

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 AND  
ARRANGEMENT OF SINO-FOREST CORPORATION

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TRUSTEES OF THE LABOURER'S 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  
Bane of America Securities LLC)

Defendants

Proceeding under the Class Proceedings Act, 1992

**FACTUM OF THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)  
(Motion Returnable: November 18, 2015)**

November 13, 2015

**CHARTERED PROFESSIONAL  
ACCOUNTANTS OF ONTARIO**

69 Bloor Street East  
Toronto, Ontario M4W 1B3

**Paul F. Farley**

Senior Counsel, Professional Conduct

[pfarley@cpaontario.ca](mailto:pfarley@cpaontario.ca)

Tel: 416-969-4251

Fax: 416-962-5538

-and-

**BELLMORE & MOORE**

393 University Avenue  
Suite 1600  
Toronto, Ontario  
M5G 1E6

**Brian P. Bellmore**

Tel: 416-581-1818 ext. 221

Fax: 416-581-1279

[brian@bellmore.ca](mailto:brian@bellmore.ca)

Lawyers for the Respondent

TO: Wardle Daley Bernstein Beiber LLP  
2104-401 Bay Street  
P.O. Box 21  
Toronto, Ontario  
M5H 2Y4

Simon Bieber  
Tel: (416) 351-2781  
Fax: (416) 351-9196

Terrence Liu  
Tel: (416) 351-2783  
Fax: (416) 351-9196

Lawyers for the Moving Party,  
David J. Horsley

AND TO: See attached Service List

## PART I - OVERVIEW

1. The Moving Party, David J. Horsley (“**Horsley**”) is a Chartered Accountant, a Chartered Professional Accountant and a member of the Institute of Chartered Accountants of Ontario (the “**ICAO**”) since 1985. The ICAO (operating since July 2014 as the Chartered Professional Accountants of Ontario) is the self-regulating body governing Chartered Accountants in the province. All members of the ICAO are governed by the *Chartered Accountants Act, 2010* S.O. 2010, c.6 (the “*Chartered Accountants Act*”), and the Bylaws, Regulations and Rules of Conduct enacted by the ICAO pursuant to the *Chartered Accountants Act*.

2. The ICAO is mandated by the *Chartered Accountants Act* to govern chartered accountants in accordance with the objects and powers set out therein:

4. The objects of the Institute are,

- (a) to promote and protect the public interest by governing and regulating the practice of individuals and firms as Chartered Accountants in accordance with this Act and the by-laws, including,
  - (i) establishing, maintaining, developing and enforcing standards of qualification,
  - (ii) establishing, maintaining, developing and enforcing standards of practice,
  - (iii) establishing, maintaining, developing and enforcing standards of professional ethics;
  - (iv) establishing, maintaining, developing and enforcing standards of knowledge, skill and proficiency, and
  - (v) regulating the practice, competence and professional conduct of individuals and firms as Chartered Accountants;

...

(Underlining added for emphasis throughout)

**Reference:** *Chartered Accountants Act*, Section 63(1) and (2), Responding Motion  
Record of the Institute of Chartered Accountants (the “**Responding Record**”), **Tab B**

3. The Rules of Professional Conduct (the “**Rules**”) established by the ICAO pursuant to the powers and objects in the *Chartered Accountants Act* include Rules 201.1 and 202.1:

201.1 A Member, Student, Applicant, membership candidate or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

202.1 A member, student or firm shall perform professional services with integrity and due care.

4. On June 16, 2014 Counsel for Horsley advised the ICAO of his intention to enter into a settlement agreement with the Ontario Securities Commission (the “OSC”) in which he would be making admissions of misconduct which might give rise to disciplinary issues within the purview of the ICAO. Counsel wrote:

We are bringing these matters to your attention now so that the Institute can consider whether to take discipline proceedings against Mr. Horsley in connection with these matters and to fulfill his obligations to self-report of these kind [sic] to the Institute.

5. On July 28, 2014 Counsel for Horsley again wrote to the ICAO advising of the finalization of the settlement with the OSC, and that on July 24, 2014 the Court had approved the settlement of “*civil claims*” against Horsley in “*related*” Sino-Forest Corporation class action proceedings (the “**Horsley Class Settlement Agreement**”, as defined below). There was no suggestion in the correspondence from Horsley’s Counsel to the ICAO that the settlement approved by the Court on July 24, 2014 in any way affected or enjoined the ICAO’s ability to consider disciplinary proceedings against Horsley as the Institute was invited to do in the June 16, 2014 letter from Horsley’s counsel.

6. Thereafter, various discussions and communications ensued between the ICAO and Horsley’s Counsel regarding the investigation and potential institution of disciplinary proceedings against Horsley during which, again, Horsley raised no issue relating to any bar or restriction on the ICAO’s right or ability to commence regulatory proceedings against him.

7. It was not until eight months later, on or about March 30, 2015, that Horsley advised the ICAO of his position that the ICAO was enjoined from commencing disciplinary proceedings against him as a result of the combined effect of the Horsley Class Settlement, and the release of “Horsley Claim” contained in the Order of Justice Morawetz dated July 24, 2014 which approved the Horsley Class Settlement (the “**Horsley Class Settlement Approval Order**”, as defined below).

8. Notwithstanding the position taken by Horsley that the ICAO could not proceed with disciplinary proceedings against him he requested an opportunity to appear before the

Professional Conduct Committee (“PCC”) because he: “...*would like to cooperate with the PCC’s investigation and try to come to a resolution of the issues that is acceptable to both parties.*”

**Reference:** Email from Horsley to ICAO dated April 6, 2015, **Responding Record, Tab A6 pg.131**

9. By Allegations dated May 21, 2015 (the “**Allegations**”), the ICAO alleged that Horsley had breached the *Rules* as follows:

1. THAT, the said David J. Horsley, in or about the period October 1, 2005 through April 30, 2012, while employed as Senior Vice President and Chief Financial Officer of Sino-Forest Corporation, failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that he conducted himself in a fashion which contravened the Securities Act R.S.O. 1990, c S.5 as described in the [OSC] Settlement Agreement attached as “Schedule A”.

2. THAT, the said David J. Horsley, in or about the period October 1, 2005 through April 30, 2012, while employed as Senior Vice President and Chief Financial Officer of Sino-Forest Corporation, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct in that he did not exercise the skill, care and diligence reasonably expected of a person in his position as described in the [OSC] Settlement Agreement attached as “Schedule A”.

**Reference:** Letter from ICAO to Horsley, dated May 26, 2015, Motion Record of the Moving Party, David J. Horsely (“**Motion Record**”),**Tab 20, pg. 263**

10. Following receipt of the Allegations, Horsley served the instant motion on the ICAO.

11. The position of the ICAO on this motion is two-fold.

12. Firstly, the Horsley Class Settlement Approval Order did not affect or enjoin proceedings by the ICAO pursuant to its mandate to regulate the accounting profession. The ICAO was not and is not a creditor of and had no “claims” against Sino-Forest or Horsley as an officer of Sino-Forest, that were subject to the Sino-Forest CCAA proceeding or the Sino-Forest Class Proceedings. The disciplinary proceedings commenced by the ICAO are not claims which were or which could be settled or compromised in a settlement of the Sino-Forest Proceedings.

13. Secondly, the disciplinary proceedings initiated by the ICAO against Horsley were not intended to constitute a “Horsley Claim” released pursuant to the Horsley Class Settlement Approval Order, as evidenced by the fact that:

(a) The ICAO was not a party to the Sino-Forest CCAA Proceeding or Class Proceeding and was not provided with notice of either proceeding. Although Horsley was aware of the ICAO’s disciplinary jurisdiction, Horsley failed to provide the ICAO with advance notice of his proposed settlement of the Sino-Forest Proceedings or of the motion heard on July 24, 2014 which resulted in the Horsley Class Settlement Approval Order, on which he now relies to enjoin the ICAO;

(b) the definition of “Horsley Claim” in the Horsley Class Settlement Approval Order ends with the following clarification:

“For greater certainty, Horsley Claims do not include any proceeding commenced or remedy sought by the Ontario Securities Commission or the Attorney General”.

The above paragraph is not inserted in the definition of “Horsley Claim” as an exception, but rather as a clarification of the general words of the definition. It is the position of the ICAO that its Allegations fall within the category of proceedings excluded from the definition of “Horsley Claim”; and

(c) In July 2014 Horsley’s counsel described in a letter to the ICAO the Horsley Class Settlement Approval Order as having “approved a comprehensive settlement of the civil claims against Mr. Horsley” and did not suggest, as Horsley now does, that the said Order prohibited the ICAO from commencing disciplinary proceedings against Horsley. It was not until eight months later, after a number of intervening negotiations and discussions between ICAO Counsel and Horsley’s Counsel regarding the elimination of investigative steps by the ICAO based on Horsley making the same admissions which he made in the OSC proceeding, that Horsley claimed the ICAO was barred from proceeding.

## **PART II – THE FACTS**

14. For ease of reference, attached hereto as **Appendix 1** is a chronology of events relevant to the within motion.

## THE SINO-FOREST CCAA PROCEEDINGS

15. On July 20, 2011 shareholders and debtholders of Sino-Forest Corporation (“**Sino-Forest**”) commenced a class action proceeding against Sino-Forest and others, including its former Chief Financial Officer, Horsley, (the “**Class Proceeding**”).

**Reference:** Affidavit of Alex Fidler-Wener, sworn October 13, 2015 (**Fidler-Wener Affidavit**), para 2, **Motion Record**, Tab 2, pg. 8

16. The ICAO had, and has, no claims, monetary or otherwise, against Sino-Forest or Horsley in the Class Proceeding.

17. On March 30, 2012, Sino-Forest applied to the Court for and received protection under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) (the “**CCAA Proceeding**”).

18. On May 14, 2012 the Court approved a “claims procedure” for persons to file proofs of “Claims” or “D&O Claims” against the “Applicant”, namely Sino-Forest, in the CCAA Proceeding (the “**CCAA Claims Procedure Order**”). The CCAA Claims Procedure Order defined “Claims” and “D&O Claims” as follows:

“Claim” means:

- (i) Any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, ...

“D&O Claim” means, other than an Excluded Claim, (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever,...

**Reference:** Claims Procedure Order, Supplementary Motion Record of the Moving Party (“**Supplementary Record**”), Tab A, pp. 4- 5

19. The ICAO had no “claims” against the Applicant, Sino-Forest in the CCAA Proceeding, nor did the ICAO have a claim against Horsley in his “capacity” as a Director or Officer of Sino-Forest. Consequently, the ICAO was not a party to and had no involvement in either the Class

Proceeding or the CCAA Proceeding (together the “**Sino-Forest Proceedings**”), and received no notice of the Sino-Forest Proceedings from Horsley until July 28, 2015 as discussed below.

**Reference:** Agreed Statement of Facts and Documents, para 3-4, **Responding Record, Tab A**

20. On December 10, 2012 the Court approved a Plan of Compromise and Reorganization in respect of Sino-Forest (the “**Sino-Forest Plan**”). The Sino-Forest Plan contained similar definitions of “Claims” and “D&O Claims” as in the CCAA Claims Procedure Order, which limited “Claims” to claims against Sino-Forest and “D&O Claims” to claims against such individuals in their capacity as directors and officers of Sino-Forest.

**Reference:** Fidler-Wener Affidavit, para 3-4, **Motion Record, Tab 2, pg. 8**  
Plan of Compromise, **Motion Record, Tab 2B, pg. 68-70**

21. When the Sino-Forest Plan was approved on December 10, 2012, Horsley was not a Named Third Party Defendant thereunder, nor a Named Director or Officer.

**Reference:** Plan of Compromise, Motion Record, Tab 2B, pg. 79, 145

## **THE PROPOSED HORSLEY CLASS SETTLEMENT**

22. In May 2014 Horsley entered into a *confidential* proposed settlement agreement in respect of the Class Proceedings (the “**Horsley Class Settlement Agreement**”). The ICAO was not a party to and had no knowledge of the proposed Horsley Class Settlement Agreement.

**Reference:** Fidler-Wener Affidavit, para 6, **Motion Record, Tab 2, pg.9**  
Minutes of Settlement, **Motion Record, Tab 2F**

23. On June 5, 2014, Justice Morawetz approved the form of notice to be published to advise “Securities Claimants” of the proposed Horsley Class Settlement (the “**Notice**”). The Endorsement of Justice Morawetz on June 5, 2014 stated as follows:

[1] The Class Action Plaintiffs and Mr. David J. Horsley, among others, have entered into Minutes of Settlement in order to resolve all causes of action, claims and/or demands, on all accounts howsoever arising in all jurisdictions, made against Mr. Horsley, including the class actions (as defined in the Plan of Compromise or Arrangement of Sino-Forest under the Companies Creditors Arrangement Act (“CCAA”) dated December 3, 2012 (the “Plan”).

...

[3] Class counsel and counsel to Mr. Horsley have prepared a draft Form of Notice (the “Notice”) to all persons and entities, wherever they may reside, who acquired any securities of Sino-Forest Corporation, including securities acquired in the primary,



secondary and over-the-counter markets (the “Securities Claimants”). The Notice will advise Securities Claimants of, among other things, the terms of the Horsley Settlement, the Settlement Approval Hearing, the Securities Claimants Rights to Object or Make Submissions Regarding the Horsley Settlement, and of certain subsequent hearings in both Ontario and New York relating to the Horsley Settlement.

...

[9] The approval hearing is scheduled for Thursday, July 24, 2014 at 9:00 a.m. in Toronto. It is my understanding that the parties will coordinate the timing of the hearing with The United States Bankruptcy Court for the Southern District, and if necessary, the date and time can be adjusted.

**Reference:** Endorsement of Morawetz J, June 5, 2014, **Motion Record, Tab 2I**

24. The June 5, 2014 Order of Justice Morawetz (the “**Class Settlement Notice Approval Order**”) approving the Notice contained the following defined terms:

“**Horsley Settlement**” means the settlement as reflected in the Minutes of Settlement between Horsley and the plaintiffs in Ontario Superior Court Action No. CV-411-431153-00CP, Quebec Superior Court No. 200-06-000132-111, and United States New York Southern District Court, Case Number 1:12-cv-01726 (AT) and the Litigation Trustee.

“**Securities Claimants**” means all Persons and entities, wherever they may reside, who acquired any Securities of Sino-Forest Corporation including Securities acquired in the primary, secondary, and over-the-counter markets.

**Reference:** Notice Approval Order, **Motion Record, Tab 2J, pg. 204**

25. In addition, the form of Notice approved by the Court in the Class Settlement Notice Approval Order was directed to “Securities Claimants” as follows:

**TO:** All persons and entities, wherever they may reside, who acquired any securities of Sino-Forest Corporation including securities acquired in the primary, secondary, and over-the counter-markets (the “Securities Claimants”).

**Reference:** Notice Approval Order, **Motion Record, Tab 2J, pg. 204**

26. The ICAO had no knowledge of the attendance before Justice Morawetz scheduled for June 5, 2015 nor did it receive a copy of the Endorsement or the Notice approved by the Court following the approval of the Notice on June 5, 2015.

27. In any event, and more importantly, the ICAO was not a Securities Claimant to whom the Notice was directed.

28. On June 16, 2014 counsel for Horsley wrote for the first time to the ICAO advising that Horsley was negotiating a settlement with the Ontario Securities Commission (the “OSC”) in which Horsley was admitting certain facts which might be relevant to the ICAO so it could “...consider whether to take disciplinary proceedings against Mr. Horsley...”. The June 16, 2014 letter stated:

We are counsel for David J. Horsley, who is currently a member in good standing of the Institute. Mr. Horsley became a chartered accountant in 1985 and has been a member in good standing since that time.

During the period from October 10, 2005 to April 17, 2012, Mr. Horsley was the Chief Financial Officer of Sino-Forest Corporation.

Mr. Horsley is currently a respondent in regulatory proceedings brought by Enforcement Staff of the Ontario Securities Commission (“OSC”) which allege that he failed to exercise the skill, care and diligence required of him as CFO of Sino-Forest when he certified the annual and interim filings of Sino-Forest during his tenure as Chief Financial Officer. Enforcement Staff of the OSC also make certain specific allegations relating to Mr. Horsley’s conduct which are set out in a Notice of Hearing and Statement of Allegations, both of which are enclosed with this letter.

The purpose of this letter is to advise you that Mr. Horsley intends to enter into a settlement with Enforcement Staff of the OSC which will involve him making certain admissions regarding the allegations made by staff. We anticipate that a settlement agreement between Mr. Horsley and Enforcement Staff will be approved by the OSC on July 21, 2014 and will become public on the OSC’s website as soon as it has been approved.

We are bringing these matters to your attention now so that the Institute can consider whether to take discipline proceedings against Mr. Horsley in connection with these matters, and to fulfill his obligations to self-report matters of these kind to the Institute. We will provide you with a copy of the settlement agreement as soon as the settlement becomes public.

**Reference:** June 16, 2014 Letter, **Responding Record, Tab A1, pp.5-6**

29. As reflected in the above letter, Horsley and his Counsel were aware of Horsley’s obligations under the ICAO’s Rules to report potential misconduct to the ICAO and implicitly to be subject to ICAO disciplinary proceedings relating to his actions and activities as a chartered accountant during the time he was employed by Sino-Forest. From the time he reported himself Horsley acknowledged the jurisdiction of the ICAO to investigate and, where warranted,

prosecute members of ICAO for breaches of the Rules of Professional Conduct. This is consistent with the Bylaws of the ICAO which state that members, "...by their application for or continuance of membership or registration shall agree and shall be deemed to have agreed with CPA Ontario to the terms of the bylaws, Rules of Professional Conduct and Regulations of CPA Ontario, as applicable, and all acts or things done thereunder..."

**Reference:** ICAO Bylaw 2.2 Compliance – General

30. The June 16<sup>th</sup> Letter did not advise the ICAO that there was a proposed Horsley Class Settlement Agreement or that Horsley was negotiating a release of claims against him in the CCAA Proceeding which was scheduled for hearing on July 24, 2015, and which might bar any ICAO discipline proceedings, nor was a copy of the Class Settlement Notice Approval Order or the Notice itself enclosed. The June 16, 2014 letter made no reference to the Sino-Forest CCAA or Class Proceedings to which Horsley was a party.

31. Consequently, on July 24, 2014 the motion to approve the Horsley Class Settlement proceeded without notice to the ICAO.

**Reference:** Agreed Statement of Facts, para 4, **Responding Record, Tab A, p. 2**

32. By Order dated July 24, 2014 the Court approved the Horsley Class Settlement Agreement including the "Horsley Release" (the "**Horsley Class Settlement Approval Order**"). Appendix "A" of the Horsley Class Settlement Approval Order defined the term "Horsley Release" and "Horsley Claims" as follows:

"**Horley Release**" means the Named Third Party Defendant Release described at section 11.2(c) of the Plan as applied to the Horsley Claims.

"**Horsley Claims**" means any and all demands, claims, actions, Causes of Action (as defined in the Plan), counterclaims, cross claims, suits, debts, sums of money, accounts, covenants, damages, judgments, executions, Encumbrances (as defined in the Plan), and other amounts sought to be recovered on account of any claim, indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person (as defined in the Plan), including any Person (defined in the Plan) who may have a claim for contribution and/or indemnity against or from them, and including without limitation, all present and former officers and Directors of Sino-Forest, Newco (as defined in the Plan), Newco II (as defined in the Plan), Poyry (Beijing) Consulting Company Limited (and its affiliates), the Noteholders (as defined in the Plan), any past, present or future holder of any direct or indirect equity interest in the SFC Companies (as defined in the Plan), any past, present or

future direct or indirect security holder of SFC Companies (as defined in the Plan), any indirect or direct security holder of Newco (as defined in the Plan) or Newco II (as defined in the Plan), the Trustees (as defined in the Plan), the Transfer Agent (as defined in the Plan), the Monitor (as defined in the Plan), and each and every present and former affiliate, partner, director, officer, associate, employee, servant, agent, contractor, insurer, heir and/or assign of each of the foregoing who may or could (at any time, past, present or future) be entitled to asset against Horsley, his family, heirs or assigned, whether known or unknown, matured or unmatured, direct or derivative, foreseen or unforeseen, suspected or unsuspected, contingent, existing or hereafter arising, based on whole or in part on any act or omission, transaction, conduct, dealing or other occurrence existing or taking place on, prior to or after the date of this Release, relating to or arising out of or in connection with the SFC Companies (as defined by the Plan), the SFC Business (as defined by the Plan), Horsley's conduct or performance as a director or officer of Sino-Forest, Horsley's trading of shares in relation to Sino-Forest, Horsley's compensation from Sino-Forest, and any and all other acts and omissions of Horsley relating to the SFC Companies (as defined by the Plan) or the SFC Business (as defined by the Plan), including without limitation any claim arising out of:

1. Horsley's conduct as a director or officer of Sino-Forest, including but not limited to his conduct as the Chief Financial Officer of Sino-Forest, any statutory or common law duties he may have owed as a director or officer of Sino-Forest, any share offering, debt offering or other offering of securities, any statement in any of Sino-Forest's public disclosure or other oral statement relating to Sino-Forest, including without limitation any document released to the public or filed on SEDAR;
2. All claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced in any or all of the Class Actions (as defined by the Plan), including any and all claims of fraud;
3. All claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced in any or all actions commenced in all jurisdictions as of the date of this Release;
4. All Noteholders Claims (as defined by the Plan), Litigation Trust Claims (as defined by the Plan), or any claim by or on behalf of the SFC Companies (as defined by the Plan);
5. All claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced by BDO Ltd, (and its affiliates), Ernst & Young (as defined by the Plan), the Underwriters (as defined by the Plan), Poyry (Beijing) Consulting Company Limited (and its affiliates), all present and former directors, officers or employees of Sino-Forest, Aird & Berlis LLP, and any and all consultants or counsel to Sino-Forest or its Independent Committee for contribution, indemnity, damages, equitable relief or other monetary recovery;
6. All claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced in Court File No, CV-13-481761,

For greater certainty, Horsley Claims do not include any proceeding commenced or remedy sought by the Ontario Securities Commission or the Attorney General.

**Reference:** Settlement Approval Order, **Motion Record, Tab 2K, pg. 225-226**

33. The ICAO was not a party to, nor was it a member of ,the class in the Class Proceeding against, *inter alia*, Sino Forest and Horsley.

34. The July 24<sup>th</sup> Order also contained the following notice provision and contained a provision retaining the jurisdiction of the Court to determine any disputes regarding the Horsley Release:

30. **THIS COURT ORDERS AND DECLARES** that all *persons and entities provided with notice of this Motion* shall be bound by the declarations made in, and the terms of, this Horsley Settlement Order.

36. **THIS COURT ORDERS** that this Court shall retain an ongoing supervisory role for the purposes of implementing, administering and enforcing the Horsley Settlement and the Horsley Release and matters related to the Settlement Trust including any disputes about the allocation of the Class Settlement Fund from the Settlement Trust. Any disputes arising with respect to the performance or effect of, or any other aspect of, the Horsley Settlement and the Horsley Release shall be determined by this Court, and that, except with leave of this Court first obtained, no Person or party shall commence or continue any proceeding or enforcement process in any other court or tribunal, with respect to the performance or effect of, or any other aspect of the Horsley Settlement and Horsley Release.

**Reference:** Settlement Approval Order, **Motion Record, Tab 2K, pg. 223**

35. As seen, between June 5, 2014 and July 24, 2014, while engaged in correspondence with counsel for the PCC of the ICAO regarding Horsley’s professional conduct, neither Horsley, nor his counsel:

- (a) provided the ICAO with the Order of Justice Morawetz dated June 5, 2014;
- (b) provided the ICAO with notice of the proposed Horsley Class Settlement Agreement;
- (c) provided the ICAO with notice of the proposed “Horsley Class Settlement Approval Order” or of the definition of “Horsley Claim” contained therein; or
- (d) advised the ICAO of the hearing before Justice Morawetz scheduled for July 24, 2014 at which the Court was to approve the Horsley Class Settlement Approval Order, including the definition of “Horsley Claim”, which Horsley’s now relies upon in this motion to enjoin the ICAO from continuing its discipline proceedings against him.

**Reference:** Agreed Statement of Facts, para 4, **Responding Record, Tab A, pg. 2**

36. On July 28, 2014 counsel for Horsley wrote to the ICAO advising that Horsley had reached a settlement with the OSC (the “**July 28<sup>th</sup> Letter**”). The July 28<sup>th</sup> Letter also referred to the settlement of the “civil claims” and the approval of same by the Court. The July 28<sup>th</sup> Letter stated, *inter alia*:

The settlement between Mr. Horsley and the Ontario Securities Commission has now been finalized and approved by the Commission. With this letter I enclose a copy of the executed settlement agreement, as well as the order made by Vice Chair Turner on July 21, 2014. I also enclose a copy of the Statement of Allegations and Notice of Hearing, which were inadvertently omitted from my June 16, 2014 letter.

I can also advise that the approval of the settlement by the Ontario Securities Commission was conditional upon approval of *related class proceedings against Mr. Horsley and others* which are being supervised by Senior Regional Justice Morawetz of the Ontario Superior Court. On July 24, 2014 Justice Morawetz approved a *comprehensive settlement of the civil claims against Mr. Horsley.* I enclose a copy of the executed Minutes of Settlement in connection with those proceedings, as well as Justice Morawetz’s endorsement.

**Reference:** Agreed Statement of Facts and Documents, para 3, **Responding Record, Tab A, pg.2**  
July 28, 2014 letter, **Responding Record, Tab A2**

37. The July 28<sup>th</sup> Letter also enclosed copies of various documents relevant to the OSC proceeding, including the Agreed Statement of Facts signed by Horsley, as well as a copy of the Horsley Class Settlement Agreement in the above proceedings, as follows:

- (1) **OSC** Notice of Hearing regarding Horsley, dated May 22, 2012;
- (2) **OSC** Statement of Allegations regarding Horsley, dated May 22, 2012;
- (3) Settlement Agreement between **OSC** and Horsley, dated June 26, 2014;
- (4) Order of **OSC**, dated July 21, 2014;
- (5) Minutes of Settlement, signed by Horsley on May 13, 2013 in the Class Action Proceeding;
- (6) Notice Approval Order of Morawetz, dated June 5, 2014

**Reference:** Agreed Statement of Facts and Documents, Part B, **Responding Record, Tab A, pg.3**  
July 28<sup>th</sup> Letter, **Responding Record, Tab A2**

38. Although the July 28<sup>th</sup> Letter referred to the Horsley Class Settlement Approval Order, a copy of same was not enclosed with the July 28<sup>th</sup> Letter. Instead, the letter enclosed a copy of the Horsley Class Notice Approval Order.

#### **NO ISSUE RAISED RE JURISDICTION OF ICAO UNTIL MARCH 2015**

39. Thereafter, between July 28, 2014 and March 30, 2015 Horsley and his counsel continued to engage in discussions and correspondence with the ICAO regarding the disciplinary steps and proceedings being considered and undertaken by the ICAO in connection with the admissions of misconduct made by Horsley to the OSC, which gave rise to potential disciplinary proceedings in relation to Horsley's membership in the ICAO. During this period no issue was raised by Horsley or his counsel regarding the effect of the Horsley Class Settlement on the ICAO until in or about *March 30, 2015*, as detailed below.

**Reference:** Agreed Statement of Facts and Documents, para 5, **Responding Record, Tab A, pg.3**

40. These discussions and correspondence included an email from Horsley's Counsel to the ICAO on January 23, 2015, in which he confirmed Horsley's agreement not to contest the facts he had admitted in the OSC proceedings to avoid the need for the ICAO to appoint an investigator:

Further to our discussion, in connection with the Institute's investigation, I have confirmed that Mr. Horsley does not intend to contest any of the facts admitted to as part of his Ontario Securities Commission settlement. That should mean that you do not need to appoint an investigator.

Mr. Horsley has advised us, however, that at this point he would prefer to deal with the Institute directly without retaining counsel. I believe you have his contact information, but if you don't please let me know.

**Reference:** Email from Horsley's Counsel to ICAO dated January 23, 2015 , **Responding Record, Tab A(3), pg.123**

41. On March 25, 2015 the ICAO wrote to Horsley requesting his attendance at a meeting on April 14, 2015 before the PCC to consider the regulatory issues arising from the facts admitted by Horsley in the OSC proceeding. The PCC is responsible for conducting investigations of suspected professional misconduct and, when necessary, filing and prosecuting allegations of misconduct at a hearing before an independent Discipline Committee.

**Reference:** Letter from ICAO to Horsley dated March 25, 2015, **Responding Record, Tab A(4) pg.124**

42. On or about March 30, 2015 Counsel for Horsley, for the first time, advised the ICAO of a possible “jurisdictional issue”. This communication was described in a letter from the ICAO to Horsley on April 1, 2015:

Further to my correspondence of February 26, 2015, I have since spoken to your legal counsel Mr. Peter Wardle. Mr. Wardle indicated to me that he believes there may be a jurisdictional issue with respect to the Professional Conduct Committee investigating and/or prosecuting an allegation against you on facts that form the basis of a Settlement Agreement approved by Justice Morawetz.

I have not received from Mr. Wardle a copy of the materials he relies upon in support of his position and until I do I will be unable to formulate an opinion for the Professional Conduct Committee...

**Reference:** Letter from ICAO to Horsley dated April 1, 2015, **Responding Record, Tab A(5), pg.130**

43. Nonetheless, at the request of Horsley, the meeting before the PCC proceeded on April 14, 2015. Following the meeting with the PCC, on May 26, 2015 the ICAO wrote to Horsley advising that the PCC had issued the Allegations and included a copy of the Allegations.

**Reference:** Email from Horsley to ICAO dated April 6, 2015, **Responding Record, Tab A(6), pg.145**  
Letter from ICAO to Horsley, dated May 26, 2015, **Motion Record, Tab 20, pg. 263**

44. The ICAO’s letter of May 26, 2015 also advised Horsley that the PCC had directed ICAO Counsel to request the following sanctions be imposed by the ICAO’s Discipline Committee in the event it found Horsley guilty:

In the event of a finding of guilt with respect to these Allegations, the Professional Conduct Committee has instructed me to request from the Discipline Committee the following sanctions:

- Reprimand in writing by the Chair of the Discipline Committee;
- A fine in the amount \$75,000.00;
- A suspension from membership in CPA Ontario for a period of two (2) years;
- Full publicity in accordance with the by-laws. This would include the usual publication in the Member magazine and on the CPAO website, along with publication in the press including your name. The by-laws provide the costs of publication are to be borne by the Member.

In addition, the Committee has instructed me to seek the recovery of 2/3 of the costs of the investigation and prosecution.



**Reference:** Letter from ICAO to Horsley, dated May 26, 2015, **Motion Record, Tab 20, pg. 263**

45. Thereafter, on June 8, 2015, counsel for Horsley wrote to the ICAO advising of Horsley's position that the ICAO could not commence or continue discipline proceedings against Horsley and that to do so "would be in breach of a Court Order". The June 8, 2015 letter was also the first time the ICAO was advised that it was the position of Horsley that "[t]he combined effect of the Plan and Settlement Order is to permanently bar the [ICAO] from initiating any proceedings or imposing any sanctions against Mr. Horsley". It was also the first time Horsley provided the ICAO with a copy of the Sino-Forest Plan or a copy of the July 24<sup>th</sup>, 2014 Horsley Class Settlement Approval Order.

**Reference:** Letter from Horsley's Counsel to ICAO, dated June 8, 2015, **Responding Record, Tab A(8), pg.133**

46. On July 8, 2015 the ICAO responded:

Thank you for your letter of June 8, 2015, received while I was on holiday.

The CPA Ontario was not a party to the CCAA proceedings in the Superior Court and did not receive notice of or consent to the Plan.

The CPA proceedings were instituted pursuant to the CPA's statutory mandate to govern the accounting profession and to enforce the standards applicable to accountants in Ontario, including Mr. Horsley.

The prosecution of Allegations of professional misconduct does not constitute a "Horsley Claim". That term is defined at Appendix A to the Order of Justice Morawetz. At the end of the definition is the clause "*for greater certainty, Horsley Claims do not include any proceeding commenced or remedy sought by the Ontario Securities Commission or the Attorney General*". The quoted paragraph is not inserted in the definition as an exception, but rather as a clarification of the definition. CPA Ontario falls within the category of entity identified by the Court as not being included within the definition of "Horsley Claims".

Further, CPA Ontario does not assert any cause of action against Mr. Horsley. Neither the Professional Conduct Committee or CPA Ontario fall within the definition of person contained within the Plan of Compromise and Reorganization, just as neither the Ontario Securities Commission nor the Attorney General fall within the definition of person. The CPA proceeding is not a creditor claim or an Affected Claim but rather is based on the conduct of Mr. Horsley as a member of the accounting profession subject to the Chartered Accountants Act, 2010 as evidenced by the settlement agreement he entered into with the Ontario Securities Commission. Mr. Horsley agreed that he would not contest any of the facts contained in that settlement agreement in the CPA Disciplinary process.

I would like to set this matter down for hearing. Please confirm that you are acting on behalf of Mr. Horsley in these matters and advise if you will be requesting a pre-hearing conference.

...

**Reference:** Letter from ICAO to Horsley's Counsel, date d July 8, 2015, **Responding Record, Tab A9, pg.136**

47. Thereafter, Horsley brought this motion seeking, *inter alia*, a declaration that the ICAO is enjoined from commencing or continuing the disciplinary proceedings against Horsley.

### **PART III – THE ISSUES**

48. The issue to decide on this motion is whether the disciplinary proceeding commenced by the ICAO against Horsley in May 2015 is enjoined by the Horsley Class Settlement Approval Order issued July 24, 2014 and/or the December 10, 2012 Sino-Forest Plan.

### **PART IV – THE LAW AND ARGUMENT**

#### **A. The ICAO's Allegations of Professional Misconduct are not claims under the CCAA**

49. The Supreme Court of Canada in *Newfoundland and Labrador v. AbitibiBowater Inc.*, [2012] S.C.J. No. 67 (S.C.C.) addressed the definition of "claim" under the CCAA and the application of same to regulatory bodies as follows:

#### ***Deschamps J. for the Majority:***

- 1 The question in this appeal is whether orders issued by a regulatory body with respect to environmental remediation work can be treated as monetary claims under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA").
- 2 Regulatory bodies may become involved in reorganization proceedings when they order the debtor to comply with statutory rules. As a matter of principle, reorganization does not amount to a licence to disregard rules. Yet there are circumstances in which valid and enforceable orders will be subject to an arrangement under the CCAA. One such circumstance is where a regulatory body makes an environmental order that explicitly asserts a monetary claim.
- 3 In other circumstances, it is less clear whether an order can be treated as a monetary claim. The appellant and a number of interveners posit that an order issued by an environmental body is not a claim under the CCAA if the order does not require the debtor to make a payment. I agree that not all orders issued by regulatory bodies are monetary in nature and thus provable claims in an insolvency proceeding, but some may

be, even if the amounts involved are not quantified at the outset of the proceeding. In the environmental context, the CCAA court must determine whether there are sufficient facts indicating the existence of an environmental duty that will ripen into a financial liability owed to the regulatory body that issued the order. In such a case, the relevant question is not simply whether the body has formally exercised its power to claim a debt. A CCAA court does not assess claims -- or orders -- on the basis of form alone. If the order is not framed in monetary terms, the court must determine, in light of the factual matrix and the applicable statutory framework, whether it is a claim that will be subject to the claims process.

...

**22** Section 12 of the CCAA establishes the basic rules for ascertaining whether an order is a claim that may be subjected to the insolvency process:

[Definition of "claim"]

**12.** (1) For the purposes of this Act, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.

[Determination of amount of claim]

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

...

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and ...

**23** Section 12 of the CCAA refers to the rules of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"). Section 2 of the *BIA* defines a claim provable in bankruptcy:

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor.

**24** This definition is completed by s. 121 of the *BIA*:

**121.** (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation

incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

**25** Sections 121(2) and 135(1.1) of the *BIA* offer additional guidance for the determination of whether an order is a provable claim:

**121... .**

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

**135... .**

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

**26** These provisions highlight three requirements that are relevant to the case at bar. First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred before *the debtor* becomes bankrupt. Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. I will examine each of these requirements in turn.

**27** The *BIA*'s definition of a provable claim, which is incorporated by reference into the *CCAA*, requires the identification of a creditor. Environmental statutes generally provide for the creation of regulatory bodies that are empowered to enforce the obligations the statutes impose. Most environmental regulatory bodies can be creditors in respect of monetary or non-monetary obligations imposed by the relevant statutes. At this first stage of determining whether the regulatory body is a creditor, the question whether the obligation can be translated into monetary terms is not yet relevant. This issue will be broached later. The only determination that has to be made at this point is whether the regulatory body has exercised its enforcement power against a debtor. When it does so, it identifies itself as a creditor, and the requirement of this stage of the analysis is satisfied.

*McLaughlin C.J. (dissenting), made the following general observations:*

3. The Distinction Between Regulatory Obligations and Claims under the *CCAA*

**70** Orders to clean up polluted property under provincial environmental protection legislation are regulatory orders. They remain in effect until the property has been cleaned up or the matter otherwise resolved.

**71** It is not unusual for corporations seeking to restructure under the *CCAA* to be subject to a variety of ongoing regulatory orders arising from statutory schemes

governing matters like employment, energy conservation and the environment. The corporation remains subject to these obligations as it continues to carry on business during the restructuring period, and remains subject to them when it emerges from restructuring unless they have been compromised or liquidated.

**72** The CCAA, like the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*") draws a fundamental distinction between ongoing regulatory obligations owed to the public, which generally survive the restructuring, and monetary claims that can be compromised.

**73** This distinction is also recognized in the jurisprudence, which has held that regulatory duties owed to the public are not "claims" under the *BIA*, nor, by extension, under the *CCAA*. In *Panamericana de Bienes y Servicios S.A. v. Northern Badger Oil & Gas Ltd.* (1991), 81 Alta. L.R. (2d) 45, the Alberta Court of Appeal held that a receiver in bankruptcy must comply with an order from the Energy Resources Conservation Board to comply with well abandonment requirements. Writing for the court, Laycraft C.J.A. said the question was whether the *Bankruptcy Act* "requires that the assets in the estate of an insolvent well licensee should be distributed to creditors leaving behind the duties respecting environmental safety ... as a charge to the public" (para. 29). He answered the question in the negative:

The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgement for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed. [Emphasis added, para. 33]

**74** The distinction between regulatory obligations under the general law aimed at the protection of the public and monetary claims that can be compromised in CCAA restructuring or bankruptcy is a fundamental plank of Canadian corporate law. It has been repeatedly acknowledged: *Lamford Forest Products Ltd. (Re)* (1991), 86 D.L.R. (4th) 534; *Re Shirley* (1995), 129 D.L.R. (4th) 105 (Ont. Ct. (Gen. Div.)), at p. 109; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at para. 146, *per* Iacobucci J. (dissenting). As Farley J. succinctly put it in *Air Canada Re [Regulators' motions]*, (2003), 28 C.B.R. (5th) 52 (Ont. S.C.J.), at para. 18: "Once [the company] emerges from these CCAA proceedings (successfully one would hope), then it will have to deal with each and every then unresolved [regulatory] matter."

**75** Recent amendments to the CCAA confirm this distinction. Section 11.1(2) now explicitly provides that, except to the extent a regulator is enforcing a payment obligation, a general stay does not affect a regulatory body's authority in relation to a corporation going through restructuring. The CCAA court may only stay specific actions or suits brought by a regulatory body, and only if such action is necessary for a viable

compromise to be reached and it would not be contrary to the public interest to make such an order (s. 11.1(3)).

...

4. When Does a Regulatory Obligation Become a Claim Under the CCAA?

77 This brings us to the heart of the question before us: when does a regulatory obligation imposed on a corporation under environmental protection legislation become a "claim" provable and compromisable under the CCAA?

78 Regulatory obligations are, as a general proposition, not compromisable claims. Only financial or monetary claims provable by a "creditor" fall within the definition of "claim" under the CCAA. "Creditor" is defined as "a person having a claim ..." (*BIA* s. 2). Thus, the identification of a "creditor" hangs on the existence of a "claim". Section 12(1) of the CCAA defines "claim" as "any indebtedness, liability or obligation ... that ... would be a debt provable in bankruptcy", which is accepted as confined to obligations of a financial or monetary nature.

79 The CCAA does not depart from the proposition that a claim must be financial or monetary. However, it contains a scheme to deal with disputes over whether an obligation is a monetary obligation as opposed to some other kind of obligation.

**Reference:** *Newfoundland and Labrador v. AbitibiBowater Inc.*, [2012] S.C.J. No. 67 (S.C.C.), **Respondent's Book of Authorities ("Respondent's Authorities")**, **Tab 1**

50. It is respectfully submitted, that the ICAO regulatory jurisdiction over Horsley does not give rise to any monetary or financial claim against Sino-Forest, and is therefore not subject to and is not compromisable under the CCAA.

51. It is further submitted that there is a fundamental difference between regulatory proceedings commenced pursuant to legislation such as the *Environmental Protection Act* versus the *Chartered Accountants Act, 2010*. Under the former legislation directors and officers may be personally liable for breaches of regulatory legislation by the debtor corporation, and such claims may be subject to the CCAA and may be compromisable thereunder. However, the *Chartered Accountants Act, 2010* does not give rise to any financial liability on the debtor company (Sino-Forest), nor does it impose liability on its officers and directors, in their capacities as such, for legal obligations of the debtor corporation which they manage and direct. The focus of the disciplinary process of the ICAO (and of the allegations that may be brought against a member pursuant to that process) is on the professional conduct of the member as articulated by the

Rules of Professional Conduct. Therefore the *Chartered Accountants Act, 2010* does not give rise to any “claims” under the CCAA which can be compromised in a CCAA order.

**B. The ICAO’s Allegations of Professional Misconduct are not claims against Horsley in his capacity as a director of Sino-Forest under the CCAA**

52. It is further submitted that under section 5.1 of the CCAA claims against directors of a debtor company which may be compromised as part of a plan of compromise or arrangement are limited to claims against individuals “in their capacity as directors” for “obligations of the company where the directors are personally liable”.

Claims against directors - compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

**Reference:** CCAA, Section 5.1,

53. During the period in issue in the Allegations issued by the ICAO, Horsley was not a director of Sino-Forest<sup>1</sup>. The disciplinary proceedings which the ICAO has commenced against Horsley are not claims against Sino-Forest for which Horsley could be “liable in [his] capacity as director for payment”.

54. It is further submitted that the “stay” provisions of the CCAA relating to regulatory proceedings limit the application of the CCAA to regulatory proceedings against a *debtor company* where, in the words of s. 11.1 of the CCAA, the “regulatory body is seeking to enforce its rights as a creditor”.

Stays, etc. — initial application

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

---

<sup>1</sup> The Allegations of Professional Misconduct issued by the ICAO against Horsley relate to the period October 1, 2005 to April 30, 2012. According to the Settlement Agreement signed by Horsley with the OSC, Horsley ceased being a director of Sino-Forest on or about October 10, 2005 (para 21 of the OSC Settlement Agreement).

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays — directors

**11.03 (1)** An order made under [section 11.02](#) may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Meaning of “regulatory body”

**11.1 (1)** In this section, “regulatory body” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body’s investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

...

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

*Reference:* CCAA, section 11.02, 11.03 and 11.1

55. In *Re Terrace Bay Pulp Inc. (Re)*, Justice Morawetz had occasion to consider the recent amendments to the CCAA contained in section 11.1 above, which address stays of regulatory proceedings. In that case, the court refused to impose a stay of proceedings under the



*Occupational Health and Safety Act*, despite the fact that such proceedings were in relation to the debtor company, because it was not clear that the regulatory proceeding would give rise to a financial liability on the debtor company. In the instant case, the ICAO is not investigating and has not charged Sino-Forest. The Discipline Committee can make no order against Sino-Forest and it is not known whether the Discipline Committee will impose a financial liability on Horsley or even whether he will be found guilty of the Allegations made against him.

**Reference:** *Re Terrace Bay Pulp Inc. (Re)*, [2013] O.J. No. 3703, **Respondent’s Authorities, Tab 2**

**C. *The ICAO’s Allegations of Professional Misconduct against Horsley are not “Claims” or “D&O Claims” which are the subject of the Sino-Forest Plan***

56. It is submitted that the Sino-Forest Plan did not affect the right or ability of the ICAO to commence or continue disciplinary proceedings against Horsley.

57. The Sino-Forest Plan applies to and defines “Claim” and “D&O Claim” as follows:

“Claim” means any right or claim of any Person that may be asserted or made against SFC, in whole or in part, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including any Directors or Officers of SFC or any of the Subsidiaries) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable against SFC in bankruptcy within the meaning of the BIA had SFC become bankrupt on the Filing Date, or is an Equity Claim, a Noteholder Class Action Claim against SFC, a Class Action Indemnity Claim against SFC, a Restructuring Claim or a Lien Claim, provided, however, that “Claim” shall not include a D&O Claim or a D&O Indemnity Claim.”

“D&O Claim” means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers of SFC that relates to a Claim for which such Directors or Officers are by law liable to pay *in their capacity as Directors or Officers of SFC*, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers of SFC, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty and including, for greater certainty, any monetary administrative or other monetary penalty or claim for costs asserted against any Officer or Director of SFC by an Governmental Entity), or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implies, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers of SFC or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, or (B) relates to a time period prior to the Filing Date.

**Reference:** Sino-Forest Plan, **Motion Record, Tab 2B, pg. 68-70**

58. At paragraph 32 of Horsley’s factum on this motion, the moving party relies on the specific carve-out in Article 7.2(h) of the Sino-Forest Plan for non-monetary remedies of the OSC to suggest that all other regulatory proceedings were expressly made subject to the terms of the Sino-Forest Plan. On the contrary the provision of Article 7.1 (b) and 7.2(h) supports the position of the ICAO that the Sino-Forest Plan only affected the rights of parties with “Claims” (as defined above) against Sino-Forest:

#### 7.1 Plan Releases

Subject to 7.2 hereof, all of the following shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred on the Plan Implementation Date:

- (a) all Affected Claims, including all Affected Creditor Claims, Equity Claims, D&O Claims....

- (b) All Claims of the Ontario Securities Commission or any other Governmental Entity that have or could give rise to a monetary liability, including fines, awards, penalties, costs, claims for reimbursement or other claims having a monetary value;  
...

## 7.2 Claims Not Released

Notwithstanding anything to the contrary in section 7.1 hereof, nothing in this Plan shall waive, compromise, release, discharge, cancel or bar any of the following:  
...

- (h) SFC of or from any investigations by or non-monetary remedies of the Ontario Securities Commission, provided that, for greater certainty, all monetary rights, claims or remedies of the Ontario Securities Commission against SFC shall be treated as Affected Creditor Claims in the manner described in section 4.1 hereof and released pursuant to section 7.1(b) hereof;  
...

**Reference:** Sino-Forest Plan, **Motion Record, Tab 2B, pg. 118, 121-122**

59. It is clear from the language of articles 7.1(b) and 7.2(h) that the compromise of the OSC and proceedings by “other Governmental Entity” being compromised were and are limited to “Claims”, which the Sino-Forest Plan defines as claims against Sino-Forest. These provisions do not compromise claims by the OSC or any “other Government Entity” against Horsley which are not “Claims” against Sino-Forest. This is also consistent with the language and scope of the CCAA and the case law as set out above.

**D. The disciplinary proceedings instituted by the ICAO against Horsley are not included in the definition of “Horsley Claim”.**

60. The definition of “Horsley Claim” contained in the Horsley Class Settlement Approval Order contains the following:

“For greater certainty, Horsley Claims do not include any proceeding commenced or remedy sought by the Ontario Securities Commission or the Attorney General”.

**Reference:** Settlement Approval Order, **Motion Record, Tab 2K, pg. 225-226**

61. It is respectfully submitted that the above provision was inserted in the definition of “Horsley Claim” not as an exception, but rather as a *clarification* of the general words of the definition. The addition of these words confirms that not every possible claim or proceeding

against Horsley would be caught by the definition of “Horsley Claim” and that disciplinary proceedings taken against Horsley in the public interest were not included in the Horsley Class Settlement Approval Order.

62. It is submitted that the ICAO’s Allegations falls within the category of proceedings identified by the Horsley Class Settlement Approval Order as being excluded from the definition of “Horsley Claim”. The Allegations brought by the ICAO against Horsley are not related to the Horsley Class Settlement Approval Order but are based entirely on the facts agreed to by Horsley in the proceeding commenced by the Ontario Securities Commission, a proceeding excluded by the Horsley Class Settlement Order. Horsley has agreed that the facts in the OSC Settlement Agreement will not be contested in the ICAO disciplinary process which is why Horsley’s counsel noted “That should mean that you do not need to appoint an investigator.”

**Reference:** Email from Horsley’s Counsel to ICAO dated January 23, 2015, **Responding Record, Tab A3, pg.123**

**E. *Horsley never intended or understood that the regulatory power of the ICAO was barred by the settlements of the CCAA or the Class Proceedings.***

63. It is respectfully submitted that Horsley himself never intended or understood that the settlement of the Sino-Forest Proceedings or the definition of “Horsley Claim” did or would bar or enjoin the ICAO from pursuing disciplinary proceedings against Horsley, as evidenced by the fact that prior to the settlement orders he now relies upon, Horsley:

- (a) never advised the ICAO of the Class Proceedings in which he was a named party prior to the settlement of Sino-Forest Proceedings;
- (b) never advised the ICAO of the CCAA Proceedings prior to his settlement of said proceeding;
- (c) never advised the ICAO of the proposed Horsley Class Settlement Agreement;

(d) never advised the ICAO of the terms of the proposed Horsley Class Settlement Approval Order, including in particular the definition of “Horsley Claim” proposed to be release thereby, prior to the approval of same on July 24, 2015;

64. Further, in the letter to the ICAO dated July 28, 2014 Horsley’s counsel described the Horsley Class Settlement Approval Order as having “approved a comprehensive settlement of the civil claims against Mr. Horsley”. There was no suggestion that said Order in any way affected the jurisdiction of the ICAO to pursue disciplinary proceedings against Horsley. In fact, Mr. Wardle had previously advised the ICAO in his June 5, 2014 Letter that he was disclosing the OSC Settlement to the ICAO “so that the Institute can consider whether to take disciplinary proceedings against Mr. Horsley in connection with these matters”.

**Reference:** June 16, 2014 Letter, **Responding Record, Tab A1**  
July 28, 2014 Letter, **Responding Record, Tab A2**

65. In January 2015 Horsley, through his counsel, agreed to admit certain facts in order that the ICAO would not be required to appoint an investigator as part of its consideration of whether discipline proceedings against Horsley were warranted.

**Reference:** Email from Horsley’s Counsel to ICAO dated January 23, 2015, **Responding Record, Tab A3, pg.123**

66. The first time Horsley took the position that the Horsley Class Settlement Agreement Order and the definition of “Horsley Claim” therein enjoined the ICAO from commencing proceedings against Horsley was on March 30, 2015.

**Reference:** Letter from ICAO to Horsley dated April 1, 2015, **Responding Record, Tab A5, pg.130**

**F. ICAO was not provided notice of the hearing which resulted in the Sino-Forest Plan or the Horsley Class Settlement Approval Order, including the definition of “Horsley Claim”**

67. The ICAO was not a party to the Sino-Forest Proceedings and was never provided with notice of the Sino-Forest Proceedings which resulted in the Plan and the Horsley Class Settlement Approval Order, which Horsley now seeks to rely upon.

68. Horsley was aware of the ICAO's jurisdiction and potential interest in commencing disciplinary proceedings against him and of his obligation to self-report potential breaches of the *Act* to the ICAO, as evidenced in Horsley's counsel letter of June 5, 2014 to the ICAO. Despite this, Horsley failed to advise the ICAO of the Sino-Forest Proceedings or provide the ICAO with advance notice of his proposed settlement of the Sino-Forest Proceedings or of the motion heard on July 24, 2014 which resulted in the Horsley Class Settlement Approval Order, which Horsley now relies upon to enjoin the ICAO.

69. Had the ICAO received advance notice of the July 24, 2014 motion and of Horsley's position that the definition of "Horsley Claim" contained therein enjoined the ICAO from instituting regulatory proceedings against Horsley in respect of his conduct as a chartered accountant and member of the ICAO, the ICAO, for greater certainty, would have requested the same exclusion to its proceedings as was given to the OSC be included in the definition of "Horsley Claim" in the Horsley Class Settlement Approval Order.

70. In these circumstances, the ICAO respectfully submits that it would be unjust to grant the relief requested by Horsley.

71. It is further submitted that granting the relief sought by Horsley would have a wide reaching adverse impact not only on the ability of the ICAO to regulate its members to protect the public pursuant to its legislative mandate, but also on the ability of other statutory bodies with similar regulatory duties. Granting the relief sought would mean that a member of a self-regulating professional organization, like Horsley, who has agreed to be bound by the Rules of Professional Conduct and the Bylaws of the ICAO pertaining to the disciplinary process could make a monetary payment in a CCAA or class action proceeding and thereby avoid accountability to their professional body and usurp the ability of the profession to govern itself through that disciplinary process. The deterrent impact of the disciplinary process on the member and like-minded members would be lost and the ability of the ICAO to regulate its members would be impaired.

## **G. Conclusion**

72. In interpreting the scope of the definition of Horsley Claim in the Horsley Class Settlement Approval Order the following passage from the decision of the Supreme Court of Canada in *Pharmascience Inc v. Binet*, [2006] 2 S.C.R. 513 may be referenced:

**36** This Court has on many occasions noted the crucial role that professional organizations play in protecting [page535] the public interest. As McLachlin J. stated in *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232, "[i]t is difficult to overstate the importance in our society of the proper regulation of our learned professions" (p. 249). The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them. Also, it should not be forgotten that in the client-professional relationship, the client is often in a vulnerable position....

The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with the responsibility for providing adequate protection for the public. *Finney* confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so.

**Reference:** *Pharmascience Inc. v. Binet*, [2006] 2 S.C.R. 513, **Respondent's Authorities, Tab 3**

73. It is respectfully submitted that the Allegations dated May 21, 2015 against Horsley (and any sanctions which *may* be imposed in the event the allegations are found to be proven after a hearing by the Discipline Committee of the ICAO are *not, and were not* intended to be, the subject of the Sino-Forest CCAA Proceeding and were not and could not form part of the Horsley Claims released by the Horsley Class Settlement Approval Order, because any allegations of misconduct as a chartered accountant by his governing body:


- (a) are not claims which could be made or compromised in the CCAA Proceeding or the Class Proceeding;
- (b) are not financial or monetary claim(s) against Sino-Forest or for which Sino-Forest has or had any liability, financial or otherwise, and were not subject to the CCAA;
- (c) are not claims against Sino-Forest for which Horsley is liable in his "capacity as director" of Sino-Forest, and were not subject to the CCAA;
- (d) are not "Claims" or "D&O Claims" as defined by and which were subject to the Sino-Forest Plan;


- (e) were not included in the definition of “Horsley Claim” set out in the Horsley Class Settlement Approval Order; and
- (f) were not intended by Horsley to be the subject of or to be affected by his settlement of the Sino-Forest Proceedings; and because
- (g) notice was never provided to the ICAO of the hearing that resulted in the Sino-Forest Plan or the Horsley Class Settlement Approval Order containing the definition of “Horsley Claim” relied upon by the Moving Party.

**PART V - RELIEF SOUGHT**

74. For the reasons set out above, the ICAO requests the following relief:
- (a) an order dismissing the motion herein brought by Mr. Horsley;
  - (b) an order declaring that the Horsley Class Settlement Agreement and the Horsley Class Settlement Approval Order does not affect the right or ability of the ICAO to bring, continue or prosecute Allegations against Horsley;
  - (c) an order declaring that the definition of “Horsley Claim” does not include disciplinary proceedings commence and continued by the ICAO; and
  - (d) its costs of this motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 18<sup>th</sup> day of November, 2015.

  
**Paul Farley**  
Counsel to the Institute of Chartered  
Accountants of Ontario

  
**Brian P Bellmore & Diana M Soos**  
Counsel to the Institute of Chartered  
Accountants of Ontario



**Schedule “A”  
Cases Cited**

*Newfoundland and Labrador v. AbitibiBowater Inc.*, [2012] S.C.J. No. 67 (S.C.C.)

*Re Terrace Bay Pulp Inc. (Re)*, [2013] O.J. No. 3703 (S.C.J.)

*Pharmascience Inc. v. Binet*, [2006] 2 S.C.R. 513

**Schedule “B”  
Statutes Cited**

***Chartered Accountants Act, 2010 S.O. 2010, c.6***

4. The objects of the Institute are,

(b) to promote and protect the public interest by governing and regulating the practice of individuals and firms as Chartered Accountants in accordance with this Act and the by-laws, including,

- (j) establishing, maintaining, developing and enforcing standards of qualification,
- (ii) establishing, maintaining, developing and enforcing standards of practice,
- (iii) establishing, maintaining, developing and enforcing standards of professional ethics;
- (iv) establishing, maintaining, developing and enforcing standards of knowledge, skill and proficiency, and
- (v) regulating the practice, competence and professional conduct of individuals and firms as Chartered Accountants;

...

63(1) The council [of the Institute] may make by-laws necessary or desirable to conduct the business and carry out the objects of the Institute.

63(2) Without limiting the generality of subsection (1), the council may make by-laws with respect to the following matters:

...

15. Governing the conduct of members of the Institute and firms as Chartered Accountants, including,

- i. providing for rules of professional conduct, and
- ii. governing complaints and discipline, including specifying requirements for making complaints.

**ICAO Bylaw 2.2 Compliance – General**

2.2 Compliance - General All Members, Students, Applicants, and firms, including professional corporations, by their application for or continuance of membership or registration shall agree and shall be deemed to have agreed with CPA Ontario to the terms of the bylaws, Rules of Professional Conduct and regulations of CPA Ontario, as applicable, and all acts or things done

thereunder, including the giving of any notice, publishing or releasing information and the interpretation of any bylaw, rule of professional conduct or regulation by the Council pursuant to these bylaws.

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

Claims against directors - compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

...

Stays, etc. — initial application

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays — directors

**11.03 (1)** An order made under [section 11.02](#) may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

...

Meaning of “regulatory body”

**11.1 (1)** In this section, “regulatory body” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body’s investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

...

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

**APPENDIX 1  
CHRONOLOGY**

| <b>No.</b> | <b>Date</b>       | <b>Description</b>  |
|------------|-------------------|---|
| 1.         | July 20, 2011     | Shareholders and debtholders of Sino-Forest Corporation (“ <b>Sino-Forest</b> ”) instituted class action proceedings against, inter alia, Sino-Forest and Horsley (the “ <b>Class Proceeding</b> ”).  |
| 2.         | March 30, 2012    | Sino-Forest filed for and received protection under the <i>Companies Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36 (the “ <b>CCAA</b> ”) (the “ <b>CCAA Proceeding</b> ”).   |
| 3.         | December 10, 2012 | Court approved a Plan of Compromise and Reorganization in respect of Sino-Forest (the “ <b>Sino-Forest Plan</b> ”).   |
| 4.         | May 14, 2012      | <p>Court issued Claims Procedure Order in the Sino-Forest CCAA Proceeding, which defined “Claim” and “D&amp;O Claim” as follows:</p> <p>“Claim” means:</p> <p style="padding-left: 40px;">(i) Any right or claim of any Person that may be asserted or made in whole or in part <b><u>against the Applicant, ...</u></b></p> <p>“D&amp;O Claim” means, other than an Excluded Claim, (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to <b><u>a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers,</u></b> or (ii) any right or claim of any Person that may be asserted or made in whole or in part against on or more Directors or Officers, <b><u>in that capacity,</u></b> whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever,...</p> |
| 5.         | May 2014          | Settlement Agreement signed by Horsley in respect of the Sino-Forest Class Action Proceeding (the “ <b>Horsley Class Settlement Agreement</b> ”).   |

|    |               |   |
|----|---------------|---|
| 6. | June 5, 2014  | <p>Morawetz J. granted “Notice Approval-Horsley Settlement” Order in the Sino-Forest Class and CCAA Proceedings. The notice was directed as follows:</p> <p><b>TO:</b> All persons and entities, wherever they may reside, <u>who acquired any securities of Sino-Forest Corporation</u> including securities acquired in the primary, secondary, and over-the counter-markets (the “Securities Claimants”).</p>  |
| 7. | June 16, 2014 | <p>Letter from Wardle to ICAO advising of OSC proceeding. No mention of Sino-Forest Class Proceeding, or proposed settlement of said proceedings by Horsley. No mention of Sino-Forest CCAA Proceeding or any proposed release of claims against Horsley in the CCAA Proceeding, most importantly, no mention of any proposed compromise of any proceedings that might be commenced by the ICAO against Horsley. No mention of the June 5, 2015 Notice Approval-Horsley Settlement Order.</p>   |
| 8. | July 24, 2014 | <p>Order of Morawtez approving the Horsley settlement which included the definition of “Horsley Claim” (the “<b>Horsley Class Settlement Approval Order</b>”). ICAO was not provided with notice of the July 24, 2014 motion.</p>   |
| 9. | July 28, 2014 | <p>Letter from Wardle to ICAO which enclosed:</p> <ul style="list-style-type: none"> <li>(1) OSC Notice of Hearing regarding Horsley, dated May 22, 2012</li> <li>(2) OSC Statement of Allegations regarding Horsley, dated May 22, 2012</li> <li>(3) Settlement Agreement between OSC and Horsley, dated June 26, 2014</li> <li>(4) Order of OSC, dated July 21, 2014</li> <li>(5) Minutes of Settlement, signed by Horsley on May 13, 2013 in the Class Action Proceeding</li> <li>(6) Order of Morawetz, dated June 5, 2014</li> </ul> |

|     |                                      |  |
|-----|--------------------------------------|--|
|     |                                      | This letter did not enclose the Sino-Forest Plan, or Horsley Class Settlement Order dated July 24, 2014. More importantly, there was no suggestion in this letter that the Horsley Class Settlement Order enjoined the ICAO from commencing proceedings against Horsley. |
| 10. | After July 28, 2014 to January, 2015 | Oral communications between ICAO and Counsel for Horsley regarding the appointment of an investigator by the ICAO. As a result of said communication Horsley agree to admit the same facts as he had admitted to the OSC.  |
| 11. | January 23, 2015                     | Email from Horsley's Counsel to the ICAO confirming that Horsley would admit the same facts he admitted to the OSC.  |
| 12. | March 25, 2015                       | Letter from ICAO to Horsley advising of and inviting Horsley to attend meeting before the ICAO's Professional Conduct Committee (the "PCC") on April 14, 2015 to review the professional conduct of Horsley in relation to Horsley's admissions of fact before the OSC.  |
| 13. | April 1, 2015                        | ICAO letter to Horsley regarding recent conversation with Horsley's Counsel re "potential jurisdictional issue".   |
| 14. | April 6, 2015                        | Horsley sends letter to ICAO advising he wishes to attend meeting with PCC on April 14, 2015, despite "potential jurisdictional issue".  |
| 15. | April 14, 2015                       | PCC meeting regarding Horsley. Horsley attended before the PCC.  |
| 16. | May 26, 2015                         | Letter from ICAO to Horsley advising of Allegations of Professional Misconduct issued by the PCC on May 21, 2015.  |
| 17. | June 8, 2015                         | Letter from Horsley's Counsel to ICAO alleging the ICAO's Allegations of Professional Misconduct against Horsley are in contravention of Horsley Settlement and related Court Order. First   |

|     |              |  |
|-----|--------------|--|
|     |              | time ICAO was provided with the Sino-Forest Plan of Arrangement and advised of the details of Horsley's position regarding the effect of the Plan and the Horsley Class Settlement Approval Order which Horsley now relies upon to oust the regulatory jurisdiction of the ICAO. |
| 18. | July 8, 2015 | Letter from ICAO to Horsley's counsel advising of ICAO's position regarding the Horsley Class Settlement Approval Order.   |



**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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE CHARTERED PROFESSIONAL  
ACCOUNTANTS OF ONTARIO**

(Returnable: November 18, 2015)

**CHARTERED PROFESSIONAL  
ACCOUNTANTS OF ONTARIO**

69 Bloor Street East

Toronto, Ontario M4W 1B3

**Paul Farley**, Senior Counsel (#19228T)

Tel: (416) 969-4251 Fax: (416) 969-5538

**BELLMORE & MOORE**

393 University Avenue, Suite 1600

Toronto, Ontario M5G 1E6

**Brian P. Bellmore** (#101290)

Tel: (416) 581-1818 Fax: (416) 581-1279

Lawyers for the Respondent