

**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**

Applicant

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

**WRITTEN SUBMISSIONS OF ERNST & YOUNG LLP  
(Motion for Sanction Order returnable December 7 and 10, 2012)**

December 6, 2012

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: [pgriffin@litigate.com](mailto:pgriffin@litigate.com)

**Peter J. Osborne (33420C)**

Tel: (416) 865-3094

Fax: (416) 865-3974

Email: [posborne@litigate.com](mailto:posborne@litigate.com)

**Shara N. Roy (49950H)**

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: [sroy@litigate.com](mailto:sroy@litigate.com)

Lawyers for Ernst & Young LLP

**TO: ATTACHED SERVICE LIST**

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SUPERIOR COURT OF JUSTICE  
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(Motion for Sanction Order returnable December 7 and 10, 2012)**

**OVERVIEW**

1. Ernst & Young LLP (“E&Y”) supports the Order sanctioning the Plan of Compromise and Reorganization (as amended) (the “Plan”) approved at the meeting of creditors of Sino-Forest Corporation on December 3, 2012.
2. The Plan was a result of a complex negotiation, of which the settlement of the class action claims against E&Y (the “Ernst & Young Settlement”) played an integral part.
3. The Ernst & Young Settlement involves:
  - (a) A substantial contribution to resolving the claims of the class action plaintiffs; and

- (b) A substantial contribution to the completion of the restructuring, given the elimination of claims of E&Y against Sino-Forest Corporation (“SFC”) and its subsidiaries, and their respective directors and officers.

## BACKGROUND

4. During the periods relevant to the class action proceedings, E&Y was retained as Sino-Forest’s auditor – from 2007 until it resigned on April 4, 2012.

**Reference** Affidavit of W. Judson Martin sworn April 23, 2012 (“April 23 Martin Affidavit”), Motion Record of Sino-Forest Corporation returnable May 8, 2012, at para. 13, Tab 2

5. 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 March 30, 2012, at para, 114 (“March 30 Martin Affidavit”) attached as Exhibit A to Affidavit of W. Judson Martin sworn April 23, 2012, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2

6. E&Y was served with a multitude of class action claims in numerous jurisdictions including Ontario and Quebec. E&Y was also served with a claim in New York State, which has been transferred to the United States New York Southern District Court. In Ontario alone, E&Y was served with four competing proposed class actions. Following a carriage motion, Siskinds LLP and Koskie Minsky LLP were awarded carriage and a number of proposed representative plaintiffs were absorbed into what is now the Ontario Class Action. Justice Perell issued reasons citing why he had included some representative plaintiffs, but not others in the combined action.

**Reference** April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012 at paras. 7-8, Tab 2

7. The plaintiffs in the Ontario Class Action claim damages in the aggregate, and 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), R.S.O. 1990, c.S-5 and at common law, in negligence and negligent misrepresentation. There is no claim against E&Y for fraud. The central claim is that Sino-Forest 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 in particular that E&Y's audit did not comply with Canadian generally accepted auditing standards. Similar claims are advanced in the Quebec and U.S. actions, (together with the Ontario Class Action, the "Class Actions").

**Reference** Schedule "A2" to Exhibit A to the Affidavit of Christina Shiels sworn June 21, 2012 ("June 21 Shiels Affidavit"), Motion Record of E&Y returnable June 26, 2012, paras 11-13, Tab 1

8. On March 30, 2012, this Honourable Court granted the Initial Order, which stayed the proceedings (the "Stay"). On May 8, 2012 this Court ordered, on consent of the parties, that the Stay extend to the third party defendants to the Ontario Class Action, including E&Y (the "Third Party Stay Order"). The Stay as extended currently expires on December 10, 2012.

**Reference** April 23 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable May 8, 2012, Tab 2, at para. 5

Affidavit of W. Judson Martin sworn May 2, 2012, ("May 2 Martin Affidavit"), Motion Record of Sino-Forest Corporation returnable May 8, 2012, at paras. 4-6, Tab 2

October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 4-5, Tab 2

9. On May 14, 2012, this Court granted the Claims Procedural Order, which provided the process by which creditors of SFC, SFC subsidiaries and their directors and officers could

submit claims to the Monitor. At paragraphs 27 and 28 of the Claims Procedural Order, the Ontario plaintiffs and the Quebec plaintiffs were given authorization to file a single Proof of Claim on behalf of members of the Class. Reference Claims Procedural Order dated May 14, 2012.

10. E&Y filed Proofs of Claim with the Monitor in accordance with the claims procedure process setting out its claims for contribution and indemnity from Sino-Forest, its directors and officers and subsidiaries. E&Y has contractual claims of indemnification against Sino-Forest and its subsidiaries for all relevant years, in respect of work done in connection with its annual audits as well as related to prospectus and note offerings. E&Y also has statutory and common law claims of contribution and/or indemnity against Sino-Forest and its subsidiaries for all relevant years.

**Reference** April 23 Martin Affidavit at paras. 13-15, Exhibits H and I, Motion Record of Sino-Forest Corporation, Tabs, 2 2-H, 2-I

Exhibits A-J to the Affidavit of Christina Shiels sworn April 24, 2012, Motion Record of E&Y returnable May 8, 2012, Tabs 1A-J

Schedule "A2" to Exhibit A to June 21 Shiels Affidavit, Motion Record of E&Y returnable June 26, 2012, Tab 1

11. On July 25, 2012, on a motion made by the Class Action Plaintiffs, this Court ordered that the parties, including the Applicant, the Class Action Plaintiffs, the Ad Hoc Committee of Noteholders, the Monitor, the Third Party Defendants (including E&Y) and any insurers (the "Mediation Parties), participate in a mediation process (the "Mediation Order").

**Reference** October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, at paras. 1, 24-27, Exhibits I and J, Tab 2.

12. The Mediation ordered for September 4, 5 and 10, 2012 was unsuccessful, however, further efforts at settlement discussions pursued by E&Y led to Minutes of Settlement entered into on November 29, 2012.

**Reference** Minutes of Settlement dated November 29, 2012 at Schedule "A".

October 3 Martin Affidavit, Motion Record of Sino-Forest Corporation returnable October 9 and 10, 2012, para. 24

### **THE ERNST & YOUNG SETTLEMENT**

13. The Ernst & Young Settlement provides for the payment of \$117,000,000.00 as a Settlement Fund as the full monetary contribution by E&Y to settlement of the claims, it being the intention of the parties that the settlement be approved and implemented in these CCAA proceedings.

**Reference** Minutes of Settlement dated November 29, 2012 at Schedule "A".

14. The Ernst & Young Settlement is conditional upon the terms set out in the Minutes of Settlement and Schedule "B" thereto, including a global release in these CCAA proceedings and a Chapter 15 proceeding to be brought in the United States Bankruptcy Court. Ernst & Young Settlement is also conditional upon the following steps, as set out at Article 11.1 of the Plan:

- (a) the granting of the Sanction Order, sanctioning the Plan including the terms of the Ernst & Young Settlement;
- (b) the issuance of the Settlement Trust Order;
- (c) any other orders necessary to give effect to the Ernst & Young Settlement;

- (d) the fulfillment of all conditions precedent in the Ernst & Young Settlement; and
- (e) all orders being final orders and not subject to further appeal or challenge.

**Reference** Minutes of Settlement dated November 29, 2012 at Schedule "A".


- 15. The Ernst & Young Settlement is the largest auditor settlement in Canadian history.
- 16. The Plan, with the Ernst & Young Settlement and the Ernst & Young Release contained therein, has been approved by an overwhelming majority of SFC's creditors, as set out in the Supplement to the Thirteenth Report of the Monitor.
- 17. The Ernst & Young Settlement provides significant benefit to these proceedings:
  - (a) E&Y has agreed to support the Plan, which includes the elements of the Ernst & Young Settlement and the Ernst & Young Release therein, at Article 11.1 and elsewhere;
  - (b) E&Y's support has materially simplified the Plan process and this Sanction Hearing:
    - (i) E&Y has agreed that its claims against SFC and the SFC Subsidiaries are released, which claims were significant and material;
    - (ii) The proof of claim filed by E&Y in these proceedings sets out extensive claims that could be asserted directly against the SFC Subsidiaries. None of these claims were addressed in the Equity Claims Order;

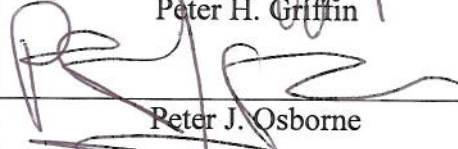



- (iii) E&Y has agreed to waive any leave to appeal to the Supreme Court of Canada in respect of the dismissal by the Court of Appeal for Ontario of the Equity Claims Order;
- (iv) By agreeing to release all these claims, E&Y has eliminated:
  - (1) The expense and management time otherwise to be incurred by Newco and the Subsidiaries in litigating these claims;
  - (2) Dilution of the noteholders' recovery if E&Y were ultimately to obtain judgments or settlements in respect of those claims; and
  - (3) Potentially extended the timelines to complete the restructuring of SFC;
- (c) E&Y 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 SFC will significantly increase the recovery to a class of stakeholders that would not otherwise receive any amount under the Plan.

18. Approval of the Ernst & Young Settlement is not before this Honourable Court on the approval of the Sanction Order, but the structure to permit its completion is part of the Plan. The Ernst & Young Settlement, including the final resolution of its claims against SFC, its subsidiaries and the directors and officers, was integral to the Plan and to approval by an overwhelming majority of SFC's creditors, necessary for today's motion for approval.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of December, 2012.

  
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Peter H. Griffin

  
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Peter J. Osborne

  
\_\_\_\_\_  
Shara N. Roy

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Fax: (416) 865-3558

Peter J. Osborne (33420C)

Tel: (416) 865-3094

Fax: (416) 865-3974

Shara N. Roy (49950H)

Tel: (416) 865-2942

Fax: (416) 865-3973

Lawyers for Ernst & Young LLP

**SCHEDULE "A"**

**IN THE MATTER OF  
SINO-FOREST CORPORATION**

BETWEEN:

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada,  
The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for  
Operating Engineers in Ontario, Sjunde AP-Fonden, David Grant, Robert Wong, Guining Liu,  
and any other proposed representative plaintiffs in Ontario Superior Court Action No. CV-11-  
431153-00CP and in Quebec Superior Court No. 200-06-000132-111,

in their personal and proposed representative capacities (the "Plaintiffs")

-and-

Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms  
thereof ("EY", together with the Plaintiffs the "Parties")

**MINUTES OF SETTLEMENT**

1. These Minutes of Settlement represent the agreement between the Plaintiffs and EY reached on November 28, 2012 to resolve in accordance with the terms more particularly set out herein the actions, causes of action, claims and/or demands, on all counts howsoever arising and in all jurisdictions, made against EY or which could have been made concerning any claims related to Sino-Forest Corporation and its affiliates and subsidiaries, whether or not captured by the "Class" or the "Class Period", as variously defined, including the actions (the "Actions") listed on Schedule "A" hereto (the "Claims");
2. The terms of these Minutes of Settlement are binding on the Parties;
3. These Minutes of Settlement are and shall remain confidential, and neither party shall publicly disclose or include in a court filing the terms hereof without the prior written consent of the other;
4. EY makes no admissions of liability and waives no defences available to it with respect to the Claims or otherwise;
5. A settlement amount of CDN \$117,000,000 (the "Settlement Fund") shall be paid by EY in accordance with the applicable orders of the courts (Ontario Superior Court of Justice, Ontario Superior Court of Justice Commercial List (supervising CCAA judge), Province of Quebec Superior Court, United States District Court and the United States Bankruptcy Court) ("Courts") on the Effective Date (save for any amounts payable in advance of the Effective Date as set out in paragraph 7), being the date that all requisite approvals and orders are obtained from the Courts and are final and non-appealable;



6. The Settlement Fund represents the full monetary contribution or payment of any kind to be made by EY in settlement of the Claims, inclusive of claims, costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes which may be payable in respect of this settlement), any payments to Claims Funding International, all costs associated with the distribution of benefits, all costs of any necessary notice, all costs associated with the administration of the settlement and any other monetary costs or amounts associated with the settlement or otherwise;
7. No payment of the Settlement Fund shall be made by EY until all conditions herein and set out in Schedule B hereto have been met. However, with respect to notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, the Plaintiffs will incur and pay such costs up to \$200,000 (the "Initial Plaintiffs Costs"), which costs are to be immediately reimbursed from the Settlement Fund after the Effective Date. EY will incur and pay such notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, over and above the Initial Plaintiffs Costs up to a further \$200,000 (the "Initial EY Costs"). The Initial EY Costs shall be deducted from the amount of the Settlement Fund payable to the Plaintiffs. Should any costs in excess of the cumulative amount of the Initial Plaintiffs Costs and the Initial EY Costs, being a total of \$400,000, in respect of notice and administration be incurred prior to the Effective Date, as a result of an Order of the Court, such amounts are to be borne equally between the Plaintiffs and EY, which amounts are to be reimbursed or deducted as the case may be from the Settlement Fund, on the terms set out above in this section. Should the settlement not proceed, the Parties shall bear their respective costs paid to that time;
8. No further proceedings shall be commenced or continued by the Plaintiffs or their counsel against EY in respect of any Claims, other than as necessary to complete the settlement herein;
9. The Plaintiffs agree not to claim from the non-settling defendants in the Actions, that portion of any damages that corresponds to the proportionate share of liability of EY, proven at trial or otherwise, such that EY is not further exposed to the Claims;
10. It is the intention of the Parties that this settlement shall be approved and implemented in the Sino-Forest Corporation CCAA proceedings. The settlement shall be conditional upon full and final releases and claims bar orders in favour of EY and which satisfy and extinguish all Claims against EY, and without opt-outs, and as contemplated by the additional terms attached hereto as Schedule B hereto and incorporated as part of these Minutes of Settlement;
11. This settlement is conditional upon obtaining appropriate orders from the Ontario Superior Court of Justice Commercial List (supervising CCAA judge) and the United States Bankruptcy Court that provide that the payment of the Settlement Fund is in full satisfaction of any and all claims that could be brought in connection with the claims of any security holder or creditor of Sino-Forest Corporation, including claims over for contribution and indemnity or otherwise, howsoever arising in Canada and the United States;

*h*

12. The releases in the Sino-Forest Corporation CCAA proceedings shall include Ernst & Young LLP (Canada) and Ernst & Young Global Limited and all member firms thereof, and all present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each, but does not include any non-settling defendants in the Actions or their respective present or former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers or successors, administrators, heirs and assigns of each in their capacity as officers or directors of Sino-Forest Corporation ("EY Global"). The releases to be provided to EY by the Plaintiffs shall include EY Global and will release all Claims of the Plaintiffs' counsels' clients in all jurisdictions;
13. It is the intention of the Parties that the Settlement Fund shall be distributed in a claims process satisfactory to the CCAA Court, with a prior claims bar order;
14. The Parties shall use all reasonable efforts to obtain all Court approvals and/or orders necessary for the implementation of these Minutes of Settlement, including an order in the CCAA proceedings granting the plaintiffs appropriate representative status to effect the terms herein;
15. If the settlement between the Parties or any terms hereof are not approved by order(s) of the applicable Courts fulfilling all conditions precedent in paragraph 10 hereto the settlement between the Parties and these Minutes of Settlement are null and void;
16. These terms shall be further reduced to a written agreement reflecting the terms of the agreement between the Parties hereto with such additional terms agreed to by the Parties consistent herewith or as agreed to give efficacy in Quebec and the United States. Should the Parties be unable to agree on the form of written agreement, the Parties agree to appoint Clifford Lax as mediator/arbitrator to assist the Parties and his decision as arbitrator shall be final and binding on the Parties, in accordance with the terms herein but subject to the terms of Schedule B hereof, and not subject to appeal;
17. The Parties will agree on a level of disclosure by EY for the purposes of reasonably assisting in the approval process of the applicable Courts, consistent with the Parties' obligations under the relevant class proceedings legislation. Should the Parties be unable to agree on the level of disclosure after good faith efforts to do so, the Parties agree to appoint Clifford Lax as mediator to assist the Parties. If the Parties after mediation are still unable to reach an agreement, then either Party may terminate the settlement;
18. Pending the implementation of this settlement, including the distribution of the Settlement Fund, EY shall advise the plaintiffs of any agreements reached by it with the Ad Hoc Committee of Noteholders, Sino-Forest, the Litigation Trustee, or counsel or representatives of any of these parties, to pay any monetary consideration to any of them.

**SIGNATURE LINES ON NEXT PAGE**

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Date: Nov 29, 2012

*Cum for Koskie Minsky LLP*  
**KOSKIE MINSKY LLP**  
Lawyers for the Plaintiffs

Date: Nov 29, 2012

*Cum for Siskinds LLP*  
**SISKINDS LLP**  
Lawyers for the Plaintiffs

Date: Nov 29, 2012

*Cum for PRRR LLP*  
**PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**  
Lawyers for the Plaintiffs

Date: November 29, 2012

*Lenzner Slaght Royce Smith  
Griffin LLP*  
**LENCZNER SLAGHT ROYCE SMITH  
GRIFFIN LLP**  
Lawyers for Ernst & Young LLP, and on behalf  
of Ernst & Young Global Limited and all  
member firms thereof

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**SCHEDULE "A"**

1. The Trustees of The Labourers' Pension Fund of Central and Eastern Canada, et al. v. Sino-Forest Corporation, et al., Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP
2. Guining Liu v. Sino-Forest Corporation, et al., Province of Quebec Superior Court, File No. 200-06-000132-111
3. David Leopard, et al. v. Allen T.Y. Chan, et al., United States New York Southern District Court, Case Number 1:2012-cv-01726-VM





## SCHEDULE "B"

### Terms and Conditions of any Ernst & Young LLP (Settlement with Class Action Plaintiffs)

A settlement unilaterally with E&Y will be conditional upon such settlement being made to a resolution that:

- a) is a settlement of all Claims, proceedings and potential claims against E&Y in all jurisdictions;
- b) reflects approval of appropriate Courts in relevant jurisdictions as described below; and
- c) accordingly must reflect the following elements in a form satisfactory to E&Y in its sole discretion, without which E&Y is at liberty to reject the settlement at any time:

#### I. Court Proceedings

##### (A) *CCAA*

- (i) Plan of Arrangement (in form consented to);
- (ii) Final Sanction Order;
- (iii) Both Plan and Sanction Order to include:
  - (a) a release of E&Y, and all affiliate firms, partners, staff, agents and assigns for any and all Claims (including cross-claims and third-party claims), and
  - (b) a claims bar (must expressly exclude all claims against all Pöyry entities).

##### (B) Ontario Class Action

- (i) Final Order approving settlement containing satisfactory PIERINGER terms and structure and dismissing action;
- (ii) i) above requires:
  - (a) certification for settlement purposes with i) class definition agreeable to E&Y; ii) notice in all relevant jurisdictions



(including Canada, U.S., Hong Kong, Singapore and PRC);  
and iii) opt-out threshold agreeable to E&Y;

- (b) fairness hearing having been held to result in (i).
- (C) Quebec Class Action
  - (i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;
  - (ii) certification and settlement approval as in (B).
- (D) U.S. Proceedings including Class Action
  - (i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;
  - (ii) certification and settlement approval as in (B).
  - (iii) Undertaking of Company (Applicant) to bring Chapter 15 proceeding to enforce Canadian *CCAA* order;
  - (iv) final U.S. order, in compliance with U.S. laws, recognizing *CCAA* order.

II. Releases and Undertakings

- (A) Full and Final Release and Claims Bar in both *CCAA* Plan and final Sanction Order;
- (B) Full and Final Release from Ontario Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;
- (C) Full and Final Release from Company, directors and officers, noteholders and others on satisfactory Pieringer terms and language;
- (D) Agreement from Ontario class counsel and from noteholders' counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction;
- (E) Full and Final Release from Quebec Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;

- (F) Agreement from Quebec class counsel to not act for or consult with or assist any plaintiff/representative plaintiff in any jurisdiction;
- (G) Full and Final Release from U.S. Class Action Representative Plaintiffs on their own behalf and in their representative capacities including an agreement not to consult or cooperate with any other party advancing Claims against E&Y; and
- (H) Agreement from U.S. class counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction.



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

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

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PROCEEDING COMMENCED AT TORONTO

**WRITTEN SUBMISSIONS OF ERNST & YOUNG LLP**  
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Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921

Fax: (416) 865-3558

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Tel: (416) 865-3094

Fax: (416) 865-3974

Email: [posborne@litigate.com](mailto:posborne@litigate.com)

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Fax: (416) 865-3973

Email: [sroy@litigate.com](mailto:sroy@litigate.com)

Lawyers for Ernst & Young LLP