

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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**FACTUM
(Notice Approval)**

TO: THE ATTACHED SERVICE LIST

PART I – INTRODUCTION

1. This consent motion marks the first step in the implementation of the Minutes of Settlement (the “Settlement Agreement”) between the plaintiffs in the above-captioned class proceeding (the “Representative Plaintiffs”) and the plaintiffs in a parallel proceeding in Quebec (the “Quebec Plaintiffs”), on the one hand, and Ernst & Young LLP (“Ernst & Young”), on the other.
2. A hearing to approve the Settlement Agreement has been scheduled for January 4, 2012 (the “Settlement Approval Hearing”). The Representative Plaintiffs bring this motion for:
 - a. Approval of the form and content of the notice to class members, and to any other parties who believe they may have a claim against Ernst & Young in relation to Ernst & Young’s audits of Sino-Forest’s financial statements, of the Settlement Approval Hearing; and
 - b. Approval of the method of dissemination of the Notice.

PART II – FACTS

3. On November 29, 2012, the Representative Plaintiffs and the Quebec Plaintiffs, on the one hand, and Ernst & Young, on the other, entered into the Settlement Agreement in order to resolve all claims asserted or that could be asserted against Ernst & Young in the above-captioned class proceeding. The Settlement Approval Hearing has been scheduled for January 4, 2012.¹
4. The Representative Plaintiffs and Ernst & Young have agreed on the form and content of the notice to class members of the Settlement Approval Hearing (“Notice”). The Notice will advise class members of the Settlement Approval Hearing, the terms of the Settlement Agreement, and of class members’ right to object or make submissions regarding the Settlement Agreement.²

¹ Jonathan Ptak Affidavit, sworn December 17, 2012 (“Ptak Affidavit”), Motion Record of the Plaintiffs (Notice Approval) (“Motion Record”), Tab 2, para 10.

² Proposed Notice, Exhibit “K” to the Ptak Affidavit, Motion Record, Tab 2K.

5. Sino-Forest Corporation has previously provided to Siskinds LLP and Koskie Minsky LLP, counsel to the Representative Plaintiffs (“Class Counsel”) a list of the name and addresses of holders of Sino-Forest securities as of June 2, 2011 (the “June 2, 2011 Shareholder List”).³
6. To date, Class Counsel have been contacted by 1,017 persons regarding these proceedings. Another 52 persons have contacted Siskinds Desmeules, sencrl, an affiliate of Siskinds and counsel to the class in a parallel action against Sino and others in Quebec.⁴
7. The Representative Plaintiffs and Ernst & Young have also agreed on the method of dissemination of the Notice (“Notice Plan”). The proposed method of dissemination is as follows:
 - a. Class Counsel shall provide or cause to be provided a copy of the Notice directly, either electronically or by mail, to all individuals or entities who have contacted Class Counsel or Siskinds Desmeules sencrl (“Desmeules”) regarding this action, and to any person or entity who requests a copy of the Notice, provided that such person or entity has furnished his, her or its contact information to Class Counsel or Desmeules;
 - b. Class Counsel will send or will cause to be sent copies of the Notice to the addresses on the June 2, 2011 Shareholder List and the current Service Lists in Court File Nos. CV-12-9667-00CL (the “CCAA Proceeding”);
 - c. Class Counsel will send or cause to be sent copies of the Notice to all 196 Canadian brokers who are known to Class Counsel, with a cover letter directing those brokers to provide a copy of the Notice, either by mail or electronically, to those of their clients who are or have been beneficial owners of Sino-Forest securities. Brokers will be requested to send a statement to Class Counsel or its designee indicating that such mailing or electronic communication was completed as directed;

³ Ptak Affidavit, Motion Record, Tab 2, para 12.

⁴ Ptak Affidavit, Motion Record, Tab 2, para 13.

- d. Copies of the Notice, in English and French, will be posted by Class Counsel on their websites;
- e. A copy of the Notice will be posted by Sino-Forest and in a prominent location on the main page of the Sino-Forest website;
- f. Class Counsel will issue and cause to be disseminated a press release which incorporates the Notice;
- g. Class Counsel will provide hyper-links to the Notice from the following twitter accounts:
 - i. @kmlawllp; and
 - ii. @SiskindsLLP;
- h. Copies of the Notice will be published in the following print publications:
 - i. *The Globe and Mail*, in English, in one weekday publication;
 - ii. *National Post*, in English, in one weekday publication
 - iii. *Wall Street Journal*, in English, in one weekday publication;
 - iv. *La Presse*, in French, in one weekday publication; and
 - v. *Le Soleil*, in French, in one weekday publication;

PART III – ISSUES AND THE LAW

- 8. This factum addresses the question of whether the form of the Notice and the plan for its dissemination are adequate.
- 9. Strictly speaking, the procedure for notice of motions seeking the approval of settlements reached in CCAA proceedings is as contemplated by the *Rules of Civil Procedure*; that is, service of notice of the motion given in the usual way to persons who have filed a Notice of Appearance in the proceedings and/or had themselves added to the Service List.

However, in cases involving the interests of a wide class of vulnerable persons, the court supervising a CCAA proceeding has directed that broader notice be given.⁵

10. Similarly (and to the extent that it is applicable) although the *Class Proceedings Act* does not require that notice of a settlement approval hearing be given, dissemination of such notice has become convention.⁶
11. Section 19 of the *Class Proceedings Act, 1992*, SO 1992, c 6 the ("*Class Proceedings Act*") permits the Court to "order any party to give such notice as it considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding."⁷
12. The purpose of this notice is simply to notify class members of the Settlement Agreement and of their right to object or make submissions at the Settlement Approval Hearing.
13. The content of the Notice is similar to the notice of the approval hearing of the settlement between Pöyry (Beijing) Consulting Company Limited ("Pöyry") and the Representative Plaintiffs. That notice was approved by Justice Perell on May 17, 2012.⁸
14. The proposed Notice Plan includes direct notice to the June 2, 2011 Shareholder List, as well as several means of indirect notice. The proposed Notice Plan is consistent with and in fact superior to the notice plan approved by Justice Perell on September 25, 2012, which provided notice of the approval of the Pöyry settlement, the certification of this class proceeding and how members may exercise their rights to opt-out of the class proceeding (the "Pöyry Notice").⁹ In fact, this Notice Plan goes beyond the Pöyry Notice plan, as this Notice Plan includes publication of the Notice via Twitter and press release.

⁵ *Re Nortel Networks Corporation* (February 9, 2010), Toronto (Commercial List) 09-CL-7950 (SCJ), Authorities, Tab 5.

⁶ *McCarthy v Canadian Red Cross Society*, [2007] OJ No 2314 (Sup Ct) at para 9, Authorities, Tab 4.

⁷ *Class Proceedings Act*, s. 19.

⁸ Pöyry Approval Order and Notice, Motion Record, Tab 3.

⁹ Pöyry Certification and Settlement Order and Notice, Motion Record, Tab 4.

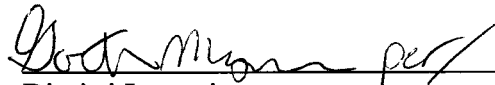
15. The Pöyry Notice plan provided a 60-day window for class members to opt-out of the class proceeding. In contrast, this Notice Plan will provide class members with approximately 2 weeks to decide whether they want to object or make submissions at the Settlement Approval Hearing. However, there is no statutory requirement that a certain minimum amount of notice be given, and given the nature of these proceedings, and the urgency with which this Settlement Agreement must be approved, this notice period is reasonable.
16. There have already been multiple waves of notice in connection with these proceedings (this is the third wave of notice being distributed in this action); persons interested in this proceeding have already received substantial notice. Through the CCAA proceeding and the previous Pöyry notices, interested parties are already engaged in this process. Those persons that have contacted Class Counsel regarding this action will receive direct notice by email almost immediately after the issuance of the order presently sought.
17. The Notice Plan takes into account the considerations identified in the *Class Proceedings Act* for determining the appropriate method of giving notice, which includes the cost of giving notice and the nature of the relief sought.¹⁰
18. Courts have consistently recognized that notice in a class proceeding need not be perfect, in part because the cost of giving perfect notice (assuming that perfect notice is even possible) would be prohibitive. Rather, notice must simply be reasonable in all of the circumstances.
19. The nature of the relief sought, which informs the method of dissemination, includes a settlement within the framework of a CCAA plan. Time is of the essence in regard to the CCAA plan in this case.
20. Finally, the current notice plan is entirely consistent with notice plans approved in numerous other Ontario securities class actions.¹¹

¹⁰ *Class Proceedings Act* s. 17(3)(a) and (b) and 19; *Canada Post Corp v Lépine*, 2009 SCC 16 at para 43, Authorities, Tab 1; *Chadha v Bayer Inc*, [1999] OJ No 3621 (Sup Ct) at para 3, reversed on other grounds, 54 OR (3d) 520 (Div Ct); aff'd 63 OR (3d) 22 (CA) Authorities, Tab 2; *Lavier v MyTravel Canada Holidays Inc*, 2011 ONSC 3149 at para 9, Authorities, Tab 3.

PART IV – ORDER REQUESTED

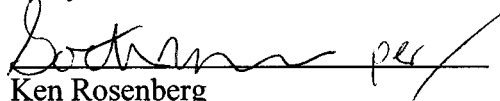
21. The Representative Plaintiffs respectfully request an order approving the Notice and Notice Plan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of December, 2012.



Dimitri Lascaris
Siskinds LLP

Lawyer for the Plaintiffs



Ken Rosenberg
Paliare Roland Rosenberg Rothstein LLP

Lawyer for the Plaintiffs

¹¹ *Dobbie et al v Arctic Glacier Income Fund et al*, Court File No.: 59725, Litigation Plan, Certification Order, s. 13, Authorities, Tab 6; *Sorensen v easyHome Ltd et al*, Court File No.: CV-10-412963-00CP, Amended Litigation Plan, Certification Order, dated March 26, 2012, s. 17, Authorities, Tab 7; and *Nor-Dor Developments Limited et al v Reline Communications Group Inc et al*, Court File No.: 2198/10CP, Plan of Notice, Schedule C to the Settlement Approval and Certification order, dated November 22, 2011, Authorities, Tab 8.

SCHEDULE 'A'
RELEVANT AUTHORITIES

Canada Post Corp v Lépine, 2009 SCC 16

Chadha v Bayer Inc, [1999] OJ No 3621; rev'd 54 OR (3d) 520; aff'd 63 OR (3d) 22

Lavier v MyTravel Canada Holidays Inc, 2011 ONSC 3149

McCarthy v Canadian Red Cross Society, [2007] OJ No 2314 (Sup Ct)

Re: Nortel Networks Corporation (February 9, 2010), Toronto (Commercial List) 09-CL-7950 (Ont Sup Ct)

SECONDARY SOURCES

Dobbie et al v Arctic Glacier Income Fund et al, Court File No.: 59725, Litigation Plan, Certification Order, dated March 1, 2011

Sorensen v easyHome Ltd et al, Court File No.: CV-10-412963-00CP, Amended Litigation Plan, Certification Order, dated March 26, 2012

Nor-Dor Developments Limited et al v Reline Communications Group Inc et al, Court File No.: 2198/10CP, Plan of Notice, dated November 22, 2011

SCHEDULE 'B'
RELEVANT LEGISLATION

1. *Class Proceedings Act, 1992, SO 1992, c 6, ss 17(3)(a)(b) and 19*

Order respecting notice

17. (3) The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to,

- (a) the cost of giving notice;
- (b) the nature of the relief sought;
- (c) the size of the individual claims of the class members;
- (d) the number of class members;
- (e) the places of residence of class members; and
- (f) any other relevant matter.

...

Notice to protect interests of affected persons

19. (1) At any time in a class proceeding, the court may order any party to give such notice as it considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding.

Idem

(2) Subsections 17 (3) to (5) apply with necessary modifications to notice given under this section.

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM
(NOTICE APPROVAL)**

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