

***COURT OF APPEAL FOR ONTARIO***

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

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**FACTUM OF THE RESPONDENT,  
FTI CONSULTING CANADA INC.,  
in its capacity as Monitor**

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April 25, 2013

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**FACTUM OF THE RESPONDENT,  
FTI CONSULTING CANADA INC.**

**PART I - OVERVIEW**

1. This responding factum is submitted by FTI Consulting Canada Inc. in its capacity as monitor (the “**Monitor**”) appointed in connection with the *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings involving Sino Forest Corporation (“**SFC**” or the “**Company**”), as a limited response to the motion for directions by the appellants, Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National de Retraite Bâtirente Inc. (collectively, the “**Appellants**”).

*Background relating to the Plan and Sanction Order*

2. SFC commenced its proceedings under the CCAA on March 30, 2012. After over eight (8) months of public CCAA proceedings and negotiations, the Company presented its plan of compromise to creditors and on December 10, 2012, the Ontario Superior Court of Justice (the “**CCAA Court**”) granted an order (the “**Sanction Order**”) approving the Company’s plan of compromise and reorganization dated December 3, 2012 (as amended, the “**Plan**”). The Plan was approved in its entirety including Article 11 which provided for a framework within which Ernst & Young LLP (“**E&Y**”) might be able to obtain a release under the Plan if certain additional conditions were met. Those conditions included separate court approval of the settlement (the “**E&Y Settlement**”) that it had entered into, including approval of the scope of the proposed release. The Plan was implemented on January 30, 2013 and substantially all of the consideration under the Plan has now been distributed.

3. The Plan reflected terms that were extensively negotiated by the Company (among others) in order to reach a compromise and reorganization acceptable to its creditors and other participants in the proceedings. The Plan was approved by over 98% (in both quantum and value) of voting creditors (who voted either in person or by proxy in accordance with the plan filing and meeting order dated August 31, 2012 which provided for amendments to the Plan to be made in accordance with the terms of such Order) and was sanctioned by the CCAA Court. It is clear that the Plan is a compromise in the true sense of the word, that its components are integrated and that it should be read as a whole.

4. On December 27, 2012, the Appellants served a notice of motion for leave to appeal the Sanction Order (the "**Sanction Order Leave Motion**"). To date, no decision with respect to the Sanction Order Leave Motion has been issued by this Court.

*Background relating to the E&Y Settlement*

5. Neither the Plan nor the Sanction Order, themselves, give effect to a third party release in favour of E&Y or any other "Named Third Party Defendant" under the Plan. As noted by Morawetz, J. in his Sanction Order Reasons, "it is apparent that approval of the E&Y Settlement is not before the court on this motion and no release is being provided to E&Y as a result of this motion." Instead, Morawetz, J. correctly noted that the E&Y release would only become effective if certain other conditions were met, including further court approval of the E&Y Settlement.

6. The motion for approval of the E&Y Settlement was heard on February 4, 2013. The Appellants participated in that motion. Pursuant to a decision of Morawetz, J. released on March 20, 2013 (the “**E&Y Settlement Reasons**”) the CCAA Court approved the E&Y Settlement.

7. On April 9, 2013, the Appellants served a notice of motion for leave to appeal the E&Y Settlement Reasons (the “**E&Y Settlement Leave Motion**”).

*The Appellants' Motion for Directions*

8. The Appellants have now brought a motion seeking direction from this Honourable Court with respect to certain matters including, without limitation, an order consolidating the Sanction Order Leave Motion with the E&Y Settlement Leave Motion (the “**Consolidation Issue**”).

9. The Monitor is filing this limited response with respect to the Consolidation Issue only given the impact that this particular relief may have on issues relating to the Sanction Order and thus the restructuring proceedings. For the reasons set forth below, the Monitor opposes the consolidation of the Sanction Order Leave Motion and the E&Y Settlement Motion.

**PART II – THE FACTS**

10. The Monitor adopts the facts summarized in the endorsement of Morawetz, J. released on December 10, 2012 (the “**Sanction Order Reasons**”) and the E&Y Settlement Reasons. To the extent of any conflict between the facts as summarized in

the Sanction Order Reasons and/or the E&Y Settlement Reasons and the facts stated on behalf of the Appellants, the Monitor disagrees with the facts set out in the Appellants' factum.

### **PART III – MONITOR'S POSITION RE: THE CONSOLIDATION ISSUE**

11. To provide some context, reference to the below dates is made:
  - (a) On December 10, 2012, the Court granted the Sanction Order approving the Plan including Article 11 of the Plan.
  - (b) Seventeen (17) days later, on December 27, 2012, the Appellants commenced the Sanction Order Leave Motion. Responding materials were served on or about February 22, 2013.
  - (c) On January 30, 2013 the Plan was implemented and substantially all of the consideration under the Plan has now been distributed.
  - (d) On February 4, 2013, the CCAA Court heard a motion for the approval of the E&Y Settlement (including the scope of the E&Y release).
  - (e) On March 20, 2013, the CCAA Court issued the E&Y Settlement Reasons.
  - (f) Twenty (20) days later, on April 9, 2013, the Appellants commenced the E&Y Settlement Leave Motion.

12. The Monitor was heavily involved in SFC's restructuring proceedings including the development of and implementation of its Plan. The granting of the Sanction Order is an essential and key part of the restructuring process and final certainty as to the approval of the Sanction Order is of significant importance to SFC and its stakeholders.

13. The Monitor is of the view that the issue as to whether the Sanction Order Leave Motion should be considered apart from the issues relating to the E&Y Settlement Leave Motion particularly given that:

- (a) The Appellants' request that the Sanction Order Leave Motion and the E&Y Settlement Leave Motion is not timely. The Sanction Order Leave Motion was commenced on December 27, 2012, almost four (4) months ago. Responding materials have been filed with this Honourable Court since February 22, 2013 including a factum filed by the Monitor outlining the reasons it opposed the Sanction Order Leave Motion;
- (b) The issues relating to the Sanction Order Leave Motion and the E&Y Settlement Leave Motion are not the same. The E&Y Settlement including the proposed release in favour of E&Y were and are subject to a separate approval process; and
- (c) The Plan has now been fully implemented and substantially all of the Plan consideration has been distributed. Consolidating the two leave motions would result in a delay of the disposition of the Sanction

Order Leave Motion which was previously proceeding in writing and which may provide SFC stakeholders with certainty as to the approval of the Plan.

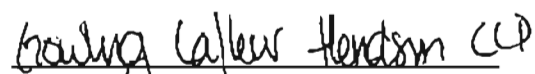
#### **PART IV – ADDITIONAL ISSUES**

14. The Monitor has no additional issues to raise in relation to this motion directions.

**PART V – ORDER REQUESTED**

15. It is the Monitor's view that, among other things, relief granting the consolidation of the Sanction Order Leave Motion and the E&Y Settlement Leave Motion should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of April, 2013.

  
Gowling Lafleur Henderson LLP

Of Counsel to the Monitor

**SCHEDULE A**

N/A



**SCHEDULE B**

N/A

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

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(PROCEEDING COMMENCED AT TORONTO)

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