

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**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, POYRY (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**

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**FACTUM OF THE UNDERWRITERS AND INITIAL PURCHASERS  
(MOTION FOR APPROVAL OF CLAIMS AND DISTRIBUTION PROTOCOL)**

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Lawyers for the Underwriters  
and Initial Purchasers

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

B E T W E E N:

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

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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, POYRY (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

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**FACTUM OF THE UNDERWRITERS AND INITIAL PURCHASERS**  
**(MOTION FOR APPROVAL OF CLAIMS AND DISTRIBUTION PROTOCOL)**

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## PART I -OVERVIEW

1. The Underwriters and Initial Purchasers<sup>1</sup> are defendants to the Ontario Sino-Forest class action (court file no. CV-11-431153-00CP). The Underwriters and Initial Purchasers are also parties affected by the Sino-Forest Plan of Arrangement (the “Plan”).
2. The Ernst & Young LLP settlement agreement (“E&Y Settlement”) and the Plaintiffs’ proposed Claims and Distribution Protocol bear upon parts of the Plan in which the Underwriters and Initial Purchasers have a direct interest. For example, the Claims and Distribution Protocol sets out what amounts from the E&Y Settlement are to be paid to noteholder claimants, which will have an impact on the Indemnified Noteholder Class Action Limit as defined in s. 1 the Plan.<sup>2</sup> That limit relates directly to that which may be claimed against the defendants in the class action (including the Underwriters and Initial Purchasers).
3. The Underwriters and Initial Purchasers object to the Claims and Distribution Protocol and the draft Order approving same on two bases:
  - (a) the Claims and Distribution Protocol is not sufficiently clear and transparent with respect to the distribution of the proceeds of the E&Y Settlement, which bears on the Underwriters and Initial Purchasers’ interests relative to the Plan and the Class Actions; and
  - (b) the draft Order seeks to limit the admissibility of materials publicly filed by the Plaintiffs in respect of the within motion in various class actions related to Sino-Forest (the “Class Actions”), which bears on the Underwriters and Initial Purchasers as defendants in the Class Actions.

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<sup>1</sup> 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)

<sup>2</sup> Pursuant to s. 4.4(b)(i) of the Plan of Arrangement, the collective aggregate amount of all rights and claims asserted or that may be asserted against the Third Party Defendants in respect of any Noteholder Class Action Claims shall not exceed, in the aggregate, the Indemnified Noteholder Class Action Limit

## PART II - FACTS

### **Distribution Protocol is Opaque**

4. The materials filed by the Plaintiffs in respect of this motion and, in particular, the Claims and Distribution Protocol, lack transparency and clarity. In particular, the Claims and Distribution Protocol as currently drafted does not provide answers to the following fundamental questions about the proposed allocation of the E&Y Settlement funds:

- (a) Assuming all potential claimants make claims, what proportion of the settlement funds will be paid to shareholders and what proportion to noteholders?
- (b) Assuming all potential claimants make claims, for shareholders and noteholders alike, what proportion will be paid to primary market purchasers and what proportion to secondary market purchasers?
- (c) With respect to noteholders only, and again assuming all potential claimants make claims, what proportion of them are "Noteholders" (as that term is defined in the affidavit of Charles Wright, sworn November 4, 2013 (the "Wright Affidavit"))?
- (d) What proportion of claimants fall into each of the merits-based categories identified by the plaintiffs in the Wright Affidavit?

5. As set out in further detail below, the Underwriters and Initial Purchasers submit that answers to the above questions are of importance in assessing the fairness of the Claims and Distribution Protocol. But, these questions also bear on the Class Actions. If damages are ever awarded in those claims to the claimants described above, an accounting will be required to determine what recovery these persons have already had. Defendants in the Class Actions are entitled to that information, and it is not in the motion materials.

6. On November 19, 2013, the Underwriters and Initial Purchasers asked the Plaintiffs to provide them with certain information related to the above questions. In particular, the Underwriters and Initial Purchasers asked the Plaintiffs to advise as follows:

- (a) with respect to the statement in paragraph 13 of the Wright Affidavit, to explain the basis for the statement that \$5 million "is equivalent to or less than what Class Counsel believed the Noteholders would likely receive from the claims process"

and, in particular, to advise what proportion of the primary market noteholder purchasers (in dollars) was included in the Noteholders and what proportion was excluded from the Noteholders;

- (b) with respect to paragraph 25 of the Wright Affidavit, to explain the basis for the amounts deducted from the face value of every series of notes; and
- (c) with respect to the notes and paragraphs 54 and 55 of the Wright Affidavit, to set out, in dollars, how many primary market noteholder purchasers fit within each of the three risk categories (0.15, 0.10 and 0.01).

7. The Underwriters and Initial Purchasers also asked the Plaintiffs to provide them with a copy of any report or written advice provided by Frank Torchio and Forensic Economics, including the information referenced in paragraphs 21, 22 and 25 of the Wright Affidavit. The latter request was made pursuant to the *Rules of Civil Procedure* and the right to inspect documents referenced in an affidavit.

8. The Plaintiffs refused to produce any information in response to the request made by the Underwriters and Initial Purchasers. A copy of the e-mails between the parties in this regard is attached as Schedule "B".

#### **Improper Request for Confidentiality and Claim of Privilege**

9. On December 8, 2013, the Plaintiffs served their draft Order approving the Claims and Distribution Protocol. The draft Order reads in relevant part as follows:

- (a) "THIS COURT ORDERS that...the Claims and Distribution Protocol and the materials filed for this motion cannot be used in the Ontario Class Action, Quebec Class Action or US Class Action as evidence of the appropriate method of calculating damages" (paragraph 5); and
- (b) "THIS COURT ORDERS that any determination of inflation for Sino-Forest securities by Frank Torchio of Forensic Economics for the purposes of the Claims and Distribution Protocol shall remain confidential and is without prejudice to any party in the Ontario Class Action, Quebec Class Action or US Class Action" (paragraph 6).

10. This relief is not requested in the Plaintiffs' Notices of Motion filed in respect of either the motion for approval of the Claims and Distribution Protocol or the fee approval motion. Further, the Plaintiffs have not filed any written argument or authorities in support of their requested relief, which, as set out in further detail below, the Underwriters and Initial Purchasers submit would be extraordinary in the circumstances.

### **PART III - LAW & ARGUMENT**

#### **The Claims and Distribution Protocol**

11. The test for approving the Claims and Distribution Protocol is the same as that which is applied in deciding whether to approve a class action settlement. The Claims and Distribution Protocol must be fair, reasonable, and in the best interests of those affected by it.<sup>3</sup>

12. Pursuant to the Claims and Distribution Protocol, the E&Y Settlement funds (less counsel fees and a payment to the third-party funder) are being proposed for distribution to claimants who acquired Sino-Forest common shares and Sino-Forest notes in the primary market (under a prospectus or offering memorandum) and on the secondary market (through a stock exchange or over the counter). The group of claimants consist of purchasers of securities in different legal regimes, and purchasers of securities over a lengthy period of time.

13. To be fair, a securityholder, or anyone with an interest in the E&Y Settlement, including the Underwriters and Initial Purchasers, is entitled to be provided with information that includes a clear explanation of the allocation of the E&Y Settlement funds, including answers to the questions set out in paragraph 4 above.

14. Such an explanation, and answers to the questions set out in paragraph 4, are not provided in the Plaintiffs' motion materials. The materials are unclear in this regard. Given that the approval of the proposed Claims and Distribution Protocol engages a consideration of the fairness of the E&Y Settlement allocation to class members, on relative and absolute terms, the Plaintiffs ought to be able to provide answers to the questions set out in paragraph 4 above. Their

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<sup>3</sup> *Zaniewicz v. Zungui Haixi Corporation*, 2013 ONSC 5490 at para. 59, Authorities of the Underwriters and Initial Purchasers, Tab 7; *Dabbs v. Sun Life Assurance*, 1998 CarswellOnt 5823 (Gen. Div.) at para. 9, Authorities of the Underwriters and Initial Purchasers, Tab 1



failure to have done that makes it difficult to conclude that the Claims and Distribution Protocol is fair to all parties affected by or with an interest in the E&Y Settlement, including the Underwriters and Initial Purchasers.

**Relief Requested in Draft Order is Improper**

15. Notwithstanding their onus to do so, the Plaintiffs have not filed any materials in respect of the following relief proposed in their draft order:

- (a) “THIS COURT ORDERS that...the Claims and Distribution Protocol and the materials filed for this motion cannot be used in the Ontario Class Action, Quebec Class Action or US Class Action as evidence of the appropriate method of calculating damages” (paragraph 5); and
- (b) “THIS COURT ORDERS that any determination of inflation for Sino-Forest securities by Frank Torchio of Forensic Economics for the purposes of the Claims and Distribution Protocol shall remain confidential and is without prejudice to any party in the Ontario Class Action, Quebec Class Action or US Class Action” (paragraph 6).

16. It is important to note that, with respect to paragraph 6 of the draft Order, the Plaintiffs are asking the court to make orders in respect of information that has not even been produced.

17. Despite the absence of a motion or argument by the Plaintiffs, it is apparent that:

- (a) in asking this court to prevent the future use of the materials filed on this motion in the Class Actions and to keep confidential any determinations of inflation for Sino-Forest securities made by Frank Torchio, the Plaintiffs are seeking relief that is tantamount to a confidentiality order over materials, some of which have never been filed; and
- (b) in asking this court to order that Torchio’s determinations are without prejudice to any party in the Class Actions, the Plaintiffs are seeking to claim settlement privilege over Torchio’s work product, which is specifically referred to in the Plaintiff’s publicly filed motion materials (albeit not produced).

***No Confidentiality of Publicly Filed Materials***

18. Confidentiality orders are only granted in exceptional circumstances, when the court “concludes that disclosure would subvert the ends of justice or unduly impair its proper administration.”<sup>4</sup> To that end, courts have developed a two-pronged approach to determining whether to grant a confidentiality order (or any other discretionary order which limits freedom of expression in relation to legal proceedings<sup>5</sup>). As recently articulated by the Ontario Court of Appeal, citing the test developed by Supreme Court jurisprudence (the “*Dagenais/Mentuk* test”), a confidentiality order will only be ordered when:

- (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression and the efficacy of the administration of justice.<sup>6</sup>

19. The Plaintiffs bear the onus of proving that a confidentiality order (and, by extension, the requested Order limiting the use of information publicly filed and/or referred to) should be granted. However, as noted above, the Plaintiffs have not filed any motion or argument in respect of this request.

20. The Plaintiffs fail to meet either branch of the *Dagenais/Mentuk* test. In any event, the Plaintiffs should not be permitted to retroactively obtain what amounts to a confidentiality order over materials that have been publicly filed and which are already in the public domain (i.e., the

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<sup>4</sup> *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at para. 4, Authorities of the Underwriters and Initial Purchasers, Tab 6

<sup>5</sup> *Toronto Star Newspapers Ltd. v. Ontario*, *ibid.* at para. 7, Authorities of the Underwriters and Initial Purchasers, Tab 6

<sup>6</sup> *M.E.H. v. Williams*, 2012 ONCA 35 at para. 22, Authorities of the Underwriters and Initial Purchasers, Tab 2; *Toronto Star Newspapers Ltd. v. Ontario*, *ibid.* at para. 26, Authorities of the Underwriters and Initial Purchasers, Tab 6

Wright Affidavit), and no order should be made in respect of information that has not even been produced (i.e., the Torchio evidence).<sup>7</sup>

21. Further, the question of the relevance, admissibility and weight to be given to any of the materials at issue is not a question that is properly determined at this stage of proceedings. These issues are more appropriately addressed by the judges presiding over the motions or any trial of the Class Actions.

***No Privilege in Materials Related to Claims and Distribution Protocol***

22. The Plaintiffs have asked this court to order that any of Frank Torchio's evidence of inflation for Sino-Forest securities is to be without prejudice to the parties in the Class Actions. In requesting this relief, the Plaintiffs are purporting to claim settlement privilege over any such evidence.

23. Settlement privilege must be established on a case-by case basis, applying the "Wigmore" test:

- (a) the communications must originate in a confidence that they will not be disclosed;
- (b) the element of confidentiality must be essential to the maintenance of the relationship in which the communications arose;
- (c) the relationship must be one which, in the opinion of the community, ought to be "sedulously fostered"; and
- (d) the injury caused to the relationship by disclosure of the communications must be greater than the benefit gained for the correct disposal of the litigation.<sup>8</sup>

24. The Torchio evidence, though referred to and apparently relied upon in the Wright Affidavit, has not been produced (despite the request for same by the Underwriters and Initial

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<sup>7</sup> *Sangha v. Reliance Investment Group Ltd*, 2012 CarswellBC 379 (S.C.), Authorities of the Underwriters and Initial Purchasers, Tab 5; *R. v. CityTV*, 2000 CarswellOnt 2655 (S.C.J.), Authorities of the Underwriters and Initial Purchasers, Tab 4

<sup>8</sup> *Ontario (Liquor Control Board) v. Magnotta Winery Corp.*, 2009 CarswellOnt 8846 at para. 51-52, Authorities of the Underwriters and Initial Purchasers, Tab 3 (referencing *Slavutych v. Baker* (1975), [1976] 1 S.C.R. 254 (S.C.C.) at 260)

Purchasers). The Plaintiffs therefore ask this court to make an order regarding evidence that neither the court nor the parties have seen. On this basis alone, the order should be denied.

25. In any event, there can be no credible claim of settlement privilege in respect of Torchio's inflation determinations. Torchio's inflation determinations do not form part of the "settlement negotiations" between the Plaintiffs and E&Y; rather, they relate to the proper distribution of the proceeds from that settlement, which is a public process arising as a result of a concluded (and approved) settlement. Further, Torchio's contemplated work product is at least indirectly disclosed in the Plaintiffs' materials filed on this motion, such that any communications between the Plaintiffs and Torchio (and any related work product) cannot be said to have originated in confidence that they would not be disclosed.

26. It would be premature and inappropriate to make a ruling at this stage of proceedings as to the relevance, admissibility and weight to be given to Torchio's inflation determinations. These issues are more appropriately resolved in the context of the Class Actions.

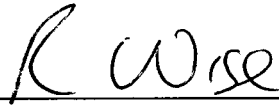
#### **PART IV - ORDER REQUESTED**

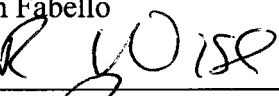
27. The Underwriters and Initial Purchasers therefore request that the court decline to approve the Claims and Distribution Protocol.


28. In the alternative, the Underwriters and Initial Purchasers request that:

- (a) the relief sought by the Plaintiffs in the last three lines of paragraph 5 and the whole of paragraph 6 of the requested Order (reproduced in paragraphs 9 and 15 above) be denied; and
- (b) the Plaintiffs be ordered to produce the information requested by the Underwriters and Initial Purchasers (as set out in Schedule "B" to this factum).

ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
for John Fabello

  
for Andrew Gray

  
Rebecca Wise

Lawyers for the Underwriters and Initial Purchasers

**TAB "A"**

## SCHEDULE A - LIST OF AUTHORITIES

1. *Dabbs v. Sun Life Assurance*, 1998 CarswellOnt 5823 (Gen. Div.)
2. *M.E.H. v. Williams*, 2012 ONCA 35
3. *Ontario (Liquor Control Board) v. Magnotta Winery Corp.*, 2009 CarswellOnt 8846
4. *R. v. CityTV*, 2000 CarswellOnt 2655 (SCJ)
5. *Sangha v. Reliance Investment Group Ltd*, 2012 CarswellBC 379 (SC)
6. *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41
7. *Zaniewicz v. Zungui Haixi Corporation*, 2013 ONSC 5490

# **TAB “B”**



**From:** A. Dimitri Lascaris  
**Sent:** Tuesday, November 19, 2013 5:39 PM  
**To:** Gray, Andrew  
**Cc:** Fabello, John; Jonathan Bida  
**Subject:** FW: Sino Forest Corporation / CV-12-9667-00CL; Motion Record (Approval for Plan of Allocation)

Andrew, Jonathan Bida has forwarded your below email to me.

On behalf of the plaintiffs, I write to advise you that we decline to answer any questions from your clients in relation to the distribution protocol.

Your clients have no interest whatsoever in the manner in which the E&Y settlement funds are distributed. Indeed, your clients are adverse in interest to the class, and the notion that they are well-situated to ensure fairness to the class therefore strains credulity.

You state below that you believe you are entitled to this information, but you state no basis for this supposed entitlement. If you provide a cogent explanation of the basis on which your clients purport to be entitled to the information you have requested, then we will give further consideration to your inquiry.

Absent such an explanation, we will not respond to any questions from your clients in regard to the distribution protocol, whether in writing or by way of a cross-examination, absent an order of the Court.

Regards, Dimitri.

**From:** Gray, Andrew [<mailto:agray@torys.com>]  
**Sent:** November-19-13 2:15 PM  
**To:** Jonathan Bida  
**Cc:** [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com); Fabello, John; Wise, Rebecca  
**Subject:** RE: Sino Forest Corporation / CV-12-9667-00CL; Motion Record (Approval for Plan of Allocation)

Jonathan,

I am writing in connection with the affidavit Charles has sworn in support of the upcoming motion to approve the distribution mechanism for the E&Y settlement. We have a small number of questions that we would prefer to put to you in writing rather than by way of cross-examination, and depending on the answers, we may dispense with cross-examination.

1. Please explain the basis for the statement in para. 13 that \$5 million “is equivalent to or less than what Class Counsel believed the Noteholders would likely receive from the claims process”. In particular, what proportion of the primary market noteholder purchasers (in dollars) is included in the Noteholders, and what proportion is excluded from the Noteholders?
2. Please provide us with a copy of any report or written advice provided by Frank Torchio and by Forensic Economics, including the information referenced in paras. 21, 22 and 25. This request is also made pursuant to the Rules of Civil Procedure and the right to inspect documents referenced in an affidavit.
3. With respect to para. 25, please explain the basis for the amounts deducted from the face value of every series of notes.
4. With respect to the notes and paras. 54 and 55, please set out, in dollars, how many primary market noteholder purchasers fit within each of the three risk categories: 0.15, 0.10 and 0.01.

We believe we are entitled to this information, we also believe that His Honour will want to know this information in order to assess the fairness of the settlement relative to the various constituencies that are comprised of the certified class.

Andrew

Andrew Gray  
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**From:** Jonathan Bida [<mailto:jbida@kmlaw.ca>]  
**Sent:** November-04-13 10:48 PM  
**To:** Jonathan Ptak; Kirk M. Baert; [Max.Starnino@paliareroland.com](mailto:Max.Starnino@paliareroland.com); [Katie.Parent@gowlings.com](mailto:Katie.Parent@gowlings.com); [kdekker@agmlawyers.com](mailto:kdekker@agmlawyers.com); [mbooth@agmlawyers.com](mailto:mbooth@agmlawyers.com); [pgreene@agmlawyers.com](mailto:pgreene@agmlawyers.com); [ajowett@applebyglobal.com](mailto:ajowett@applebyglobal.com);

[awillins@applebyglobal.com](mailto:awillins@applebyglobal.com); [esimpson@applebyglobal.com](mailto:esimpson@applebyglobal.com); [david.gadsden@bakermckenzie.com](mailto:david.gadsden@bakermckenzie.com);  
[john.pirie@bakermckenzie.com](mailto:john.pirie@bakermckenzie.com); [belld@bennettjones.com](mailto:belld@bennettjones.com); [bellj@bennettjones.com](mailto:bellj@bennettjones.com); [zychk@bennettjones.com](mailto:zychk@bennettjones.com);  
[sahnir@bennettjones.com](mailto:sahnir@bennettjones.com); [ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com); [staley@bennettjones.com](mailto:staley@bennettjones.com); [Harvey@chaitons.com](mailto:Harvey@chaitons.com);  
[marymargaret.fox@clydeco.ca](mailto:marymargaret.fox@clydeco.ca); [paul.emerson@clydeco.ca](mailto:paul.emerson@clydeco.ca); [mkaplan@cohenmilstein.com](mailto:mkaplan@cohenmilstein.com); [rspeirs@cohenmilstein.com](mailto:rspeirs@cohenmilstein.com);  
[stoll@cohenmilstein.com](mailto:stoll@cohenmilstein.com); [sramirez@cohenmilstein.com](mailto:sramirez@cohenmilstein.com); [davidc@davieshowe.com](mailto:davidc@davieshowe.com); [jdoris@dwvp.com](mailto:jdoris@dwvp.com);  
[jswartz@dwvp.com](mailto:jswartz@dwvp.com); [bbarnes@davis.ca](mailto:bbarnes@davis.ca); [bdarlington@davis.ca](mailto:bdarlington@davis.ca); [sfriedman@davis.ca](mailto:sfriedman@davis.ca); [mcolloff@emmetmarvin.com](mailto:mcolloff@emmetmarvin.com);  
[Mike.P.Dean@ca.ey.com](mailto:Mike.P.Dean@ca.ey.com); [coneill@fasken.com](mailto:coneill@fasken.com); [sbrotman@fasken.com](mailto:sbrotman@fasken.com); [jane.dietrich@fmc-law.com](mailto:jane.dietrich@fmc-law.com);  
[neil.rabinovitch@fmc-law.com](mailto:neil.rabinovitch@fmc-law.com); [greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com); [Jodi.porepa@fticonsulting.com](mailto:Jodi.porepa@fticonsulting.com); [bzarnett@goodmans.ca](mailto:bzarnett@goodmans.ca);  
[boneill@goodmans.ca](mailto:boneill@goodmans.ca); [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca); [rhadwick@goodmans.ca](mailto:rhadwick@goodmans.ca); [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com);  
[derrick.tay@gowlings.com](mailto:derrick.tay@gowlings.com); [Jason.mcmurtrie@gowlings.com](mailto:Jason.mcmurtrie@gowlings.com); [Jennifer.stam@gowlings.com](mailto:Jennifer.stam@gowlings.com); [jo@kimorr.ca](mailto:jo@kimorr.ca);  
[mbm@kimorr.ca](mailto:mbm@kimorr.ca); [mcs@kimorr.ca](mailto:mcs@kimorr.ca); [ttj@kimorr.ca](mailto:ttj@kimorr.ca); [wjk@kimorr.ca](mailto:wjk@kimorr.ca); [yr@kimorr.ca](mailto:yr@kimorr.ca); [Ava.Kim@gowlings.com](mailto:Ava.Kim@gowlings.com);  
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**Cc:** Heather Palmer

**Subject:** Sino Forest Corporation / CV-12-9667-00CL; Motion Record (Approval for Plan of Allocation)

To Service List,

Please find attached the Notice of Claims Filing Deadline and Hearing to Approve the Claims and Distribution Protocol and Counsel Fees, along with the proposed Claims and Distribution Protocol, Notice of Objection form and Claims Form.

You may visit <http://www.kmlaw.ca/sinoforestclassaction> to obtain additional information regarding the upcoming hearing, including a guide to the proposed Claims and Distribution Protocol and the Affidavit of Charles Wright in support of the proposed protocol.

Regards,

**Jonathan Bida**

**Koskie Minsky LLP**

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

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

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA et al.

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

SINO-FOREST CORPORATION et al.

v.

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FACTUM OF THE UNDERWRITERS AND  
INITIAL PURCHASERS  
(Motion for Approval Of Claims And  
Distribution Protocol)**

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