel or other representatives having access to representatives with full

authority and undertaking to promptly pursue instructions with respect to any proposed agreements that arise from the Mediation.

6. THIS COURT ORDERS that parties in addition to the Mediation Parties shall only have standing to participate in the Mediation on consent of the Applicant and the Monitor, acting reasonably, or by further Order of this Court.

#### DATA ROOM

7. THIS COURT ORDERS that in connection with the Mediation, as soon as practicable, but in any event no later than August 3, 2012, the Applicant shall provide access to the Mediation Parties to the existing data room maintained by Merrill (the "Data Room"), provided however that prior to access to the Data Room, all participants (other than the Applicant, the incumbent directors of the Applicant and the Monitor) shall have entered into a confidentiality agreement with the Applicant on terms reasonably acceptable to the Applicant and the Monitor.

8. THIS COURT ORDERS that any Mediation Parties who enter into a confidentiality agreement as contemplated by paragraph 7 of this order shall comply with the terms of such confidentiality agreement.

9. THIS COURT ORDERS that the Applicant, its subsidiaries and affiliates, and their directors, officers, employees, agents and advisors, shall incur no liability in connection with causing, effecting or acquiescing in the establishment of the Data Room or disclosure in respect of such materials and the information contained therein in accordance with this Order. The materials in the Data Room shall be made available without any representation as to the truth of their contents or their completeness, and persons relying on those materials shall do so at their own risk. The disclosure of such materials and the information contained therein in accordance with this Order is not and shall not be public disclosure in any respect. Nothing in this paragraph affects any rights or causes of action that any person may have in relation to the prior disclosure of any of the contents of the Data Room, insofar as such rights or causes of action are independent from and not related to the provision of materials and information in accordance with this Order.

## MEDIATION SCHEDULE

10. THIS COURT ORDER THAT, the schedule for the Mediation shall be as follows:
- (a) the Mediation shall be conducted on September 4<sup>th</sup> and 5<sup>th</sup>, and if a third day is required, on September 10<sup>th</sup>, 2012 (the "Mediation Dates");
  - (b) additional Mediation dates shall only be added, and any adjournments of any mediation dates shall only be accepted, with the prior written consent of all Mediation Parties;
  - (c) the Mediation shall be conducted at a location to be determined by the Mediator (as defined below); and
  - (d) the Applicant, the Plaintiffs and the Third Party Defendants shall deliver their respective written position statements to each other and to the other Mediation Parties on or before August 27, 2012.

## APPOINTMENT OF THE MEDIATOR

11. THIS COURT ORDERS that the Honourable Justice Newbould shall be appointed mediator (the "Mediator").

12. THIS COURT ORDERS that, prior to the commencement of the Mediation, the Mediator shall have the right to communicate with this Court and the Monitor from time to time as deemed necessary or advisable by the Mediator in their sole discretion.

## TERMINATION OF THE MEDIATION

13. THIS COURT ORDERS that the Mediation process shall be terminated under any of the following circumstances:

- (a) by declaration by the Mediator that a settlement has been reached;
- (b) by declaration by the Mediator that further efforts at mediation are no longer considered worthwhile;

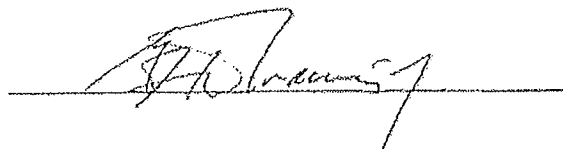
## CONFIDENTIALITY

17. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties shall be used only in the context of the Mediation and for no other purpose and shall be kept confidential by all such parties irrespective of whether such Mediation Parties sign a confidentiality agreement.

18. THIS COURT ORDERS that any mediation briefs or other documents filed by the Mediation Parties that contain information obtained from the Data Room may not be shared with or otherwise disclosed to any person or entity that has not signed a confidentiality agreement, other than the Applicant, the incumbent directors of the Applicant, the Monitor and Mediator.

## MISCELLANEOUS

19. THIS COURT ORDERS that the terms of this Order may only be varied by further Order of this Court, which may be sought on an ex parte basis on consent of the Mediation Parties.



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 ON / BOOK NO.  
 LE / DANS LE REGISTRE NO.:  
 JUL 25 2012

REMARKS

MS

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER  
(Mediation)

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

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 4377  
COURT FILE NO.: CV-12-9667-00CL  
DATE: 20120727

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION, Applicant**

**BEFORE: MORAWETZ J.**

**COUNSEL: Robert W. Staley and Jonathan Bell, for the Applicant**

**Jennifer Stam, for the Monitor**

**Kenneth Dekker, for BDO Limited**

**Peter Griffin and Peter Osborne, for Ernst & Young LLP**

**Benjamin Zarnett, Robert Chadwick and Brendan O'Neill, for the Ad Hoc Committee of Noteholders**

**James Grout, for the Ontario Securities Commission**

**Emily Cole and Joseph Marin, for Allen Chan**

**Simon Bieber, for David Horsley**

**David Bish, John Fabello and Adam Slavens, for the Underwriters Named in the Class Action**

**Max Starnino and Kirk Baert, for the Ontario Plaintiffs**

**Larry Lowenstein, for the Board of Directors**

**HEARD: June 26, 2012**

**ENDORSEMENT**



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[28] Section 6(8) of the CCAA prohibits a distribution to equity claimants prior to payment in full of all non-equity claims.

[29] Section 22(1) of the CCAA provides that equity claimants are prohibited from voting on a plan unless the court orders otherwise.

#### **Position of Ernst & Young**

[30] E&Y opposes the relief sought, at least as against E&Y, since the E&Y proof of claim evidence demonstrates in its view that E&Y's claim:

- (a) is not an equity claim;
- (b) does not derive from or depend upon an equity claim (in whole or in part);
- (c) represents discreet and independent causes of action as against SFC and its directors and officers arising from E&Y's direct contractual relationship with such parties (or certain of such parties) and/or the tortious conduct of SFC and/or its directors and officers for which they are in law responsible to E&Y; and
- (d) can succeed independently of whether or not the claims of the plaintiffs in the class actions succeed.

[31] In its factum, counsel to E&Y acknowledges that during the periods relevant to the Class Action Proceedings, E&Y was retained as SFC's auditor and acted as such from 2007 until it resigned on April 5, 2012.

[32] On June 2, 2011, Muddy Waters LLC ("Muddy Waters") issued a report which purported to reveal fraud at SFC. In the wake of that report, SFC's share price plummeted and Muddy Waters profited from its short position.

[33] E&Y was served with a multitude of class action claims in numerous jurisdictions.

[34] The plaintiffs in the Ontario Class Proceedings claim damages in the aggregate, as against all defendants, of \$9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)* and at common law, in negligence and negligent misrepresentation.

[35] In its factum, counsel to E&Y acknowledges that the central claim in the class actions is that SFC made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and note in particular that E&Y's audit did not comply with Canadian generally accepted accounting standards. Similar claims are advanced in Quebec and the U.S.

[36] Counsel to E&Y notes that on May 14, 2012 the court granted a Claims Procedure Order which, among other things, requires proofs of claim to be filed no later than June 20, 2012. E&Y takes issue with the fact that this motion was then brought notwithstanding that proofs of claim and D&O proofs of claim had not yet been filed.

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[74] It has also been clear from the outset of the CCAA Proceedings, that a Sales Process would be undertaken and the expected proceeds arising from the Sales Process would generate proceeds insufficient to satisfy the claims of creditors.

[75] The Claims Procedure is in place but, it seems to me that the issue that has been placed before the court on this motion can be determined independently of the Claims Procedure. I do not accept that any party can be said to be prejudiced if this threshold issue is determined at this time. The threshold issue does not depend upon a determination of quantification of any claim. Rather, its effect will be to establish whether the claims of E&Y, BDO and the Underwriters will be subordinated pursuant to the provisions of the CCAA. This is independent from a determination as to the validity of any claim and the quantification thereof.

#### **Should the Equity Claims Order be Granted?**

[76] I am in agreement with the submission of counsel for the Ad Hoc Noteholders to the effect that the characterization of claims for indemnity turns on the characterization of the underlying primary claims.

[77] In my view, the claims advanced in the Shareholder Claims are clearly equity claims. The Shareholder Claims underlie the Related Indemnity Claims.

[78] In my view, the CCAA Amendments have codified the treatment of claims addressed in pre-amendment cases and have further broadened the scope of equity claims.

[79] The plain language in the definition of "equity claim" does not focus on the identity of the claimant. Rather, it focuses on the nature of the claim. In this case, it seems clear that the Shareholder Claims led to the Related Indemnity Claims. Put another way, the inescapable conclusion is that the Related Indemnity Claims are being used to recover an equity investment.

[80] The plain language of the CCAA dictates the outcome, namely, that the Shareholder Claims and the Related Indemnity Claims constitute "equity claims" within the meaning of the CCAA. This conclusion is consistent with the trend towards an expansive interpretation of the definition of "equity claims" to achieve the purpose of the CCAA.

[81] In *Return on Innovation*, Newbould J. characterized the contractual indemnification claims of directors and officers as "equity claims". The Court of Appeal denied leave to appeal. The analysis in *Return on Innovation* leads to the conclusion that the Related Indemnity Claims are also equity claims under the CCAA.

[82] It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the Underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of the shareholders cannot achieve the same status. To hold otherwise would indeed provide an indirect remedy where a direct remedy is not available.

[83] Further, on the issue of whether the claims of E&Y, BDO and the Underwriters fall within the definition of equity claims, there are, in my view, two aspects of these claims and it is necessary to keep them conceptually separate.

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[84] The first and most significant aspect of 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. The class action plaintiffs have launched their actions against SFC, the auditors and the Underwriters. In turn, E&Y, BDO and the Underwriters have launched actions against SFC and its subsidiaries. The claims of the shareholders are clearly "equity claims" and a plain reading of s. 2(1)(e) of the CCAA leads to the same conclusion with respect to the claims of E&Y, BDO and the Underwriters. To hold otherwise, would, as stated above, lead to a result that is inconsistent with the principles of the CCAA. It would potentially put the shareholders in a position to achieve creditor status through their claim against E&Y, BDO and the Underwriters even though a direct claim against SFC would rank as an "equity claim".

[85] I also recognize that the legal construction of the claims of the auditors and the Underwriters as against SFC is different than the claims of the shareholders against SFC. However, that distinction is not, in my view, reflected in the language of the CCAA which makes no distinction based on the status of the party but rather focuses on the substance of the claim.

[86] Critical to my analysis of this issue is the statutory language and the fact that the CCAA Amendments came into force after the cases relied upon by the Underwriters and the auditors.

[87] It has been argued that the amendments did nothing more than codify pre-existing common law. In many respects, I accept this submission. However, I am unable to accept this submission when considering s. 2(1) of the CCAA, which provides clear and specific language directing that "equity claim" means a claim that is in respect of an equity interest, including a claim for, among other things, "(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)".

[88] Given that a shareholder claim falls within s. 2(1)(d), the plain words of subsections (d) and (e) lead to the conclusions that I have set out above.

[89] I fail to see how the very clear words of subsection (e) can be seen to be a codification of existing law. To arrive at the conclusion put forth by E&Y, BDO and the Underwriters would require me to ignore the specific words that Parliament has recently enacted.

[90] I cannot agree with the position put forth by the Underwriters or by the auditors on this point. The plain wording of the statute has persuaded me that it does not matter whether an indemnity claim is seeking no more than allocation of fault and contribution at common law, or whether there is a free-standing contribution and indemnity claim based on contracts.

[91] However, that is not to say that the full amount of the claim by the auditors and Underwriters can be characterized, at this time, as an "equity claim".

[92] The second aspect to the claims of the auditors and underwriters can be illustrated by the following hypothetical: if the claim of the shareholders does not succeed against the class action defendants, E&Y, BDO and the Underwriters will not be liable to the class action plaintiffs. However, these parties may be in a position to demonstrate that they do have a claim against

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SFC for the costs of defending those actions, which claim does not arise as a result of "contribution or indemnity in respect of an equity claim".

[93] It could very well be that each of E&Y, BDO and the Underwriters have expended significant amounts in defending the claims brought by the class action plaintiffs which, in turn, could give rise to contractual claims as against SFC. If there is no successful equity claim brought by the class action plaintiffs, it is arguable that any claim of E&Y, BDO and the Underwriters may legitimately be characterized as a claim for contribution or indemnity but not necessarily in respect of an equity claim. If so, there is no principled basis for subordinating this portion of the claim. At this point in time, the quantification of such a claim cannot be determined. This must be determined in accordance with the Claims Procedure.

[94] However, it must be recognized that, by far the most significant part of the claim, is an "equity claim".

[95] In arriving at this determination, I have taken into account the arguments set forth by E&Y, BDO and the Underwriters. My conclusions recognize the separate aspects of the Related Indemnity Claims as submitted by counsel to the Underwriters at paragraph 40 of their factum which reads:

...it must be recognized that there are, in fact, at least two different kinds of Related Indemnity Claims:

- (a) indemnity claims against SFC in respect of Shareholder Claims against the auditors and the Underwriters; and
- (b) indemnity claims against SFC in respect of the defence costs of the auditors and the Underwriters in connection with defending themselves against Shareholder Claims.

### **Disposition**

[96] In the result, an order shall issue that the claims against SFC resulting from the ownership, purchase or sale of equity interests in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" are "equity claims" as defined in s. 2 of the CCAA, being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest. It is noted that counsel for the class action plaintiffs did not contest this issue.

[97] In addition, an order shall also issue that any indemnification claim against SFC related to or arising from the Shareholders Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim. However, I feel it is premature to determine whether this order extends to the aspect of the Related Indemnity Claims that corresponds to the defence costs of the Underwriters and the auditors in connection with defending themselves against the Shareholder Claims.

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[98] A direction shall also issue that these orders are made without prejudice to SFC's rights to apply for a similar order with respect to (i) any claims in the statement of claim that are in respect of securities other than shares and (ii) any indemnification claims against SFC related thereto.



MORAWETZ J.

**Date:** July 27, 2012

## COURT OF APPEAL FOR ONTARIO

CITATION: Sino-Forest Corporation (Re), 2012 ONCA 816

DATE: 20121123

DOCKET: C56115, C56118 &amp; C56125

Goudge, Hoy and Pepall JJ.A.

In the Matter of the *Companies' Creditors  
Arrangement Act*, R.S.C. 1985, c. C-36, as amended

And in the Matter of a Plan of Compromise or  
Arrangement of Sino-Forest Corporation

Peter H. Griffin, Peter J. Osborne and Shara Roy, for the appellant Ernst & Young LLP

Sheila Block and David Bish, for the appellants Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), 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

Kenneth Dekker, for the appellant BDO Limited

Robert W. Staley, Derek J. Bell and Jonathan Bell, for the respondent Sino-Forest Corporation

Benjamin Zarnett, Robert Chadwick and Julie Rosenthal, for the respondent the Ad Hoc Committee of Noteholders

Clifton Prophet, for the Monitor FTI Consulting Canada Inc.

Kirk M. Baert, A. Dimitri Lascaris and Massimo Starnino, for the respondent the Ad Hoc Committee of Purchasers

Emily Cole, for the respondent Allen Chan

Erin Pleet, for the respondent David Horsley

David Gadsden, for the respondent Pöyry (Beijing)

Larry Lowenstein and Edward A. Sellers, for the respondent the Board of Directors

Heard: November 13, 2012

On appeal from the order of Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated July 27, 2012, with reasons reported at 2012 ONSC 4377, 92 C.B.R. (5th) 99.

**By the Court:**

**I OVERVIEW**

[1] In 2009, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), was amended to expressly provide that general creditors are to be paid in full before an equity claim is paid.

[2] This appeal considers the definition of "equity claim" in s. 2(1) of the CCAA. More particularly, the central issue is whether claims by auditors and underwriters against the respondent debtor, Sino-Forest Corporation ("Sino-Forest"), for contribution and indemnity fall within that definition. The claims arise out of proposed shareholder class actions for misrepresentation.

[3] The appellants argue that the supervising judge erred in concluding that the claims at issue are equity claims within the meaning of the CCAA and in

determining the issue before the claims procedure established in Sino-Forest's CCAA proceeding had been completed.

[4] For the reasons that follow, we conclude that the supervising judge did not err and accordingly dismiss this appeal.

## **II THE BACKGROUND**

### **(a) The Parties**

[5] Sino-Forest is a Canadian public holding company that holds the shares of numerous subsidiaries, which in turn own, directly or indirectly, forestry assets located principally in the People's Republic of China. Its common shares are listed on the Toronto Stock Exchange. Sino-Forest also issued approximately \$1.8 billion of unsecured notes, in four series. Trading in Sino-Forest shares ceased on August 26, 2011, as a result of a cease-trade order made by the Ontario Securities Commission.

[6] The appellant underwriters<sup>1</sup> provided underwriting services in connection with three separate Sino-Forest equity offerings in June 2007, June 2009 and December 2009, and four separate Sino-Forest note offerings in July 2008, June 2009, December 2009 and October 2010. Certain underwriters entered into agreements with Sino-Forest in which Sino-Forest agreed to indemnify the

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<sup>1</sup> Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), 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.



underwriters in connection with an array of matters that could arise from their participation in these offerings.

[7] The appellant BDO Limited (“BDO”) is a Hong Kong-based accounting firm that served as Sino-Forest’s auditor between 2005 and August 2007 and audited its annual financial statements for the years ended December 31, 2005 and December 31, 2006.

[8] The engagement agreements governing BDO’s audits of Sino-Forest provided that the company’s management bore the primary responsibility for preparing its financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”) and implementing internal controls to prevent and detect fraud and error in relation to its financial reporting.

[9] BDO’s Audit Report for 2006 was incorporated by reference into a June 2007 prospectus issued by Sino-Forest regarding the offering of its shares to the public. This use by Sino-Forest was governed by an engagement agreement dated May 23, 2007, in which Sino-Forest agreed to indemnify BDO in respect of any claims by the underwriters or any third party that arose as a result of the further steps taken by BDO in relation to the issuance of the June 2007 prospectus.

[10] The appellant Ernst & Young LLP (“E&Y”) served as Sino-Forest’s auditor for the years 2007 to 2012 and delivered Auditors’ Reports with respect to the

consolidated financial statements of Sino-Forest for fiscal years ended December 31, 2007 to 2010, inclusive. In each year for which it prepared a report, E&Y entered into an audit engagement letter with Sino-Forest in which Sino-Forest undertook to prepare its financial statements in accordance with GAAP, design and implement internal controls to prevent and detect fraud and error, and provide E&Y with its complete financial records and related information. Some of these letters contained an indemnity in favour of E&Y.

[11] The respondent Ad Hoc Committee of Noteholders consists of noteholders owning approximately one-half of Sino-Forest's total noteholder debt.<sup>2</sup> They are creditors who have debt claims against Sino-Forest; they are not equity claimants.

[12] Sino-Forest has insufficient assets to satisfy all the claims against it. To the extent that the appellants' claims are accepted and are treated as debt claims rather than equity claims, the noteholders' recovery will be diminished.

### **(b) The Class Actions**

[13] In 2011 and January of 2012, proposed class actions were commenced in Ontario, Quebec, Saskatchewan and New York State against, amongst others,

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<sup>2</sup> Noteholders holding in excess of \$1.296 billion, or 72%, of Sino-Forest's approximately \$1.8 billion in noteholders' debt have executed written support agreements in favour of the Sino-Forest CCAA plan as of March 30, 2012. These include noteholders represented by the Ad Hoc Committee of Noteholders.

Sino-Forest, certain of its officers, directors and employees, BDO, E&Y and the underwriters. Sino-Forest is sued in all actions.<sup>3</sup>

[14] The proposed representative plaintiffs in the class actions are shareholders of Sino-Forest. They allege that: Sino-Forest repeatedly misrepresented its assets and financial situation and its compliance with GAAP in its public disclosure; the appellant auditors and underwriters failed to detect these misrepresentations; and the appellant auditors misrepresented that their audit reports were prepared in accordance with generally accepted auditing standards (“GAAS”). The representative plaintiffs claim that these misrepresentations artificially inflated the price of Sino-Forest’s shares and that proposed class members suffered damages when the shares fell after the truth was revealed in 2011.

[15] The representative plaintiffs in the Ontario class action seek approximately \$9.2 billion in damages. The Quebec, Saskatchewan and New York class actions do not specify the quantum of damages sought.

[16] To date, none of the proposed class actions has been certified.

### **(c) CCAA Protection and Proofs of Claim**

[17] On March 30, 2012, Sino-Forest sought protection pursuant to the provisions of the CCAA. Morawetz J. granted the initial order which, among other

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<sup>3</sup> None of the appellants are sued in Saskatchewan and all are sued in Ontario. E&Y is also sued in Quebec and New York and the appellant underwriters are also sued in New York.

things, appointed FTI Consulting Canada Inc. as the Monitor and stayed the class actions as against Sino-Forest. Since that time, Morawetz J. has been the supervising judge of the CCAA proceedings. The initial stay of the class actions was extended and broadened by order dated May 8, 2012.

[18] On May 14, 2012, the supervising judge granted an unopposed claims procedure order which established a procedure to file and determine claims against Sino-Forest.

[19] Thereafter, all of the appellants filed individual proofs of claim against Sino-Forest seeking contribution and indemnity for, among other things, any amounts that they are ordered to pay as damages to the plaintiffs in the class actions. Their proofs of claim advance several different legal bases for Sino-Forest's alleged obligation of contribution and indemnity, including breach of contract, contractual terms of indemnity, negligent and fraudulent misrepresentation in tort, and the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

**(d) Order under Appeal**

[20] Sino-Forest then applied for an order that the following claims are equity claims under the CCAA: claims against Sino-Forest arising from the ownership, purchase or sale of an equity interest in the company, including shareholder claims ("Shareholder Claims"); and any indemnification claims against Sino-

Forest related to or arising from the Shareholder Claims, including the appellants' claims for contribution or indemnity ("Related Indemnity Claims").

[21] The motion was supported by the Ad Hoc Committee of Noteholders.

[22] On July 27, 2012, the supervising judge granted the order sought by Sino-Forest and released a comprehensive endorsement.

[23] He concluded that it was not premature to determine the equity claims issue. It had been clear from the outset of Sino-Forest's CCAA proceedings that this issue would have to be decided and that the expected proceeds arising from any sales process would be insufficient to satisfy the claims of creditors. Furthermore, the issue could be determined independently of the claims procedure and without prejudice being suffered by any party.

[24] He also concluded that both the Shareholder Claims and the Related Indemnity Claims should be characterized as equity claims. In summary, he reasoned that:

- The characterization of claims for indemnity turns on the characterization of the underlying primary claims. The Shareholder Claims are clearly equity claims and they led to and underlie the Related Indemnity Claims;
- The plain language of the CCAA, which focuses on the nature of the claim rather than the identity of the claimant, dictates that both Shareholder Claims and Related Indemnity Claims constitute equity claims;

- The definition of “equity claim” added to the CCAA in 2009 broadened the scope of equity claims established by pre-amendment jurisprudence;
- This holding is consistent with the analysis in *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 5018, 83 C.B.R. (5th) 123, which dealt with contractual indemnification claims of officers and directors. Leave to appeal was denied by this court, 2012 ONCA 10, 90 C.B.R. (5th) 141; and
- “It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of shareholders cannot achieve the same status” (para. 82). To hold otherwise would run counter to the scheme established by the CCAA and would permit an indirect remedy to the shareholders when a direct remedy is unavailable.

[25] The supervising judge did not characterize the full amount of the claims of the auditors and underwriters as equity claims. He excluded the claims for defence costs on the basis that while it was arguable that they constituted claims for indemnity, they were not necessarily in respect of an equity claim. That determination is not appealed.

### **III INTERPRETATION OF “EQUITY CLAIM”**

#### **(a) Relevant Statutory Provisions**

[26] As part of a broad reform of Canadian insolvency legislation, various amendments to the CCAA were proclaimed in force as of September 18, 2009.

[27] They included the addition of s. 6(8):

No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Section 22.1, which provides that creditors with equity claims may not vote at any meeting unless the court orders otherwise, was also added.

[28] Related definitions of “claim”, “equity claim”, and “equity interest” were added to s. 2(1) of the CCAA:

In this Act,

...

“claim” means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

...

“equity claim” means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); [Emphasis added.]

“equity interest” means

- (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right

The words “in respect of” have been held by this Court to be words of the broadest scope that convey some link between two subject matters. [Citations omitted.]

[42] It is conceded that the Shareholder Claims against Sino-Forest are claims for “a monetary loss resulting from the ownership, purchase or sale of an equity interest”, within the meaning of paragraph (d) of the definition of “equity claim”. There is an obvious link between the appellants’ claims against Sino-Forest for contribution and indemnity and the shareholders’ claims against Sino-Forest. The legal proceedings brought by the shareholders asserted their claims against Sino-Forest together with their claims against the appellants, which gave rise to these claims for contribution and indemnity. The causes of action asserted depend largely on common facts and seek recovery of the same loss.

[43] The appellants’ claims for contribution or indemnity against Sino-Forest are therefore clearly connected to or “in respect of” a claim referred to in paragraph (d), namely the shareholders’ claims against Sino-Forest. They are claims in respect of equity claims by shareholders and are provable in bankruptcy against Sino-Forest.

[44] Second, Parliament also defined equity claim as “including a claim for, among others”, the claims described in paragraphs (a) to (e). The Supreme Court has held that this phrase “including” indicates that the preceding words – “a claim that is in respect of an equity interest” – should be given an expansive interpretation, and include matters which might not otherwise be within the



address the characterization of the appellants' claims had also been clear from the outset. The appellants have not identified any prejudice that arises from the determination of the issue at this stage. There was no additional information that the appellants have identified that was not before the supervising judge. The Monitor, a court-appointed officer, supported the motion procedure. The supervising judge was well positioned to determine whether the procedure proposed was premature and, in our view, there is no basis on which to interfere with the exercise of his discretion.

## **V SUMMARY**

[59] In conclusion, we agree with the supervising judge that the appellants' claims for contribution or indemnity are equity claims within s. 2(1)(e) of the CCAA.

[60] We reach this conclusion because of what we have said about the expansive language used by Parliament, the language Parliament did not use, the avoidance of surplusage, the logic of the section, and what, from the foregoing, we conclude is the purpose of the 2009 amendments as they relate to these proceedings.

[61] We see no basis to interfere with the supervising judge's decision to consider whether the appellants' claims were equity claims before the completion of the claims procedure.

**VI DISPOSITION**

[62] This appeal is accordingly dismissed. As agreed, there will be no costs.

Released: November 23, 2012 ("S.T.G.")

"S.T. Goudge J.A."  
"Alexandra Hoy J.A."  
"S.E. Pepall J.A."

Court of Appeal File No.: M42404  
Commercial Court File No.: CV-12-9667-00CL

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

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court of Appeal File No.: M42404  
Superior Court File No.: CV-10-414302CF

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND  
EASTERN CANADA, et al.  
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.  
Defendants

COURT OF APPEAL FOR ONTARIO

BEFORE: SIMMONS JA

DATE: May 1, 2013

DISPOSITION OF MOTION:

*Order to go as follows:*  
*1. I have motion for the*  
*settled approved order & the*  
*Reportation dis missal order to*  
*be preferred by May 10/13*  
*responding received dated by*

COURT OF APPEAL FOR ONTARIO

(Proceeding Commenced at Toronto)

MOTION RECORD OF THE MOVING PARTIES  
(APPELLANTS) (Motion for Directions)

KIM ORR BARRISTERS P.C.  
19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario M5V 1H2

Michael C. Spencer (LSUC #59637F)  
Won J. Kim (LSUC #32918H)  
Megan B. McPhee (LSUC #48351G)

Tel: (416) 596-1414  
Fax: (416) 598-0601

Lawyers for the Moving Parties (Appellants), 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.



- 3. Leave motion for the sanction order to be consolidated with the leave motion for the settlement order & represent abt dismission order.
- 4. Motion to quash to be listed for hearing during the same week the leave motion are listed (probably Thursday or Friday)
- 5. The issue of a representation for the purposes of the appeal reserved to the leave panel or the appeal panel as the issues of representing ~~any~~ \$ appeals.
- 6. Service of all documents on

by e-mail; proof of service  
dispensed with

7. Reply / actions, if any, to be  
detained within 5 days of  
response returned.

8. Perfection of the appeal not required  
leave suspended pending the matter  
to quash; in other words time shall  
not run.

9. Leave motions to be listed for  
the week of June 24/13, the  
motion to quash is set for  
June 28/13 30 min MOVING PARTY  
20 min RESPONDING PARTY.

10. Costs of today assigned to the  
Respondent the ~~expense~~ motion & return <sup>to</sup> quash.

Court of Appeal File No.: M42404  
Commercial Court File No.: CV-12-9667-00CL

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

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court of Appeal File No.: M42404  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, et al.  
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**AFFIDAVIT OF TANYA T. JEMEC**  
sworn April 22, 2013

**KIM ORR BARRISTERS P.C.**

19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario (M5V 1H2)

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Lawyers for the Moving Parties (Appellants), 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.

11. The motion to consolidate the two motions + the appeals is dismissed.



**Typed version of handwritten motion endorsement**

**The Trustees of the Labourers' Pension Fund of Central and Eastern  
Canada et al v. Sino-Forest Corporation et al**

**Court File No.: M42404 (M42399)**

**Heard: May 1, 2013**

**Simmons J.A.:**

[1] Order to go as follows:

1. Leave motion for the settlement approval order and the representation dismissal order to be perfected by May 10, 2013 and responding material delivered by May 17, 2013.
2. Motion to quash to be perfected by May 10, 2013.
3. Leave motion for the sanction order to be consolidated with the leave motion for the settlement order and representation dismissal order.
4. Motion to quash to be listed for hearing during the same week the leave motions are listed (preferably Thursday or Friday).
5. The issue of representation for the purposes of any appeal reserved to the leave panel or the appeal panel as are issues of expediting any appeals.
6. Service of all documents may be by email; proof of service dispensed with.



7. Reply factums, if any, to be delivered within 5 days of responding material.
8. Perfection of the appeal not requiring leave suspended pending the motion to quash; in other words time shall not run.
9. Leave motions to be listed for the week of June 24, 2013, the motion to quash is set for June 28, 2013 – 30 minutes for the moving party, 20 minutes for the responding party.
10. Costs of today reserved to the panel hearing the leave motions and motion to quash.
11. The motion to consolidate the leave motions and the appeals is dismissed.

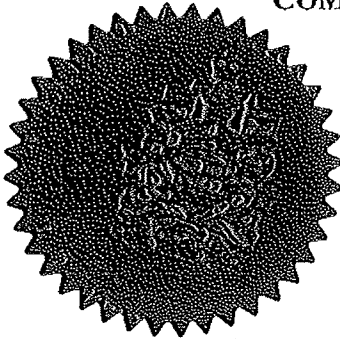
“Janet Simmons J.A.”

Court of Appeal File No.: M42068  
 Court of Appeal File No.: M42399  
 Court of Appeal File No.: M42404  
 Court of Appeal File No.: C56961  
 S.C.J. Court File No.: CV-12-9667-00CL

**COURT OF APPEAL FOR ONTARIO**

THE HONOURABLE MADAM ) WEDNESDAY, THE  
 )  
 JUSTICE SIMMONS ) 1<sup>ST</sup> DAY OF MAY, 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 OR ARRANGEMENT OF SINO-FOREST CORPORATION**



Court of Appeal File No.: M42068  
 Court of Appeal File No.: M42399  
 Court of Appeal File No.: M42404  
 Court of Appeal File No.: C56961  
 S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

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

Plaintiffs

- and -

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

**FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC)**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the Moving Parties (Appellants) 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. for directions on administrative matters including consolidating, expediting and seeking representative status on motions for leave to appeal and in the appeals thereof, was heard this day, at Osgoode Hall, 130 Queen St. West, Toronto, Ontario.

**ON READING** the motion record and factum of the Appellants and the motion record and factum of the responding parties, and on hearing the submissions of the lawyers for the Appellants and the responding parties,

1. **THIS COURT ORDERS** that all materials related to this motion, the motions for leave to appeal bearing Court of Appeal File No.: M42068 and M42399, the appeal in Court File No. C56961 and, if leave is granted, any appeal from the orders dated March 20, 2013 of the Honourable Mr. Justice Morawetz ("Settlement Approval Order" and "Representation Dismissal Order", Court of Appeal File No.: M42399), the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz ("Sanction Order", Court of Appeal File No.: M42068) and the motions to quash the Appellants' Notice of Appeal (Court of Appeal File No.: C56961), may be served by electronic mail, and that proof of receipt of that electronic mail is not required to validate service and is hereby dispensed with for the purpose of filing the materials with the Court.

2. **THIS COURT ORDERS** that the motion for leave to appeal the Sanction Order shall be consolidated and heard together with the motion for leave to appeal the Settlement Approval Order and Representation Dismissal Order.
3. **THIS COURT ORDERS** that the motion to consolidate the hearing of the motions for leave to appeal and the related appeals, orally and before a panel of three judges, is dismissed.
4. **THIS COURT ORDERS** that the motion for leave to appeal the Settlement Approval Order and the Representation Dismissal Order shall be perfected by May 10, 2013, responding material shall be served by May 17, 2013 and reply factums, if any, shall be served by May 27, 2013.
5. **THIS COURT ORDERS** that the motions to quash the Appellants' Notice of Appeal shall be perfected by May 10, 2013 and responding materials shall be served by May 17, 2013.
6. **THIS COURT ORDERS** that the timelines for perfecting the appeal initiated by the Appellants' Notice of Appeal shall be suspended pending the result of the motions to quash such that time shall not run;
7. **THIS COURT ORDERS** that the motions for leave to appeal shall be listed for the week of June 24, 2013;
8. **THIS COURT ORDERS** that the motions to quash the Appellants' Notice of Appeal shall be heard on June 28, 2013. The moving party shall be permitted 30 minutes for argument and the responding party shall be permitted 20 minutes for argument.

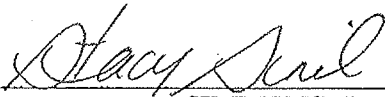
9. THIS COURT ORDERS that the Appellants' motions for leave to act as the representative party for the purposes of any appeal and to expedite any appeals is reserved to the leave panel or the appeal panel.

10. THIS COURT ORDERS that the costs of this motion for directions is reserved to the panel hearing the motions for leave to appeal and the motions to quash the Appellants' Notice of Appeal.

ENTERED AT / INSCRIPT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 05 2013

PER / PAR: SOS

  
\_\_\_\_\_  
SIMMONS, J.  
*Registrar, Court of Appeal for Ontario*

Court of Appeal File No.: M42068  
Court of Appeal File No.: M42399  
Court of Appeal File No.: M42404  
Court of Appeal File No.: C56961  
Commercial Court File No.: CV-12-9667-00CL

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

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court of Appeal File No.: M42068  
Court of Appeal File No.: M42399  
Court of Appeal File No.: M42404  
Court of Appeal File No.: C56961  
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL  
AND EASTERN CANADA, et al.

-and-

SINO-FOREST CORPORATION, et al.

Plaintiffs/Appellants

Defendants/Respondents

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**ORDER**

**KIM ORR BARRISTERS P.C.**

19 Mercer Street, 4<sup>th</sup> Floor  
Toronto, Ontario M5V 1H2

Michael C. Spencer (LSUC #59637F)  
Won J. Kim (LSUC #32918H)  
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Tel: (416) 596-1414  
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Lawyers for the Moving Parties (Appellants), 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.

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".

(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.



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., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Cannacord 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.

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

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 29<sup>th</sup> day of November, 2012  
*Chan Ching Yee*  
Chan Ching Yee  
Solicitor  
A Commissioner of Oaths  
Reed Smith  
Richards Butler  
20/F Alexandra House  
Hong Kong SAR

*W. Judson Martin*  
W. Judson Martin

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**

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF CHARLES M. WRIGHT



- 4 -

9. The Ernst & Young Settlement is also conditional on the approvals by courts in Ontario, Quebec and the United States and certain other conditions contained in the Minutes of Settlement, the Plan and the Sanction Order.

10. The draft settlement approval orders provide that the distribution of the net Settlement Amount<sup>1</sup> shall be made to the Securities Claimants.

#### **BACKGROUND OF THE ACTION**

11. Sino shares were publicly traded at all material times on the Toronto Stock Exchange (the "TSX"), on the Berlin exchange, on the over-the-counter market in the United States and on the Tradegate market. Sino shares also traded on alternative trading venues in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. During the period from March 19, 2007 through June 2, 2011, approximately 93.4% of the aggregate global volume of trade in Sino common shares took place in Canada (82.9% on the TSX and 10.5% on other trading venues in Canada).

12. Sino also issued and had various notes outstanding. These notes were offered to investors by way of offering memoranda, and were underwritten by various financial institutions who are defendants in the Ontario Action. In addition to those primary market offerings, these notes traded in the secondary market.

13. On June 2, 2011, Muddy Waters Research ("Muddy Waters") released a research report alleging fraud against Sino and alleging that it "massively exaggerates its assets." The release of this report was immediately followed by a dramatic decline in Sino's share price.

---

<sup>1</sup> The net Settlement Amount is the amount remaining from the Settlement Amount after payment of administration and notice costs, class counsel fees and expenses as approved by the Court and payment to Claims Funding International in accordance with the funding order of Justice Perell dated May 17, 2012, attached hereto as Exhibit "F."

- 12 -

defendants in the action, including Ernst & Young. The Ontario Plaintiffs agreed not to oppose this order on condition that (a) there was an order permitting a settlement approval hearing and certification hearing relating to a settlement with the defendant Pöyry (Beijing) Consulting Company Limited (described below); and (b) the defendants execute the second tolling agreement reflecting the delay caused by the Insolvency Proceeding. The stay of proceedings is currently extended through to February 1, 2013.

47. From the outset, it was apparent to counsel to the Ontario Plaintiffs that the Insolvency Proceeding presented a material risk to the Ontario Plaintiffs. Namely that in order to effect a restructuring that generated as much value as possible for Sino's creditors, there could be a plan of arrangement that had the effect of imposing an unfavourable settlement on the Ontario Plaintiffs.

48. Consequently, Class Counsel immediately entered into negotiations with other stakeholders in the Insolvency Proceeding, and took a number of steps to vigorously represent the interests of the purchasers of Sino's securities. The following were among Class Counsel's main objectives:

- (a) Reserving the Ontario Plaintiffs' rights to object to various features of the Insolvency Proceeding, so as to generate and/or preserve momentum for the Ontario Plaintiffs' claims and positions;
- (b) Ensuring that a Claims Process was established that identified the universe of stakeholders having an interest in the Insolvency Proceeding while ensuring the recognition of the totality of the representative claim advanced by the Ontario Plaintiffs;
- (c) Establishing a process for the mediation in the Insolvency Proceeding through which the positions of the various stakeholders would be defined; and

- 13 -

- (d) Obtaining access to information that would permit Class Counsel to make informed recommendations to the Ontario Plaintiffs and the court in connection with the terms of any Plan.

49. To further these objectives, Class Counsel took a number of steps in the Insolvency Proceeding, including the following:

- (a) Bringing or appearing in response to the following motions:
  - (i) March 30, 2012 – Attending at the initial application regarding *CCAA* protection and sales process for Sino and its subsidiaries, including a stay of proceedings against Sino, its subsidiaries and directors and officers;
  - (ii) April 13, 2012 – Attending at the Company’s motion regarding stay extension;
  - (iii) April 20, 2012 – Bringing a motion regarding advice and direction on the *CCAA* stay and its impact on the pending motions in the Ontario Action;
  - (iv) April 20, 2012 – Attending at the Company’s motion regarding expansion of the powers of the Monitor;
  - (v) May 8, 2012 – Attending and participating actively in the motion regarding a third party stay;
  - (vi) May 8, 2012 – Bringing a motion regarding Pöyry settlement leave;
  - (vii) May 14, 2012 – Attending and participating in a motion regarding Claims Procedure Order, including granting of leave to the Ontario Plaintiffs to file a Claim in respect of the substance of the matters set out in the Ontario Action on behalf of the proposed Class and the same leave to the Quebec Plaintiffs;
  - (viii) May 14, 2012 – Attending a motion brought by Contrarian, one of Sino’s noteholders;
  - (ix) May 17, 2012 – Bringing a motion in the Ontario Action regarding a third-party funding agreement;

- 14 -

- (x) May 17, 2012 – Bringing a motion in the Ontario Action regarding Pöyry settlement approval;
- (xi) May 31, 2012 – Attending at the Company’s motion regarding stay extension;
- (xii) June 26, 2012 – Attending at the Company’s motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;
- (xiii) July 25, 2012 – Precipitating and attending at a motion regarding mediation in the *CCAA* proceedings, which included an order that the Ontario Plaintiffs were a party to the mediation;
- (xiv) July 27, 2012 – Attending at the Company’s motion regarding the status of Shareholder Claims and Related Indemnity Claims under the *CCAA*;
- (xv) July 30, 2012 – Bringing a motion regarding document production and a data room;
- (xvi) August 31, 2012 – Attending at the Company’s motion regarding plan filing and meeting Order;
- (xvii) August 31, 2012 – Attending at the Company’s motion regarding adjournment of Ad Hoc Committee’s motion (regarding appointment of Representative Plaintiff and leave to vote on Plan of Compromise);
- (xviii) September 28, 2012 – Attending at the Company’s motion regarding stay extension;
- (xix) October 9, 2012 – Attending and participating in the Company’s motion regarding adjournment of the Ad Hoc Committee’s motion (regarding lifting of the stay against the Third Parties);
- (xx) October 9, 2012 – Attending at the Company’s motion regarding stay extension;
- (xxi) October 28, 2012 – Bringing a motion to limit the scope of stay to exclude to the Third Party Defendants and others;
- (xxii) October 29, 2012 – Attending at the Company’s motion regarding revised noteholder noticing process;

- 15 -

- (xxiii) November 13, 2012 – Attending an appeal regarding Equity Claims decision; and
  - (xxiv) November 23, 2012 – Attending at the Company's motion regarding stay extension;
  - (xxv) December 7, 2012 – Attending and participating in the motion to sanction the Plan;
- (b) almost from the inception of the Insolvency Proceeding, engaging in extensive and protracted negotiations with the Ad Hoc Noteholder Group and with Sino with respect to the terms of the Plan of Reorganization;
  - (c) bringing a motion early in the proceeding seeking various relief challenging the framework of the Insolvency Proceeding, such as the appointment of a receiver and providing for representation on behalf of the Class Members, and reserving all rights with respect to those issues throughout the Insolvency Proceeding;
  - (d) supporting a motion for an order increasing the powers of the Monitor to administer Sino which took away powers from entrenched management and the then-existing board, protecting the assets of the company for all stakeholders and ensuring greater transparency and balance in the proceeding;
  - (e) negotiating the claims procedure in the Insolvency Proceeding and obtaining the right to file a representative claim so as to protect the interests of the putative Class;
  - (f) obtaining a data room of confidential non-public documents from Sino, which related principally to the audits of Sino's financial statements so as to permit the Ontario Plaintiffs to negotiate with other stakeholders at the Mediation and respond to any plan of arrangement in an informed manner;
  - (g) examining all applicable insurance policies and indemnity agreements and assessed the capacity to pay of various defendants, including Ernst & Young;
  - (h) compelling the attendance of Sino's CEO at a cross-examination and testing his evidence in the Insolvency Proceeding;

- 16 -

- (i) engaging in multiple formal and informal, group and individual mediation and negotiation sessions with other stakeholders regarding the Class Members' claims, including a court-ordered, 2-day Mediation in September presided over by the Honourable Justice Newbould; and
- (j) bringing a motion, in response to the form of the restructuring plan initially filed with the court, which the Ontario Plaintiffs deemed to be contrary to their interests, challenging various features of the Plan, and seeking the right to vote on the Plan, and expressly reserving all of the Ontario Plaintiffs' rights in connection with that motion pending the presentation of the plan for sanction by the court, to ensure that the plan was in the best interests of the Class Members.

#### **SETTLEMENT WITH PÖYRY (BEIJING)**

50. The Ontario Plaintiffs engaged in settlement discussions with Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), a defendant in these proceedings, starting in January 2012. Following arm's-length negotiations, the Ontario Plaintiffs entered into a settlement with Pöyry (Beijing) in March 2012. In connection with the motion for court approval of the Pöyry settlement agreement, a notice was disseminated in the form marked and attached hereto as **Exhibit "X."** No one, including any potential Class Member, objected to the settlement with Pöyry (Beijing) at the motion to approve the settlement.

51. On September 25, 2012, this action was certified as a class proceeding as against Pöyry (Beijing) for the purposes of settlement and the Pöyry settlement was approved between the Class (as defined) and Pöyry (Beijing). A copy of the certification and settlement approval order is attached hereto as **Exhibit "Y."**

52. Notice of the certification and Pöyry settlement has been given in accordance with the order of the Honourable Justice Perell, dated September 25, 2012. A copy of this notice is marked and attached hereto as **Exhibit "Z."**

122. Based on our assessment of the Audit Analytics document and other information available in the public domain, the Settlement Amount ranks as the fifth largest settlement paid by an auditing firm worldwide in a securities class action.

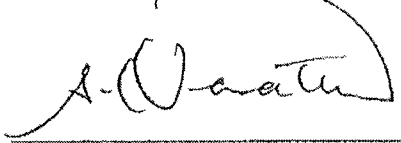
123. The other class action settlements were: i) the \$335 million payment to Cendant shareholders in December 1999; ii) the \$225 million payment to Tyco shareholders in November 2007; iii) the \$210 million payment to Adelpia shareholders in August 2007; and iv) the \$125 million payment to Rite Aid shareholders in March 2003.

124. The remaining settlements on the Audit Analytics list that rank above the Ernst & Young settlement relate to payments made by auditing firms to government regulators or the auditors' clients, or relate to non-securities litigation.

**CONCLUSION**

125. In light of all of the above considerations, it is Class Counsel's opinion that the Ernst & Young Settlement and Settlement Amount are fair and reasonable to the Class. Class Counsel have no hesitation in recommending to the Court that it approve this settlement.

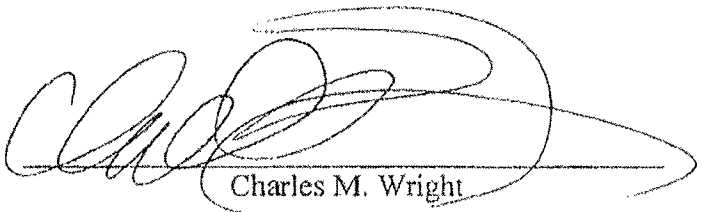
SWORN before me at the City of )  
Toronto, in the Province of Ontario, )  
this 10<sup>th</sup> day of January, 2013. )



A Commissioner, etc. )

LSUC # 62311 B )

S. Sajjad Nematollahi

  
Charles M. Wright

The Trustees of the Labourers' Pension Fund  
of Central and Eastern Canada, et al.  
Plaintiffs

and

Sino-Forest Corporation, et al.  
Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at Toronto

**AFFIDAVIT OF CHARLES M. WRIGHT**

**KOSKIE MINSKY LLP**  
900-20 Queen Street West  
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**Jonathan Bida (LSUC#: 54211D)**

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Fax: 416.204.2907

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

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

Tel: 519.660.7844

Fax: 519.660.7845

Lawyers for the Plaintiffs



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR  
ARRANGEMENT OF SINO-FOREST CORPORATION

Applicant:

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

AFFIDAVIT OF W. JUDSON MARTIN  
(Sworn January 11, 2013)

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 ("Sino-Forest" or the "Applicant"). 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.

2. This affidavit is made in support of a motion brought by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the representative plaintiffs in the Ontario Class Action (collectively, the "Ontario Plaintiffs"), for approval of a settlement (the "Ernst & Young Settlement"), as further defined in the Plan of Compromise and Reorganization of Sino-Forest dated December 3, 2012 (the "Plan"), with Ernst & Young LLP and the release of claims

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Young, it could and likely would have continued to assert all appeal and other rights in respect of the Equity Claims Decision and in respect of the Sanction Order.

19. The Ernst & Young Settlement provides significant benefit to these CCAA Proceedings:

(a) Ernst & Young agreed to support the Plan, including the Plan provisions that deal with the Ernst & Young Settlement;

(b) Ernst & Young's support simplified and accelerated the Plan process:

(i) Ernst & Young agreed that its claims against Sino-Forest and the Sino-Forest Subsidiaries are released, which claims were significant as stated above;

(ii) The proofs of claim filed by Ernst & Young in these proceedings set out extensive claims that could be asserted directly against the Sino-Forest Subsidiaries. Components of those claims were not expressly addressed in the Equity Claims Decision made by this Court;

(iii) Ernst & Young agreed not to seek leave to appeal to the Supreme Court of Canada in respect of the dismissal by the Court of Appeal for Ontario of Ernst & Young's appeal of the Equity Claims Decision;

(iv) By agreeing to release all of its claims, Ernst & Young has eliminated:

a. The expense and management time otherwise to be incurred in litigating its claims;

b. Dilution of the recovery by other creditors if Ernst & Young's

-7-

claims were ultimately resolved in its favour and not subordinated;  
and

- c. Potentially extending the timelines to complete the restructuring of Sino-Forest;
- (e) Ernst & Young has agreed not to receive any distributions of any kind under the Plan in respect of Noteholder Class Action Claims, as have the other Third Party Defendants. Without that agreement, the Unresolved Claims Reserve would have materially increased, with the potential for a corresponding dilution of consideration paid to the Affected Creditors; and
- (d) Although the allocation of the settlement funds has yet to be determined, any portion allocated to the equity holders of Sino-Forest will significantly increase the recovery to a class of stakeholders that would not otherwise receive any amount under the Plan.

20. Sino-Forest, the only Applicant in the CCAA Proceeding, is a holding company and its only material assets are the shares of the Sino-Forest Subsidiaries. The release of claims by Ernst & Young assisted in allowing the Sino-Forest Subsidiaries to contribute, unencumbered by claims totalling billions of dollars, their assets to the overall restructuring.

21. For these reasons among others, I believe that the Ernst & Young Settlement contributed in a significant and positive way to the timeliness of the Sanction Order, and ultimately to the implementation of the Plan.

22. I understand that the terms of the Ernst & Young Settlement include the provision of a release in favour of Ernst & Young in respect of all claims related to Sino-Forest. The Plan (as

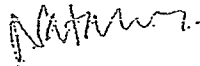
-8-

sanctioned) already includes third party releases in respect of other non-Applicant entities and individuals who have made material contributions to the success of the restructuring, including present and former directors and officers, and the Sino-Forest Subsidiaries.

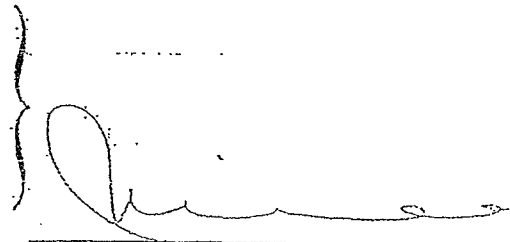
23. The Plan provides for the mechanics and framework for other third party settlements, should those occur in the future. The inclusion of these provisions in the Plan facilitated the support of the Plan by the Underwriters and withdrawal of objections to the Plan by BDO. From the course of the negotiations over the relevant period I believe that the Ernst & Young Settlement was a catalyst to those other parties withdrawing their objections to the Plan. Ultimately, except for the group of securities holders now opposing the Ernst & Young Settlement, the Plan was approved without opposition.

24. In conclusion, for the reasons described above, the Applicant believes that the Ernst & Young Settlement represented a significant contribution to the Plan and to a successful restructuring, and the Applicant supports the motion for approval of the Ernst & Young Settlement.

SWORN BEFORE ME at the City of Hong  
Kong, Special Administrative Region,  
People's Republic of China this     day of  
January, 2013



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



W. JUDSON MARTIN

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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

SINO-FOREST CORPORATION

Plaintiffs

ERNST & YOUNG LLP, et al

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

Defendants

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF W. JUDSON MARTIN, SWORN THIS  
11<sup>TH</sup> DAY OF JANUARY, 2013.

BENNETT JONES LLP  
3400 One First Canadian Place  
PO Box 130  
Toronto, ON M5X 1A4

Robert W. Staley (LSUC #27115J)  
Kevin Zych (LSUC #33129T)  
Raj Sahni (LSUC #42942U)  
Derek J. Bell (LSUC #424320J)  
Jonathan Bell (LSUC #53457P)

Tel: 416-863-2200  
Fax: 416-863-1716  
Lawyers for the Applicant

This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Invesco Canada Ltd. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: INVESCO CANADA LTD. First Name:

Current Address:  
5140 YONGE STREET  
SUITE 800

City: TORONTO Prov./State: ON Postal Code/Zip Code: M2N 6X7

Social Insurance Number/Social Security Number/Unique Tax Identifier:  
N/A

Telephone Number (Work): 416-228-3670 Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 4499385

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: [Handwritten Signature] Date Signed: Jan. 11, 2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3



This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by Comité Syndical National de Retraite Bâtirente Inc. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: COMITE SYNDICAL NATIONAL DE  
 First Name:  
 Current Address: RETRAITE BATIRENTE INC.  
 203-2175 BOUL DE MAISONNEUVE E  
 City: MONTREAL Prov./State: QC Postal Code/Zip Code: H2K 4S3  
 Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A  
 Telephone Number (Work): 514-525-5065 Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 87250

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

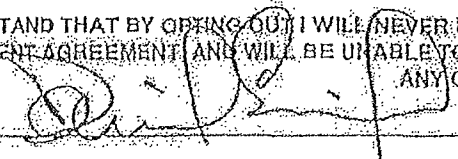
Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

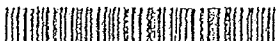
- My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.
- I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: 

Date Signed: 01/11/2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3



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

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTAL AFFIDAVIT OF CHARLES M. WRIGHT**



**OPT OUTS IN THE ONTARIO ACTION AND OBJECTIONS TO THE PROPOSED ERNST & YOUNG SETTLEMENT**

11. This Court fixed January 18, 2013 as the date by which eligible persons had to file objections to the proposed Ernst & Young Settlement. By that deadline, 86 persons or entities submitted valid Notices of Objection to the proposed Ernst & Young Settlement, including the six Objectors. Excluding the six Objectors, five of the valid objections were filed by institutional investors and corporate entities.

12. I am advised by Michael G. Robb, Serge Kalloghlian and Sajjad Nematollahi of Siskinds LLP and Jonathan Bida and Garth Myers of Koskie Minsky LLP, that they have had discussions regarding the proposed settlement with 26 of the persons and entities who filed objections to the settlement for the purpose of inquiring into their reasons for objecting and explaining to them the basis of the settlement.

13. I am further advised by Messrs. Robb, Kalloghlian, Nematollahi, Bida and Myers that 23 of such objectors have since withdrawn their objections, including all five of the institutional investors and corporate entities referenced in the last sentence of paragraph 11 above. Certain of those objectors indicated that they misunderstood the Notice of Objection and did not in fact intend to object. Others withdrew their objections after the basis of the proposed Ernst & Young Settlement was explained to them. In any event, no institutions other than the Objectors continue to object to the Ernst & Young Settlement.

14. Attached hereto as Exhibit "O" is a chart (a) identifying each objector who filed an objection and who has not withdrawn his, her or its objection as of the time I have sworn this affidavit, and (b) setting forth a short summary of the reasons he, she or it provided for objecting to the settlement. As appears from the attached chart, 10 of those objectors have given no reason for their objection.

15. If more of those objectors withdraw their objections before the hearing of the within motion, Class Counsel will file with the Court a further affidavit identifying those objectors.

16. The courts in the Ontario and Quebec Actions fixed January 15, 2013 as the date by which persons wishing to opt out of the actions had to file Opt-Out Forms. By that deadline, 7 individuals and 8 institutional investors had submitted Opt-Out Forms deemed valid by the administrator. Six of the institutions who filed Opt-Out Forms on or before the deadline were the Objectors.

17. I am advised by Kurt Elgie, of NPT RicePoint that 3 of the persons and entities who timely filed valid Opt-Out Forms have since withdrawn their Opt-Out Forms.

18. Attached hereto as **Exhibit "P"** is a chart (a) identifying each person and entity who filed on or before the applicable deadline an Opt-Out Form deemed valid by the administrator, and who has not withdrawn that Opt-Out Form as of the time I have sworn this affidavit, and (b) setting forth a short summary of the reasons he, she or it provided for opting out of the Ontario Action or Quebec Action.

19. If additional persons or entities withdraw their Opt-Out Forms before the hearing of the within motion, Class Counsel will file a further affidavit identifying those persons and entities.

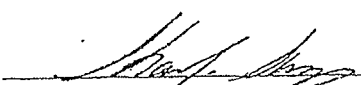
20. On April 18, 2012, the current CEO of Sino, Judson Martin, swore an affidavit in the above-captioned CCAA proceeding in which he stated, at para. 22 that, as of April 29, 2011, Sino had 34,177 beneficial shareholders. A copy of that affidavit is attached as **Exhibit "Q"**.

**INITIAL VERSION OF SINO'S PLAN OF ARRANGEMENT (THE "PLAN")**

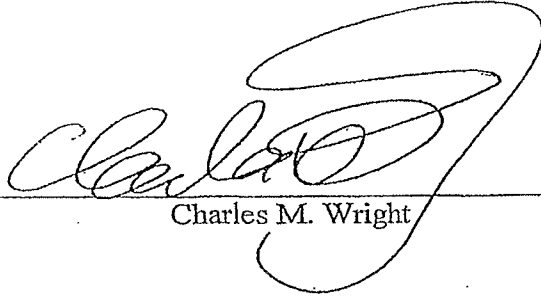
21. Attached hereto as **Exhibit "R"** is the initial, August 14, 2012 version of the Plan, as filed with the Court by Sino. Prior to August 14, 2012, we were provided earlier versions of the

Plan on a without prejudice and confidential basis and sought to negotiate various revisions to those versions of the Plan in order to protect the class' interests.

SWORN before me at the City of )  
London, in the Province of Ontario, )  
this 23<sup>rd</sup> day of January, 2013. )

  
A Commissioner, etc. )

SHARLA JOAN STROOP, a Commissioner, etc.,  
Provincia of Ontario. for Siskinds<sup>LLP</sup>  
Barristers and Sollicitors. Expires: October 6, 2015 )

  
Charles M. Wright

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

Plaintiffs

and

Sino-Forest Corporation, et al.

Defendants

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at Toronto

SUPPLEMENTAL AFFIDAVIT OF  
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Lawyers for the Plaintiffs

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

**Sino-Forest Corporation**

**FIFTEENTH REPORT OF THE MONITOR**

January 28, 2013

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**

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 MURRY, 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

**FIFTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

(“Kim Orr”). To date, Kim Orr has not perfected its leave motion nor has leave been granted by the Ontario Court of Appeal.

(m) On December 21, 2012, the Court granted an Order approving the notice process for the approval of the Ernst & Young Settlement.

13. As of the date of this Fifteenth Report, the Company is continuing to work towards the implementation of the Plan, the details of which are discussed in more detail below.

### **THE CLAIMS PROCESS, MEDIATION AND PARTICIPATION OF THE CLASS ACTION PLAINTIFFS IN THE CCAA PROCEEDINGS**

#### *Claims, the Class Actions and the Mediation*

14. From the outset of the CCAA Proceedings, it was apparent that addressing the contingent claims against the Company (and related claims against the Sino-Forest Subsidiaries) would be important given the extent of the litigation against the Company and resulting indemnification claims from others named in the Class Actions. To further that process, on May 14, 2012, the Company obtained the Claims Procedure Order,<sup>2</sup> which provided for the calling of claims against the Company, its directors and officers and its subsidiaries. The call for Claims included a call for “equity claims”. Claims (other than Restructuring Claims) and D&O Claims (as such terms are defined in the Claims Procedure Order) were to be filed prior to June 20, 2012 (the “Claims Bar Date”). Any Claim not filed by the Claims Bar Date is now forever barred.

15. In developing the terms of the Claims Procedure Order, the Company and the Monitor were both cognizant of the relatively unique nature of the claims that were anticipated to be asserted in the claims process. As set out above, as a holding company, unlike many CCAA debtors, the Company does not have many, if any, trade creditors. Instead, aside from the claims in respect of the Notes, it was anticipated that most or all of the remaining claims filed would be in connection with the Class Actions either directly by

<sup>2</sup> See Appendix F for a copy of the Claims Procedure Order.

the plaintiffs in the Class Actions or by way of indemnity claims from the Third Party Defendants.

16. In that regard, the Company and the Monitor had extensive discussions with class action counsel for the Ontario Class Action Plaintiffs and the Quebec Class Action Plaintiffs (collectively, the “**Canadian Plaintiffs**”) (among others) as to certain terms of the Claims Procedure Order. Ultimately, numerous changes were made to the Claims Procedure Order that was proposed to the Court including paragraphs ordering that the Canadian Plaintiffs were entitled to file representative Proofs of Claim and D&O Proofs of Claim (as both terms are defined in the Claims Procedure Order) in respect of the substance of the Ontario Class Action and the Quebec Class Action, respectively (collectively, the “**Canadian Class Actions**”).<sup>3</sup>
17. On June 26, 2012, the Company brought a motion seeking a direction that Claims by the plaintiffs in the Class Actions in respect of the purchase of securities<sup>4</sup> and resulting indemnification claims by the Third Party Defendants constituted “equity claims” pursuant to section 2(1) of the CCAA. The motion was opposed by Ernst & Young, BDO and the Underwriters. The motion was not opposed by the Canadian Plaintiffs who conceded that their Class Action claims in respect of the purchase of securities were “equity claims”.<sup>5</sup>
18. On July 27, 2012, the Court issued its decision determining that such claims did constitute “equity claims” under section 2(1) of the CCAA (the “**Equity Claims Decision**”). The Equity Claims Decision was appealed by Ernst & Young, BDO and the Underwriters. The appeal was heard by the Ontario Court of Appeal on November 13, 2012. On November 23, 2012, the Ontario Court of Appeal issued its reasons and dismissed the appeal. The Equity Claims Decision was not appealed to the Supreme Court of Canada.

<sup>3</sup> See paragraphs 27 and 28 of the Claims Procedure Order.

<sup>4</sup> The motion did not deal with claims in respect of the purchase of debt securities.

<sup>5</sup> Kim Orr did not appear at or in any way oppose the motion on the Equity Claims Decision.



19. Early in the CCAA Proceedings, it became apparent to the Monitor that the nature, complexity and number of parties involved in the litigation claims surrounding the Company had the potential to cause extensive delay and additional costs in the CCAA Proceedings. As such, it was the view of the Monitor (with the agreement of the Company) that there was merit in a global resolution of not only the Class Action Claims against the Company, but also against the other defendants named in the Class Actions other than Pöyry Beijing (the “**Third Party Defendants**”).<sup>6</sup>
20. On July 25, 2012 the Court granted an order (the “**Mediation Order**”), directing a mediation (the “**Mediation**”) of the class action claims against the Company and the Third Party Defendants.<sup>7</sup> The parties directed to participate in the mediation were the Company, the Canadian Plaintiffs, the Third Party Defendants, the Monitor, the Initial Consenting Noteholders and relevant insurers. The Monitor is aware and believes that the parties took the Mediation seriously and relied on the ability of those in attendance to bind their respective constituents as was required by the Mediation Order. The Mediation was conducted on September 4 and 5, 2012. No settlements were reached during the Mediation.
21. Although no settlements were reached during the Mediation, the Monitor was aware that many of the Third Party Defendants remained focused on determining whether a resolution within the CCAA Proceedings was possible. Specifically, the Monitor notes the description of the ongoing settlement discussions between the Canadian Plaintiffs and Ernst & Young in the affidavit of Charles Wright sworn January 10, 2013 (the “**Wright Affidavit**”), which ultimately resulted in the Ernst & Young Settlement.

<sup>6</sup> The Third Party Defendants are: EY, BDO, the Underwriters, Allen Chan, Judson Martin, Kai Kit Poon, David Horsley, William Ardell, James Bowland, James Hyde, Edmund Mak, Simon Murray, Peter Wang and Garry West.

<sup>7</sup> See Appendix G for a copy of the Mediation Order.

of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

38. The Monitor participated in the development of the Plan as a whole and is of the view that it is clearly reflected in the Court's endorsement that the Plan, as a whole, be approved.

*The E&Y Notice Order*

39. The parties took the view that this Court was the appropriate court for hearing the motion to approve the Ernst & Young Settlement. Upon direction from the Regional Senior Justice on December 13, 2012, it was determined that the Court would hear the motion for approval of the Ernst & Young Settlement. On December 21, 2012, the Court granted an order (the "E&Y Notice Order") approving the notice process regarding the approval of the Ernst & Young Settlement and scheduled the motion date for the Ernst & Young Settlement Motion to be February 4, 2013.<sup>21</sup>
40. The E&Y Notice Order set out the required methods for providing notice of the Ernst & Young Settlement as well as an objection process pursuant to which any person wishing to object to the approval of the Ernst & Young Settlement at the Ernst & Young Settlement Motion was required to file a notice of objection in the prescribed form on or prior to January 18, 2013. The Monitor was also required to attach all objections received to a report to court.
41. The Monitor has filed its Fourteenth Report that contained all Notices of Objections or other correspondence expressing objections received up to the date of the Fourteenth Report. The Monitor has or will provide any further Notices of Objection or other correspondence expressing objections in further supplements to the Fourteenth Report.

*The Benefits of Ernst & Young Settlement to the Company and the CCAA Proceedings*

<sup>21</sup> See Appendix N for a copy of the E&Y Notice Order.

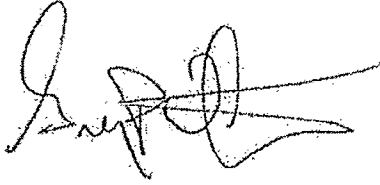
42. Although the Ernst & Young Settlement resolves class action litigation claims against Ernst & Young, the settlement was reached in the context of the Company's CCAA Proceedings and has provided a benefit to the Company, the Plan and the CCAA Proceedings for the following reasons. In particular:
- (a) It eliminated the chance that Ernst & Young would seek leave to appeal the Equity Claims Decision to the Supreme Court of Canada which might have been costly and time consuming;
  - (b) Given that the Equity Claims Decision did not address the entirety of Ernst & Young's indemnity claims, the settlement results in the elimination of further litigation relating to the acceptance, disallowance or revision of the Claim and D&O Claim filed by Ernst & Young, which litigation could have been extensive, lengthy and costly;
  - (c) Ernst & Young has agreed to forego any distributions under the Plan which; and
  - (d) It eliminated the possibility that Ernst & Young would vote against the Plan, object to the Sanction Hearing and appeal the Sanction Order which could have caused delay in implementing the Plan and result in significant additional cost to the estate.
43. Further, the Monitor has consistently recognized the potential benefit of settlement within the CCAA Proceedings of the litigation claims surrounding the Company, including those against the Third Party Defendants. This view was evident not only in the Monitor's Reports but also through the Monitor's support of the Third Party Stay Motion as well as the bringing of the motion for Mediation. The Monitor has, throughout, encouraged the settlement of these claims within the CCAA framework which, in the Monitor's view, provides for an efficient legal regime through which such settlements may be effected.
44. The Monitor has also consistently expressed its views regarding urgency in the CCAA Proceedings and is of the view that the Ernst & Young Settlement has assisted in eliminating a potential delay in the implementation of the Plan.

**MONITOR'S RECOMMENDATION**

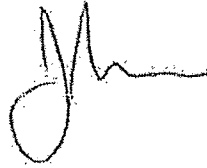
45. For the reasons set out above, the Monitor recommends approval of the Ernst & Young Settlement including the granting of the proposed release as set out in Articles 7 and 11 of the Plan.

Dated this 28<sup>th</sup> day of January, 2013.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Sino-Forest Corporation, and not in its personal capacity



Greg Watson  
Senior Managing Director



Jodi Porepa  
Managing Director

INVESCO CANADA LTD. et al  
Applicants (Moving Parties/Appellants)

-and- SINO-FOREST CORPORATION et al.  
Respondents (Respondents)

S.C.C. Court File No.: 35541

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

**RESPONSE TO APPLICATION**  
**FOR LEAVE TO APPEAL**

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