

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

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

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

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**FACTUM OF THE APPLICANT,**  
**SINO-FOREST CORPORATION**

**(Approval of Ernst & Young Settlement Motion returnable February 4, 2013)**

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Dated: January 30, 2013

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TO: THE SERVICE LIST

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**I. OVERVIEW**

1. The Applicant, Sino-Forest Corporation ("SFC" or the "Applicant"), supports the motion brought by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the representative plaintiffs in the Ontario Class Action (collectively, the "Ontario Plaintiffs"), for approval of a settlement (the "Ernst & Young Settlement"), as further defined in the Plan of Compromise and Reorganization of SFC dated December 3, 2012 (the "Plan"), with Ernst & Young LLP and the release of claims against Ernst & Young LLP (the "Ernst & Young Release", the "Ernst & Young Claims" and "Ernst & Young", all as those terms are defined in the Plan).

2. The Ernst & Young Settlement and the Ernst & Young Release are specifically provided for in the Plan and are the direct result of mediation efforts originally initiated and ordered (on

the consent of the parties) by this Honourable Court with a view to the overall objectives of this restructuring. The Ernst & Young Settlement not only resolved Ernst & Young's claims against the Applicant and Ernst & Young's objections to the Plan, but it was also a catalyst for the support of other third party stakeholders of the Plan.

3. The Ernst & Young Settlement significantly contributed to the Plan, its timing and implementation, and the maximization of stakeholder recovery. The Ernst & Young Settlement and the Ernst & Young Release should be approved.

## **II. FACTS**

### **A. Background**

4. SFC is an integrated forest plantation operator and forest productions company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China (the "PRC"). SFC's registered office is in Toronto and its principal business office is in Hong Kong.<sup>1</sup>

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

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<sup>1</sup> Affidavit of W. Judson Martin sworn November 29, 2012, para. 8 ( the "Martin November 29 Affidavit") attached as Exhibit B to the Affidavit of W. Judson Martin sworn January 11, 2013 (the "Martin January 11 Affidavit"), the Responding Motion Record of Sino-Forest Corporation (the "Motion Record"), Tab 1(C), p. 96.

<sup>2</sup> Martin November 29 Affidavit, para 9, Motion Record, Tab 1(C), p. 96.

6. SFC applied to this Honourable Court and obtained an Initial Order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a stay of proceedings was granted in respect of SFC and certain of its subsidiaries. The stay of proceedings provided for in the Initial Order was subsequently extended by Orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended by the Court, will expire on February 1, 2013.<sup>3</sup>

**B. Claims Process**

7. On May 14, 2012, this Honourable Court granted an order (the "Claims Procedure Order") which approved a claims process that was developed by SFC, in consultation with the Monitor.<sup>4</sup>

8. In order to identify the nature and extent of claims asserted against SFC's subsidiaries, the Claims Procedure Order required any claimant that had or intended to assert a right or claim against one or more of the subsidiaries, relating to a purported claim made against SFC, to so indicate on their Proof of Claim.<sup>5</sup>

**C. Claims Relevant to this Motion**

9. As detailed below, the claims process established by the Claims Procedure Order gave rise to a number of claims that are relevant for purposes of this motion.

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<sup>3</sup> Martin November 29 Affidavit, para. 28, Motion Record, Tab 1(C), p. 101.

<sup>4</sup> Martin November 29 Affidavit, para. 39, Motion Record, Tab 1(C), p. 106.

<sup>5</sup> Martin November 29 Affidavit, para. 41, Motion Record Tab 1(C), pp. 105-106.

**1. *The Noteholders***

10. At the date of filing, SFC had approximately \$1.8 billion of principal amount of debt owing under notes, plus accrued and unpaid interest.<sup>6</sup>

**2. *The Shareholder / Former Noteholder Group***

11. As indicated above, after the Muddy Waters report was released, SFC and certain of its officers, directors and employees, along with SFC's former auditors, technical consultants and the Underwriters (defined below) involved in prior equity and debt offerings, were named as defendants in a number of proposed class action lawsuits. Presently, there are active proposed class actions in four jurisdictions: Ontario, Quebec, Saskatchewan, and New York.<sup>7</sup>

12. The *Labourers v. Sino-Forest Corporation* class action (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP.<sup>8</sup> It has two components. First, there is a shareholder claim, brought on behalf of current and former shareholders of SFC, seeking damages in the amount of \$6.5 billion for general damages, \$174.8 million in connection with a prospectus issued in June 2007, \$330 million in relation to a prospectus issued in June 2009, and \$319.2 million in relation to a prospectus issued in December 2009.<sup>9</sup> Second, there is a noteholder claim, brought on behalf of former holders of SFC's notes in the amount of

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<sup>6</sup> Martin November 29 Affidavit, paras. 43, Motion Record, Tab 1(C), p. 106.

<sup>7</sup> Martin November 29 Affidavit, paras. 45-50, Motion Record Tab 1(C), pp. 107-109.

<sup>8</sup> Who succeeded in a carriage fight. See *Smith v. Sino-Forest Corporation*, 2012 ONSC 24, para. 233 ["I award carriage to Koskie Minsky and Siskinds in *Labourers v. Sino-Forest*. In the race for carriage of an action against Sino-Forest, I would have ranked Rochon Genova second and Kim Orr third."], Brief of Authorities of the Applicant, Tab 1.

<sup>9</sup> Martin November 29 Affidavit, para. 47, Motion Record, Tab 1(C), p. 108.

approximately \$1.8 billion. The Noteholder component of this claim asserts, among other things, damages for loss of value in the Notes.<sup>10</sup>

13. The Quebec class action was brought by Siskinds' office in Quebec, and is similar in nature to the Ontario Class Action. The Ontario and Quebec Class Action plaintiffs both filed Proofs of Claim. The plaintiffs in the Saskatchewan claim did not file a Proof of Claim in this proceeding.<sup>11</sup> The New York complaint is brought on behalf of persons who purchased SFC shares on the over-the-counter market and on behalf of non-Canadian purchasers of SFC debt securities, but no quantum of damages is specified in the complaint.<sup>12</sup> The plaintiffs in the New York class action also filed Proofs of Claims. A few shareholders filed Proofs of Claim separately, but no Proof of Claim was filed by Kim Orr LLP who now represents the parties opposing this motion.

14. In this proceeding, an Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers' Committee") has appeared to represent the interests of shareholders and noteholders who have asserted class action claims against SFC and others. The Ad Hoc Securities Purchasers' Committee is represented in this proceeding by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP.<sup>13</sup>

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<sup>10</sup> Martin November 29 Affidavit, para. 48, Motion Record Tab 1(C), pp. 108-109.

<sup>11</sup> Martin November 29 Affidavit, para. 49, Motion Record Tab 1(C), p. 109.

<sup>12</sup> Martin November 29 Affidavit, para. 50, Motion Record Tab 1(C), p. 109.

<sup>13</sup> Martin November 29 Affidavit, para. 51, Motion Record Tab 1(C), p. 109.

### 3. *Auditors*

15. Since 2000, SFC has had two auditors: Ernst & Young, who acted as auditor from 2000 to 2004 and 2007 to 2012, and BDO Limited ("BDO"), who acted as auditor from 2005 to 2006.<sup>14</sup>

16. The auditors asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the shareholder class actions, with each of the auditors having asserted claims in excess of \$6.5 billion. In addition, the auditors asserted claims for payment of professional fees associated with SFC after the release of the Muddy Waters report, and generalized claims for damage to reputation.<sup>15</sup> The auditors also asserted indemnification claims in respect of the class action claims against them by the former Noteholders.<sup>16</sup> The auditors asserted claims against SFC's subsidiaries for, among other things, indemnification in connection with the shareholder class actions. Those claims tended to treat SFC and its subsidiaries interchangeably or as one collective entity.<sup>17</sup>

### 4. *Underwriters*

17. In each instance where SFC has had a debt or equity public offering, such offering has been underwritten. A total of eleven firms<sup>18</sup> (the "Underwriters") have acted as SFC's

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<sup>14</sup> Martin November 29 Affidavit, para. 61, Motion Record, Tab 1(C), p. 111.

<sup>15</sup> Martin November 29 Affidavit, para. 62, Motion Record, Tab 1(C), p. 112.

<sup>16</sup> Martin November 29 Affidavit, para. 66, Motion Record, Tab 1(C), p. 113.

<sup>17</sup> Martin November 29 Affidavit, para. 67, Motion Record Tab 1(C), p. 113.

<sup>18</sup> The full list of the underwriting firms is provided in the Martin November 29 Affidavit, para. 68, Motion Record Tab 1(C), pp. 113-114.



underwriters and have also been named as defendants in the Ontario Class Action. Certain of the Underwriters are also defendants in the New York class action.<sup>19</sup>

18. Like the auditors, the Underwriters filed claims against SFC seeking contribution and indemnity for the shareholder class actions.<sup>20</sup> The Underwriters also asserted indemnification claims in respect of the class action claims against them by the former Noteholders.<sup>21</sup> Certain of the Underwriters also asserted claims against the SFC's subsidiaries in connection with the four note offerings.<sup>22</sup>

#### **D. The Equity Claims Decision**

19. On June 26, 2012, SFC brought a motion for an order directing that claims against SFC that arise in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims are "equity claims" as defined in section 2 of the CCAA, including the claims by or on behalf of shareholders asserted in the class action proceedings.<sup>23</sup> The equity claims motion did not purport to deal with the component of the class action proceedings relating to SFC's notes.<sup>24</sup>

20. In reasons released on July 27, 2012, this Honourable Court granted the relief sought by SFC (the "Equity Claims Decision"), finding that "the claims advanced in the Shareholder Claims are clearly equity claims." The Ad Hoc Securities Purchasers' Committee did not oppose

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<sup>19</sup> Martin November 29 Affidavit, para. 68, Motion Record, Tab 1(C), pp. 113-114.

<sup>20</sup> Martin November 29 Affidavit, para. 69, Motion Record, Tab 1(C), p. 114.

<sup>21</sup> Martin November 29 Affidavit, para. 71, Motion Record, Tab 1(C), p. 114.

<sup>22</sup> Martin November 29 Affidavit, para. 72, Motion Record, Tab 1(C), p. 114.

<sup>23</sup> Martin November 29 Affidavit, para. 52, Motion Record, Tab 1(C) p. 110.

<sup>24</sup> Martin November 29 Affidavit, para. 52, Motion Record Tab 1(C), p. 110.

the motion and no issue was taken by any party with the Court's determination that the shareholder claims against SFC were "equity claims".<sup>25</sup> The Equity Claims Decision was affirmed by the Ontario Court of Appeal on November 23, 2012.<sup>26</sup>

**E. Efforts and Achievements in Arriving at a Negotiated Resolution**

21. From shortly after this proceeding was commenced, efforts were made to develop a path forward for SFC that could achieve the requisite creditor support.

22. There could be no effective restructuring of SFC's business and separation from the Canadian parent (which SFC has said from the outset was the objective at the commencement of these proceedings) if the claims asserted against SFC's subsidiaries arising out of, or connected to, claims against SFC remained outstanding.<sup>27</sup> The Plan had to provide for the release of claims against SFC's subsidiaries.

23. In addition, and as SFC and the Monitor have previously advised this Honourable Court, timing and delay were critical factors in this restructuring. Undue delays and the passage of time would have negatively impacted the value of SFC's assets and the recovery by stakeholders.<sup>28</sup>

24. Accordingly, it was critical to the success of this restructuring, to the maximization of value and to the preservation of assets that the claims against SFC and SFC's subsidiaries be

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<sup>25</sup> Martin November 29 Affidavit, paras. 54-55, Motion Record, Tab 1(C), p. 110.

<sup>26</sup> Martin November 29 Affidavit, para. 55, Motion Record, Tab 1(C), p. 110.

<sup>27</sup> Martin November 29 Affidavit, para. 124, Motion Record, Tab 1(C), p. 129.

<sup>28</sup> Martin January 11 Affidavit, para. 11, Motion Record, Tab 1, p. 4.

determined or resolved such that the assets held by the subsidiaries not be subject to these contingent claims, and that this be achieved as quickly as possible.<sup>29</sup>

25. It is for these reasons, among others, that SFC, supported by the noteholders, continued its efforts to advance this restructuring as soon as possible. SFC welcomed the initiative by this Honourable Court to urge and encourage the principal stakeholders to engage in a constructive dialogue with a view to attempting to resolve disputes on a consensual basis, including the claims against SFC and SFC's subsidiaries.<sup>30</sup>

26. On July 25, 2012, the Court issued a mediation order (the "Mediation Order") on the consent of all parties.<sup>31</sup> For the reasons set out above, SFC welcomed the Mediation Order made in these proceedings and the ensuing mediation. The Court-ordered mediation involving the parties to the Ontario Class Action, the noteholders and the Monitor was consistent with the direction and encouragement from this Honourable Court that the principal stakeholders should focus their efforts on the resolution of claims.<sup>32</sup>

27. Paragraph 4 of the Mediation Order provided that the purpose of the mediation would be the resolution of the Ontario and Quebec class actions and paragraph 5 directed the parties, including the Ad Hoc Securities Purchasers' Committee, to attend the mediation with full authority to settle the class action claims. The mediation occurred in a context where this Honourable Court had the jurisdiction to settle the class actions (as discussed below), and yet the

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<sup>29</sup> Martin January 11 Affidavit, para. 12, Motion Record, Tab 1, p. 4.

<sup>30</sup> Martin January 11 Affidavit, para. 13, Motion Record, Tab 1, p. 4.

<sup>31</sup> Martin November 29 Affidavit, paras. 84-85, Motion Record, Tab 1(C), p. 118.

<sup>32</sup> Martin January 11 Affidavit, para. 14, Motion Record, Tab 1, p. 5.

shareholder group represented by Kim Orr LLP never attempted to participate in the mediation nor did they ever raise any objection to the mediation.

28. SFC established a confidential data room, containing approximately 18,000 documents, which was made available to parties to the mediation who signed non-disclosure agreements.<sup>33</sup>

29. The mediation took place on September 4 and 5, 2012. Justice Newbould acted as the mediator. While the mediation did not result in a global resolution, further discussions continued among certain of the parties after the conclusion of the mediation, and those discussions continued up to the meeting of SFC's creditors.<sup>34</sup>

30. As a result of these efforts, SFC obtained the support of and non-opposition to the Plan by significant participants in these proceedings prior to the Meeting, namely: (1) noteholders representing a significant majority of the principal amount of outstanding notes agreed to support the proposed restructuring at an early stage of this proceeding; (2) shareholders and former noteholders, through the Ad Hoc Securities Purchasers Committee, agreed on October 26, 2012 to not oppose the Plan and agreed to the amendments embodied in the Plan as approved; (3) Ernst & Young agreed to support the Plan; (4) the Underwriters agreed to support the Plan; and (5) BDO agreed not to oppose the Plan.

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<sup>33</sup> Martin November 29 Affidavit, para. 84-85, Motion Record, Tab 1(C), p. 118.

<sup>34</sup> Martin November 29 Affidavit, para. 86, Motion Record, Tab 1(C), p. 118.

**F. The Ernst & Young Settlement**

31. Following the mediation, Ernst & Young continued discussions with the Ontario Plaintiffs, ultimately resulting in the Minutes of Settlement which define the terms of the Ernst & Young Settlement.<sup>35</sup>

32. SFC was and remains of the view that the Ernst & Young Settlement is a positive development in this restructuring for the reasons expressed below. As a result, SFC was amenable to amending the draft Plan to provide for the mechanics and framework for the Ernst & Young Settlement and the Ernst & Young Release, and the mechanism for future similar settlements, in order that it could be voted on at the meeting of creditors and sanctioned by this Honourable Court.<sup>36</sup>

33. The Ernst & Young Settlement has provided significant benefit to these proceedings:<sup>37</sup>

- (a) Ernst & Young agreed to support the Plan, including the Plan provisions that deal with the Ernst & Young Settlement;
- (b) Ernst & Young's support simplified and accelerated the Plan process:
  - (i) Ernst & Young agreed that its claims against SFC and its subsidiaries are released, which claims were significant as stated above;

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<sup>35</sup> Martin January 11 Affidavit, para. 16, Motion Record, Tab 1, p. 5.

<sup>36</sup> Martin January 11 Affidavit, para. 17, Motion Record, Tab 1, p. 5.

<sup>37</sup> Martin January 11 Affidavit, para. 19, Motion Record, Tab 1, pp. 6-7.

- (ii) The proofs of claim filed by Ernst & Young set out extensive claims that could be asserted directly against the SFC subsidiaries. Components of those claims were not expressly addressed in the Equity Claims Decision made by this Court;
  - (iii) Ernst & Young agreed not to seek leave to appeal to the Supreme Court of Canada in respect of the dismissal by the Court of Appeal for Ontario of Ernst & Young's appeal of the Equity Claims Decision;
  - (iv) By agreeing to release all of its claims, Ernst & Young has eliminated:
    - (A) The expense and management time otherwise to be incurred in litigating its claims;
    - (B) Dilution of the recovery by other creditors if Ernst & Young's claims were ultimately resolved in its favour and not subordinated; and
    - (C) Potentially extending the timelines to complete the restructuring of SFC;
- (c) Ernst & Young has agreed not to receive any distributions of any kind under the Plan in respect of the noteholder class action claims, as have the other third party defendants (as discussed below). Without that agreement, the Unresolved Claims Reserve (as defined in the Plan) would have materially increased, with the

potential for a corresponding dilution of consideration paid to the affected creditors; and

- (d) Although the allocation of the settlement funds has yet to be determined, any portion allocated to the equity holders of SFC will significantly increase the recovery to a class of stakeholders that would not otherwise receive any amount under the Plan.<sup>38</sup>

34. For these reasons, among others, the Ernst & Young Settlement contributed in a significant and positive way to the timeliness of the Sanction Order, and ultimately to the implementation of the Plan.<sup>39</sup>

35. The terms of the Ernst & Young Settlement include the provision of a release in favour of Ernst & Young in respect of all claims related to SFC. The Plan (as sanctioned) already includes third party releases in respect of other non-Applicant entities and individuals who have made material contributions to the success of the restructuring, including present and former directors and officers, and SFC's subsidiaries.<sup>40</sup>

36. The Plan provides for the mechanics and framework for other third party settlements, should those occur in the future. The inclusion of these provisions in the Plan facilitated the support of the Plan by the Underwriters and the withdrawal of objections to the Plan by BDO. From the course of the negotiations over the relevant period, it is clear that the Ernst & Young

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<sup>38</sup> Martin January 11 Affidavit, para. 19, Motion Record, Tab 1, pp. 6-7.

<sup>39</sup> Martin January 11 Affidavit, para. 21, Motion Record, Tab 1, pp. 7.

<sup>40</sup> Martin January 11 Affidavit, para. 22, Motion Record, Tab 1, pp. 7-8.

Settlement was a catalyst to those other parties withdrawing their objections to the Plan. Ultimately, except for the group of securities holders now opposing the Ernst & Young Settlement, the Plan was approved without opposition.<sup>41</sup>

### **G. The Plan**

37. Pursuant to an Order of this Honourable Court dated August 31, 2012 (the "Plan Filing and Meeting Order") a creditor meeting was held on December 3, 2012 and an overwhelming majority of SFC's affected creditors approved the Plan. The Plan was sanctioned by this Honourable Court on December 10, 2012.

### **III. LAW AND ARGUMENT**

38. The Ernst & Young Settlement and the Ernst & Young Release meet the test for approval under the CCAA.

39. The CCAA is a "flexible statute", and the court has "jurisdiction to approve major transactions, including settlement agreements, during the stay period defined in the Initial Order." The CCAA affords courts broad jurisdiction to make orders and "fill in the gaps in legislation so as to give effect to the objects of the CCAA."<sup>42</sup>

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<sup>41</sup> Martin January 11 Affidavit, para. 23, Motion Record, Tab 1, p. 8.

<sup>42</sup> *Re Nortel Networks Corp.* (2010), 63 C.B.R. (5th) 44 at para. 67 and 70 (Sup. Ct. J.), Brief of Authorities of the Applicant, Tab 2; *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div.) at para. 43, Brief of Authorities of the Applicant, Tab 3.



40. In recent years, a number of courts supervising CCAA proceedings have approved class action settlements within the context of CCAA plans.<sup>43</sup> When assessing a settlement within the CCAA context, courts consider three factors:

- (a) whether the settlement is fair and reasonable;
- (b) whether it provides substantial benefits to other stakeholders; and
- (c) whether it is consistent with the purpose and spirit of the CCAA.<sup>44</sup>

The Ernst & Young Settlement satisfies each of these factors.

41. Where a settlement also provides for a release, such as here, the courts have considered the following (related) factors to determine whether there is a sufficient nexus between the third party releases and the overall plan of arrangement:

- (a) the claims to be released are rationally related to the purpose of the plan;
- (b) the claims to be released are necessary for the success of the plan;
- (c) the parties who have claims released against them are contributing in a tangible and realistic way to the plan; and
- (d) the plan will benefit the debtor and the creditors generally.

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<sup>43</sup> *Re Nortel Networks Corp.* (2010), 63 C.B.R. (5th) 44 (Sup. Ct. J.), Brief of Authorities of the Applicant, Tab 2; *Robertson v. ProQuest Information and Learning Co.*, [2011] O.J. No. 1160 (Sup. Ct. J.), Brief of Authorities of the Applicant, Tab 4.

<sup>44</sup> *Robertson v. ProQuest Information and Learning Co.*, [2011] O.J. No. 1160 (Sup. Ct. J.), Brief of Authorities of the Applicant, Tab 4.

None of these factors is determinative. The court must consider all factors particular to each claim.<sup>45</sup>

42. For the reasons set out above, as well as those set out in factum to be filed by Ernst & Young, all of the above criteria are satisfied on the present facts and this Honourable Court ought to approve the Ernst & Young Settlement and the Ernst & Young Release.

43. Of particular importance to SFC is that the Ernst & Young Settlement represented a significant step forward in SFC's successful restructuring. Prior to the Ernst & Young Settlement, Ernst & Young, the Underwriters and BDO stood together in opposing SFC's restructuring efforts. The Ernst & Young Settlement, and the Plan framework created for future similar settlements, broke a wall of opposition to the Plan and was the immediate catalyst to the resolutions reached with the Underwriters and BDO, eliminating their opposition to the Plan. It is beyond reasonable debate that the Ernst & Young Settlement contributed significantly to SFC's timely and successful restructuring to the benefit of SFC and all of its stakeholders,

44. The Ernst & Young Settlement and the Ernst & Young Release, and the process by which they were negotiated, are fair and reasonable. Moreover, the process that culminated in the Ernst & Young Settlement and the Ernst & Young Release was consistent with the initiative by this Honourable Court to encourage the principal stakeholders to engage in a constructive dialogue with a view to attempting to resolve disputes on a consensual basis, including the claims against SFC and its subsidiaries.

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<sup>45</sup> *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 92 O.R. (3d) 513 (C.A.) at paras. 71-72, Brief of Authorities of the Applicant, Tab 5; see also, the application reasons at (2008), 43 C.B.R. (5th) 269 (Ont. Sup.Ct. J.), Brief of Authorities of the Applicant, Tab 6; *Nortel Networks Corp., Re*, 2010 ONSC 1708 at paras. 79, Brief of Authorities of the Applicant, Tab 2.

45. Parties that elected not to participate in this constructive dialogue should not now be permitted to undermine a significant negotiated settlement that helped lay the groundwork for the acceptance of the Plan and for SFC's timely and successful restructuring.

**IV. RELIEF SOUGHT**

46. SFC requests that this Court grant the relief sought on this motion by making an order approving the Ernst & Young Settlement and the Ernst & Young Release.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

  
BENNETT JONES LLP

Lawyers for Sino-Forest Corporation

**SCHEDULE "A" – AUTHORITIES CITED****Jurisprudence**

1. *Smith v. Sino-Forest Corporation*, 2012 ONSC 24
2. *Re Nortel Networks Corp.* (2010), 63 C.B.R. (5th) 44 (Ont. Sup. Ct. J.)
3. *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div.)
4. *Robertson v. ProQuest Information and Learning Co.*, [2011] O.J. No. 1160 (S.C.J.)
5. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 92 O.R. (3d) 513 (C.A)
6. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 43 C.B.R. (5th) 269 (Ont. Sup. Ct. J.)

**SCHEDULE B – STATUTORY REFERENCES**

None.

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

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

Proceedings commenced in Toronto

**FACTUM OF THE APPLICANT  
(Ernst & Young Settlement Approval  
February 4, 2013)**

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