Court File No CV-12-9667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE 30th
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2012

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

INITIAL ORDER

THIS APPLICATION, made by Sino-Forest Corporation (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of W. Judson Martin sworn March 30, 2012 and the Exhibits thereto (the "Martin Affidavit") and the Pre-Filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI") (the "Monitor's Pre-Filing Report"), and on being advised that there are no secured creditors who are likely to be affected by the charges created herein, and on hearing the submissions of counsel for the Applicant, the Applicant's directors, FTI, the *ad hoc* committee of holders of notes issued by the Applicant (the "Ad Hoc Noteholders"), and no one else appearing for any other party, and on reading the consent of FTI to act as the Monitor,

This is Exhibit F referred to in the affidavit of Tanya Jemec sworn before me, this 22 day of April 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within seven days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

53. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website.

GENERAL

54. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

56. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 2 - 2012

Schedule "A"

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

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

INITIAL ORDER

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Tel: 416-863-1200
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Lawyers for the Applicant

This is Exhibit G referred to in the affidavit of Tonya Jemec sworn before me, this 22 day of April 2013.

A COMMISSIONER FOR TAKING AFFIDAVITS

IN THE MATTER OF
SINO-FOREST CORPORATION

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, Robert Wong, Guining Liu, and any other proposed representative plaintiffs in Ontario Superior Court Action No. CV-11-431153-00CP and in Quebec Superior Court No. 200-06-000132-111,

in their personal and proposed representative capacities (the "Plaintiffs")

-and-

Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms thereof ("EY", together with the Plaintiffs the "Parties")

MINUTES OF SETTLEMENT

1. These Minutes of Settlement represent the agreement between the Plaintiffs and EY reached on November 28, 2012 to resolve in accordance with the terms more particularly set out herein the actions, causes of action, claims and/or demands, on all counts howsoever arising and in all jurisdictions, made against EY or which could have been made concerning any claims related to Sino-Forest Corporation and its affiliates and subsidiaries, whether or not captured by the "Class" or the "Class Period", as variously defined, including the actions (the "Actions") listed on Schedule "A" hereto (the "Claims");

2. The terms of these Minutes of Settlement are binding on the Parties;

3. These Minutes of Settlement are and shall remain confidential, and neither party shall publicly disclose or include in a court filing the terms hereof without the prior written consent of the other;

4. EY makes no admissions of liability and waives no defences available to it with respect to the Claims or otherwise;

5. A settlement amount of CDN $117,000,000 (the "Settlement Fund") shall be paid by EY in accordance with the applicable orders of the courts (Ontario Superior Court of Justice, Ontario Superior Court of Justice Commercial List (supervising CCAA judge), Province of Quebec Superior Court, United States District Court and the United States Bankruptcy Court) ("Courts") on the Effective Date (save for any amounts payable in advance of the Effective Date as set out in paragraph 7), being the date that all requisite approvals and orders are obtained from the Courts and are final and non-appealable;

6. The Settlement Fund represents the full monetary contribution or payment of any kind to be made by EY in settlement of the Claims, inclusive of claims, costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes which may be payable in respect of this settlement), any payments to Claims Funding International, all costs associated with the distribution of benefits, all costs of any necessary notice, all costs associated with the administration of the settlement and any other monetary costs or amounts associated with the settlement or otherwise;

7. No payment of the Settlement Fund shall be made by EY until all conditions herein and set out in Schedule B hereto have been met. However, with respect to notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, the Plaintiffs will incur and pay such costs up to $200,000 (the "Initial Plaintiffs Costs"), which costs are to be immediately reimbursed from the Settlement Fund after the Effective Date. EY will incur and pay such notice and administration costs which are incurred in advance of the Effective Date, as a result of an Order of the Court, over and above the Initial Plaintiffs Costs up to a further $200,000 (the "Initial EY Costs"). The Initial EY Costs shall be deducted from the amount of the Settlement Fund payable to the Plaintiffs. Should any costs in excess of the cumulative amount of the Initial Plaintiffs Costs and the Initial EY Costs, being a total of $400,000, in respect of notice and administration be incurred prior to the Effective Date, as a result of an Order of the Court, such amounts are to be borne equally between the Plaintiffs and EY, which amounts are to be reimbursed or deducted as the case may be from the Settlement Fund, on the terms set out above in this section. Should the settlement not proceed, the Parties shall bear their respective costs paid to that time;

8. No further proceedings shall be commenced or continued by the Plaintiffs or their counsel against EY in respect of any Claims, other than as necessary to complete the settlement herein;

9. The Plaintiffs agree not to claim from the non-settling defendants in the Actions, that portion of any damages that corresponds to the proportionate share of liability of EY, proven at trial or otherwise, such that EY is not further exposed to the Claims;

10. It is the intention of the Parties that this settlement shall be approved and implemented in the Sino-Forest Corporation CCAA proceedings. The settlement shall be conditional upon full and final releases and claims bar orders in favour of EY and which satisfy and extinguish all Claims against EY, and without opt-outs, and as contemplated by the additional terms attached hereto as Schedule B hereto and incorporated as part of these Minutes of Settlement;

11. This settlement is conditional upon obtaining appropriate orders from the Ontario Superior Court of Justice Commercial List (supervising CCAA judge) and the United States Bankruptcy Court that provide that the payment of the Settlement Fund is in full satisfaction of any and all claims that could be brought in connection with the claims of any security holder or creditor of Sino-Forest Corporation, including claims over for contribution and indemnity or otherwise, howsoever arising in Canada and the United States;

12. The releases in the Sino-Forest Corporation CCAA proceedings shall include Ernst & Young LLP (Canada) and Ernst & Young Global Limited and all member firms thereof, and all present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns of each, but does not include any non-settling defendants in the Actions or their respective present or former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers or successors, administrators, heirs and assigns of each in their capacity as officers or directors of Sino-Forest Corporation ("EY Global"). The releases to be provided to EY by the Plaintiffs shall include EY Global and will release all Claims of the Plaintiffs' counsels' clients in all jurisdictions;

13. It is the intention of the Parties that the Settlement Fund shall be distributed in a claims process satisfactory to the CCAA Court, with a prior claims bar order;

14. The Parties shall use all reasonable efforts to obtain all Court approvals and/or orders necessary for the implementation of these Minutes of Settlement, including an order in the CCAA proceedings granting the plaintiffs appropriate representative status to effect the terms herein;

15. If the settlement between the Parties or any terms hereof are not approved by order(s) of the applicable Courts fulfilling all conditions precedent in paragraph 10 hereto the settlement between the Parties and these Minutes of Settlement are null and void;

16. These terms shall be further reduced to a written agreement reflecting the terms of the agreement between the Parties hereto with such additional terms agreed to by the Parties consistent herewith or as agreed to give efficacy in Quebec and the United States. Should the Parties be unable to agree on the form of written agreement, the Parties agree to appoint Clifford Lax as mediator/arbitrator to assist the Parties and his decision as arbitrator shall be final and binding on the Parties, in accordance with the terms herein but subject to the terms of Schedule B hereof, and not subject to appeal;

17. The Parties will agree on a level of disclosure by EY for the purposes of reasonably assisting in the approval process of the applicable Courts, consistent with the Parties' obligations under the relevant class proceedings legislation. Should the Parties be unable to agree on the level of disclosure after good faith efforts to do so, the Parties agree to appoint Clifford Lax as mediator to assist the Parties. If the Parties after mediation are still unable to reach an agreement, then either Party may terminate the settlement;

18. Pending the implementation of this settlement, including the distribution of the Settlement Fund, EY shall advise the plaintiffs of any agreements reached by it with the Ad Hoc Committee of Noteholders, Sino-Forest, the Litigation Trustee, or counsel or representatives of any of these parties, to pay any monetary consideration to any of them.

SIGNATURE LINES ON NEXT PAGE

Date: Nov 29 / 2012

CUW for Koskie Minsky LLP

KOSKIE MINSKY LLP
Lawyers for the Plaintiffs

Date: Nov 29, 2012

CUW for Siskinds LLP

SISKINDS LLP
Lawyers for the Plaintiffs

Date: Nov 29, 2012

CUW for PRR LLP.

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
Lawyers for the Plaintiffs

Date: November 29, 2012

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
Lawyers for Ernst & Young LLP, and on behalf of Ernst & Young Global Limited and all member firms thereof

SCHEDULE "A"

1. The Trustees of The Labourers' Pension Fund of Central and Eastern Canada, et al. v. Sino-Forest Corporation, et al., Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP

2. Guining Liu v. Sino-Forest Corporation, et al., Province of Quebec Superior Court, File No. 200-06-000132-111

3. David Leapard, et al. v. Allen T.Y. Chan, et al., United States New York Southern District Court, Case Number 1:2012-cv-01726-VM

L

SCHEDULE "B"

Terms and Conditions of any Ernst & Young LLP (Settlement with Class Action Plaintiffs

A settlement unilaterally with E&Y will be conditional upon such settlement being made to a resolution that:

a) is a settlement of all Claims, proceedings and potential claims against E&Y in all jurisdictions;

b) reflects approval of appropriate Courts in relevant jurisdictions as described below; and

c) accordingly must reflect the following elements in a form satisfactory to E&Y in its sole discretion, without which E&Y is at liberty to reject the settlement at any time:

I. Court Proceedings

(A) *CCAA*

(i) Plan of Arrangement (in form consented to);

(ii) Final Sanction Order;

(iii) Both Plan and Sanction Order to include:

(a) a release of E&Y, and all affiliate firms, partners, staff, agents and assigns for any and all Claims (including cross-claims and third-party claims), and

(b) a claims bar (must expressly exclude all claims against all Pöyry entities).

(B) Ontario Class Action

(i) Final Order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;

(ii) i) above requires:

(a) certification for settlement purposes with i) class definition agreeable to E&Y; ii) notice in all relevant jurisdictions

(including Canada, U.S., Hong Kong, Singapore and PRC); and iii) opt-out threshold agreeable to E&Y;

(b) fairness hearing having been held to result in (i).

(C) Quebec Class Action

(i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;

(ii) certification and settlement approval as in (B).

(D) U.S. Proceedings including Class Action

(i) Final order approving settlement containing satisfactory Pieringer terms and structure and dismissing action;

(ii) certification and settlement approval as in (B).

(iii) Undertaking of Company (Applicant) to bring Chapter 15 proceeding to enforce Canadian *CCAA* order;

(iv) final U.S. order, in compliance with U.S. laws, recognizing *CCAA* order.

II. <u>Releases and Undertakings</u>

(A) Full and Final Release and Claims Bar in both *CCAA* Plan and final Sanction Order;

(B) Full and Final Release from Ontario Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;

(C) Full and Final Release from Company, directors and officers, noteholders and others on satisfactory Pieringer terms and language;

(D) Agreement from Ontario class counsel and from noteholders' counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction;

(E) Full and Final Release from Quebec Class Action Representative Plaintiffs on their own behalf and in their representative capacities, including an agreement not to consult or cooperate with any other party in advancing Claims against E&Y;

(F) Agreement from Quebec class counsel to not act for or consult with or assist any plaintiff/representative plaintiff in any jurisdiction;

(G) Full and Final Release from U.S. Class Action Representative Plaintiffs on their own behalf and in their representative capacities including an agreement not to consult or cooperate with any other party advancing Claims against E&Y; and

(H) Agreement from U.S. class counsel to not act for or consult with or assist any plaintiff/representative plaintiff/claimant in respect of any Claim or potential Claim against E&Y in any jurisdiction.

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7041
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121210

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

BEFORE: MORAWETZ J.

COUNSEL: Robert W. Staley, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

Robert Chadwick and Brendan O'Neill, for the Ad Hoc Committee of Noteholders

Kenneth Rosenberg, Kirk Baert, Max Starnino, and A. Dimitri Lascaris, for the Class Action Plaintiffs

Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

Peter Greene and Ken Dekkar, for BDO Limited

Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

This is Exhibit H referred to in the affidavit of Tanya Jemec sworn before me, this 22 day of April 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: **DECEMBER 7, 2012**

ENDORSEMENT

[1] The Applicant, Sino-Forest Corporation ("SFC"), seeks an order sanctioning the Plan of Compromise and Arrangement dated December 3, 2012, as modified, amended, varied or supplemented in accordance with its terms (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act* ("CCAA"), and ancillary relief as set out in the proposed sanction order (the "Sanction Order").

[2] The Plan is supported by:

(a) the Monitor;

(b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Committee");

(c) Ernst & Young LLP ("E&Y");

(d) BDO Limited ("BDO"); and

(e) the Underwriters.

The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee" including the "Class Action Plaintiffs") has agreed not to oppose the Plan.

[3] The Plan was approved by an overwhelming majority of Affected Creditors voting on the Plan in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[4] Invesco Canada Ltd. ("Invesco"), Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. (collectively, the "Funds") object to the proposed Sanction Order. The Funds request an adjournment of the motion for a period of one month. Alternatively, the Funds request that the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants".

[5] This endorsement fully addresses the adjournment request of the Funds. In this endorsement, defined terms have been taken from the motion record.

[6] The Funds are institutional, public and private equity funds that owned 3,085,786 common shares of SFC on June 2, 2011. The Funds alleged that they suffered substantial losses after the market in SFC shares collapsed following a public issuance of a report suggesting that fraud permeated SFC's assets and operations.

[7] Following the collapse of SFC's share price, class actions were commenced against SFC, certain of its directors and officers, the auditors, the Underwriters and other expert firms.

[8] On January 6, 2012, Perell J. granted carriage of the class action to Koskie Minsky LLP and Siskinds LLP ("Class Counsel"). The class has not been certified.

[9] Counsel to the Funds takes the position that Class Counsel does not represent the Funds.

[10] In his affidavit sworn December 6, 2012, Mr. Eric J. Adelson, Senior Vice President, Secretary and head of Legal of Invesco stated that on December 3, 2012, Class Counsel and E&Y announced that they had entered into a settlement by which E&Y would pay $117 million into a "Trust" formed as part of the CCAA proceedings, in return for releases of all claims that could be brought against E&Y by any person in connection with SFC.

[11] Mr. Adelson also states that on December 3, 2012, an Amended Plan was issued that, for the first time in the CCAA proceedings, contained provisions for settlement of claims against Third Party Defendants (Article 11), including specific provisions concerning the settlement by and releases for E&Y, and also allowing other Third Party Defendants to avail themselves of similar provisions for unspecified settlements and releases in the future.

[12] Mr. Adelson acknowledges that on December 5, 2012, counsel for E&Y advised Invesco's counsel that the parties had decided not to request court approval of the proposed E&Y Settlement at the motion scheduled for December 7, 2012. However, Mr. Adelson takes the position that provisions of the Plan, even apart from the E&Y Settlement, appear to affect the legal and practical ability of Invesco and other investors to seek adjudication of their claims against defendants in the SFC litigation on the merits, rendering it vital that sufficient time be provided to fully understand the present matters.

[13] Mr. Adelson also details "preliminary reasons for objecting to the Plan's release provisions":

> 15. If the effect of the Plan is to allow a Third Party Defendant (such as E&Y) to settle its liability to investors in connection with Sino-Forest through a settlement agreement with Class Counsel, and to bind the investors to that settlement without giving them the opportunity to opt out and pursue their claims on the merits outside the Class Action, then Invesco would strenuously object and oppose approval of such an arrangement.
>
> 16. The Class Action has not been certified, so Invesco does not view Class Counsel, with whom we have no other relationship, as authorized to represent its

> interests in connection with Sino-Forest. Our views have not been heard and our interests have not been represented in connection with the Plan and the proposed settlement. It is my understanding that Invesco, as an investor with claims against Sino-Forest and the other defendants in the Class Action, is not a "creditor" with respect to the Plan. Invesco accordingly submits that it would be contrary to its rights to bind it to a release or a settlement involving Third Party Defendants unless Invesco directly participated in proceedings or unless in certified class proceedings it was given the opportunity to opt out. We do not understand the CCAA to authorize releases of third parties, that is, parties other than the Applicant and certain officers and directors under certain circumstances, as part of a Sanction Order. Invesco objects to any such provisions or results in this matter.

[14] Counsel to the Funds made specific reference to Article 11.2 of the Plan which, counsel submits, if approved, establishes an open-ended mechanism for eligible Third Party Defendants, defined to include the 11 Underwriters named as defendants in the class action, BDO and/or E&Y (if its proposed settlement is not already concluded), to enter into a "Named Third Party Defendant Settlement" with "one or more of (i) counsel to the plaintiffs in any of the class actions...".

[15] Counsel to the Funds further submits that under Articles 11.2 (b) and (c), once a settlement is concluded among the specified parties, the settling defendant will obtain releases and bar orders in the CCAA proceeding, preventing the continued litigation of any SFC-related claims against them. If a settlement is reached in the future, counsel submits that the CCAA release and bar orders will remain available notwithstanding that the CCAA process may have concluded. Accordingly, counsel submits that it appears that these provisions purport to vest authority in the parties as described to enter into settlements that may have the effect of barring any claimants (such as the Funds) from prosecuting SFC-related claims against the Underwriters, BDO and/or E&Y, subject to the approval of this court. This bar, counsel submits, would be imposed without compliance with establishes prerequisites of the *Class Proceedings Act* ("CPA") – including class certification, a fairness hearing, approval by the court supervising the class action, and provision of opt-out rights – necessary to impose releases or other restrictions on class members who are not named parties before that court.

[16] Stated more succinctly, counsel submits that the Plan appears designed to unnecessarily fetter the powers of a future court, namely, the class action case management court, by assigning to the CCAA court the power to approve and effectuate class-wide settlements without regard to established statutory and rule-based procedural safeguards found in the CPA.

[17] The adjournment request was opposed, primarily on the basis that the Funds had misunderstood the terms of the Plan. Oral submissions were made by counsel on behalf of the Monitor, SFC, Ad Hoc Noteholders, SFC Board, Ontario Securities Commission, E&Y and the Class Action Plaintiffs. Specifically, these parties submit there was a misunderstanding on the part of the Funds as to what was before the court for approval and, perhaps more importantly, what was not before the court for approval.

[18] Counsel to the Monitor also submits that SFC has limited funds and time is critical.

[19] The thrust of the arguments of the combined forces opposing the adjournment request is that the court is not being asked, at this time, to approve the settlement. Rather, what is before the court is a motion to approve the Plan, which includes approval of a framework with respect to a proposed settlement of claims against Third Party Defendants.

[20] Essentially, if certain conditions are met and further court approvals and orders are obtained, it is conceivable that E&Y will get a release. However, such a release is not being requested at this time. Further, it is not a condition of Plan Implementation that the E&Y matter be settled.

[21] To support this position, counsel referenced a number of provisions in the Plan including:

1. The defined term "Settlement Trust Order", which means a court order that establishes the Settlement Trust (section 11.1 (a) of the Plan) and approves the E&Y Settlement and the E&Y Release...;

2. Section 8.2, which outlines the effect the Sanction Order and includes a reference in Section 8.2 (z) that the E&Y Release shall become effective on the E&Y Settlement Date in the manner set forth in section 11.1;

3. Section 11.1, which details settlement of claims against Third Party Defendants and specifically E&Y. This provision sets out a number of pre-conditions to the required payment to be made by E&Y as provided for in the E&Y Settlement. These pre-conditions are:

   (i) the granting of the Sanction Order;

   (ii) the issuance of the Settlement Trust Order;

   (iii) the granting of an order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States;

   (iv) any other order necessary to give effect to the E&Y Settlement;

   (v) the fulfillment of all conditions precedent in the E&Y Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and

   (vi) the Sanction Order, the Settlement Trust Order and all E&Y Orders being final orders and not subject to further appeal or challenge.

[22] Having reviewed these documents, 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. In the event all of the pre-conditions are satisfied and if all of the required court approvals and orders are issued, the position of the Funds could be affected. However, the Funds will have the opportunity to make argument on such hearings.

[23] I have also reviewed the form of Sanction Order being requested specifically paragraph 40. This provision provides that the E&Y Settlement and the release of the E&Y Claims pursuant to section 11.1 of the Plan shall become effective upon the satisfaction of certain conditions precedent, including court approval of the terms of the E&Y Settlement, the terms and scope of the E&Y Release and the Settlement Trust Order and the granting of the Settlement Trust Order.

[24] Paragraph 41 of the draft Sanction Order also provides that any Named Third Party Defendant Settlement, Named Third Party Defendant Settlement Order and Named Third Party Defendant Release, the terms and scope of which remain in each case subject to further court approval in accordance with the Plan, shall only become effective after the Plan Implementation Date and upon the satisfaction of the conditions precedent, set forth in section 11.2 of the Plan.

[25] The requested Sanction Order confirms my view that the arguments put forth by counsel on behalf of the Funds are premature and can be addressed on the return of the motion to approve the specific settlements and releases.

[26] In the result, I have not been persuaded that the adjournment is necessary. The motion for the adjournment is accordingly denied.

MORAWETZ J.

Date: December 10, 2012

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7055
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121210

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

BEFORE: MORAWETZ J.

COUNSEL: Robert W. Staley, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

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Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

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James Grout, for the Ontario Securities Commission

This is Exhibit I referred to in the affidavit of Tonya Temec sworn before me, this 22 day of April 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: DECEMBER 7, 2012

ENDORSEMENT

[1] For reasons to follow, the motion is granted and an order shall issue sanctioning the Plan substantially in the form of the draft Sanction Order.

MORAWETZ J.

Date: December 10, 2012

CITATION: Sino-Forest Corporation (Re), 2012 ONSC 7050
COURT FILE NO.: CV-12-9667-00CL
DATE: 20121212

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

BEFORE: MORAWETZ J.

COUNSEL: Robert W. Staley, Kevin Zych, Derek J. Bell and Jonathan Bell, for Sino-Forest Corporation

Derrick Tay, Jennifer Stam, and Cliff Prophet for the Monitor, FTI Consulting Canada Inc.

Robert Chadwick and Brendan O'Neill, for the Ad Hoc Committee of Noteholders

Kenneth Rosenberg, Kirk Baert, Max Starnino, and A. Dimitri Lascaris, for the Class Action Plaintiffs

Won J. Kim, James C. Orr, Michael C. Spencer, and Megan B. McPhee, for Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc.

Peter Griffin, Peter Osborne and Shara Roy, for Ernst & Young Inc.

Peter Greene and Ken Dekkar, for BDO Limited

Edward A. Sellers and Larry Lowenstein, for the Board of Directors of Sino-Forest Corporation

John Pirie and David Gadsden, for Poyry (Beijing)

James Doris, for the Plaintiff in the New York Class Action

David Bish, for the Underwriters

Simon Bieber and Erin Pleet, for David Horsley

James Grout, for the Ontario Securities Commission

This is Exhibit J referred to in the affidavit of Tonya Jemec sworn before me, this 22 day of April 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

Emily Cole and Joseph Marin, for Allen Chan

Susan E. Freedman and Brandon Barnes, for Kai Kit Poon

Paul Emerson, for ACE/Chubb

Sam Sasso, for Travelers

HEARD: **DECEMBER 7, 2012**

ENDORSED: DECEMBER 10, 2012

REASONS: DECEMBER 12, 2012

ENDORSEMENT

[1] On December 10, 2012, I released an endorsement granting this motion with reasons to follow. These are those reasons.

Overview

[2] The Applicant, Sino-Forest Corporation ("SFC"), seeks an order sanctioning (the "Sanction Order") a plan of compromise and reorganization dated December 3, 2012 as modified, amended, varied or supplemented in accordance with its terms (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act* ("CCAA").

[3] With the exception of one party, SFC's position is either supported or is not opposed.

[4] Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndicale Nationale de Retraite Bâtirente Inc. (collectively, the "Funds") object to the proposed Sanction Order. The Funds requested an adjournment for a period of one month. I denied the Funds' adjournment request in a separate endorsement released on December 10, 2012 (*Re Sino-Forest Corporation*, 2012 ONSC 7041). Alternatively, the Funds requested that the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants".

[5] The defined terms have been taken from the motion record.

[6] SFC's counsel submits that the Plan represents a fair and reasonable compromise reached with SFC's creditors following months of negotiation. SFC's counsel submits that the Plan, including its treatment of holders of equity claims, complies with CCAA requirements and is consistent with this court's decision on the equity claims motions (the "Equity Claims Decision") (2012 ONSC 4377, 92 C.B.R. (5th) 99), which was subsequently upheld by the Court of Appeal for Ontario (2012 ONCA 816).

[7] Counsel submits that the classification of creditors for the purpose of voting on the Plan was proper and consistent with the CCAA, existing law and prior orders of this court, including the Equity Claims Decision and the Plan Filing and Meeting Order.

[8] The Plan has the support of the following parties:

(a) the Monitor;

(b) SFC's largest creditors, the Ad Hoc Committee of Noteholders (the "Ad Hoc Noteholders");

(c) Ernst & Young LLP ("E&Y");

(d) BDO Limited ("BDO"); and

(e) the Underwriters.

[9] The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers Committee", also referred to as the "Class Action Plaintiffs") has agreed not to oppose the Plan. The Monitor has considered possible alternatives to the Plan, including liquidation and bankruptcy, and has concluded that the Plan is the preferable option.

[10] The Plan was approved by an overwhelming majority of Affected Creditors voting in person or by proxy. In total, 99% in number, and greater than 99% in value, of those Affected Creditors voting favoured the Plan.

[11] Options and alternatives to the Plan have been explored throughout these proceedings. SFC carried out a court-supervised sales process (the "Sales Process"), pursuant to the sales process order (the "Sales Process Order"), to seek out potential qualified strategic and financial purchasers of SFC's global assets. After a canvassing of the market, SFC determined that there were no qualified purchasers offering to acquire its assets for qualified consideration ("Qualified Consideration"), which was set at 85% of the value of the outstanding amount owing under the notes (the "Notes").

[12] SFC's counsel submits that the Plan achieves the objective stated at the commencement of the CCAA proceedings (namely, to provide a "clean break" between the business operations of the global SFC enterprise as a whole ("Sino-Forest") and the problems facing SFC, with the aspiration of saving and preserving the value of SFC's underlying business for the benefit of SFC's creditors).

Facts

[13] SFC is an integrated forest plantation operator and forest products 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 ("PRC"). SFC's registered office is located in Toronto and its principal business office is located in Hong Kong.

[14] SFC is a holding company with six direct subsidiaries (the "Subsidiaries") and an indirect majority interest in Greenheart Group Limited (Bermuda), a publicly-traded company. Including SFC and the Subsidiaries, there are 137 entities that make up Sino-Forest: 67 companies incorporated in PRC, 58 companies incorporated in British Virgin Islands, 7 companies incorporated in Hong Kong, 2 companies incorporated in Canada and 3 companies incorporated elsewhere.

[15] On June 2, 2011, Muddy Waters LLC ("Muddy Waters"), a short-seller of SFC's securities, released a report alleging that SFC was a "near total fraud" and a "Ponzi scheme". SFC subsequently became embroiled in multiple class actions across Canada and the United States and was subjected to investigations and regulatory proceedings by the Ontario Securities Commission ("OSC"), Hong Kong Securities and Futures Commission and the Royal Canadian Mounted Police.

[16] SFC was unable to file its 2011 third quarter financial statements, resulting in a default under its note indentures.

[17] Following extensive arm's length negotiations between SFC and the Ad Hoc Noteholders, the parties agreed on a framework for a consensual resolution of SFC's defaults under its note indentures and the restructuring of its business. The parties ultimately entered into a restructuring support agreement (the "Support Agreement") on March 30, 2012, which was initially executed by holders of 40% of the aggregate principal amount of SFC's Notes. Additional consenting noteholders subsequently executed joinder agreements, resulting in noteholders representing a total of more than 72% of aggregate principal amount of the Notes agreeing to support the restructuring.

[18] The restructuring contemplated by the Support Agreement was commercially designed to separate Sino-Forest's business operations from the problems facing the parent holding company outside of PRC, with the intention of saving and preserving the value of SFC's underlying business. Two possible transactions were contemplated:

(a) First, a court-supervised Sales Process to determine if any person or group of persons would purchase SFC's business operations for an amount in excess of the 85% Qualified Consideration;

(b) Second, if the Sales Process was not successful, a transfer of six immediate holding companies (that own SFC's operating business) to an acquisition vehicle to be owned by Affected Creditors in compromise of their claims against SFC. Further, the creation of a litigation trust (including funding) (the "Litigation Trust") to enable SFC's litigation claims against any person not otherwise released within the CCAA proceedings, preserved and pursued for the benefit of SFC's stakeholders in accordance with the Support Agreement (concurrently, the "Restructuring Transaction").

[19] SFC applied and obtained an initial order under the CCAA on March 30, 2012 (the "Initial Order"), pursuant to which a limited stay of proceedings ("Stay of Proceedings") was also granted in respect of the Subsidiaries. The Stay of Proceedings was subsequently extended

by orders dated May 31, September 28, October 10, and November 23, 2012, and unless further extended, will expire on February 1, 2013.

[20] On March 30, 2012, the Sales Process Order was granted. While a number of Letters of Intent were received in respect of this process, none were qualified Letters of Intent, because none of them offered to acquire SFC's assets for the Qualified Consideration. As such, on July 10, 2012, SFC announced the termination of the Sales Process and its intention to proceed with the Restructuring Transaction.

[21] On May 14, 2012, this court granted an order (the "Claims Procedure Order") which approved the Claims Process that was developed by SFC in consultation with the Monitor.

[22] As of the date of filing, SFC had approximately $1.8 billion of principal amount of debt owing under the Notes, plus accrued and unpaid interest. As of May 15, 2012, Noteholders holding in aggregate approximately 72% of the principal amount of the Notes, and representing more than 66.67% of the principal amount of each of the four series of Notes, agreed to support the Plan.

[23] 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 Underwriters 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 (the "Class Action Claims").

[24] *The Labourers v. Sino-Forest Corporation Class Action* (the "Ontario Class Action") was commenced in Ontario by Koskie Minsky LLP and Siskinds LLP. It has the following two components: first, there is a shareholder claim (the "Shareholder Class Action Claims") 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; second, there is a $1.8 billion noteholder claim (the "Noteholder Class Action Claims") brought on behalf of former holders of SFC's Notes. The noteholder component seeks damages for loss of value in the Notes.

[25] The Quebec Class Action is similar in nature to the Ontario Class Action, and both plaintiffs filed proof of claim in this proceeding. The plaintiffs in the Saskatchewan Class Action did not file a proof of claim in this proceeding, whereas the plaintiffs in the New York Class Action did file a proof of claim in this proceeding. A few shareholders filed proofs of claim separately, but no proof of claim was filed by the Funds.

[26] In this proceeding, the Ad Hoc Securities Purchasers Committee - represented by Siskinds LLP, Koskie Minsky, and Paliare Roland Rosenberg Rothstein LLP - has appeared to represent the interests of the shareholders and noteholders who have asserted Class Action Claims against SFC and others.

[27] Since 2000, SFC has had the following two auditors ("Auditors"): E&Y from 2000 to 2004 and 2007 to 2012 and BDO from 2005 to 2006.

[28] The Auditors have asserted claims against SFC for contribution and indemnity for any amounts paid or payable in respect of the Shareholder Class Action Claims, with each of the Auditors having asserted claims in excess of $6.5 billion. The Auditors have also asserted indemnification claims in respect the Noteholder Class Action Claims.

[29] The Underwriters have similarly filed claims against SFC seeking contribution and indemnity for the Shareholder Class Action Claims and Noteholder Class Action Claims.

[30] The Ontario Securities Commission ("OSC") has also investigated matters relating to SFC. The OSC has advised that they are not seeking any monetary sanctions against SFC and are not seeking monetary sanctions in excess of $100 million against SFC's directors and officers (this amount was later reduced to $84 million).

[31] SFC has very few trade creditors by virtue of its status as a holding company whose business is substantially carried out through its Subsidiaries in PRC and Hong Kong.

[32] On June 26, 2012, SFC brought a motion for an order declaring that all claims made against SFC arising in connection with the ownership, purchase or sale of an equity interest in SFC and related indemnity claims to be "equity claims" (as defined in section 2 of the CCAA). These claims encapsulate the commenced Shareholder Class Action Claims asserted against SFC. The Equity Claims Decision did not purport to deal with the Noteholder Class Action Claims.

[33] In reasons released on July 27, 2012, I granted the relief sought by SFC in the Equity Claims Decision, finding that the "the claims advanced in the shareholder claims are clearly equity claims." The Auditors and Underwriters appealed the decision and on November 23, 2012, the Court of Appeal for Ontario dismissed the appeal.

[34] On August 31, 2012, an order was issued approving the filing of the Plan (the "Plan Filing and Meeting Order").

[35] According to SFC's counsel, the Plan endeavours to achieve the following purposes:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all affected claims;

(b) to effect the distribution of the consideration provided in the Plan in respect of proven claims;

(c) to transfer ownership of the Sino-Forest business to Newco and then to Newco II, in each case free and clear of all claims against SFC and certain related claims against the Subsidiaries so as to enable the Sino-Forest business to continue on a viable, going concern basis for the benefit of the Affected Creditors; and

(d) to allow Affected Creditors and Noteholder Class Action Claimants to benefit from contingent value that may be derived from litigation claims to be advanced by the litigation trustee.

[36] Pursuant to the Plan, the shares of Newco ("Newco Shares") will be distributed to the Affected Creditors. Newco will immediately transfer the acquired assets to Newco II.

[37] SFC's counsel submits that the Plan represents the best available outcome in the circumstances and those with an economic interest in SFC, when considered as a whole, will derive greater benefit from the implementation of the Plan and the continuation of the business as a going concern than would result from bankruptcy or liquidation of SFC. Counsel further submits that the Plan fairly and equitably considers the interests of the Third Party Defendants, who seek indemnity and contribution from SFC and its Subsidiaries on a contingent basis, in the event that they are found to be liable to SFC's stakeholders. Counsel further notes that the three most significant Third Party Defendants (E&Y, BDO and the Underwriters) support the Plan.

[38] SFC filed a version of the Plan in August 2012. Subsequent amendments were made over the following months, leading to further revised versions in October and November 2012, and a final version dated December 3, 2012 which was voted on and approved at the meeting. Further amendments were made to obtain the support of E&Y and the Underwriters. BDO availed itself of those terms on December 5, 2012.

[39] The current form of the Plan does not settle the Class Action Claims. However, the Plan does contain terms that would be engaged if certain conditions are met, including if the class action settlement with E&Y receives court approval.

[40] Affected Creditors with proven claims are entitled to receive distributions under the Plan of (i) Newco Shares, (ii) Newco notes in the aggregate principal amount of U.S. $300 million that are secured and guaranteed by the subsidiary guarantors (the "Newco Notes"), and (iii) Litigation Trust Interests.

[41] Affected Creditors with proven claims will be entitled under the Plan to: (a) their *pro rata* share of 92.5% of the Newco Shares with early consenting noteholders also being entitled to their *pro rata* share of the remaining 7.5% of the Newco Shares; and (b) their *pro rata* share of the Newco Notes. Affected Creditors with proven claims will be concurrently entitled to their *pro rata* share of 75% of the Litigation Trust Interests; the Noteholder Class Action Claimants will be entitled to their *pro rata* share of the remaining 25% of the Litigation Trust Interests.

[42] With respect to the indemnified Noteholder Class Action Claims, these relate to claims by former noteholders against third parties who, in turn, have alleged corresponding indemnification claims against SFC. The Class Action Plaintiffs have agreed that the aggregate amount of those former noteholder claims will not exceed the Indemnified Noteholder Class Action Limit of $150 million. In turn, indemnification claims of Third Party Defendants against SFC with respect to indemnified Noteholder Class Action Claims are also limited to the $150 million Indemnified Noteholder Class Action Limit.

[43] The Plan includes releases for, among others, (a) the subsidiary; (b) the Underwriters' liability for Noteholder Class Action Claims in excess of the Indemnified Noteholder Class Action Limit; (c) E&Y in the event that all of the preconditions to the E&Y settlement with the Ontario Class Action plaintiffs are met; and (d) certain current and former directors and officers of SFC (collectively, the "Named Directors and Officers"). It was emphasized that non-released

D&O Claims (being claims for fraud or criminal conduct), conspiracy claims and section 5.1 (2) D&O Claims are not being released pursuant to the Plan.

[44] The Plan also contemplates that recovery in respect of claims of the Named Directors and Officers of SFC in respect of any section 5.1 (2) D&O Claims and any conspiracy claims shall be directed and limited to insurance proceeds available from SFC's maintained insurance policies.

[45] The meeting was carried out in accordance with the provisions of the Plan Filing and Meeting Order and that the meeting materials were sent to stakeholders in the manner required by the Plan Filing and Meeting Order. The Plan supplement was authorized and distributed in accordance with the Plan Filing and Meeting Order.

[46] The meeting was ultimately held on December 3, 2012 and the results of the meeting were as follows:

(a) the number of voting claims that voted on the Plan and their value for and against the Plan;

(b) The results of the Meeting were as follows:

a. the number of Voting Claims that voted on the Plan and their value for and against the Plan:

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	250	98.81%	$ 1,465,766,204	99.97%
Total Claims Voting Against	3	1.19%	$ 414,087	0.03%
Total Claims Voting	253	100.00%	$ 1,466,180,291	100.00%

b. the number of votes for and against the Plan in connection with Class Action Indemnity Claims in respect of Indemnified Noteholder Class Action Claims up to the Indemnified Noteholder Limit:

	Vote For	Vote Against	Total Votes
Class Action Indemnity Claims	4	1	5

c. the number of Defence Costs Claims votes for and against the Plan and their value:

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	12	92.31%	$ 8,375,016	96.10%
Total Claims Voting Against	1	7.69%	$ 340,000	3.90%
Total Claims Voting	13	100.00%	$ 8,715,016	100.00%

d. the overall impact on the approval of the Plan if the count were to include Total Unresolved Claims (including Defence Costs Claims) and, in order to demonstrate the "worst case scenario" if the entire $150 million of the Indemnified Noteholder Class Action Limit had been voted a "no" vote (even

though 4 of 5 votes were "yes" votes and the remaining "no" vote was from BDO, who has now agreed to support the Plan):

	Number of Votes	%	Value of Votes	%
Total Claims Voting For	263	98.50%	$ 1,474,149,082	90.72%
Total Claims Voting Against	4	1.50%	$ 150,754,087	9.28%
Total Claims Voting	267	100.00%	$ 1,624,903,169	100.00%

[47] E&Y has now entered into a settlement ("E&Y Settlement") with the Ontario plaintiffs and the Quebec plaintiffs, subject to several conditions and approval of the E&Y Settlement itself.

[48] As noted in the endorsement dated December 10, 2012, which denied the Funds' adjournment request, the E&Y Settlement does not form part of the Sanction Order and no relief is being sought on this motion with respect to the E&Y Settlement. Rather, section 11.1 of the Plan contains provisions that provide a framework pursuant to which a release of the E&Y claims under the Plan will be effective if several conditions are met. That release will only be granted if all conditions are met, including further court approval.

[49] Further, SFC's counsel acknowledges that any issues relating to the E&Y Settlement, including fairness, continuing discovery rights in the Ontario Class Action or Quebec Class Action, or opt out rights, are to dealt with at a further court-approval hearing.

Law and Argument

[50] Section 6(1) of the CCAA provides that courts may sanction a plan of compromise if the plan has achieved the support of a majority in number representing two-thirds in value of the creditors.

[51] To establish the court's approval of a plan of compromise, the debtor company must establish the following:

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court;

(b) nothing has been done or purported to be done that is not authorized by the CCAA; and

(c) the plan is fair and reasonable.

(See *Re Canadian Airlines Corporation*, 2000 ABQB 442, leave to appeal denied, 2000 ABCA 238, aff'd 2001 ABCA 9, leave to appeal to SCC refused July 21, 2001, [2001] S.C.C.A. No. 60 and Re Nelson Financial Group Limited, 2011 ONSC 2750, 79 C.B.R. (5th) 307).

[52] SFC submits that there has been strict compliance with all statutory requirements.

[53] On the initial application, I found that SFC was a "debtor company" to which the CCAA applies. SFC is a corporation continued under the *Canada Business Corporations Act* ("CBCA") and is a "company" as defined in the CCAA. SFC was "reasonably expected to run out of

liquidity within a reasonable proximity of time" prior to the Initial Order and, as such, was and continues to be insolvent. SFC has total claims and liabilities against it substantially in excess of the $5 million statutory threshold.

[54] The Notice of Creditors' Meeting was sent in accordance with the Meeting Order and the revised Noteholder Mailing Process Order and, further, the Plan supplement and the voting procedures were posted on the Monitor's website and emailed to each of the ordinary Affected Creditors. It was also delivered by email to the Trustees and DTC, as well as to Globic who disseminated the information to the Registered Noteholders. The final version of the Plan was emailed to the Affected Creditors, posted on the Monitor's website, and made available for review at the meeting.

[55] SFC also submits that the creditors were properly classified at the meeting as Affected Creditors constituted a single class for the purposes of considering the voting on the Plan. Further, and consistent with the Equity Claims Decision, equity claimants constituted a single class but were not entitled to vote on the Plan. Unaffected Creditors were not entitled to vote on the Plan.

[56] Counsel submits that the classification of creditors as a single class in the present case complies with the commonality of interests test. See *Re Canadian Airlines Corporation.*

[57] Courts have consistently held that relevant interests to consider are the legal interests of the creditors hold *qua* creditor in relationship to the debtor prior to and under the plan. Further, the commonality of interests should be considered purposively, bearing in mind the object of the CCAA, namely, to facilitate reorganizations if possible. See *Stelco Inc.* (2005), 78 O.R. (3d) 241 (Ont. C.A.), *Re Canadian Airlines Corporation*, and *Re Nortel Networks Corporation* (2009) O.J. No. 2166 (Ont. S.C.). Further, courts should resist classification approaches that potentially jeopardize viable plans.

[58] In this case, the Affected Creditors voted in one class, consistent with the commonality of interests among Affected Creditors, considering their legal interests as creditors. The classification was consistent with the Equity Claims Decision.

[59] I am satisfied that the meeting was properly constituted and the voting was properly carried out. As described above, 99% in number, and more than 99% in value, voting at the meeting favoured the Plan.

[60] SFC's counsel also submits that SFC has not taken any steps unauthorized by the CCAA or by court orders. SFC has regularly filed affidavits and the Monitor has provided regular reports and has consistently opined that SFC is acting in good faith and with due diligence. The court has so ruled on this issue on every stay extension order that has been granted.

[61] In *Nelson Financial,* I articulated relevant factors on the sanction hearing. The following list of factors is similar to those set out in *Re Canwest Global Communications Corporation*, 2010 ONSC 4209, 70 C.B.R. (5th) 1:

1. The claims must have been properly classified, there must be no secret arrangements to give an advantage to a creditor or creditor; the approval of the plan by the requisite majority of creditors is most important;

2. It is helpful if the Monitor or some other disinterested person has prepared an analysis of anticipated receipts and liquidation or bankruptcy;

3. If other options or alternatives have been explored and rejected as workable, this will be significant;

4. Consideration of the oppression rights of certain creditors; and

5. Unfairness to shareholders.

6. The court will consider the public interest.

[62] The Monitor has considered the liquidation and bankruptcy alternatives and has determined that it does not believe that liquidation or bankruptcy would be a preferable alternative to the Plan. There have been no other viable alternatives presented that would be acceptable to SFC and to the Affected Creditors. The treatment of shareholder claims and related indemnity claims are, in my view, fair and consistent with CCAA and the Equity Claims Decision.

[63] In addition, 99% of Affected Creditors voted in favour of the Plan and the Ad Hoc Securities Purchasers Committee have agreed not to oppose the Plan. I agree with SFC's submission to the effect that these are exercises of those parties' business judgment and ought not to be displaced.

[64] I am satisfied that the Plan provides a fair and reasonable balance among SFC's stakeholders while simultaneously providing the ability for the Sino-Forest business to continue as a going concern for the benefit of all stakeholders.

[65] The Plan adequately considers the public interest. I accept the submission of counsel that the Plan will remove uncertainty for Sino-Forest's employees, suppliers, customers and other stakeholders and provide a path for recovery of the debt owed to SFC's non-subordinated creditors. In addition, the Plan preserves the rights of aggrieved parties, including SFC through the Litigation Trust, to pursue (in litigation or settlement) those parties that are alleged to share some or all of the responsibility for the problems that led SFC to file for CCAA protection. In addition, releases are not being granted to individuals who have been charged by OSC staff, or to other individuals against whom the Ad Hoc Securities Purchasers Committee wishes to preserve litigation claims.

[66] In addition to the consideration that is payable to Affected Creditors, Early Consent Noteholders will receive their *pro rata* share of an additional 7.5% of the Newco Shares ("Early Consent Consideration"). Plans do not need to provide the same recovery to all creditors to be considered fair and reasonable and there are several plans which have been sanctioned by the courts featuring differential treatment for one creditor or one class of creditors. See, for example, *Canwest Global* and *Re Armbro Enterprises Inc.* (1993), 22 C.B.R. (3d) 80 (Ont. Gen.

Div.). A common theme permeating such cases has been that differential treatment does not necessarily result in a finding that the Plan is unfair, as long as there is a sufficient rational explanation.

[67] In this case, SFC's counsel points out that the Early Consent Consideration has been a feature of the restructuring since its inception. It was made available to any and all noteholders and noteholders who wished to become Early Consent Noteholders were invited and permitted to do so until the early consent deadline of May 15, 2012. I previously determined that SFC made available to the noteholders all information needed to decide whether they should sign a joinder agreement and receive the Early Consent Consideration, and that there was no prejudice to the noteholders in being put to that election early in this proceeding.

[68] As noted by SFC's counsel, there was a rational purpose for the Early Consent Consideration. The Early Consent Noteholders supported the restructuring through the CCAA proceedings which, in turn, provided increased confidence in the Plan and facilitated the negotiations and approval of the Plan. I am satisfied that this feature of the Plan is fair and reasonable.

[69] With respect to the Indemnified Noteholder Class Action Limit, I have considered SFC's written submissions and accept that the $150 million agreed-upon amount reflects risks faced by both sides. The selection of a $150 million cap reflects the business judgment of the parties making assessments of the risk associated with the noteholder component of the Ontario Class Action and, in my view, is within the "general range of acceptability on a commercially reasonable basis". See *Re Ravelston Corporation*, (2005) 14 C.B.R. (5th) 207 (Ont. S.C). Further, as noted by SFC's counsel, while the New York Class Action Plaintiffs filed a proof of claim, they have not appeared in this proceeding and have not stated any opposition to the Plan, which has included this concept since its inception.

[70] Turning now to the issue of releases of the Subsidiaries, counsel to SFC submits that the unchallenged record demonstrates that there can be no effective restructuring of SFC's business and separation from its Canadian parent if the claims asserted against the Subsidiaries arising out of or connected to claims against SFC remain outstanding. The Monitor has examined all of the releases in the Plan and has stated that it believes that they are fair and reasonable in the circumstances.

[71] The Court of Appeal in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corporation*, 2008 ONCA 587, 45 C.B.R. (5th) 163 stated that the "court has authority to sanction plans incorporating third party releases that are reasonably related to the proposed restructuring".

[72] In this case, counsel submits that the release of Subsidiaries is necessary and essential to the restructuring of SFC. The primary purpose of the CCAA proceedings was to extricate the business of Sino-Forest, through the operation of SFC's Subsidiaries (which were protected by the Stay of Proceedings), from the cloud of uncertainty surrounding SFC. Accordingly, counsel submits that there is a clear and rational connection between the release of the Subsidiaries in the Plan. Further, it is difficult to see how any viable plan could be made that does not cleanse the Subsidiaries of the claims made against SFC.

[73] Counsel points out that the Subsidiaries who are to have claims against them released are contributing in a tangible and realistic way to the Plan. The Subsidiaries are effectively contributing their assets to SFC to satisfy SFC's obligations under their guarantees of SFC's note indebtedness, for the benefit of the Affected Creditors. As such, counsel submits the releases benefit SFC and the creditors generally.

[74] In my view, the basis for the release falls within the guidelines previously set out by this court in *ATB Financial*, *Re Nortel Networks*, 2010 ONSC 1708, and *Re Kitchener Frame Limited*, 2012 ONSC 234, 86 C.B.R. (5th) 274. Further, it seems to me that the Plan cannot succeed without the releases of the Subsidiaries. I am satisfied that the releases are fair and reasonable and are rationally connected to the overall purpose of the Plan.

[75] With respect to the Named Directors and Officers release, counsel submits that this release is necessary to effect a greater recovery for SFC's creditors, rather than having those directors and officers assert indemnity claims against SFC. Without these releases, the quantum of the unresolved claims reserve would have to be materially increased and, to the extent that any such indemnity claim was found to be a proven claim, there would have been a corresponding dilution of consideration paid to Affected Creditors.

[76] It was also pointed out that the release of the Named Directors and Officers is not unlimited; among other things, claims for fraud or criminal conduct, conspiracy claims, and section 5.1 (2) D&O Claims are excluded.

[77] I am satisfied that there is a reasonable connection between the claims being compromised and the Plan to warrant inclusion of this release.

[78] Finally, in my view, it is necessary to provide brief comment on the alternative argument of the Funds, namely, the Plan be altered so as to remove Article 11 "Settlement of Claims Against Third Party Defendants". The Plan was presented to the meeting with Article 11 in place. This was the Plan that was subject to the vote and this is the Plan that is the subject of this motion. The alternative proposed by the Funds was not considered at the meeting and, in my view, it is not appropriate to consider such an alternative on this motion.

Disposition

[79] Having considered the foregoing, I am satisfied that SFC has established that:

(i) there has been strict compliance with all statutory requirements and adherence to the previous orders of the court;

(ii) nothing has been done or purported to be done that is not authorized by the CCAA; and

(iii) the Plan is fair and reasonable.

[80] Accordingly, the motion is granted and the Plan is sanctioned. An order has been signed substantially in the form of the draft Sanction Order.

MORAWETZ J.

Date: December 12, 2012

This is Exhibit K referred to in the affidavit of Tonia Jeme C. sworn before me, this 22 day of April 20 13

A COMMISSIONER FOR TAKING AFFIDAVITS

Court of Appeal File No.: M42068
S.C.J. Court File No.: CV-12-9667-00CL

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

AMENDED NOTICE OF MOTION FOR LEAVE TO APPEAL

THE APPELLANTS, Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc. ("Appellants"), seek leave to appeal to a Panel of three judge of the Court of Appeal from the order dated December 10, 2012 ("Sanction Order") of the Honourable Mr. Justice Morawetz sanctioning Article 11 of the Plan of Compromise and Reorganization (the "Plan").

THE APPELLANTS ASK that leave be granted to appeal from sections 40 and 41 of the Sanction Order which sanctioned Article 11 of the Plan and that leave be granted to admit fresh affidavit evidence, as set out in the affidavit of Yonatan Rozenszajn sworn January 28, 2013.

PROPOSED METHOD OF HEARING:

The motion will be heard in writing, 36 days after service of the moving party's motion record, factum and transcripts, if any, or on the filing of the moving party's reply factum, if any, whichever is earlier, pursuant to Rule 61.03.1(1) of the *Rules of Civil Procedure*.

THE GROUNDS FOR THE MOTION ARE:

1. Justice Morawetz erred in sanctioning Article 11 of the Plan which would operate to eliminate statutory opt out rights of putative class members under section 9 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*").

2. Justice Morawetz erred in sanctioning Article 11 of the Plan which provides for releases to Named Third Party Defendants as listed in Schedule A to the Plan ("Named Third Party Defendants"), from the claims of any person including claims arising from the class action styled *Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, Court File No. CV-11-431153-00CP, without any showing that such releases are reasonably connected and necessary to the restructuring of the applicant, Sino-Forest, and the appeal is therefore meritorious;

3. Justice Morawetz erred in sanctioning Article 11 of the Plan, which provides for the release of the Named Third Party Defendants, as fair and reasonable without affording the Appellants adequate time and notice to object;

4. the proposed appeal will not unduly hinder the progress of the *CCAA* proceeding;

5. the fresh affidavit evidence contains factual information that arose subsequent to the Sanction Order, relates to the public importance of the appropriateness of sanctioning third party releases such as those contained in Article 11, is reasonably capable of belief and could reasonably have affected the result of the proceedings;

6. the *CCAA*, and, in particular, sections 6, 13, and 14 thereof;

7. sections 6(1)(a) and 134(4) of the *Courts of Justice Act;*

8. rule 61 of the *Rules of Civil Procedure*; and,

9. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTS WILL BE USED AT THE HEARING OF THE MOTION:

1. The motion materials filed below on the hearing before Justice Morawetz and orders made and the Monitor's reports filed in the *CCAA* proceedings; and,

2. such other documents as counsel may advise and this Honourable Court may permit.

December 27, 2012

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TO: THE SERVICE LIST

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

COURT OF APPEAL FOR ONTARIO

(Proceeding Commenced at Toronto)

AMENDED NOTICE OF MOTION
FOR LEAVE TO APPEAL

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Lawyers for Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National de Retraite Bâtirente Inc.

This is Exhibit L referred to in the affidavit of Tonya Jemec sworn before me, this 22 day of April 2013

A COMMISSIONER FOR TAKING AFFIDAVITS

Court of Appeal File No.: M42068
S.C.J. Court File No.: CV-12-9667-00CL

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

FACTUM OF THE APPELLANTS, INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., AND COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

(Motion for Leave to Appeal from Sanction Order)

January 29, 2013

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TO: THE SERVICE LIST

PART I – APPELLANTS AND ORDER APPEALED FROM

1. The Appellants, Invesco Canada Ltd. ("Invesco"), Northwest & Ethical Investments L.P. ("NEI"), and Comité Syndical National de Retraite Bâtirente Inc. ("Bâtirente") are institutional public and private equity funds that were putative class members (but not named representative plaintiffs) in the class proceeding against Sino-Forest Corporation ("Sino-Forest") and other parties that followed the disclosure of apparent fraud at Sino-Forest in June 2011. Sino-Forest entered reorganization proceedings under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*") in March 2012. The Appellants appeared in the *CCAA* proceedings after it was announced on December 3, 2012 that certain parties were seeking to obtain *CCAA* approval for a settlement and full release of all claims that could be asserted by anyone against Ernst & Young LLP ("E&Y") in connection with E&Y's audits of Sino-Forest, as well as a general "framework" that would release claims against other parties that might be liable (underwriters, another auditor, directors and officers).

2. This case involves a massive securities fraud, unfortunately one of a series in this country. This securities fraud led to class actions being commenced by victimized shareholders pursuant to the *Securities Act*, R.S.O. 1990, c. S.5, as amended and the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*"). The Ontario Securities Commission ("OSC") has since identified one of the Sino-Forest founders, Mr. Allen Chan ("Chan") as a possible architect of the fraud and E&Y as an entity that may have enabled the fraud by failing to conduct their audits in accordance with Generally Accepted Auditing Standards ("GAAS"). Chan and E&Y are both defendants in the class actions. Regulatory proceedings have since been commenced against both parties.

3. This case is the first to consider whether "third party" *CCAA* releases can eliminate provincial statutory protections guaranteeing investors the right to individually pursue remedies against parties like Chan and E&Y by opting out of the class action. It is the Appellants' position that there is no need to override the valid statutory rights of victims by resort to extraordinary

CCAA powers. The class action settlement with another defendant, Pöyry (Beijing) Consulting Company Limited ("Pöyry") was approved by the Class Action Court, during the rendering of the *CCAA* proceeding, without *CCAA* releases and, in a manner that did not do violence to the right to opt out granted by the *CPA*. This is the approach that should be followed. The issue is important, not just to the Appellants, who would have their right to pursue independent recovery extinguished, but also to all investment funds who will in the future be considering whether to invest in Canadian companies.

4. The Appellants submit that, in this situation at least, it was not "fair and reasonable" for the *CCAA* Court to sanction full releases of "third parties" like E&Y, who are defendants in the Sino-Forest class proceeding, when those releases were not reasonably connected to, and certainly were not necessary for, Sino-Forest's restructuring. The third party claims involved -- mainly claims asserted by share purchasers against professionals who failed to warn of the fraud at Sino-Forest -- could and should have been resolved in the Sino-Forest class proceeding as was done with Pöyry, with the normal protections afforded in class actions, including the ability of class members to opt out and prosecute their claims individually if they were dissatisfied with a class settlement.

5. Accordingly, the Appellants seek leave to appeal sections 40 and 41 of the order of the Honourable Mr. Justice Morawetz dated December 10, 2012 ("Sanction Order")[1], which sanctioned Article 11 of the December 3, 2012 version of the Plan of Compromise and Reorganization (the "Plan") of Sino-Forest.[2] Article 11 provides a "framework" for releasing E&Y, and also a general framework for releasing other persons and entities that have been, or may be, designated as "Named Third Party Defendants" and listed in Schedule A of the Plan.[3] The

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[1] Order of Hon. Mr. Justice Morawetz, dated December 10, 2012, Motion Record of the Appellants, Tab 4, pp. 420-439.

[2] Plan of Compromise and Reorganization ["Plan"], Schedule A to Order of Hon. Mr. Justice Morawetz, dated December 10, 2012, Motion Record of the Appellants, Tab 4A, pp. 440-536.

[3] Named Third Party Defendants listed are thirteen underwriters ("Underwriters"), Ernst & Young LLP ("E&Y") and BDO Limited ("BDO") and their affiliates or related parties, as well as Allen Chan, Kai Kit Poon and David Horsley. See Schedule A to Plan of Compromise and Reorganization, December 3, 2012, Motion Record of the Appellants, Tab 4A, pp. 440-536; Letter from Ms. Jennifer Stam to the Service List, dated January 11, 2013, Exhibit "R" to the

sanction of Article 11 raises serious issues that are of real and significant interest to the parties and to the insolvency and class proceedings bars and to the investing public.

6. The Appellants submit that Article 11 of the Plan and sections 40 and 41 of the Sanction Order should be set aside or amended, and an order be made:

a) severing Article 11 from the sanctioned Plan;

b) severing sections 40 and 41 from the Sanction Order; and,

c) declaring that Article 11 of the Plan and sections 40 and 41 of the Sanction Order are not reasonably connected or necessary to the restructuring of Sino-Forest and are therefore of no force and effect.

7. The Appellants accordingly seek leave to appeal from the Sanction Order.

PART II – FACTUAL OVERVIEW

8. Sino-Forest was one of Canada's largest forestry companies, with extensive operations in China, headquarters in Ontario, and a listing on the Toronto Stock Exchange ("TSX"). Its market capitalization in early 2011 was approximately $6.2 billion. It is now synonymous with one of Canada's worst cases of alleged securities fraud.

9. The Appellants had purchased securities of Sino-Forest and held them on June 2, 2011, the date on which Muddy Waters LLC, a securities analyst, published a report accusing Sino-Forest of serious securities fraud. In response to the report, the price of Sino-Forest shares collapsed from $18.21 to $5.23 per share over the course of two days, and trading was halted on August 26, 2011,[4] resulting in large losses for shareholders of the stock, including the Appellants. The value of Sino-Forest notes was also decimated.

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affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants, Tab 3R, pp. 394-397; Letter from Mr. James Orr to Ms. Jennifer Stam, dated January 11, 2013, Exhibit "S" to the affidavit of Yonatan Rozenszajn, sworn January 28, 2013 Motion Record of the Appellants, Tab 3S, pp.398-400; Letter from Ms. Jennifer Stam to Mr. James Orr, dated January 12, 2013, Exhibit "T" to the affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants, Tab 3T, pp. 401-402.

[4] Affidavit of W. Judson Martin, sworn November 29, ["Martin Affidavit-Nov. 29, 2012], at para 14, Exhibit "N" to the Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion record of the Appellants, Tab 3N, pp. 286-335.

10. Sino-Forest, many of its directors and officers, its auditors during the relevant years (E&Y and BDO Limited ("BDO"), which had issued clean audit opinions on the company's financial statements), thirteen underwriters of securities offerings by the company (the "Underwriters"), and Pöyry, a forestry consulting firm whose reports were included in Sino-Forest prospectuses and news releases, were sued in multiple class actions in Ontario, Saskatchewan, Quebec and New York.

11. Two of the Appellants, Bâtirente and NEI, are plaintiffs in an Ontario putative class action, *Northwest & Ethical Investments L.P. v. Sino-Forest Corp.,* Court File No. CV-11-43582600CP (the "NEI Action"). On January 6, 2012, the Honourable Mr. Justice Paul Perell of the Ontario Superior Court of Justice stayed the NEI Action and another class action that had been filed in Ontario[5], and granted carriage of the Ontario class proceedings to the plaintiffs and counsel in the action styled *Trustees of the Labourers' Pension Fund of Central and Eastern Canada, et al. v. Sino-Forest Corp., et al.,* Court File No. CV-11-431153-00CP (the "Class Action"). The named plaintiffs in that case (the "Ontario Plaintiffs") are represented by the law firms of Koskie Minsky LLP and Siskinds LLP ("Class Counsel").

12. In the decision granting carriage, Justice Perell specifically noted that the large institutional putative class members did not require the class action structure and were prime candidates to opt out of the class proceeding and pursue the defendants to obtain compensation for their respective funds and members.[6]

13. The proposed plaintiff class in the Class Action consists of all persons and entities who acquired Sino-Forest's securities from March 19, 2007 to and including June 2, 2011, except for excluded persons related to Sino-Forest (the "Class"). The Appellants fall within the Class definition.

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[5] *Smith v. Sino-Forest Corp.*, 2012 ONSC 24, [2012] O.J. No. 88 ["*Smith v. Sino-Forest*"], Book of Authorities, Tab 24.

[6] *Ibid.*, at para. 280.

14. On March 20, 2012, Pöyry became the first defendant to settle with the Ontario Plaintiffs.[7] It agreed to provide Class Counsel with information and cooperation to pursue the other defendants in the Class Action. The settlement did not include a monetary payment by Pöyry to the Class.

15. Ten days later, on March 30, 2012, Sino-Forest sought *CCAA* protection. A stay of proceedings was imposed, essentially preventing the Class Action from moving forward. During the ensuing months, Sino-Forest, its creditors, Class Counsel, and the defendants in the Class Action worked to restructure the company's affairs, which involved transferring shares of Sino-Forest subsidiaries from Sino-Forest to new corporate entities for the benefit of creditors.

16. Sino-Forest's officers and directors, auditors (including E&Y) and the Underwriters sought recognition for their claims of indemnification against Sino-Forest and its subsidiaries with respect to the share purchasers' claims being asserted in the Class Action, but the *CCAA* Court (and ultimately this Court) determined that the indemnification claims were equity claims and therefore subordinate to the claims of other creditors.[8]

17. During the course of its restructuring, Sino-Forest filed successive versions of its reorganization Plan. The versions set forth the proposed treatment, and release, of the Sino-Forest subsidiaries and of certain claims asserted against directors and officers. All of the versions contained a section providing that claims against other third parties like E&Y were not affected by the Plan.

18. To effect Court approval of the Pöyry settlement, the Ontario Plaintiffs obtained an order from Justice Morawetz that lifted the *CCAA* litigation in relation to Pöyry and its affiliated companies.[9] The Ontario Plaintiffs undertook a normal process for settlement approval in the Class

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[7] Order of Hon. Mr. Justice Perell, dated September 25, 2012, ["Pöyry Settlement Order"], Exhibit "E" to the affidavit of Yonatan Rozenszaju sworn January 28, 2013, Motion Record of the Appellants Tab 3E, pp.118—177.

[8] *Sino-Forest Corp. (Re),* 2012 ONSC 4377, aff'd 2012 ONCA 816. ["Equities Decision"], Book of Authorities, Tab 23.

[9] Order of Hon. Mr. Justice Morawetz dated May 8, 2012, ["Order of Justice Morawetz re lifting stay"], Exhibit "D" to the affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3D, pp.113-117.

Action before Justice Perell, including certification of a settlement class, notice, and a settlement approval hearing followed by an opt out process.[10]

19. On May 9, 2012, Sino-Forest's common shares were delisted from the TSX.[11]

20. On May 22, 2012, the OSC issued allegations that Sino-Forest and some of its officers and directors including Chan engaged in a complex fraudulent scheme to inflate the assets and revenue of Sino-Forest and made materially misleading statements in Sino-Forest's public disclosure record related to its primary business. The OSC also made allegations against David Horsley ("Horsley") for non-compliance with Ontario securities law and alleged that he acted contrary to the public interest.[12]

21. In August 2012, Sino-Forest filed the first version of its Plan of Compromise and Reorganization. The Plan was modified several times over the subsequent months. It generally contained standard language providing that all claims against Sino-Forest and certain officers and directors would be barred except claims described in section 5.1(2) of the *CCAA*, claims of fraud, claims of conspiracy, and insured claims. Any Equity Claims would be released as of the Plan Implementation Date or Equity Cancellation Date.

22. In these earlier versions of the Plan there were no provisions barring claims against, or providing releases in favour of, other "Third Party Defendants" named in the Class Action - i.e., E&Y, BDO or the Underwriters.[13]

23. On September 25, 2012, Justice Perell certified the Class Action for purposes of the Pöyry settlement and approved the Pöyry settlement.[14] Putative class members were given an opportunity

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[10] *Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2012 ONSC 5398 ("Sino-Forest Pöyry settlement decision"), Book of Authorities, Tab 29; Order of Justice Morawetz re lifting stay, *Ibid.*,

[11] Statement of Allegations of the Ontario Securities Commission, May 22, 2012,["OSC Allegations-May 22, 2012"] at para 10, Exhibit "P" to Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3P, p. 354.

[12] *Ibid.*,

[13] Amended Plan of Compromise and Reorganization, dated November 28, 2012, Exhibit "L" to the Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab3L, pp. 190-269.

[14] *Sino-Forest Pöyry settlement decision, supra* note 10.

to opt-out of the class action as certified against Pöyry by January 15, 2013.[15] The notice stated that any class member who opted out of the Class Action was also thereby opting out of the entire proceeding, thereby making him unable to participate in any future settlement or judgment reached against the remaining defendants in the Class Action.[16]

24. Unbeknownst to the Appellants, on November 29, 2012, counsel for E&Y and Class Counsel concluded a settlement ("E&Y Settlement"). The terms of the E&Y Settlement are contained in the Minutes of Settlement. The parties agreed that the E&Y Settlement was conditional upon there being no opt outs from the settlement:

> ¶10 It is the intention of the Parties that *this* settlement shall be approved and implemented in the Sino-Forest Corporation CCAA Proceedings. **The settlement shall be conditional upon full and final releases and claims bar orders in favour of EY and which satisfy and extinguish all claims against EY, and without opt-outs,** and as contemplated by the additional terms attached hereto as Schedule B hereto and incorporated as part of these Minutes of Settlement.[17]
>
> [Emphasis added]

25. On the morning of December 3, 2012, the latest scheduled date of the creditors' meeting to vote on the Plan, a new amended Plan was released.

26. For the first time, it contained, in the new Article 11, specific provisions for the proposed settlement of Class Action claims against E&Y and certain related entities, as well as a "framework" for the future settlement of Class Action claims against persons that were, or might in the future become, Named Third Party Defendants.[18]

27. E&Y and Class Counsel simultaneously announced the proposed settlement of the claims against E&Y. E&Y was to pay $117 million into a Settlement Trust administered through the *CCAA* proceedings.

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[15] Order of Hon. Mr. Justice Perell re Pöyry Settlement, Exhibit "E" to the Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3E, pp. 118-177.
[16] Notice of settlement with Pöyry, Schedule B to the Order of Hon. Mr. Justice Perell re Pöyry Settlement, *Ibid.*
[17] Minutes of Settlement, at para. 10, Motion Record of the Appellants, Tab 8, p. 560.
[18] See Schedule C for excerpts of the Plan.

28. The new Article 11 of the Plan would in effect render illusory and extinguish the statutory opt out rights of class members under section 9 of the *CPA* and/or would negate any valid opt outs by the Appellants or other putative class members. Article 11.1 specifically dealt with the settlement and release of claims against E&Y. Among other things, it was intended to ensure that putative class members could not commence or continue individual actions against E&Y. Under Article 11.1(b), if the E&Y Settlement is concluded, E&Y will obtain releases and bar orders in the *CCAA* proceeding, forever preventing the continuation or commencement of any litigation against E&Y for any Sino-Forest related claims. In effect, this would negate and render illusory as against E&Y any valid opt outs previously filed as part of the Pöyry opt out process.

29. Article 11.2 of the Plan establishes an open-ended mechanism for other Class Action defendants -- including BDO and the Underwriters, as well as former directors and officers, such as Chan, Kai Kit Poon ("Poon"), and former SVP and CFO Horsley who was accused by the OSC of failing to comply with Ontario securities laws and failing to act in the public interest -- to enter into a "Named Third Party Defendant Settlement" with "one or more of (i) counsel to the plaintiffs in any of the Class Actions...".[19]

30. Under Article 11.2(c), once such a Named Third Party Defendant Settlement is concluded, the Named Third Party Defendant will obtain releases and bar orders in the *CCAA* proceeding, as defined in the Plan, preventing the continued litigation of any Sino-Forest-related claims against it. Those releases would also negate the Appellants' previously filed opt outs.

31. The releases under Article 11 are absolute and include fraud.

32. It was reported after the creditors' meeting that a large majority of creditors approved the Plan. The proxy vote records have not been made public. However, as proxy votes were due three

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[19] Plan, *supra* note 2, Motion Record of the Appellants, Tab 4A, p 519-520. Article 11.2(a) allowed Eligible Third Party Defendants, as defined in the Plan, to become a Named Third Party Defendant upon the agreement of that defendant, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, the Monitor and if prior to the Plan Implementation Date, Sino-Forest itself.

days prior to the creditors meeting, proxy votes were based on creditors' consideration of a pre-Article 11 version of the Plan.

33. On the same day as the Plan amendment and creditors' meeting, the OSC issued a Statement of Allegations against E&Y, alleging that it had failed to perform its audit work on Sino-Forest's financial statements in accordance with GAAS, in violation of ss. 78(2), 78(3) and 122(1)(b) of the Ontario *Securities Act,* R.S.O. 1990, c. S-5, as amended.[20]

34. On December 7, 2012, the hearing to sanction the Plan proceeded before Justice Morawetz. At that time the Named Third Party Defendants were E&Y, BDO, and the Underwriters. The Appellants argued that they had not been provided with sufficient time to assess the amended Plan and sought an adjournment of the sanction hearing, or in the alternative the Appellants sought to carve out Article 11 from the Plan.

35. On December 10, 2012 Justice Morawetz refused the Appellants' request to adjourn the Sanction Hearing, and sanctioned the Plan with the provisions in Article 11 intact, notwithstanding the clear disconnect between the third party releases and the restructuring of Sino-Forest.

36. In sanctioning the Plan, Justice Morawetz reasoned that the implementation of the Plan was not conditional on the E&Y matter being successfully settled and that any concerns with respect to the effect of the releases on the rights of the Appellants were "premature."[21]

37. The Appellants seek leave to appeal from the Sanction Order.

38. Following the sanctioning of the Plan, three directors and officers were added as Named Third Party Defendants, making them eligible for broad no-opt-out releases under Article 11.2 of the Plan. On January 11, 2013, Chan and Poon were added.[22] On January 22, 2013, Horsley was

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[20] Statement of Allegations of the Ontario Securities Commission, dated December 3, 2012, Exhibit "O" to the Affidavit of Affadavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3O, pp. 336-351.

[21] *Sino-Forest Corporation (Re)*, 2012 ONSC 7041, at para. 25 ["Justice Morawetz's endorsement-December 10, 2012"], Motion Record of the Appellants, Tab 5, p. 542.

[22] Correspondence between Mr. James Orr and Ms. Jennifer Stam, *supra* note 3; OSC Allegations-May 22, 2012, *supra* note 11.

added.[23] The OSC has accused both Chan and Horsley of unlawful conduct in connection with the Sino-Forest fraud.

39. On January 15, 2013, the Appellants opted out of the Pöyry settlement.[24] In view of the proposed *CCAA* releases and in order to preserve their rights, the Appellants inserted the following language on their opt out form:

> This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding does not receive an order in this proceeding, which order becomes final, releasing any claim against such defendant, which includes a claim asserted on an opt-out basis by [the Objector]. Otherwise, this opt out right would be wholly illusory.

40. Following the Sanction Order, Sino-Forest took steps to implement the Plan, without regard to whether the E&Y Settlement, or any other Named Third Party Defendant settlements were actually consummated, and without regard to whether Releases were ever finally granted to E&Y and/or the Named Third Party Defendants.[25]

PART III – QUESTIONS ON APPEAL

41. The Appellants propose the following questions to be answered if leave to appeal is granted:

1) Did the *CCAA* Court err in sanctioning the "framework" allowing for settlement and full release of misrepresentation and related claims asserted by purchasers of the applicant's shares against the applicant's former auditor, when such a third-party compromise or

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[23] Letter from Jennifer Stam to the Service List, dated January 21, 2013, Exhibit "U" to the affidavit of Yonatan Rozenszajn, Motion Record of the Appellants, Tab3U, pp. 403-406; OSC allegations-May 22, 2012, *ibid.*

[24] Sino-Forest Class Action Settlement Opt Out Forms of Invesco Canada Ltd., Comité Syndical National de Retraite Bâtirente Inc., Northwest & Ethical Investments L.P., Matrix Asset Management Inc., Gestion Férique, and Montrusco Bolton Investments Inc., ["Appellants' opt out forms, postmarked January 15, 2013"], Exhibits "F" to "K" of the Affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants, Tabs 3F-3K, pp. 178-189.

[25] On January 21, 2013 Sino-Forest obtained a further order from the Court intended to facilitate the transfer of shares between a Sino-Forest subsidiary and Newco II. See the Plan Implementation Order of Justice Morawetz entered January 21, 2013, Affidavit of Yonatan Rozenszajn, sworn January 28, 2013, Motion Record of the Appellants, Tab 3, pp. 12-19.

arrangement was not "necessary" for, or even reasonably connected to, the success of the applicant's restructuring plan?

2) Did the *CCAA* Court err in sanctioning the "framework" allowing for future undefined settlements and full releases of misrepresentation claims asserted by such share purchasers against other third party defendants, before such settlements were even reached and before some of the eligible third party defendants had even been identified?

3) In such circumstances, did the Court err in sanctioning the "frameworks" when the proposed releases did not contain at least some carve-out for fraud claims?

4) Was it "premature" for the Appellants to object to the sanctioning of the "frameworks" for such third party releases, when the settlements themselves were being presented for approval at a later date?

PART IV – ISSUES AND THE LAW

42. In the *CCAA* context, leave to appeal is to be granted where there are serious and arguable grounds that are of real and significant interest to the parties. A four-part inquiry governs the Court's determination of whether leave ought to be granted:

1) whether the point on the proposed appeal is of significance to the practice;

2) whether the point is of significance to the action;

3) whether the proposed appeal is *prima facie* meritorious or frivolous; and

4) whether the appeal will unduly hinder the progress of the action.[26]

43. For the reasons stated below, the proposed appeal satisfies the test for leave.

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[26] *Timminco Limited (Re)*, 2012 ONCA 552, at para. 2, Book of Authorities, Tab 27.

1) The standards governing the availability of third-party releases in *CCAA* proceedings is significant to complex litigation practitioners

44. Many complex litigation cases involving allegations of misrepresentation against securities issuers occur in situations in which the subject company may become insolvent and qualify for reorganization under the *CCAA*.[27] The parameters governing how the *CCAA* may be used (or abused) to influence the ultimate assignment of liability among various parties for injuries suffered in such circumstances are therefore of significant interest.

45. Sino-Forest appears to present the first occasion in which a Court has sanctioned a *CCAA* reorganization plan that provides for full releases that would operate to extinguish claims asserted in a related class action against "third-party" professionals who allegedly bear legal liability for losses suffered related to the reasons the *CCAA* applicant became insolvent.

46. The Appellants submit that in this situation, the company, the professionals, and class counsel have engaged in over-reaching in the *CCAA* proceeding, so as to extend beyond any defensible boundaries the ability of third-party professionals to obtain full releases of claims asserted against them by injured share purchasers. In particular, the type of exceptional circumstances found to justify approval of third-party releases in the *CCAA* proceedings involving participants in the asset-backed commercial paper market ("ABCP"), as recognized in the seminal decision of this Court in *Re Metcalfe & Mansfield Alternative Investments II Corp.*[28] ("*Metcalfe*") (restructuring of the ABCP market), simply do not exist here.

47. Practitioners in this field will need to know whether, and in what circumstances, the pendency of a *CCAA* restructuring will open the possibility of third-party releases for parties whose alleged misconduct gave rise to misrepresentation and related liability. In particular, how does the justification found to be present in *Metcalfe* -- that the third-party releases were necessary for the

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[27] See for example *Timminco Limited (Re)*, 2012 ONSC 2515, Book of Authorities, Tab 28 and *Menegon v. Phillip Services Corp.*, [1999] O.J. No. 4080 (Sup. Ct.), Book of Authorities, Tab 15.

[28] *Re Metcalfe & Mansfield Alternative Investments II Corp.* 92 O.R.(3d) 513 (C.A.) ["*Metcalfe*"], Book of Authorities, Tab 16.

reorganization plan to succeed -- translate into other factual settings, where the viability of entire markets or industries does not hang in the balance?

48. The Appellants submit that the present situation does not share any salient characteristics with *Metcalfe*. In fact, Sino-Forest's demise, although humongous in scale, was essentially mundane in form and structure. It was and is a simple case of asset values that proved to be highly exaggerated or non-existent. The Sino-Forest misrepresentations, whose effect was limited to investors in that single company, cannot be compared with the alleged multi-party misconduct that led to the market meltdown treated in *Metcalfe*.

49. It is of interest to practitioners in the field whether investors' claims against professionals who failed to warn of material problems may be defeasible by use of *CCAA* insolvency proceedings by the professionals to procure third-party releases, which among other things would render illusory the right of investors to opt out of a class proceeding so as to pursue their claims individually.

50. The Appellants object to the misuse of the Sino-Forest *CCAA* restructuring proceedings to provide a "framework" intended to extinguish the statutory rights of putative class members to commence or maintain opt out litigation against E&Y and the other Named Third Party Defendants.

First Principles of Insolvency Law

51. In *Century Services Inc. v. Canada (Attorney General)*[29] the Supreme Court of Canada held that the purpose of the *CCAA* is to allow an insolvent debtor company to attempt reorganization under judicial supervision.[30] When exercising *CCAA* authority, the Court must consider whether the applicant has satisfied the Court that the order requested is appropriate in the circumstances in

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[29] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ("*Century Services*"), Book of Authorities, Tab 6; see also *Reference re Companies' Creditors Arrangement Act (Canada)*, [1934] S.C.R. 659 at paras. 4 and 7, Book of Authorities, Tab 19.

[30] *Century Services, Ibid.*, at para. 15

that it would promote the policy objectives of the *CCAA* -- which are to avoid the social and economic losses that would result from liquidation.[31]

52. It is well established in insolvency law that the *CCAA* process should not be used as a tool for the confiscation of rights, especially the rights of parties that are not able to look out for their own best interests.[32]

53. A plan of arrangement that does not adequately address unique and meaningful legal entitlements to claim damages against third parties is confiscatory in nature and unfair.[33]

54. In particular, third party releases, which extinguish the rights of a broad set of persons, should not be requested or granted as a matter of course in a *CCAA* sanction hearing.[34]

55. In *Metcalfe,* this Court noted that the third party releases at issue in that case were "reasonably related to the proposed restructuring" and indeed "necessary for it", and held that such releases may be approved if there is a "reasonable connection between the third party claim being compromised in the Plan and the restructuring achieved by the Plan to warrant inclusion of the third party release in the Plan".[35]

56. Following *Metcalfe,* the Court has held that only third party releases that are integral or necessary to the restructuring of the debtor should be sanctioned.[36]

57. In *Metcalfe*, this Court noted the presence of a number of specific facts supporting the approval of third party releases:

a) the parties to be released are necessary and essential to the restructuring of the debtor;

b) the claims to be released are rationally related to the purpose of the Plan and necessary fit for it;

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[31] *Century Services, Ibid.*, at paras. 69-70

[32] *Re T. Eaton Co.* [1999] O.J. 5322 at para. 5 (Sup. Ct..), Book of Authorities, Tab 26.

[33] *Re San Francisco Gifts Ltd.* 2004 ABQB 705, at paras. 27, 28 and 35 ("*San Francisco Gifts*")., Book of Authorities, Tab 21.

[34] *Canwest Global Communications (Re),* 2010 ONSC 4209 at para. 29, Book of Authorities, Tab 5.

[35] *Ibid.* at paras. 61 and 70.

[36] *Allen-Vanguard Corp. (Re),* 2011 ONSC 5017, [2011] O.J. No. 3946 at para. 61, Book of Authorities, Tab 2.

c) the Plan cannot succeed without the releases;

d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan; and,

e) the Plan will benefit not only the debtor companies but creditors generally.[37]

This Court also noted that the releases at issue were subject to a "fraud carve-out", and that both the releasing parties and the released parties were creditors in the restructuring -- in particular, the complaining creditors were members of a class of creditors that had voted overwhelmingly to approve the Plan, and themselves benefited from the restructuring of the ABCP market facilitated thereby.[38]

58. Finally, to be justified, third party releases should not be overly broad or offensive to public policy.[39]

No Compelling Reason to Sanction the Framework for Third Party Releases

59. None of the reasons that supported granting third party releases in *Metcalfe* apply to the Sino-Forest restructuring.

60. It is evident from the history of the Sino-Forest restructuring process that the "framework" for releasing E&Y and the other Named Third Party Defendants was never essential to the Plan. Several iterations of the Plan were proposed and published without any mention of third party releases -- up until the day before the Plan was voted upon. The framework in Article 11 was added only as part of the E&Y Settlement. The fact that the Article 11 framework does not even define which third parties will seek releases confirms that such releases cannot plausibly be termed necessary to Sino-Forest's restructuring.

61. The evidence submitted on the motion for approval of the Sanction Order by the parties to the Sino-Forest restructuring did not contain any explanation whatsoever as to why a framework

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[37] *Ibid.* at para. 71.
[38] *Metcalfe*, *supra* note 28, at paras. 3, 33 and 119.
[39] *Re Nortel Networks*, 2010 ONSC 1708, at para. 79, Book of Authorities, Tab 17.

for releasing E&Y and other Named Third Party Defendants was necessary, or even related to, the restructuring. Nor was there any evidence as to why the normal opt-out provisions for class action certifications and settlements were not recognized and given effect.

62. E&Y and the Named Third Party Defendants have not made a tangible contribution to the restructuring of Sino-Forest sufficient to justify third party releases. The *CCAA* Court determined, and this Court has affirmed, that the indemnity claims asserted by E&Y and certain other Named Third Party Defendants against Sino-Forest and its subsidiaries were Equity Claims[40], which are subject to cancellation as of the Plan Implementation Date or Equity Cancellation Date. The only restructuring benefit that E&Y can wring from this situation is that it will forgo seeking leave to appeal before the Supreme Court of Canada -- a benefit that is minuscule, if that.

63. E&Y's proposal to provide $117 million to a Settlement Trust fund[41] as consideration for obtaining a release of the Class Action claims against it does not "count" as a benefit for Sino-Forest's restructuring Plan. As noted above, there has been no showing that the Plan has been affected one way or the other by the presence of such a framework; and the fact that even if the settlement is not consummated the Plan will proceed without alteration, confirms the disconnect.

64. In short, the framework for proposed settlements and releases belongs in the Class Action Court, where normal procedures and protections apply. In particular, it would be inherently unfair and unjust to extinguish class members' statutory opt out rights as consideration for E&Y's decision to support the Plan. Such result would amount to a confiscation of rights.[42]

65. The Court should not allow the *CCAA* process to be used to further a collateral objective that, in the end, is not in connection with the ultimate goal of the *CCAA*.[43]

66. The central objective of the Plan is to restructure Sino-Forest by creating Newco and Newco II and transferring their notes and shares to affected creditors with proven claims.[44]

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[40] Equities Decision, *supra*, note 8.
[41] Plan, *supra* note 2, Article 11.1(a), Motion Record of the Appellants, Tab 4A, pp. 518-519.
[42] *San Francisco Gifts*, *supra* note 33 at paras. 27, 28 and 35.
[43] *Abitibibowater inc. (Re)*, 2009 QCCS 5482, [2009] Q.J. No. 16916, at para. 84, Book of Authorities, Tab 1.

67. Releases to E&Y and Named Third Party Defendants have no relation to the main objective of the Plan. They do not affect or impact the restructuring or improve its chances for success.

68. The purpose and operation of the Settlement Trust is not defined in the Plan. The Settlement Trust has not been designed to serve any purpose of Sino-Forest, Newco or Newco II.

69. In fact, the third party releases included in Article 11 are eleventh-hour add-ons that have nothing to do with Sino-Forest's restructuring; they were only imported into the *CCAA* process for the sole objective of allowing the Ontario Plaintiffs to obtain a settlement premium from E&Y and Named Third Party Defendants in exchange for extinguishing class members' statutory opt out rights.[45]

70. Use of the Plan to implement a no-opt-out class action settlement would be completely collateral to Sino-Forest's restructuring and is an inappropriate use of the *CCAA* process.

No Reasonable Connection between Article 11 and Sino-Forest's Restructuring

71. The release of E&Y is not integral to the restructuring of Sino-Forest.

72. The word integral has been defined as a "part or constituent component necessary or essential to complete the whole";[46] "essential to completeness, constituent; formed as a unit with another part; lacking nothing essential";[47] and, "forming an intrinsic portion or element, as distinguished from an adjunct or appendage".[48]

73. Justice Morawetz explicitly stated in his December 10, 2012 and December 12, 2012 Endorsements that E&Y's third party release is not part of the Sanction Order or a condition of Plan Implementation:

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[44] Plan, *supra* note 2, Article 6, Motion Record of the Appellants, Tab 4A, pp. 491-501.
[45] Memorandum by Siskinds LLP dated December 31, 2012, Exhibit "X" to the Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3X, pp. 415-419.
[46] *Black's Law Dictionary*, 6th ed., s.v. "integral", Book of Authorities, Tab 34.
[47] *Webster's Collegiate Dictionary*, s.v. "integral", Book of Authorities, Tab 33.
[48] *The Oxford English Dictionary*, 2nd ed., s.v. "integral", Book of Authorities, Tab 32.

> ¶48 As noted in the endorsement dated December 10, 2012, which denied the Funds' adjournment request, the E&Y Settlement does not form part of the Sanction Order[49]
> ...
> ...
> ¶20 Essentially, if certain conditions are met and further court approval and order are obtained, it is conceivable that E&Y will get a release. However, such a release is not being requested at this time. Further, it is not a condition of Plan Implementation that the E&Y matter be settled.[50]
>
> [Emphasis added]

74. The words of the Court are clear. The Plan can succeed without E&Y or the Named Third Party Defendants receiving releases. The Court's reasons and Sanction Order fail to express how or why the E&Y Release and Article 11 are integral to the Plan and the Sino-Forest restructuring.

75. In fact, the Plan has proceeded towards implementation without the release of E&Y or the Named Third Party Defendants becoming effective. All equity claims have been cancelled and eligible creditors will receive their shares and notes in the restructured company in due course once all the assets of Sino-Forest have been officially transferred to Newco and Newco II.

76. The conceptual and temporal detachment of Article 11 from the Plan implementation exceeds the jurisdictional limit of the *CCAA* Court which cannot allow parties to prospectively and unilaterally vary civil rights.[51]

77. In this case, it is possible that several years could elapse following the conclusion of these *CCAA* proceedings, before one or more Named Third Party Defendants finally agree to a class action settlement which would then reach back in time to automatically trigger Article 11.2 of the Plan, solely for the purpose of negating any opt out rights.

78. Even the vote of creditors is suspect with regard to the Third Party Defendant settlements and releases. Creditors who voted on the Plan by proxy had to submit their proxies by November 26, 2012, or at the latest (due to the adjournment of the creditors' meeting) on November 30, 2012.

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[49] *Sino-Forest Corporation (Re)*, ["Justice Morawetz's endorsement - December 12, 2012"] 2012 ONSC 7050 at para. 48, **Motion Record of the Appellants, Tab 7, p.553.**

[50] Justice Morawetz's endorsement-December 10, 2012, *supra* note 21 at para. 20, **Motion Record of the Appellants, Tab 5, p. 541.**

[51] *Doman Industries Ltd., Re*, 2003 BCSC 376, at paras. 26, 27 and 30, **Book of Authorities, Tab 10.**

Creditors who voted by proxy could not have had knowledge of Article 11 since it was only inserted into the Plan on the morning of December 3, 2012.

The Sanctioning of Article 11 Was Contrary to the Public Interest

79. In *Metcalfe*, the Plan and the third party releases were intended to resuscitate the frozen ABCP market.[52] The unique situation of an entire financial sector requiring *CCAA* restructuring provided considerable socio-economic justifications for the imposition of broad based third party releases. Moreover, as this Court in *Metcalfe* noted, the released "third parties" were almost invariably also creditors in the restructuring, or financially tied to such creditors, and were participants in the ABCP market that was being saved by the restructuring. Their interests were thus closely intertwined with the restructuring process and result.

80. Sino-Forest's restructuring engages no socio-economic purposes similar to the restructuring of the ABCP market. There are no public policy reasons to justify granting broad third party releases as part this *CCAA* restructuring. The present proceedings involve the insolvency of one company that allegedly orchestrated one of the biggest securities frauds in Canadian history. Unlike the third parties in *Metcalfe*, none of the third party defendants here are economically interconnected to Sino-Forest.

81. There are strong public policy reasons that militate against granting E&Y and Named Third Party Defendants with absolute third party releases early in the civil proceedings before any documentary discoveries have taken place and before the OSC has revealed its case against E&Y. Investors should be allowed to pursue litigation and recovery against third parties in cases of massive securities fraud. An unnecessary frustration of investors' legal autonomy would shatter international confidence in Canada's capital markets and be contrary to public policy.[53]

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[52] *Metcalfe*, *supra* note 28 at paras. 53 and 55.

[53] Affidavit of Eric J. Adelson sworn December 6, 2012, ["Adelson Affidavit-Dec. 6, 2012"] at para. 17, Motion Record of the Appellants, Tab 2, p. 10.

82. The right of a party to opt-out is fundamental to the Court's jurisdiction over absent class members. It is also fundamental to preserve the autonomy of those who wish to exercise their legal rights outside of a particular class action.[54] The opt-out period allows persons to pursue their self-interest and to preserve their rights to pursue individual actions.[55]

83. This Court has recognized that the right to opt out is fundamental and should not negated by the Courts:

> While this speculation about future opting out may ultimately prove to be correct, it ignores the well-settled principle that a right to opt out is an important element of procedural fairness in class proceedings. It is not an illusory right that should be negated by speculation, judicial or otherwise.[56]
>
> [Emphasis added]

84. The Supreme Court of Canada has similarly recognized the importance of notice of the right to opt out being provided to absent class members so they are given an opportunity to exclude themselves from the proceeding and preserve their litigation autonomy.[57] The Supreme Court of Canada has further recognized that individual rights must be safeguarded in class actions.[58]

85. In the context of *CCAA* proceedings the denial of opt out rights creates unfairness between individual creditors, who retain the autonomy to instruct and act through their own counsel, and class members who are permanently bound to the decisions effected by the Ontario Plaintiffs.[59]

86. Article 11 creates an unprecedented regime whereby the Court has powers under the *CCAA* and the Plan to approve and effectuate class-wide settlements that would forever extinguish the rights of putative class members to opt out of settlements and commence opt out litigation for seemingly an unlimited period of time. Upon settlement approval, the Plan operates to negate not only future opt outs but also any prior opt outs which were duly filed as part of the Class Action

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[54] *Currie v. McDonald's Restaurants of Canada Ltd.* (2005), 74 O.R. (3d) 321, [2005] O.J. No. 506 at para. 28 (C.A.), Book of Authorities, Tab 9.

[55] *Mangan* v. *Inco Ltd.*, [1998] O.J. No. 551 at para. 36 (Ct. J. (Gen. Div.)), Book of Authorities, Tab 14.

[56] *Fischer v. IG Investment Management Ltd.*, 2012 ONCA 47 at para. 69, Book of Authorities, Tab 11.

[57] *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para. 49, Book of Authorities, Tab 30.

[58] *Canada Post Corp. v. Lepine* 2009 SCC 16, at para. 42, Book of Authorities, Tab 3.

[59] George Rutherglen, *Better Late Than Never: Notice and Opt Out at the Settlement Stage of Class Actions* (1996) 71 N.Y.U.L. Rev. 258 at 285-286, Book of Authorities, Tab 31.

procedure.[60] Such a regime is offensive to public policy, which recognizes the fundamental nature of opt out rights.

87. Justice Morawetz erred in sanctioning Article 11 without a clear showing of its necessity to the restructuring of Sino-Forest.

Article 11 Releases Are Contrary to Sections 5.1(2) and 19(2) of the CCAA

88. Justice Morawetz erred in not assessing the framework for releases under Article 11 against sections 5.1(2) and 19(2) of the *CCAA*.

89. After the Plan was sanctioned, several directors and officers of Sino-Forest have been added to the list of Named Third Party Defendants who are eligible for a full and final release under Article 11.2, including: Chan, Poon and Horsley.

90. Unlike other directors and officers who are directly released by the Plan, the Article 11 releases will be all encompassing and absolute.

91. The release of directors and officers such as Chan, Horsley and Poon through Article 11.2 of the Plan provides the possibility of releasing officers and directors of Sino-Forest in a manner contrary to section 5.1(2) of the *CCAA*:

> 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.[61]

92. The law is clear that a plan of compromise can release directors, except claims which come under section 5.1(2) of the *CCAA*. Claims against directors for wrongful or oppressive conduct cannot be compromised under a *CCAA* plan.[62]

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[60] The Plan would negate any opt outs filed by January 15, 2013 as part of the Pöyry settlement approval process. Article 11 releases would apply to any person, regardless of the membership in a class action, forever depriving them of the right to assert or continue asserting any past, present or future claim in relation to Sino-Forest. This would have the effect of terminating any ongoing proceedings that may have been independently commenced by former putative class members who opted out of the Class Action.

[61] *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C- 36, s. 5.1(2).

[62] *Cheng v. Worldwide Pork Co.*, 2009 SKQB 186, [2009] S.J. No. 277 at para. 38 (Sask. Q.B.), Book of Authorities, Tab 7.

93. Chan and Horsley are the subject of OSC investigations that have accused Chan of committing fraud, and Horsley of failing to comply with securities laws.

94. The Class Action makes claims of false, knowing or reckless misrepresentation against Chan and Horsley as well as claims of oppressive conduct against the companies' directors.[63] Two of the Appellants have made claims of fraud against Chan, Horsley and other directors in the stayed NEI Action.[64]

95. Claims of fraudulent or negligent misrepresentation against a director may not be compromised by a provision in a plan or reorganization. Where a statement of claim makes such allegations the Court has found that section 5.1(2)(b) will operate to preclude a stay of the litigation, because the allegations may not be included in a plan of compromise or arrangement. The Class Action and the NEI Action both make claims that fall within what should not be compromised under section 5.1(2)(b) – however the Release provisions in Article 11.2 do not expressly exclude such claims.

96. When the release of directors does not expressly comply with section 5.1(2) the Court has amended the release so as not to interfere with this statutory requirement.[65]

97. It is improper to insert into the Plan a framework release that attempts to negate this statutory provision, when other officers and directors who received a release under the Plan are still subject to civil actions that may allege fraud. It is not the function of the Court to reassess or override validly enacted legislation.[66]

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[63] Statement of Claim in *Trustees of Labourers' Pension Fund of Central and Eastern Canada et al v. Sino-Forest Corporation et al.*, at paras. 79, 203, 274-277, **Motion Record of the Appellants, Tab 10, pp. 631, 677, 704-706.**

[64] Amended Statement of Claim in *Northwest & Ethical Investments L.P. et al. v. Sino-Forest Corporation et al.*, at paras. 228 – 230, Exhibit "A" to the Affidavit of Yonatan Rozenszajn sworn January 28, 2013, **Motion Record of the Appellants, Tab 3A, p. 99-100.**

[65] *Canadian Airlines Corp. (Re)*, 2000 ABQB 442 at para. 90, leave to appeal ref'd, 2000 ABCA 238, **Book of Authorities, Tab 4.**

[66] *R. v. Malmo-Levine*, 2003 SCC 74 at para. 211, **Book of Authorities, Tab 18.**

98. Justice Morawetz failed to consider the applicability of the new section 19(2) of the *CCAA*[67], which provides that certain claims may not be compromised in a Plan unless that claim was explicitly provided for in the Plan and the creditor in relation to that claim voted in favour of it:

> (2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:
>
> (*a*) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;
>
> (*b*) any award of damages by a court in civil proceedings in respect of
>
> (i) bodily harm intentionally inflicted, or sexual assault, or
>
> (ii) wrongful death resulting from an act referred to in subparagraph (i);
>
> (*c*) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;
>
> (*d*) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or
>
> (*e*) any debt for interest owed in relation to an amount referred to in any of paragraphs (*a*) to (*d*).[68]
>
> [Emphasis added]

99. Justice Morawetz failed to analyse the decision of this Court in *Metcalfe* in light of the new statutory scheme under section 19(2) of the *CCAA* which restricts the compromise of certain claims in a plan of arrangement before sanctioning Article 11.

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[67] Subsection 19(2) of the *CCAA* came into force on September 18, 2009.
[68] *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C- 36, s. 19(2).

100. Specifically, Justice Morawetz failed to consider that subsection 19(2)(c) broadly excepts any debt or liability arising out of fraud unless the claimant in relation to that debt or liability voted in favour of the compromise of this claim. Similarly, subsection 19(2)(d) broadly excepts any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation. Subsection 19(2)(d) necessarily includes any equity claims against persons or entities other than the company under restructuring, such as professionals, directors and other third parties.

101. Similarly to the exceptions in section 5.1(2), the exception of certain types of claims under subsections 19(2)(c) and 19(2)(d) protects claimants by effectively granting them a veto power over the compromise of their excepted claims in a plan of arrangement.

102. The releases under Article 11 fail to carve out any of the excepted claims under section 19(2). No creditor, including the Appellants, has been allowed to vote in relation to and confirm the compromise of any excepted claim.

103. The generous, broad, and disjunctive wording of subsection 19(2)(c) and 19(2)(d) suggests that Parliament intended this section to be read liberally and purposively to prevent abusive resort to *CCAA* plans of arrangement to defeat fraud and fraud like claims.

104. The Appellants submit that had Justice Morawetz considered Article 11 of the Plan in conjunction with subsections 19(2), and in particular 19(2)(c) and 19(2)(d), a purposive, remedial and liberal interpretation of those subsections would have resulted in Article 11 being severed from the Plan and/or the Appellants being granted the right to vote on the compromise of their excepted claims at the very least against E&Y.

2) Sanction of Article 11 is of significance to the Sino-Forest proceedings and the parties

105. The appropriateness of sanctioning Article 11 in the absence of a reasonable connection between the third party releases and the restructuring of Sino-Forest is of significant interest to the

parties, especially putative class members, whose statutory opt out rights will be illusory in the face of the releases.

106. The proposed appeal will set the parameters for future negotiations between the Ontario Plaintiffs and other parties by clarifying whether Article 11 of the Plan can be used by the Ontario Plaintiffs to offer putative class members' statutory opt out rights in exchange for a premium payment from eligible Named Third Party Defendants in the action.

107. This is especially significant since Class Counsel did not obtain a Representation Order[69] pursuant to Rule 10 of the *Rules of Civil Procedure*[70], so Class Counsel did not even facially have authority to bind class members.[71]

108. Appellate review of the connection of Article 11 to the Plan and whether its sanction is fair and equitable will be of interest to other third party defendants such as Pöyry, which is the only defendant to undertake to help the Ontario Plaintiffs prove the Sino-Forest fraud, but which is not obtaining a *CCAA* Release.

3) The Appeal is *prima facie* meritorious

109. The Court should grant leave to appeal when the appeal raises novel and important points of law, the issues are of first impression, and concerns the jurisdiction of the Court.[72]

110. For all of the submissions set out above, the Appellants respectfully submit that the appeal is meritorious. Justice Morawetz acted unreasonably, erred in principle and/or made a manifest

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[69] See Minutes of Settlement, at para. 14:

> The Parties shall use all reasonable efforts to obtain all Court approvals and/or orders necessary for the implementation of the Minutes of Settlement, including an order in the CCAA proceedings granting the plaintiffs appropriate representative status to effect the terms herein;

[70] *Rules of Civil Procedure*, R.R.O. 1990, reg. 194. r. 10.

[71] Adelson Affidavit-Dec. 6, 2012, *supra* note 53 at paras. 6 and 18, **Motion Record of the Appellants, Tab 2, pp. 6 and 10.**

[72] *Stelco Inc. (Re)*, [2005] O.J. No. 4733 at para. 14 (C.A.), **Book of Authorities, Tab 25.**

error[73] in approving sections 40 and 41 of the Sanction Order and sanctioning Article 11 of the Plan.

4) The Appeal will not unduly hinder the progress of the *CCAA* action

111. Justice Morawetz stated in his December 10, 2012 and December 12, 2012 Endorsements that the Plan Implementation is not conditional or dependant in any way on the E&Y Settlement being approved and/or any Third Party Defendant being granted a release pursuant to Article 11.[74]

112. The Plan is in the process of being implemented.

113. The Appellants have not sought to stay the restructuring of Sino-Forest to await the outcome of this appeal.

114. The proposed appeal will not hinder or delay the progress of the Sino-Forest restructuring as the Plan Implementation has already begun and can continue unaffected by this appeal.

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[73] For the applicable standard of review, see *San Francisco Gifts Ltd. v. Oxford Properties Group Inc.*,2004 ABCA 386 at para. 8 Book of Authorities, Tab 22; *Royal Bank of Canada v. Fracmaster Ltd.*, 1999 ABCA 178 at para. 3, Book of Authorities, Tab 20.

[74] Justice Morawetz's Endorsement-December 12, 2012, *supra* note 49 at para. 48, Motion Record of the Appellants, Tab 5, p. and Justice Morawetz's Endorsement-December 10, 2012, *supra* note 21 at para. 20, Motion Record of the Appellants, Tab 5, p. 541.

PART V – RELIEF SOUGHT

115. The Funds respectfully request that this Court grant leave to appeal the Plan Sanction Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 29th DAY OF January, 2013

James C. Orr

Won J. Kim P.C

Megan B. McPhee

Michael C. Spencer.

Lawyers for the Appellants, Invesco Canada Ltd., Northwest & Ethical Investments L.P. and Comité Syndical National de Retraite Bâtirente Inc.

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TAB "A"

Schedule A—Authorities

Jurisprudence

1.	*Abitibibowater inc. (Re)*, 2009 QCCS 5482, [2009] Q.J. No. 16916
2.	*Allen-Vanguard Corp. (Re)*, 2011 ONSC 5017, [2011] O.J. No. 3946
3.	*Canada Post Corp. v. Lepine* 2009 SCC 16.
4.	*Canadian Airlines Corp. (Re)*, 2000 ABQB 442, leave to appeal ref'd, 2000 ABCA 238 (Alta. C.A.).
5.	*Canwest Global Communications (Re)*, 2010 ONSC 4209.
6.	*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
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10.	*Doman Industries Ltd., Re*, 2003 BCSC 376.
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21.	*San Francisco Gifts Ltd. (Re)*, 2004 ABQB 705.
22.	*San Francisco Gifts Ltd. v. Oxford Properties Group Inc.*, 2004 ABCA 386
23.	*Sino-Forest Corporation (Re)*, 2012 ONSC 4377; aff'd 2012 ONCA 0816.
24.	*Smith v. Sino-Forest Corp.*, 2012 ONSC 24, [2012] O.J. No. 88.
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27.	*Timminco Limited (Re)*, 2012 ONCA 552.
28.	*Timminco Limited (Re)*, 2012 ONSC 2515
29.	*Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2012 ONSC 5398.
30.	*Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46.

Secondary Sources

1.	George Rutherglen, "Better Late Than Never: Notice and Opt Out at the Settlement Stage of Class Actions" (1996) 71 N.Y.U.L. Rev. 258.
2.	*The Oxford English Dictionary*, 2nd ed., s.v. "integral"
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TAB "B"

Schedule B—Legislation

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

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.

(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.

(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.

(4) There all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

19. (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(*a*) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(*b*) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (*a*)(i) and (ii).

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and

the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(*a*) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(*b*) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(*c*) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(*d*) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(*e*) any debt for interest owed in relation to an amount referred to in any of paragraphs (*a*) to (*d*).

Securities Act, R.S.O. 1990, c. S-5

78. (1) Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to,

(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer or mutual fund has completed a financial year, the last financial year, as the case may be; and

(b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer or mutual fund prepared in accordance with the regulations

(3) The auditor of a reporting issuer or mutual fund shall make such examinations as will enable the auditor to make the report required by subsection (2).

122(1) Every person or company that,

(a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

(b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

(c) contravenes Ontario securities law,

is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

Class Proceedings Act, 1992, S.O. 1992, c.6

9. Any member of a class involved in a class proceeding may opt out of the proceeding in the manner and within the time specified in the certification order.

Rules of Civil Procedure, R.R.O. 1990, reg. 194

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the *Variation of Trusts Act*;

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

10.02 Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding.

10.03 Where a person or an estate is bound by reason of a representation order made under subrule 10.01 (1) or rule 10.02, an approval under subrule 10.01 (3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

(a) the order or approval was obtained by fraud or non-disclosure of material facts;

(b) the interests of the person or estate were different from those represented at the hearing; or

(c) for some other sufficient reason the order or approval should be set aside.

TAB "C"

Schedule C-Excerpts of the Plan of Compromise and Reorganization

ARTICLE 1
INTERPRETATION

1.1 Definitions

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

"Ernst & Young Claim" means any and all demands, claims, actions, Causes of Action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any claim, indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person, including any Person who may claim contribution or indemnification against or from them and also including for greater certainty the SFC Companies, the Directors (in their capacity as such), the Officers (in their capacity as such), the Third Party Defendants, Newco, Newco II, the directors and officers of Newco and Newco II, the Noteholders or any Noteholder, any past, present or future holder of a direct or indirect equity interest in the SFC Companies, any past, present or future direct or indirect investor or security holder of the SFC Companies, any direct or indirect security holder of Newco or Newco II, the Trustees, the Transfer Agent, the Monitor, and each and every member (including members of any committee or governance council), present and former affiliate, partner, associate, employee, servant, agent, contractor, director, officer, insurer and each and every successor, administrator, heir and assign of each of any of the foregoing may or could (at any time past present or future) be entitled to assert against Ernst & Young, including any and all claims in respect of statutory liabilities of Directors (in their capacity as such), Officers (in their capacity as such) and any alleged fiduciary (in any capacity) whether known or unknown, matured or unmatured, direct or derivative, foreseen or unforeseen, suspected or unsuspected, contingent or not contingent, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on, prior to or after the Ernst & Young Settlement Date relating to, arising out of or in connection with the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such) and/or professional services performed by Ernst & Young or any other acts or omissions of Ernst & Young in relation to the SFC Companies, the SFC Business, any Director or Officer (in their capacity as such), including for greater certainty but not limited to any claim arising out of:

(a) all audit, tax, advisory and other professional services provided to the SFC Companies or related to the SFC Business up to the Ernst & Young Settlement Date, including for greater certainty all audit work performed, all auditors' opinions and all consents in respect of all offering of SFC securities and all regulatory compliance delivered in

respect of all fiscal periods and all work related thereto up to and inclusing the Ernst & Young Settlement Date;

(b) all claims advanced or which could have been advanced in any or all of the Class
Actions;

(c) all claims advanced or which could have been advanced in any or all actions commenced in all jurisdictions prior the Ernst & Young Settlement Date; or

(d) all Noteholder Claims, Litigation Trust Claims or any claim of the SFC Companies,

"Ernst & Young Settlement" means the settlement as reflected in the Minutes of Settlement executed on November 29, 2012 between Ernst & Young LLP, on behalf of itself and Ernst & Young Global Limited and all member firms thereof and the plaintiffs in Ontario Superior Court Action No. CV-11-4351153-00CP and in Quebec Superior Court No. 200-06-00132-111, and such other documents contemplated thereby.

"Named Third Party Defendant Settlement" means a binding settlement between any applicable Named Third Party Defendant and one or more of: (i) the plaintiffs in any of the Class Actions; and (ii) the Litigation Trustee (on behalf of the Litigation Trust) (if after the Plan Implementation Date), provided that, in each case, such settlement must be acceptable to SFC (if on or prior to the Plan Implementation Date), the Monitor, the Initial Consenting Noteholders (if on or prior to the Plan Implementation Date) and the Litigation Trustee (if after the Plan Implementation Date), and provided further that such settlement shall not affect the
plaintiffs in the Class Actions without the consent of counsel to the Ontario Class Action Plaintiffs.

"Named Third Party Defendants" means the Third Party Defendants listed on Schedule "A" to the Plan in accordance with section 11.2(a) hereof, provided that only Eligible Third Party Defendants may become Named Third Party Defendant

ARTICLE 11
SETTLEMENT OF CLAIMS AGAINST THIRD PARTY DEFENDANTS

11.1 Ernst & Young

(a) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the issuance of the Settlement

Trust Order (as may be modified in a manner satisfactory to the parties to the Ernst & Young Settlement and SFC (if occurring on or prior to the Plan Implementation Date), the Monitor and the Initial Consenting Noteholders, as applicable, to the extent, if any, that such modifications affect SFC, the Monitor or the Initial Consenting Noteholders, each acting reasonably); (iii) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and the Settlement Trust Order in the United States; (iv) any other order necessary to give effect to the Ernst & Young Settlement (the orders referenced in (iii) and (iv) being collectively the "**Ernst & Young Orders**"); (v) the fulfillment of all conditions precedent in the Ernst & Young Settlement and the fulfillment by the Ontario Class Action Plaintiffs of all of their obligations thereunder; and (vi) the Sanction Order, the Settlement Trust Order and all Ernst & Young Orders being final orders and not subject to further appeal or challenge, Ernst & Young shall pay the settlement amount as provided in the Ernst & Young Settlement to the trust established pursuant to the Settlement Trust Order (the "**Settlement Trust**"). Upon receipt of a certificate from Ernst & Young confirming it has paid the settlement amount to the Settlement Trust in accordance with the Ernst & Young Settlement and the trustee of the Settlement Trust confirming receipt of such settlement amount, the Monitor shall deliver to Ernst & Young a certificate (the "**Monitor's Ernst & Young Settlement Certificate**") stating that (i) Ernst & Young has confirmed that the settlement amount has been paid to the Settlement Trust in accordance with the Ernst & Young Settlement; (ii) the trustee of the Settlement Trust has confirmed that such settlement amount has been received by the Settlement Trust; and (iii) the Ernst & Young Release is in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Ernst & Young Settlement Certificate with the Court.

(b) Notwithstanding anything to the contrary herein, upon receipt by the Settlement Trust of the settlement amount in accordance with the Ernst & Young Settlement: (i) all Ernst & Young Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against Ernst & Young; (ii) section 7.3 hereof shall apply to Ernst & Young and the Ernst & Young Claims *mutatis mutandis* on the Ernst & Young Settlement Date; and (iii) none of the plaintiffs in the Class Actions shall be permitted to claim from any of the other Third Party Defendants that portion of any damages that corresponds to the liability of Ernst & Young, proven at trial or otherwise, that is the subject of the Ernst & Young Settlement.

(c) In the event that the Ernst & Young Settlement is not completed in accordance with its terms, the Ernst & Young Release and the injunctions described in section 11.1(b) shall not become effective.

11.2 **Named Third Party Defendants**

(a) Notwithstanding anything to the contrary in section 12.5(a) or 12.5(b) hereof, at any time prior to 10:00 a.m. (Toronto time) on December 6, 2012 or such later date as agreed in writing by the Monitor, SFC (if on or prior to the Plan Implementation Date) and the Initial Consenting Noteholders, Schedule "A" to this Plan may be amended, restated, modified or supplemented at any time and from time to time to add any Eligible Third Party Defendant as a "Named Third Party Defendant", subject in each case to the prior written consent of such Third Party Defendant, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, the Monitor and, if occurring on or prior to the Plan Implementation Date, SFC. Any such amendment, restatement, modification and/or supplement of Schedule "A" shall be deemed to be effective automatically upon all such required consents being received. The Monitor shall: (A) provide notice to the service list of any such amendment, restatement, modification and/or supplement of Schedule "A"; (B) file a copy thereof with the Court; and (C) post an electronic copy thereof on the Website. All Affected Creditors shall be deemed to consent thereto any and no Court Approval thereof will be required.

(b) Notwithstanding anything to the contrary herein, subject to: (i) the granting of the Sanction Order; (ii) the granting of the applicable Named Third Party Defendant Settlement Order; and (iii) the satisfaction or waiver of all conditions precedent contained in the applicable Named Third Party Defendant Settlement, the applicable Named Third Party Defendant Settlement shall be given effect in accordance with its terms. Upon receipt of a certificate (in form and in substance satisfactory to the Monitor) from each of the parties to the applicable Named Third Party Defendant Settlement confirming that all conditions precedent thereto have been satisfied or waived, and that any settlement funds have been paid and received, the Monitor shall deliver to the applicable Named Third Party Defendant a certificate (the "**Monitor's Named Third Party Settlement Certificate**") stating that (i) each of the parties to such Named Third Party Defendant Settlement has confirmed that all conditions precedent thereto have been satisfied or waived; (ii) any settlement funds have been paid and received; and (iii) immediately upon the delivery of the Monitor's Named Third Party Settlement Certificate, the applicable Named Third PartyDefendant Release will be in full force and effect in accordance with the Plan. The Monitor shall thereafter file the Monitor's Named Third Party Settlement Certificate with the Court.

(c) Notwithstanding anything to the contrary herein, upon delivery of the Monitor's Named Third Party Settlement Certificate, any claims and

Causes of Action shall be dealt with in accordance with the terms of the applicable Named Third Party Defendant Settlement, the Named Third Party Defendant Settlement Order and the Named Third Party Defendant Release. To the extent provided for by the terms of the applicable Named Third Party Defendant Release: (i) the applicable Causes of Action against the applicable Named Third Party Defendant shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the applicable Named Third Party Defendant; and (ii) section 7.3 hereof shall apply to the applicable Named Third Party Defendant and the applicable Causes of Action against the applicable Named Third Party Defendant *mutatis mutandis* on the effective date of the Named Third Party Defendant Settlement

Court of Appeal File No.: M42068
Court File No.: CV-12-9667-00CL

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 OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

FACTUM OF THE APPELLANTS, INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., AND COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

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Court of Appeal File No.: M42068
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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

REPLY FACTUM OF THE APPELLANTS, INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., AND COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

(Motion for Leave to Appeal from Sanction Order)

March 1, 2013

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TO: THE SERVICE LIST

LAW AND ARGUMENT

Overview

1. This Reply Factum addresses two new arguments raised by the Respondents, the Underwriters, Ernst & Young LLP ("E&Y") and Sino-Forest Corporation ("Sino-Forest"): (a) that the remedy sought by the Appellants "is no longer possible" now that the applicant's Plan of Compromise and Reorganization ("Plan") has been implemented, rendering this proposed appeal moot; and (b) that the Appellants did not obtain leave to submit fresh evidence on appeal concerning the public importance of the issue underlying this proposed appeal.

2. It is plain and obvious that the framework for third party releases, stated in Article 11 of the Plan, is severable and separate from the rest of the Plan. As a matter of historical fact, the Plan was submitted to parties and on the verge of approval without any Article 11. Moreover, the Article 11 framework still may never have any operative effect on the Plan or any of the parties, if no settlements and releases under it are ever approved, so as a matter of logic no party can say its approval of the Plan depended on the presence of the framework for such releases. In addition, it is self-contradictory for the Respondents to argue both that the Appellants are seeking to appeal prematurely and that the Appellants should have pressed their point before the Plan was implemented. In fact, the Plan's prior implementation militates in favour of granting leave to appeal since the typical time pressures associated with an active restructuring are no longer present.[1]

3. This Court can and should consider the important issue of third party releases presented by this case. In addition to this proposed appeal, it is apparent that the third party release issue will also be the subject of a proposed appeal by whichever parties are dissatisfied by Justice Morawetz' forthcoming decision on the approval of the proposed E&Y settlement. It would advance judicial economy to allow the proposed appeal to be heard and ultimately join it with any appeal which

[1] *Edgewater Casino Inc. (Re)*, 2009 BCCA 40 at para. 25.

would result from Justice Morawetz' decision on the fairness of E&Y's settlement, so that both appeals may be considered in their full procedural context. Denying leave to appeal at this stage would unnecessarily encourage litigation by installment.[2]

4. The fresh affidavit evidence filed by the Appellants in their motion record illustrates the public importance of not allowing Article 11 to stand and under applicable case law it should be admitted on that basis.

The Proposed Appeal Is Not Moot

5. The Respondents do not dispute that the third party releases for which Article 11 provides a framework will not come into existence unless and until the Court below approves a settlement containing such releases. As a result, the parties all know that the framework is inoperative and hypothetical in the absence of such approval; and indeed that such releases may never come into existence at all. This demonstrates that the Article 11 framework for releases stands separate from the rest of the Plan, and may never become operative at all. Indeed, that is the basis for the Respondents' argument that this proposed appeal is premature.

6. It is also the Respondents, not the Appellants, who decided to segment the insertion of the third party release feature of the Plan into separate "framework" and "settlement approval" stages. The Respondents cannot fairly use that "installment" method to seek to insulate the third party release issue from appeal.

7. The Appellants' position in the proposed appeal is that *no* framework for third party releases is lawful or appropriate in the present situation, and accordingly the Plan is not fair and reasonable in respect of Article 11, regardless of which of the possible third party defendants may seek releases within the framework. It follows that *not* granting leave to appeal at this stage would prevent an efficient unitary adjudication of the issue of whether third party releases are permissible

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[2] *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 SCR 629, at para. 90 ["*Garland*"].

here, and would waste the resources of the Court and parties since the releases then would have to be considered piecemeal at each settlement approval hearing and in possible motions for leave to appeal therefrom.

8. Moreover, the history of the implementation of the Plan confirms that an appellate remedy disallowing Article 11 would not require a reversal of the reorganization Plan. The Plan was proposed to the creditors without the Article 11 framework, which was tacked on at the last moment. All parties know that approval of the releases contemplated by the Article 11 framework has not yet occurred and is not assured -- nevertheless, the Plan has been implemented. If this Court allows the appeal and determines that third party releases are inappropriate, the result will be the same as though each proposed settlement and release was separately disapproved, which is an outcome all parties must know could occur. Such a remedy accordingly would not contradict the reasonable expectations of any party, and therefore cannot be the basis of a mootness argument.

9. The Supreme Court of Canada outlined a two-part test to determine whether the Court should decline to hear an issue because it is moot in *Borowski v. Canada (Attorney General)*:

> First, it is necessary to determine **whether the required tangible and concrete dispute has disappeared and the issues have become academic**. Second, if the response to the first question is affirmative, it is **necessary to decide if the court should exercise its discretion to hear the case.**[3]

10. There is a tangible and concrete dispute between the parties as to the appropriateness of using the *CCAA* process to provide extraordinary no-opt-out third party releases which may be invoked at any future date, indeed after the restructuring Plan is implemented.

11. The propriety of Article 11 of the Plan cannot reasonably be deemed a moot or academic issue. An appeal from a *CCAA* proceeding is not moot if the outcome may be determinative of ongoing litigation.[4] A decision on this proposed appeal that the third party release framework is

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[3] *Borowski v. Canada (Attorney General)* [1989] 1 S.C.R. 342 at para. 16 ["*Borowski*"].
[4] *843504 Alberta Ltd. (Re)*, 2011 ABQB 448 at para. 26.

inappropriate certainly would determine the availability of such releases in settlement of the ongoing class action claims against the various defendants who may seek to avail themselves of the framework.[5]

12. E&Y and other third party defendants have not gained any rights that cannot be undone.[6] While the implementation of the Plan means that Sino-Forest's restructuring cannot be undone, the same cannot be said of the framework under Article 11. According to the terms of the Plan, the various actions or forbearances undertaken by the third party defendants in connection with the Plan are not tied to effectiveness of third party releases. Article 11 therefore stands separate and apart from the rest of the Plan. The parties' dispute over the propriety of Article 11 is very much alive and an effective remedy can be given if the answer is that Article 11 is inappropriate.

13. In the second stage of the *Borowski* test, the Court has discretion to hear an appeal even if it is moot. If the Court were to reach this stage, it would find that the relevant factors -- adversarial interests of the parties, judicial economy, and proper judicial role and function -- are satisfied.[7]

14. It is clear that the necessary adversarial relationship continues to exist in this action. The Appellants have opted out of the class action against the defendants for the purpose of commencing individual proceedings, and have vigorously contested the third party release framework at all times.

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[5] To invoke the release of Named Third Party Defendants the prerequisites in Article 11.2(b) of the Plan require (i) the granting of the Sanction Order, (ii) the granting of the applicable Named Third Party Defendant Settlement Order; and (iii) the satisfaction/waiver of all conditions precedent in the settlement. Once it is confirmed that the conditions precedent in the settlement are fulfilled the release in Article 11.2(c) applies.

To invoke the release of E&Y the pre-requisites in Article 11.1(a) of the Plan require (i) the granting of the Sanction Order; (ii) the issuance of the Settlement Trust Order; (iii) the granting of an Order under Chapter 15 of the United States Bankruptcy Code recognizing and enforcing the Sanction Order and Settlement Trust Order in the United States; (iv) any other order necessary to give effect to the E&Y settlement; (v) the fulfillment of all conditions precedent in the E&Y settlement and the fulfillment by the Ontario class action plaintiffs of all of their obligations thereunder, and (vi) the Sanction Order, the Settlement Trust Order and all E&Y Orders being final orders. The release in Article 11.1(b) then applies once the settlement monies are paid and confirmed paid.

[6] *TELUS Corporation (Re)*, 2012 BCSC 1919 at para. 141.

[7] *Borowski, supra* note 3 at paras. 31, 34, and 40.

15. Allowing this appeal will advance judicial economy by determining whether any third party releases are appropriate, rather than approaching the issue piecemeal in connection with potentially all 15 Named Party Defendants.

16. Releases proposed for incorporation in Court-approved settlements of class litigation involving a *CCAA* applicant are clearly suited for consideration by the judiciary. The issue is of great public importance with ramifications for Canada's capital markets.[8] It is in the public interest that this Court engage in judicial resolution of this issue in the circumstances of this case.[9]

The Court Should Discourage Litigation by Installments

17. As stated by the Respondents in their factums, Justice Morawetz has reserved his decision regarding the fairness of the settlement between the Class Action plaintiffs and E&Y. Regardless of the outcome, it is expected that leave to appeal that decision will be pursued by some of the parties to this appeal. Judicial economy will be advanced if this Court is presented with all issues, in context, in both appeals at the same time, as opposed to litigating the same issues in fragmented instalments.[10]

Leave to Admit Fresh Evidence Should Be Granted

18. In applications for leave to appeal a sanction order granted under the *CCAA*, the test for admitting fresh evidence at the leave stage[11] is set out by the Supreme Court of Canada in *R. v. Palmer*[12]: (1) by due diligence, the evidence could not have been adduced in the proceeding below; (2) it is relevant to a decisive or potentially decisive issue; (3) it is reasonably capable of belief; and, (4) if believed, it may reasonably have affected the result. In non-*CCAA* applications for leave

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[8] Affidavit of Eric J. Adelson sworn December 6, 2012, Motion Record of the Appellants, Tab 2, p. 10, at para. 17.
[9] *Borowski, supra* note 3 at para. 40.
[10] *Garland, supra* note 2 at para. 90.
[11] *Country Style Food Services Inc. (Re)*, [2002] O.J. No. 1377 (C.A.) at para. 4.
[12] *R. v. Palmer*, [1980] 1 S.C.R. 759 at 775.

to appeal, the admission of fresh evidence is allowed if it relates to the issue of public importance.[13] The appellants meet both tests.

19. The fresh affidavit evidence filed by the Appellants[14] is limited to relevant factual information, concerning the issue of public importance of Justice Morawetz's Sanction Order, and accordingly leave to admit should be granted. The evidence shows that defendants like Allen T.Y. Chan, the alleged architect of the fraud that caused Sino-Forest to collapse, and David J. Horsley, who allegedly authorized, permitted or acquiesced in what the Ontario Securities Commission termed Sino-Forest's "Standing Timber Fraud",[15] are seeking to utilize the Article 11 framework to obtain releases.[16] The use of Article 11 to insulate from civil liability former officers and directors accused of serious wrongdoing by the OSC was not discussed or contemplated at the Plan sanction hearing and would have reasonably affected the result. This evidence was not in the record below because it occurred only after the Sanction Order was issued.

20. The fresh evidence submitted meets those requirements. The third party release issue is of public importance for the reasons previously described, and particularly because in practice it would defeat a class member's important right to effectively prosecute his claims individually upon opting out of a class action or settlement.[17] The fresh evidence demonstrates how the public interest may be compromised by open-ended frameworks for releases such as Article 11.[18] The fresh evidence is factual and informational, as described above.

21. Accordingly, the Appellants submit that leave to admit the fresh affidavit evidence should be granted.

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[13] *Markevich v. Canada,* [2001] S.C.C.A. No. 371 (S.C.C.); *Canada Mortgage and Housing Corp. v. Iness* (2002), 62 O.R. (3d) 255 (C.A.) at paras. 5, 11, 12.
[14] Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3.
[15] *Ibid.*, at paras. 11, 13, and 14, Exhibits "P", "R", "S", "T" and "U".
[16] *Ibid.*
[17] Factum of the Appellants, at paras. 3, 44-47.
[18] Affidavit of Yonatan Rozenszajn sworn January 28, 2013, Motion Record of the Appellants, Tab 3, at paras. 7, 13 and 14, Exhibits "F", "K", "R", "S", "T" and "U".

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 1st DAY of MARCH, 2013

per James C. Orr

Won J. Kim P.C

Megan B. McPhee

per Michael C. Spencer.

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Schedule A—Authorities

Jurisprudence

1.	*843504 Alberta Ltd. (Re)*, 2011 ABQB 448
2.	*Borowski v. Canada (Attorney General)* [1989] 1 S.C.R. 342
3.	*Canada Mortgage and Housing Corp. v. Iness* (2002), 62 O.R. (3d) 255 (C.A.)
4.	*Country Style Food Services Inc. (Re)*, [2002] O.J. No. 1377 (C.A.)
5.	*Edgewater Casino Inc. (Re)*, 2009 BCCA 40
6.	*Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 SCR
7.	*Markevich v. Canada*, [2001] S.C.C.A. No. 371
8.	*R. v. Palmer*, [1980] 1 S.C.R. 759
9.	*TELUS Corporation (Re)*, 2012 BCSC 1919

Court of Appeal File No.: M42068
Court File No.: CV-12-9667-00CL

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 OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

REPLY FACTUM OF THE APPELLANTS, INVESCO CANADA LTD., NORTHWEST & ETHICAL INVESTMENTS L.P., AND COMITÉ SYNDICAL NATIONAL DE RETRAITE BÂTIRENTE INC.

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