



montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

January 11, 2013

SENT TO EMAIL

THE SERVICE LIST

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

Jennifer Stam  
Direct 416-862-5697  
jennifer.stam@gowlings.com

Dear Sirs/Mesdams:

.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Re: Sino-Forest Corporation ("SFC"): Court File #CV-12-9667-00CL**

We refer to SFC's plan of compromise and reorganization dated December 3, 2012 (as the same may be amended, varied or supplemented from time to time in accordance with its terms, the "Plan") and the Plan Sanction Order dated December 10, 2012 (the "Sanction Order") and hereby give notice to the Service List of the matters concerning the Plan. Capitalized terms used herein but not defined have the meaning given to them in the Plan.

SFC today announced that the Plan Implementation Date, which was expected to be January 15, 2013, is expected to be January 17, 2013. This date has been selected by SFC with the consent of the Monitor and the Initial Consenting Noteholders.

In addition, pursuant to and in accordance with Section 11.2(a) of the Plan, Allen Chan and Kai Kit Poon have become "Named Third Party Defendants" under the Plan and a revised "Schedule A" to the Plan is attached to this letter. In accordance with Section 7.1(n) of the Plan, as a result of becoming Named Third Party Defendants under the Plan, Mr. Chan and Mr. Poon shall not be entitled to receive any distributions under the Plan.

In addition, on the consent of SFC, the Monitor, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, and in accordance with section 1.1 of the Plan, the "Indemnified Noteholder Class Action Limit" under the Plan has been reduced to \$25 million as it relates to David Horsley. The reduction of the Indemnified Noteholder Class Action Limit to \$25 million as it relates to Mr. Horsely has been incorporated into and forms a part of the Plan as approved by the Sanction Order.

As a result of the parties added to the Plan as "Named Third Party Defendants" and the reduction of the Indemnified Noteholder Class Action Limit to \$25 million as it relates to Mr. Horsely, the Unresolved Claims Reserve has been correspondingly reduced to an aggregate amount of \$28,500,000, which consists of (a) Class Action Indemnity Claims in the amount of \$25 million; (b) Claims in respect of Defence Costs in the amount of \$3 million; and (c) other Affected Creditor Claims that have been identified by the Monitor as Unresolved Claims in an amount up to \$500,000. The reduction of the Unresolved Claims Reserve to an aggregate amount of \$28,500,000 has occurred with the consent of the Monitor and the Initial Consenting Noteholders in accordance with

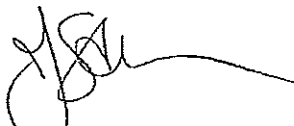
gowlings

section 1.1 of the Plan, and has been incorporated into and forms a part of the Plan as approved by the Sanction Order.

The establishment of the Unresolved Claims Reserve is not an admission by SFC, the Monitor or any other party (including the Initial Consenting Noteholders) as to the validity of any such Claims and all rights to dispute such Claims are reserved. Likewise, the reduction of the Indemnified Noteholder Class Action Limit as it relates to Mr. Horsely to \$25 million does not constitute an admission by SFC, the Monitor or any other party (including the Initial Consenting Noteholders) as to the validity of any indemnity Claims by Mr. Horsely and all rights to dispute any such Claims by Mr. Horsely have been and are reserved.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP



Jennifer Stam

JS

TOR\_LAW 80763903  
1/10/13

**SCHEDULE A****NAMED THIRD PARTY DEFENDANTS**

1. The Underwriters, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.
2. Ernst & Young LLP (Canada), Ernst & Young Global Limited and all other member firms thereof, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such, in the event that the Ernst & Young Settlement is not completed.
3. BDO Limited, together with its respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.
4. Allen Chan, together with his successors, administrators, heirs, assigns and insurers.
5. Kai Kit Poon, together with his successors, administrators, heirs, assigns and insurers.



montreal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

January 21, 2013


SENT TO EMAIL

THE SERVICE LIST

Dear Sirs/Mesdams:

This is Exhibit.....<sup>(A)</sup>.....referred to in the  
affidavit of.....Tanya Temec.....  
sworn before me, this.....22.....  
day of.....April.....20..13.....

Jennifer Stam  
Direct 416-862-5697  
jennifer.stam@gowlings.com

  
COMMISSIONER FOR TAKING AFFIDAVITS

**Re: Sino-Forest Corporation ("SFC"): Court File #CV-12-9667-00CL**

We refer to SFC's plan of compromise and reorganization dated December 3, 2012 (as the same may be amended, varied or supplemented from time to time in accordance with its terms, the "Plan"), the Plan Sanction Order dated December 10, 2012 (the "Sanction Order") and our letter to the Service List dated January 11, 2013 (the "January 11 Letter") and hereby give notice to the Service List of the following matters concerning the Plan. Capitalized terms used herein but not defined have the meaning given to them in the Plan.

SFC today announced that the Plan Implementation Date, which was expected to be January 17, 2013, is expected to be January 23, 2013. This date has been selected by SFC with the consent of the Monitor and the Initial Consenting Noteholders.

In addition, pursuant to and in accordance with Section 11.2(a) of the Plan, David Horsley has become a "Named Third Party Defendant" under the Plan and a revised "Schedule A" to the Plan is attached to this letter. In accordance with Section 7.1(n) of the Plan, as a result of becoming a Named Third Party Defendant under the Plan, Mr. Horsley shall not be entitled to receive any distributions on account of Affected Claims under the Plan.

In addition, on the consent of SFC, the Monitor, the Initial Consenting Noteholders, counsel to the Ontario Class Action Plaintiffs, and in accordance with section 1.1 of the Plan, the "Indemnified Noteholder Class Action Limit" under the Plan, which had previously been reduced to \$25 million as it relates to Mr. Horsley as set out in our January 11 Letter, has been returned to \$150 million. The return of the the Indemnified Noteholder Class Action Limit to \$150 million as it relates to Mr. Horsley has been incorporated into and forms a part of the Plan as approved by the Sanction Order.

With the addition of Mr. Horsley as a "Named Third Party Defendant", all affected defendants named in the Class Actions have now become Named Third Party Defendants under the Plan or otherwise waived their entitlement to receive distributions under the Plan. As such, the Unresolved Claims Reserve has been correspondingly, further reduced to eliminate any reserve for Class Action Indemnity Claims. The Unresolved Claims Reserve has now been set at an aggregate amount of \$1.7 million, which consists of (a) certain unresolved Claims in respect of Defence Costs in the amount of \$1.5 million; and (b) certain other Affected Creditor Claims that have been identified by the Monitor as Unresolved Claims in an amount up to \$200,000. The reduction of the Unresolved

TOR\_LAW 80842332

Gowling Lafleur Henderson LLP • Lawyers • Patent and Trade-mark Agents

1 First Canadian Place • 100 King Street West • Suite 1600 • Toronto • Ontario • M5X 1G5 • Canada T 416-862-7525 F 416-862-7661 gowlings.com


# gowlings

Claims Reserve to an aggregate amount of \$1.7 million has occurred with the consent of the Monitor and the Initial Consenting Noteholders in accordance with section 1.1 of the Plan, and has been incorporated into and forms a part of the Plan as approved by the Sanction Order.

The establishment of the Unresolved Claims Reserve is not an admission by SFC, the Monitor or any other party (including the Initial Consenting Noteholders) as to the validity of any such Claims and all rights to dispute such Claims are reserved.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP



Jennifer Stam

JS

**SCHEDULE A****NAMED THIRD PARTY DEFENDANTS**

1. The Underwriters, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.
2. Ernst & Young LLP (Canada), Ernst & Young Global Limited and all other member firms thereof, together with their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such, in the event that the Ernst & Young Settlement is not completed.
3. BDO Limited, together with its respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and assigns, excluding any Director or Officer and successors, administrators, heirs and assigns of any Director or Officer in their capacity as such.
4. Allen Chan, together with his successors, administrators, heirs, assigns and insurers.
5. Kai Kit Poon, together with his successors, administrators, heirs, assigns and insurers.
6. David Horsley, together with his successors, administrators, heirs, assigns and insurers.

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 Invesco Canada Ltd. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 16, 2013

**THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖVRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.**

Last Name

INVESCO CANADA LTD.

First Name

Current Address

5140 YONGE STREET

SUITE 800

City

TORONTO

Prov./State

ON

Postal Code/Zip Code

M2N 0G7

Social Insurance Number/Social Security Number/Unique Tax Identifier

N/A

Telephone Number (Work)

416-228-3670

Telephone Number (Home)

*This is Exhibit referred to in the affidavit of Tamara Jernec sworn before me, this 22 day of April 2013*

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011):

4499385

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pövy (Beijing) Consulting Company Limited ("Pövy (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pövy (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pövy (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖVRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature:

*[Handwritten Signature]*

Date Signed:

Jan. 11, 2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3







This opt-out is submitted on condition that, and is intended to be effective only to the extent that, any defendant in this proceeding <sup>2019</sup> 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 Northwest & Ethical Investments L.P. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: NORTHWEST & ETHICAL INVESTMENTS  
First Name: L

Current Address: L.P.  
155 UNIVERSITY AVENUE 4TH FLOOR

City: TORONTO Prov./State: ON Postal Code/Zip Code: M5H 3B7

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 416-933-6288 Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 714,075

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

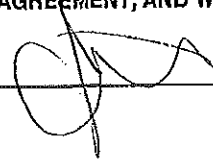
I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöry (Beijing) Consulting Company Limited ("Pöry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature:  Date Signed: 2013/01/11

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3





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 Comité Syndical National de Retraite Bâtirente Inc. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name First Name

COMITÉ SYNDICAL NA	TIONAL DE
--------------------	-----------

Current Address RETRAITE BÂTIRENTE INC.

203	-	2175	BOUL	DE	MAISON	NEUVE	E
-----	---	------	------	----	--------	-------	---

City Prov./State Postal Code/Zip Code

MONTREAL	QC	H2K 4S3
----------	----	---------

Social Insurance Number/Social Security Number/Unique Tax Identifier

N/A							
-----	--	--	--	--	--	--	--

Telephone Number (Work) Telephone Number (Home)

514	-	525	-	5065				
-----	---	-----	---	------	--	--	--	--

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 87250

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: [Signature] Date Signed: 01/11/2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3





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 Matrix Asset Management Inc.. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
**DO NOT** USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: MATRIX ASSET MANAG  
First Name: EMENT INC

Current Address: 130 KING STREET WEST SUITE  
2200 PO BOX 422

City: TORONTO Prov./State: ON Postal Code/Zip Code: M5X 1E3

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 416-362-3077 Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 478222

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.  
 I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature: David Galt Date Signed: Jan 15/2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3





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 Montrusco Bolton Investments Inc. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

Last Name: MONTRUSCO BOLTON | First Name: INVESTMENTS INC.

Current Address: 1501 MCGILL COLLEGE AVENUE  
SUITE 1200

City: MONTREAL | Prov./State: QC | Postal Code/Zip Code: H3A 3M8

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 514-842-6464 | Telephone Number (Home):

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 302565

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

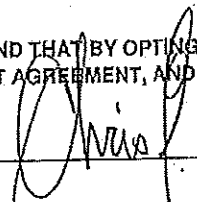
Identification of person signing this Opt Out Form (please check):

I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

- My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.
- I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT, AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature:  Date Signed: 14 janvier 2013

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON N6A 4K3







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 Gestion FÉRIQUE. Otherwise, this opt out right would be wholly illusory.

# SINO-FOREST CLASS ACTION SETTLEMENT OPT OUT FORM

Must be Postmarked  
No Later Than  
January 15, 2013

**THIS FORM IS NOT A REGISTRATION FORM OR A CLAIM FORM.  
THIS FORM EXCLUDES YOU FROM PARTICIPATION IN THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT.  
DO NOT USE THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.**

Last Name: GESTION FÉRIQUE  
First Name: [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

Current Address: 1010 DE LA GAUCHETIÈRE ST. WEST  
SUITE 1000

City: MONTREAL  
Prov./State: QC  
Postal Code/Zip Code: H3B 2N2

Social Insurance Number/Social Security Number/Unique Tax Identifier: N/A

Telephone Number (Work): 514-840-9206  
Telephone Number (Home): [ ] [ ] [ ] - [ ] [ ] [ ] - [ ] [ ] [ ]

Total number of Sino-Forest securities purchased during the Class Period (March 19, 2007 to June 2, 2011): 194925

You must also accompany your Opt-Out form with brokerage statements, or other transaction records, listing all of your purchases of Sino-Forest common shares between March 19, 2007 to June 2, 2011, inclusive (the "Class Period").

Identification of person signing this Opt Out Form (please check):

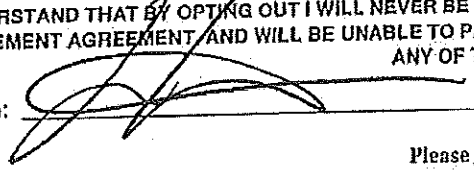
I represent that I purchased Sino-Forest Corporation ("Sino-Forest") securities and am the above identified Class Member. I am signing this Form to EXCLUDE myself from the participation in the Sino-Forest Class Action Settlement Agreement reached between the Class and Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), the Settling Defendant.

Purpose for Opting Out (check only one):

My current intention is to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings.

I am opting out of the class action for a reason other than to begin individual litigation against Pöyry (Beijing) in relation to the matters alleged in the Proceedings. I am opting out for the following reason(s):

I UNDERSTAND THAT BY OPTING OUT I WILL NEVER BE ELIGIBLE TO RECEIVE BENEFITS OBTAINED BY WAY OF THE PÖYRY (BEIJING) SETTLEMENT AGREEMENT AND WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGEMENT WITH OR AGAINST ANY OF THE REMAINING DEFENDANTS.

Signature:  Date Signed: 14/1/2012

Please mail your Opt Out Form to:  
Sino-Forest Class Action  
PO Box 3355  
London, ON. N6A 4K3



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



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**MONITOR'S CERTIFICATE  
(Plan Implementation)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan of Compromise and Reorganization of Sino-Forest Corporation ("SFC") dated December 3, 2012 (the "Plan"), which is attached as Schedule "A" to the Order of the Honourable Mr. Justice Morawetz made in these proceedings on the 10<sup>th</sup> day of December, 2012 (the "Order"), as such Plan may be further amended, varied or supplemented from time to time in accordance with the terms thereof.

Pursuant to paragraph 12 of the Order, FTI Consulting Canada Inc. (the "Monitor") in its capacity as Court-appointed Monitor of SFC delivers to SFC and Goodmans LLP this certificate and hereby certifies that:

1. The Monitor has received written notice from SFC and Goodmans LLP (on behalf of the Initial Consenting Noteholders) that the conditions precedent set out in section 9.1 of the Plan have been satisfied or waived in accordance with the terms of the Plan; and

This is Exhibit 2 referred to in the  
affidavit of Tamla Temec  
sworn before me, this 22  
day of April, 2013.

[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS

2. The Plan Implementation Date has occurred and the Plan and the Plan Sanction Order are effective in accordance with their terms.

DATED at the City of Toronto, in the Province of Ontario, this 30<sup>th</sup> day of January, 2013.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of the Sino-Forest Corporation and not in its personal capacity

By: 

Name: Gregory P. Watson

Title: Senior Managing Director

**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 OR COMPROMISE OR  
ARRANGEMENT OF SINO-FOREST CORPORATION**

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

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

Proceedings commenced in Toronto

**MONITOR'S CERTIFICATE**

**GOWLING LAFLEUR HENDERSON LLP**  
First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario  
M5X 1G5

**Jennifer Stam (LSUC#: 46735J)**

Tel: (416) 862-5697

Fax: (416) 862-7661

E-mail: [jennifer.stam@gowlings.com](mailto:jennifer.stam@gowlings.com)

Lawyers for FTI Consulting Canada Inc., in its  
capacity as Monitor of the within proceedings.

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

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

  
A COMMISSIONER FOR TAKING AFFIDAVITS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED NOTICE OF MOTION**  
(Motion for Relief From Binding Effect of Settlement Approval Order)

- 2 -

**TAKE NOTICE** that the Objectors, Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments Inc., will make a motion to a Judge of the Commercial List on February 4, 2013, at 10:00 a.m., 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario, to be heard concurrently with the motion for approval of the Ernst & Young LLP and Ernst & Young Global Limited ("E&Y") Settlement, or at such other time and place as the Court may direct.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- a. an Order, if necessary, validating and abridging the time for service and filing of this motion and motion record, and dispensing with any further notice thereof;
- b. an Order appointing the Objectors as representatives on behalf of the Objecting Securities Claimants, defined as all persons and entities who filed a notice of objection to the E&Y Settlement;
- c. in the event that this Court grants a Representation Order to the Ontario Plaintiffs, an Order that the Objectors are not bound by any such Representation Order;
- d. an Order declaring that the Objectors are not bound by the Settlement Approval Order, in the event that this Court appoints the Ontario Plaintiffs as representatives of all Securities Claimants and grants the proposed Settlement Approval Order; and,
- e. such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

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- a. On November 29, 2012, the Ontario Plaintiffs entered into a no-opt-out settlement agreement, purporting to act on behalf of all putative class members and/or all Securities Claimants, with E&Y;
- b. subsequently, the Ontario Plaintiffs negotiated an amendment to the Plan of Compromise and Reorganization ("Plan"), which would provide E&Y with a full and final release of claims assertable by any person against E&Y relating to Sino-Forest once certain conditions are met, which would effectively negate any opt out rights of class members;
- c. the Ontario Plaintiffs sought but did not obtain a Representation Order under Rule 10.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "Rules"), appointing them as representatives of class members and/or the Securities Claimants;
- d. on December 7, 2012, certain of the Objectors opposed the sanction of the Plan on the basis that the Plan provided a framework for negating opt out rights, and sought an adjournment; and the Ontario Plaintiffs and other parties opposed the adjournment request and argued in favour of the Plan sanction; whereupon the Court entered the requested sanction order;
- e. in further proceedings, the E&Y Settlement Approval Hearing was adjourned to February 4, 2013;
- f. on January 15, 2013, the Objectors opted out of the Class Action in connection with the settlement with Pöyry (Beijing) Consulting Company Ltd.;
- g. the Objectors are submitting Objections to the proposed E&Y Settlement herewith, and oppose the proposed settlement on the grounds stated therein;

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- h. the interests of the Objectors are different from, and in conflict with, those of the Ontario Plaintiffs;
- i. the Objectors are represented by counsel, rendering a Representation Order unnecessary;
- j. the Objectors object to the Ontario Plaintiffs' renewed request for a Representation Order pursuant to Rule 10 of the Rules, and if such a Representation Order is entered, the Objectors seek relief and to be excluded from the binding effect of such an Order;
- k. the Objectors have similar and/or common interests with all persons and entities who filed a notice of objection;
- l. Rules 1, 2.03, 3.02, 10.01, 10.03 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- m. section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- n. section 9 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
- o. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- a) the affidavit of Daniel Simard, sworn January 18, 2013;
- b) the affidavit Eric J. Adelson, sworn January 18, 2013;
- c) the affidavit of Tanya T. Jemec, sworn January 18, 2013;
- d) the Fourteenth Report of the Monitor dated January 22, 2013;



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e) such further and other grounds counsel may advise and this Honourable Court may permit.

January 18-31, 2013

**KIM ORR BARRISTERS P.C.**  
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Toronto, ON M5V 1H2

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Ltd., Northwest & Ethical Investments L.P., Comité  
Syndical National de Retraite Bâtirente Inc., Matrix  
Asset Management Inc., Gestion Férique and  
Montrusco Bolton Investments Inc.

**TO: THE SERVICE LIST**

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

Superior Court File No.: CV-10-414302CP

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

- and -  
SINO-FOREST CORPORATION, et al.

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED NOTICE OF MOTION OF THE  
OBJECTORS**

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Ethical Investments L.P., Comité Syndical  
National de Retraite Bâirente Inc., Matrix Asset  
Management Inc., Gestion Férique and  
Montrusco Bolton Investments Inc.

This is Exhibit 5 referred to in the affidavit of Tanya Jemec sworn before me, this 22 day of April 2013.  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

CITATION: Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation, 2013 ONSC 1078  
COURT FILE NO.: CV-12-9667-00CL  
CV-11-431153-00CP  
DATE: 20130320

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

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

AND:

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (FORMERLY KNOWN AS BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, PÓYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA) IN., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LUNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (SUCCESSOR BY MERGER TO BANC OF AMERICA SECURITIES LLC), Defendants

BEFORE: MORAWETZ J.

COUNSEL: Kenneth Rosenberg, Max Starnino, A. Dimitri Lascaris, Daniel Bach, Charles M. Wright, and Jonathan Ptak, for the Ad Hoc Committee of Purchasers including the Class Action Plaintiffs

Peter Griffin, Peter Osborne, and Shara Roy, for Ernst & Young LLP

- Page 2 -

John Pirie and David Gadsden, for Pöyry (Beijing) Consulting Company Ltd.

Robert W. Staley, for Sino-Forest Corporation

Won J. Kim, Michael C. Spencer, and Megan B. McPhee, for the Objectors, Invesco Canada Ltd., Northwest & Ethical Investments LP and Comité Syndical National de Retraite Bâtirente Inc.

John Fabello and Rebecca Wise for the Underwriters

Ken Dekker and Peter Greene, for BDO Limited

Emily Cole and Joseph Marin, for Allen Chan

James Doris, for the U.S. Class Action

Brandon Barnes, for Kai Kit Poon

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

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

Simon Bieber, for David Horsley

James Grout, for the Ontario Securities Commission

Miles D. O'Reilly, Q.C., for the Junior Objectors, Daniel Lam and Senthilvel Kanagaratnam

HEARD: FEBRUARY 4, 2013

### ENDORSEMENT

#### INTRODUCTION

[1] The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Ad Hoc Securities Purchasers' Committee" or the "Applicant"), including the representative plaintiffs in the Ontario class action (collectively, the "Ontario Plaintiffs"), bring this motion for approval of a settlement and release of claims against Ernst & Young LLP [the "Ernst & Young Settlement", the "Ernst & Young Release", the "Ernst & Young Claims" and "Ernst & Young", as further defined in the Plan of Compromise and Reorganization of Sino-Forest Corporation ("SFC") dated December 3, 2012 (the "Plan")].

[2] Approval of the Ernst & Young Settlement is opposed by Invesco Canada Limited ("Invesco"), Northwest and Ethical Investments L.P. ("Northwest"), Comité Syndical National de Retraite Bâtirente Inc. ("Bâtirente"), Matrix Asset Management Inc. ("Matrix"), Gestion

- Page 3 -

Férique and Montrusco Bolton Investments Inc. ("Montrusco") (collectively, the "Objectors"). The Objectors particularly oppose the no-opt-out and full third-party release features of the Ernst & Young Settlement. The Objectors also oppose the motion for a representation order sought by the Ontario Plaintiffs, and move instead for appointment of the Objectors to represent the interests of all objectors to the Ernst & Young Settlement.

[3] For the following reasons, I have determined that the Ernst & Young Settlement, together with the Ernst & Young Release, should be approved.

## FACTS

### Class Action Proceedings

[4] SFC is an integrated forest plantation operator and forest productions company, with most of its assets and the majority of its business operations located in the southern and eastern regions of the People's Republic of China. SFC's registered office is in Toronto, and its principal business office is in Hong Kong.

[5] SFC's shares were publicly traded over the Toronto Stock Exchange. During the period from March 19, 2007 through June 2, 2011, SFC made three prospectus offerings of common shares. SFC also issued and had various notes (debt instruments) outstanding, which were offered to investors, by way of offering memoranda, between March 19, 2007 and June 2, 2011.

[6] All of SFC's debt or equity public offerings have been underwritten. A total of 11 firms (the "Underwriters") acted as SFC's underwriters, and are named as defendants in the Ontario class action.

[7] Since 2000, SFC has had two auditors: Ernst & Young, who acted as auditor from 2000 to 2004 and 2007 to 2012, and BDO Limited ("BDO"), who acted as auditor from 2005 to 2006. Ernst & Young and BDO are named as defendants in the Ontario class action.

[8] Following a June 2, 2011 report issued by short-seller Muddy Waters LLC ("Muddy Waters"), SFC, and others, became embroiled in investigations and regulatory proceedings (with the Ontario Securities Commission (the "OSC"), the Hong Kong Securities and Futures Commission and the Royal Canadian Mounted Police) for allegedly engaging in a "complex fraudulent scheme". SFC concurrently became embroiled in multiple class action proceedings across Canada, including Ontario, Quebec and Saskatchewan (collectively, the "Canadian Actions"), and in New York (collectively with the Canadian Actions, the "Class Action Proceedings"), facing allegations that SFC, and others, misstated its financial results, misrepresented its timber rights, overstated the value of its assets and concealed material information about its business operations from investors, causing the collapse of an artificially inflated share price.

[9] The Canadian Actions are comprised of two components: first, there is a shareholder claim, brought on behalf of SFC's current and former shareholders, 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; and second, there is a noteholder

claim, brought on behalf of former holders of SFC's notes (the "Noteholders"), in the amount of approximately \$1.8 billion. The noteholder claim asserts, among other things, damages for loss of value in the notes.

[10] Two other class proceedings relating to SFC were subsequently commenced in Ontario: *Smith et al. v. Sino-Forest Corporation et al.*, which commenced on June 8, 2011; and *Northwest and Ethical Investments L.P. et al. v. Sino-Forest Corporation et al.*, which commenced on September 26, 2011.

[11] In December 2011, there was a motion to determine which of the three actions in Ontario should be permitted to proceed and which should be stayed (the "Carriage Motion"). On January 6, 2012, Perell J. granted carriage to the Ontario Plaintiffs, appointed Siskinds LLP and Koskie Minsky LLP to prosecute the Ontario class action, and stayed the other class proceedings.

#### CCAA Proceedings

[12] SFC obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") on March 30, 2012 (the "Initial Order"), pursuant to which a stay of proceedings was granted in respect of SFC and certain of its subsidiaries. Pursuant to an order on May 8, 2012, the stay was extended to all defendants in the class actions, including Ernst & Young. Due to the stay, the certification and leave motions have yet to be heard.

[13] Throughout the CCAA proceedings, SFC asserted that there could be no effective restructuring of SFC's business, and separation from the Canadian parent, if the claims asserted against SFC's subsidiaries arising out of, or connected to, claims against SFC remained outstanding.

[14] In addition, SFC and FTI Consulting Canada Inc. (the "Monitor") continually advised that timing and delay were critical elements that would impact on maximization of the value of SFC's assets and stakeholder recovery.

[15] On May 14, 2012, an order (the "Claims Procedure Order") was issued that approved a claims process developed by SFC, in consultation with the Monitor. In order to identify the nature and extent of the claims asserted against SFC's subsidiaries, the Claims Procedure Order required any claimant that had or intended to assert a right or claim against one or more of the subsidiaries, relating to a purported claim made against SFC, to so indicate on their proof of claim.

[16] The Ad Hoc Securities Purchasers' Committee filed a proof of claim (encapsulating the approximately \$7.3 billion shareholder claim and \$1.8 billion noteholder claim) in the CCAA proceedings on behalf of all putative class members in the Ontario class action. The plaintiffs in the New York class action filed a proof of claim, but did not specify quantum of damages. Ernst & Young filed a proof of claim for damages and indemnification. The plaintiffs in the Saskatchewan class action did not file a proof of claim. A few shareholders filed proofs of claim separately. No proof of claim was filed by Kim Orr Barristers P.C. ("Kim Orr"), who represent the Objectors.

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[17] Prior to the commencement of the CCAA proceedings, the plaintiffs in the Canadian Actions settled with Pöyry (Beijing) Consulting Company Limited ("Pöyry") (the "Pöyry Settlement"), a forestry valuator that provided services to SFC. The class was defined as all persons and entities who acquired SFC's securities in Canada between March 19, 2007 to June 2, 2011, and all Canadian residents who acquired SFC securities outside of Canada during that same period (the "Pöyry Settlement Class").

[18] The notice of hearing to approve the Pöyry Settlement advised the Pöyry Settlement Class that they may object to the proposed settlement. No objections were filed.

[19] Perell J. and Émond J. approved the settlement and certified the Pöyry Settlement Class for settlement purposes. January 15, 2013 was fixed as the date by which members of the Pöyry Settlement Class, who wished to opt-out of either of the Canadian Actions, would have to file an opt-out form for the claims administrator, and they approved the form by which the right to opt-out was required to be exercised.

[20] Notice of the certification and settlement was given in accordance with the certification orders of Perell J. and Émond J. The notice of certification states, in part, that:

IF YOU CHOOSE TO OPT OUT OF THE CLASS, YOU WILL BE OPTING OUT OF THE ENTIRE PROCEEDING. THIS MEANS THAT YOU WILL BE UNABLE TO PARTICIPATE IN ANY FUTURE SETTLEMENT OR JUDGMENT REACHED WITH OR AGAINST THE REMAINING DEFENDANTS.

[21] The opt-out made no provision for an opt-out on a conditional basis.

[22] On June 26, 2012, SFC brought a motion for an order directing that claims against SFC that arose in connection with the ownership, purchase or sale of an equity interest in SFC, and related indemnity claims, were "equity claims" as defined in section 2 of the CCAA, including the claims by or on behalf of shareholders asserted in the Class Action Proceedings. The equity claims motion did not purport to deal with the component of the Class Action Proceedings relating to SFC's notes.

[23] In reasons released July 27, 2012 [*Re Sino-Forest Corp.*, 2012 ONSC 4377], I granted the relief sought by SFC (the "Equity Claims Decision"), finding that "the claims advanced in the shareholder claims are clearly equity claims". The Ad Hoc Securities Purchasers' Committee did not oppose the motion, and no issue was taken by any party with the court's determination that the shareholder claims against SFC were "equity claims". The Equity Claims Decision was subsequently affirmed by the Court of Appeal for Ontario on November 23, 2012 [*Re Sino-Forest Corp.*, 2012 ONCA 816].

#### Ernst & Young Settlement

[24] The Ernst & Young Settlement, and third party releases, was not mentioned in the early versions of the Plan. The initial creditors' meeting and vote on the Plan was scheduled to occur on November 29, 2012; when the Plan was amended on November 28, 2012, the creditors' meeting was adjourned to November 30, 2012.

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[25] On November 29, 2012, Ernst & Young's counsel and class counsel concluded the proposed Ernst & Young Settlement. The creditors' meeting was again adjourned, to December 3, 2012; on that date, a new Plan revision was released and the Ernst & Young Settlement was publicly announced. The Plan revision featured a new Article 11, reflecting the "framework" for the proposed Ernst & Young Settlement and for third-party releases for named third-party defendants as identified at that time as the Underwriters or in the future.

[26] On December 3, 2012, a large majority of creditors approved the Plan. The Objectors note, however, that proxy materials were distributed weeks earlier and proxies were required to be submitted three days prior to the meeting and it is evident that creditors submitting proxies only had a pre-Article 11 version of the Plan. Further, no equity claimants, such as the Objectors, were entitled to vote on the Plan. On December 6, 2012, the Plan was further amended, adding Ernst & Young and BDO to Schedule A, thereby defining them as named third-party defendants.

[27] Ultimately, the Ernst & Young Settlement provided for the payment by Ernst & Young of \$117 million as a settlement fund, being the full monetary contribution by Ernst & Young to settle the Ernst & Young Claims; however, it remains subject to court approval in Ontario, and recognition in Quebec and the United States, and conditional, pursuant to Article 11.1 of the Plan, upon the following steps:

- (a) the granting of the sanction order sanctioning the Plan including the terms of the Ernst & Young Settlement and the Ernst & Young Release (which preclude any right to contribution or indemnity against Ernst & Young);
- (b) the issuance of the Settlement Trust Order;
- (c) the issuance of any other orders necessary to give effect to the Ernst & Young Settlement and the Ernst & Young Release, including the Chapter 15 Recognition Order;
- (d) the fulfillment of all conditions precedent in the Ernst & Young Settlement; and
- (e) all orders being final orders not subject to further appeal or challenge.

[28] On December 6, 2012, Kim Orr filed a notice of appearance in the CCAA proceedings on behalf of three Objectors: Invesco, Northwest and Bâtirente. These Objectors opposed the sanctioning of the Plan, insofar as it included Article 11, during the Plan sanction hearing on December 7, 2012.

[29] At the Plan sanction hearing, SFC's counsel made it clear that the Plan itself did not embody the Ernst & Young Settlement, and that the parties' request that the Plan be sanctioned did not also cover approval of the Ernst & Young Settlement. Moreover, according to the Plan and minutes of settlement, the Ernst & Young Settlement would not be consummated (*i.e.* money paid and releases effective) unless and until several conditions had been satisfied in the future.

[30] The Plan was sanctioned on December 10, 2012 with Article 11. The Objectors take the position that the Funds' opposition was dismissed as premature and on the basis that nothing in the sanction order affected their rights.



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[31] On December 13, 2012, the court directed that its hearing on the Ernst & Young Settlement would take place on January 4, 2013, under both the CCAA and the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA"). Subsequently, the hearing was adjourned to February 4, 2013.

[32] On January 15, 2013, the last day of the opt-out period established by orders of Perell J. and Émond J., six institutional investors represented by Kim Orr filed opt-out forms. These institutional investors are Northwest and Bâtirente, who were two of the three institutions represented by Kim Orr in the Carriage Motion, as well as Invesco, Matrix, Montrusco and Gestion Ferique (all of which are members of the Pöyry Settlement Class).

[33] According to the opt-out forms, the Objectors held approximately 1.6% of SFC shares outstanding on June 30, 2011 (the day the Muddy Waters report was released). By way of contrast, Davis Selected Advisors and Paulson and Co., two of many institutional investors who support the Ernst & Young Settlement, controlled more than 25% of SFC's shares at this time. In addition, the total number of outstanding objectors constitutes approximately 0.24% of the 34,177 SFC beneficial shareholders as of April 29, 2011.

## LAW AND ANALYSIS

### Court's Jurisdiction to Grant Requested Approval

[34] The Claims Procedure Order of May 14, 2012, at paragraph 17, provides that any person that does not file a proof of claim in accordance with the order is barred from making or enforcing such claim as against any other person who could claim contribution or indemnity from the Applicant. This includes claims by the Objectors against Ernst & Young for which Ernst & Young could claim indemnity from SFC.

[35] The Claims Procedure Order also provides that the Ontario Plaintiffs are authorized to file one proof of claim in respect of the substance of the matters set out in the Ontario class action, and that the Quebec Plaintiffs are similarly authorized to file one proof of claim in respect of the substance of the matters set out in the Quebec class action. The Objectors did not object to, or oppose, the Claims Procedure Order, either when it was sought or at any time thereafter. The Objectors did not file an independent proof of claim and, accordingly, the Canadian Claimants were authorized to and did file a proof of claim in the representative capacity in respect of the Objectors' claims.

[36] The Ernst & Young Settlement is part of a CCAA plan process. Claims, including contingent claims, are regularly compromised and settled within CCAA proceedings. This includes outstanding litigation claims against the debtor and third parties. Such compromises fully and finally dispose of such claims, and it follows that there are no continuing procedural or other rights in such proceedings. Simply put, there are no "opt-outs" in the CCAA.

[37] It is well established that class proceedings can be settled in a CCAA proceeding. See *Robertson v. ProQuest Information and Learning Co.*, 2011 ONSC 1647 [*Robertson*].

[38] As noted by Pepall J. (as she then was) in *Robertson*, para. 8:

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When dealing with the consensual resolution of a CCAA claim filed in a claims process that arises out of ongoing litigation, typically no court approval is required. In contrast, class proceedings settlements must be approved by the court. The notice and process for dissemination of the settlement agreement must also be approved by the court.

[39] In this case, the notice and process for dissemination have been approved.

[40] The Objectors take the position that approval of the Ernst & Young Settlement would render their opt-out rights illusory; the inherent flaw with this argument is that it is not possible to ignore the CCAA proceedings.

[41] In this case, claims arising out of the class proceedings are claims in the CCAA process. CCAA claims can be, by definition, subject to compromise. The Claims Procedure Order establishes that claims against Ernst & Young fall within the CCAA proceedings. Thus, these claims can also be the subject of settlement and, if settled, the claims of all creditors in the class can also be settled.

[42] In my view, these proceedings are the appropriate time and place to consider approval of the Ernst & Young Settlement. This court has the jurisdiction in respect of both the CCAA and the CPA.

*Should the Court Exercise Its Discretion to Approve the Settlement*

[43] Having established the jurisdictional basis to consider the motion, the central inquiry is whether the court should exercise its discretion to approve the Ernst & Young Settlement.

*CCAA Interpretation*

[44] The CCAA is a "flexible statute", and the court has "jurisdiction to approve major transactions, including settlement agreements, during the stay period defined in the Initial Order". The CCAA affords courts broad jurisdiction to make orders and "fill in the gaps in legislation so as to give effect to the objects of the CCAA." [*Re Nortel Networks Corp.*, 2010 ONSC 1708, paras. 66-70 ("*Re Nortel*"); *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299, 72 O.T.C. 99, para. 43 (Ont. C.J.)]

[45] Further, as the Supreme Court of Canada explained in *Re Ted Leroy Trucking Ltd.* [*Century Services*], 2010 SCC 60, para. 58:

CCAA decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly described as "the hothouse of real time litigation" has been the primary method by which the CCAA has been adapted and has evolved to meet contemporary business and social needs (internal citations omitted). ...When large companies encounter difficulty, reorganizations become increasingly complex. CCAA courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the

- Page 9 -

Debtor to allow breathing room for reorganization. They have been asked to sanction measures for which there is no explicit authority in the CCAA.

[46] It is also established that third-party releases are not an uncommon feature of complex restructurings under the CCAA [*ATB Financial v. Metcalf and Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (“*ATB Financial*”); *Re Nortel, supra*; *Robertson, supra*; *Re Muscle Tech Research and Development Inc.* (2007), 30 C.B.R. (5th) 59, 156 A.C.W.S. (3d) 22 (Ontario S.C.J.) (“*Muscle Tech*”); *Re Grace Canada Inc.* (2008), 50 C.B.R. (5th) 25 (Ont. S.C.J.); *Re Allen-Vanguard Corporation*, 2011 ONSC 5017].

[47] The Court of Appeal for Ontario has specifically confirmed that a third-party release is justified where the release forms part of a comprehensive compromise. As Blair J. A. stated in *ATB Financial, supra*:

69. In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be “necessary” in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).

70. The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be 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 ...

71. In the course of his reasons, the application judge made the following findings, all of which are amply supported on the record:

- 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 for it;
- 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 creditor Noteholders generally.

72. Here, then – as was the case in T&N – there is a close connection between the claims being released and the restructuring proposal. The tort claims arise out of

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the sale and distribution of the ABCP Notes and their collapse in value, just as do the contractual claims of the creditors against the debtor companies. The purpose of the restructuring is to stabilize and shore up the value of those notes in the long run. The third parties being released are making separate contributions to enable those results to materialize. Those contributions are identified earlier, at para. 31 of these reasons. The application judge found that the claims being released are not independent of or unrelated to the claims that the Noteholders have against the debtor companies; they are closely connected to the value of the ABCP Notes and are required for the Plan to succeed ...

73. I am satisfied that the wording of the CCAA – construed in light of the purpose, objects and scheme of the Act and in accordance with the modern principles of statutory interpretation – supports the court’s jurisdiction and authority to sanction the Plan proposed here, including the contested third-party releases contained in it.

...

78. ... I believe the open-ended CCAA permits third-party releases that are reasonably related to the restructuring at issue because they are encompassed in the comprehensive terms “compromise” and “arrangement” and because of the double-voting majority and court sanctioning statutory mechanism that makes them binding on unwilling creditors.

...

113. At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here – with two additional findings – because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that:

- 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 for it;
- 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;
- e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;

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f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,

g) The releases are fair and reasonable and not overly broad or offensive to public policy.

[48] Furthermore, in *ATB Financial, supra*, para. 111, the Court of Appeal confirmed that parties are entitled to settle allegations of fraud and to include releases of such claims as part of the settlement. It was noted that "there is no legal impediment to granting the release of an antecedent claim in fraud, provided the claim is in the contemplation of the parties to the release at the time it is given".

#### Relevant CCAA Factors

[49] In assessing a settlement within the CCAA context, the court looks at the following three factors, as articulated in *Robertson, supra*:

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

[50] Where a settlement also provides for a release, such as here, courts assess whether 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". Applying this "nexus test" requires consideration of the following factors: [*ATB Financial, supra*, para. 70]

- (a) Are the claims to be released rationally related to the purpose of the plan?
- (b) Are the claims to be released necessary for the plan of arrangement?
- (c) Are the parties who have claims released against them contributing in a tangible and realistic way? and
- (d) Will the plan benefit the debtor and the creditors generally?

#### Counsel Submissions

[51] The Objectors argue that the proposed Ernst & Young Release is not integral or necessary to the success of Sino-Forest's restructuring plan, and, therefore, the standards for granting third-party releases in the CCAA are not satisfied. No one has asserted that the parties require the Ernst & Young Settlement or Ernst & Young Release to allow the Plan to go forward; in fact, the Plan has been implemented prior to consideration of this issue. Further, the Objectors contend that the \$117 million settlement payment is not essential, or even related, to the restructuring, and that it is concerning, and telling, that varying the end of the Ernst & Young Settlement and Ernst & Young Release to accommodate opt-outs would extinguish the settlement.

[52] The Objectors also argue that the Ernst & Young Settlement should not be approved because it would vitiate opt-out rights of class members, as conferred as follows in section 9 of the CPA: "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." This right is a fundamental element of procedural fairness in the Ontario class action regime [*Fischer v. IG Investment Management Ltd.*, 2012 ONCA 47, para. 69], and is not a mere technicality or illusory. It has been described as absolute [*Durling v. Sunrise Propane Energy Group Inc.*, 2011 ONSC 266]. The opt-out period allows persons to pursue their self-interest and to preserve their rights to pursue individual actions [*Mangan v. Inco Ltd.*, (1998) 16 C.P.C. (4th) 165 38 O.R. (3d) 703 (Ont. C.J.)].

[53] Based on the foregoing, the Objectors submit that a proposed class action settlement with Ernst & Young should be approved solely under the CPA, as the Pöyry Settlement was, and not through misuse of a third-party release procedure under the CCAA. Further, since the minutes of settlement make it clear that Ernst & Young retains discretion not to accept or recognize normal opt-outs if the CPA procedures are invoked, the Ernst & Young Settlement should not be approved in this respect either.

[54] Multiple parties made submissions favouring the Ernst & Young Settlement (with the accompanying Ernst & Young Release), arguing that it is fair and reasonable in the circumstances, benefits the CCAA stakeholders (as evidenced by the broad-based support for the Plan and this motion) and rationally connected to the Plan.

[55] Ontario Plaintiffs' counsel submits that the form of the bar order is fair and properly balances the competing interests of class members, Ernst & Young and the non-settling defendants as:

- (a) class members are not releasing their claims to a greater extent than necessary;
- (b) Ernst & Young is ensured that its obligations in connection to the Settlement will conclude its liability in the class proceedings;
- (c) the non-settling defendants will not have to pay more following a judgment than they would be required to pay if Ernst & Young remained as a defendant in the action; and
- (d) the non-settling defendants are granted broad rights of discovery and an appropriate credit in the ongoing litigation, if it is ultimately determined by the court that there is a right of contribution and indemnity between the co-defendants.

[56] SFC argues that Ernst & Young's support has simplified and accelerated the Plan process, including reducing the expense and management time otherwise to be incurred in litigating claims, and was a catalyst to encouraging many parties, including the Underwriters and BDO, to withdraw their objections to the Plan. Further, the result is precisely the type of compromise that the CCAA is designed to promote; namely, Ernst & Young has provided a tangible and significant contribution to the Plan (notwithstanding any pitfalls in the litigation claims against Ernst & Young) that has enabled SFC to emerge as Newco/NewcoII in a timely way and with potential viability.

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[57] Ernst & Young's counsel submits that the Ernst & Young Settlement, as a whole, including the Ernst & Young Release, must be approved or rejected; the court cannot modify the terms of a proposed settlement. Further, in deciding whether to reject a settlement, the court should consider whether doing so would put the settlement in "jeopardy of being unraveled". In this case, counsel submits there is no obligation on the parties to resume discussions and it could be that the parties have reached their limits in negotiations and will backtrack from their positions or abandon the effort.

Analysis and Conclusions

[58] The Ernst & Young Release forms part of the Ernst & Young Settlement. In considering whether the Ernst & Young Settlement is fair and reasonable and ought to be approved, it is necessary to consider whether the Ernst & Young Release can be justified as part of the Ernst & Young Settlement. See *ATB Financial*, *supra*, para. 70, as quoted above.

[59] In considering the appropriateness of including the Ernst & Young Release, I have taken into account the following.

[60] Firstly, although the Plan has been sanctioned and implemented, a significant aspect of the Plan is a distribution to SFC's creditors. The significant and, in fact, only monetary contribution that can be directly identified, at this time, is the \$117 million from the Ernst & Young Settlement. Simply put, until such time as the Ernst & Young Settlement has been concluded and the settlement proceeds paid, there can be no distribution of the settlement proceeds to parties entitled to receive them. It seems to me that in order to effect any distribution, the Ernst & Young Release has to be approved as part of the Ernst & Young Settlement.

[61] Secondly, it is apparent that the claims to be released against Ernst & Young are rationally related to the purpose of the Plan and necessary for it. SFC put forward the Plan. As I outlined in the Equity Claims Decision, the claims of Ernst & Young as against SFC are intertwined to the extent that they cannot be separated. Similarly, the claims of the Objectors as against Ernst & Young are, in my view, intertwined and related to the claims against SFC and to the purpose of the Plan.

[62] Thirdly, although the Plan can, on its face, succeed, as evidenced by its implementation, the reality is that without the approval of the Ernst & Young Settlement, the objectives of the Plan remain unfulfilled due to the practical inability to distribute the settlement proceeds. Further, in the event that the Ernst & Young Release is not approved and the litigation continues, it becomes circular in nature as the position of Ernst & Young, as detailed in the Equity Claims Decision, involves Ernst & Young bringing an equity claim for contribution and indemnity as against SFC.

[63] Fourthly, it is clear that Ernst & Young is contributing in a tangible way to the Plan, by its significant contribution of \$117 million.

[64] Fifthly, the Plan benefits the claimants in the form of a tangible distribution. Blair J.A., at paragraph 113 of *ATB Financial*, *supra*, referenced two further facts as found by the application

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judge in that case; namely, the voting creditors who approved the Plan did so with the knowledge of the nature and effect of the releases. That situation is also present in this case.

[65] Finally, the application judge in *ATB Financial, supra*, held that the releases were fair and reasonable and not overly broad or offensive to public policy. In this case, having considered the alternatives of lengthy and uncertain litigation, and the full knowledge of the Canadian plaintiffs, I conclude that the Ernst & Young Release is fair and reasonable and not overly broad or offensive to public policy.

[66] In my view, the Ernst & Young Settlement is fair and reasonable, provides substantial benefits to relevant stakeholders, and is consistent with the purpose and spirit of the CCAA. In addition, in my view, the factors associated with the *ATB Financial* nexus test favour approving the Ernst & Young Release.

[67] In *Re Nortel, supra*, para. 81, I noted that the releases benefited creditors generally because they "reduced the risk of litigation, protected Nortel against potential contribution claims and indemnity claims and reduced the risk of delay caused by potentially complex litigation and associated depletion of assets to fund potentially significant litigation costs". In this case, there is a connection between the release of claims against Ernst & Young and a distribution to creditors. The plaintiffs in the litigation are shareholders and Noteholders of SFC. These plaintiffs have claims to assert against SFC that are being directly satisfied, in part, with the payment of \$117 million by Ernst & Young.

[68] In my view, it is clear that the claims Ernst & Young asserted against SFC, and SFC's subsidiaries, had to be addressed as part of the restructuring. The interrelationship between the various entities is further demonstrated by Ernst & Young's submission that the release of claims by Ernst & Young has allowed SFC and the SFC subsidiaries to contribute their assets to the restructuring, unencumbered by claims totalling billions of dollars. As SFC is a holding company with no material assets of its own, the unencumbered participation of the SFC subsidiaries is crucial to the restructuring.

[69] At the outset and during the CCAA proceedings, the Applicant and Monitor specifically and consistently identified timing and delay as critical elements that would impact on maximization of the value and preservation of SFC's assets.

[70] Counsel submits that the claims against Ernst & Young and the indemnity claims asserted by Ernst & Young would, absent the Ernst & Young Settlement, have to be finally determined before the CCAA claims could be quantified. As such, these steps had the potential to significantly delay the CCAA proceedings. Where the claims being released may take years to resolve, are risky, expensive or otherwise uncertain of success, the benefit that accrues to creditors in having them settled must be considered. See *Re Nortel, supra*, paras. 73 and 81; and *Muscle Tech, supra*, paras. 19-21.

[71] Implicit in my findings is rejection of the Objectors' arguments questioning the validity of the Ernst & Young Settlement and Ernst & Young Release. The relevant consideration is whether a proposed settlement and third-party release sufficiently benefits all stakeholders to justify court approval. I reject the position that the \$117 million settlement payment is not



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essential, or even related, to the restructuring; it represents, at this point in time, the only real monetary consideration available to stakeholders. The potential to vary the Ernst & Young Settlement and Ernst & Young Release to accommodate opt-outs is futile, as the court is being asked to approve the Ernst & Young Settlement and Ernst & Young Release as proposed.

[72] I do not accept that the class action settlement should be approved solely under the CPA. The reality facing the parties is that SFC is insolvent; it is under CCAA protection, and stakeholder claims are to be considered in the context of the CCAA regime. The Objectors' claim against Ernst & Young cannot be considered in isolation from the CCAA proceedings. The claims against Ernst & Young are interrelated with claims as against SFC, as is made clear in the Equity Claims Decision and Claims Procedure Order.

[73] Even if one assumes that the opt-out argument of the Objectors can be sustained, and opt-out rights fully provided, to what does that lead? The Objectors are left with a claim against Ernst & Young, which it then has to put forward in the CCAA proceedings. Without taking into account any argument that the claim against Ernst & Young may be affected by the claims bar date, the claim is still capable of being addressed under the Claims Procedure Order. In this way, it is again subject to the CCAA fairness and reasonable test as set out in *ATB Financial, supra*.

[74] Moreover, CCAA proceedings take into account a class of creditors or stakeholders who possess the same legal interests. In this respect, the Objectors have the same legal interests as the Ontario Plaintiffs. Ultimately, this requires consideration of the totality of the class. In this case, it is clear that the parties supporting the Ernst & Young Settlement are vastly superior to the Objectors, both in number and dollar value.

[75] Although the right to opt-out of a class action is a fundamental element of procedural fairness in the Ontario class action regime, this argument cannot be taken in isolation. It must be considered in the context of the CCAA.

[76] The Objectors are, in fact, part of the group that will benefit from the Ernst & Young Settlement as they specifically seek to reserve their rights to "opt-in" and share in the spoils.

[77] It is also clear that the jurisprudence does not permit a dissenting stakeholder to opt-out of a restructuring. [*Re Sammi Atlas Inc.*, (1998) 3 C.B.R. (4th) 171 (Ont. Gen. Div. (Commercial List)).] If that were possible, no creditor would take part in any CCAA compromise where they were to receive less than the debt owed to them. There is no right to opt-out of any CCAA process, and the statute contemplates that a minority of creditors are bound by the plan which a majority have approved and the court has determined to be fair and reasonable.

[78] SFC is insolvent and all stakeholders, including the Objectors, will receive less than what they are owed. By virtue of deciding, on their own volition, not to participate in the CCAA process, the Objectors relinquished their right to file a claim and take steps, in a timely way, to assert their rights to vote in the CCAA proceeding.

[79] Further, even if the Objectors had filed a claim and voted, their minimal 1.6% stake in SFC's outstanding shares when the Muddy Waters report was released makes it highly unlikely that they could have altered the outcome.

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[80] Finally, although the Objectors demand a right to conditionally opt-out of a settlement, that right does not exist under the CPA or CCAA. By virtue of the certification order, class members had the ability to opt-out of the class action. The Objectors did not opt-out in the true sense; they purported to create a conditional opt-out. Under the CPA, the right to opt-out is "in the manner and within the time specified in the certification order". There is no provision for a conditional opt-out in the CPA, and Ontario's single opt-out regime causes "no prejudice...to putative class members". [CPA, section 9; *Osmun v. Cadbury Adams Canada Inc.* (2009), 85 C.P.C. (6th) 148, paras. 43-46 (Ont. S.C.J.); and *Eidoo v. Infineon Technologies AG*, 2012 ONSC 7299.]

*Miscellaneous*

[81] For greater certainty, it is my understanding that the issues raised by Mr. O'Reilly have been clarified such that the effect of this endorsement is that the Junior Objectors will be included with the same status as the Ontario Plaintiffs.

**DISPOSITION**

[82] In the result, for the foregoing reasons, the motion is granted. A declaration shall issue to the effect that the Ernst & Young Settlement is fair and reasonable in all the circumstances. The Ernst & Young Settlement, together with the Ernst & Young Release, is approved and an order shall issue substantially in the form requested.

  
MORAWETZ J.

Date: March 20, 2013

This is Exhibit 4 referred to in the  
 affidavit of Tanya Temec  
 sworn before me, this 22  
 day of April, 2013

Court of Appeal File No.: M42399  
 S.C.J. Court File No.: CV-12-9667-00CL

  
 A COMMISSIONER FOR TAKING AFFIDAVITS

**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**

Court of Appeal File No.: M42399  
 S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED NOTICE OF MOTION FOR LEAVE TO APPEAL**

**THE APPELLANTS, Invesco Canada Ltd., Northwest & Ethical Investments  
 L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc.,**

Gestion F rique and Montrusco Bolton Investments Inc. ("Appellants"), seek leave to appeal to a Panel of three judges of the Court of Appeal from the order dated March 20, 2013 ("Settlement Approval Order") of the Honourable Mr. Justice Morawetz approving the Ernst & Young LLP Settlement ("E&Y Settlement") and third party release of Ernst & Young LLP ("E&Y Release").

The Appellants also seek leave to appeal to a Panel of three judges of the Court of Appeal from the order dated March 20, 2013 ("Representation Dismissal Order") of Justice Morawetz dismissing the Appellants' motion for a representation order and dismissing their request for relief from the binding effect of the representation order appointing certain other persons (the Ontario Plaintiffs) as representatives, as part of the restructuring proceedings of Sino-Forest Corporation ("Sino-Forest" or the "applicant").

**THE APPELLANTS ASK:**

- a) that leave be granted to appeal from the Settlement Approval Order;
- b) that leave be granted to appeal from the Representation Dismissal Order; and,
- c) if this Court permits proposed non-debtor third-party settlements and releases to be heard in the Sino-Forest CCAA proceedings, that the Appellants be appointed as representatives of all equity claimants and/or all objectors;
- ~~d) for an order consolidating the present motions for leave to appeal, should leave be granted, with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 ("Sanction Order"), and all related appeals;~~
- ~~e) for an order directing that the hearings of the motions for leave to appeal and the appeals of the Sanction Order, Settlement Approval Order, and Representation~~

~~Dismissal Order be consolidated and heard together before a panel of three judges, orally; and~~

~~f) for an order expediting the hearing of all such motions for leave to appeal and all such appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order.~~

#### PROPOSED METHOD OF HEARING:

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

#### THE GROUNDS FOR THE MOTION ARE:

1. Justice Morawetz erred in entering the Settlement Approval Order approving the E&Y Settlement and E&Y Release under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") in connection with the Plan of Compromise and Reorganization of Sino-Forest Corporation (the "Plan"), and the appeal is therefore meritorious, particularly in that:

(a) as a matter of law and fact, the E&Y Settlement and the E&Y Release were not and are not reasonably connected and necessary to the restructuring of the applicant, and do not meet the requirements for third-party non-debtor releases set forth in *ATB Financial v. Metcalfe and Mansfield Alternative Investments II Corp.*, 2008 ONCA 587;

(b) the CCAA does not provide jurisdiction for the court supervising a CCAA restructuring plan to release claims asserted against a person other than the applicant,

its subsidiaries, or its directors or officers, when the persons whose claims are being released are not creditors of the applicant who voted on the plan;

(c) the Ontario Plaintiffs did not appropriately and adequately represent the members of the class whose claims against E&Y are proposed to be settled and released;

(d) the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, provides an adequate and appropriate alternative framework for the proposed settlement of the class action claims asserted against E&Y;

(e) the terms of the E&Y Settlement do not provide any assurance that settlement consideration would flow to the parties whose claims are proposed to be settled and released;

(f) the terms of the E&Y Settlement were construed by the Court not to provide opt out rights to the members of the class whose claims against E&Y are proposed to be settled and released; and

(g) the Court did not address or decide whether the amount of consideration in the proposed E&Y Settlement was fair, reasonable, and adequate;

2. Justice Morawetz erred in entering the Representation Dismissal Order, particularly in that the Appellants would have appropriately and adequately represented the interests of the members of the class who are equity claimants and/or the members who objected to the proposed E&Y Settlement, without any conflict of interest, and the interests of justice would have been served thereby;

3. The point on the proposed appeal is of significance to the practice, in that the circumstances in which non-debtor third-party releases are properly available in

connection with *CCAA* restructuring plans, particularly concerning class action claims asserted against auditor and underwriter defendants in securities litigations, has the potential to affect many future cases if the releases are made available as a matter of routine practice, as was the case here;

4. The appropriateness of the E&Y Settlement and E&Y Release is of significance to the action, both as they affect the Appellants' ability to pursue separate claims after opting out, and as they affect claims against the 15 other defendants in the Ontario Class Action who are positioning themselves in the *CCAA* proceeding to enter into settlements and receive releases similar to the E&Y Release;

5. The Plan has been implemented and the *CCAA* litigation stay has expired. The proposed appeal will not unduly hinder the progress of the *CCAA* proceeding;

~~6. This motion and the motion for leave to appeal the Sanction Order, pending in Court of Appeal File No.: M42068, concern a common principal issue: under what circumstances are non-debtor third party releases available in *CCAA* restructuring plans;~~

~~7. The present motions for leave, the motion for leave to appeal the Sanction Order, and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order should be heard together as soon as possible by this Court;~~

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

7.9. Sections 6 and 134 of the *Courts of Justice Act*;

8.10. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*;

9.11. Rules 6.01, 10, and 61 of the *Rules of Civil Procedure*; and

10.12. 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.

April 9, 2013~~2~~

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**TO: THE SERVICE LIST**



Court of Appeal File No.: M42399  
Commercial 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 File No.: M42399  
Superior Court File No.: CV-10-414302CP

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

-and- SINO-FOREST CORPORATION, et al.

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

NOTICE OF MOTION FOR LEAVE TO APPEAL

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Lawyers for Invesco Canada Ltd., Northwest & Ethical  
Investments L.P., Comité Syndical National de Retraite  
Bâtirente Inc., Matrix Asset Management Inc., Gestion  
Férique and Montrusco Bolton Investments Inc.

This is Exhibit U referred to in the affidavit of Tanya Jenne C sworn before me, this 22 day of April 2013

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

  
~~COMMISSIONER FOR TAKING AFFIDAVITS~~

**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**

Court of Appeal File No.:  
S.C.J. Court File No.: CV-11-431153-00CP

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

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

Plaintiffs

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF APPEAL**

**THE OBJECTORS (APPELLANTS) APPEAL** to the Court of Appeal from the order dated March 20, 2013 ("Settlement Approval Order") of the Honourable Mr. Justice

Morawetz approving the Ernst & Young LLP Settlement ("E&Y Settlement") and third party release of Ernst & Young LLP ("E&Y Release").

The Appellants also appeal the order dated March 20, 2013 ("Representation Dismissal Order") of Justice Morawetz dismissing the Appellants' motion for a representation order and dismissing their request for relief from the binding effect of the representation order appointing certain other persons (the Ontario Plaintiffs) as representatives, as part of the restructuring proceedings of Sino-Forest Corporation ("Sino-Forest" or the "applicant").

**THE APPELLANTS ASK:**

1. that an Order be granted setting aside the Settlement Approval Order;
2. that an Order be granted setting aside the Representation Dismissal Order;
3. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS OF APPEAL** are as follows:

1. Justice Morawetz erred in entering the Settlement Approval Order approving the E&Y Settlement and E&Y Release under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") in connection with the Plan of Compromise and Reorganization of Sino-Forest Corporation (the "Plan"), particularly in that:

- (a) Justice Morawetz, the Supervising CCAA Judge in this proceeding, was designated on December 13, 2012, by Regional Senior Justice Then to hear the motion for approval of the E&Y Settlement pursuant to both the CCAA and the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA");

- (b) the Settlement Approval Order in effect avoided or rejected application of the CPA in determining whether to approve the E&Y Settlement;

(c) the Settlement Approval Order in effect refused to certify the class proceeding against E&Y under the *CPA*;

(d) the Settlement Approval Order in effect entered judgment on common issues or entered an aggregate assessment of monetary relief on the claims asserted under the *CPA* against E&Y, by fully and finally releasing E&Y from liability to class members upon satisfaction of the conditions of the settlement;

(e) the Ontario Plaintiffs did not appropriately and adequately represent the members of the class whose claims against E&Y are proposed to be settled and released;

(f) the *CPA* provides an adequate and appropriate alternative framework for the proposed settlement of the class action claims asserted against E&Y;

(g) the terms of the E&Y Settlement do not provide any assurance that settlement consideration would flow to the parties whose claims are proposed to be settled and released;

(h) the terms of the E&Y Settlement were construed by the Court not to provide opt out rights to the members of the class whose claims against E&Y are proposed to be settled and released;

(i) no-opt-out class action settlements are not permissible under the *CPA*; and,

(j) the Court did not address or decide whether the amount of consideration in the proposed E&Y Settlement was fair, reasonable, and adequate;

2. Justice Morawetz erred in entering the Representation Dismissal Order, particularly in that the Appellants would have more appropriately and adequately represented the interests of the members of the class who are equity claimants and/or the members who objected to the proposed E&Y Settlement, without any conflict of interest, and the interests

of justice would have been served thereby. The combined effect of the Representation Dismissal Order and Settlement Approval Order denied the Appellants their right to representation by counsel of their choice;

3. The Appellants have moved for leave to act as the representative party on this appeal;
4. Rules 10 and 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
5. Sections 6 and 134 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
6. Sections 5, 9, 17, 19, 24, 29, 30(3), 30(5) and 34 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6; and,
7. Such further and other grounds as counsel may advise.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The orders appealed from are final orders of a Judge of the Superior Court of Justice disposing of the rights of class members. Accordingly, the appeal lies directly to the Court of Appeal;
2. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43; and,
3. Sections 30(3) and 30(5) of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

The Appellants request that this appeal be heard at Toronto.

April 18, 2013

**KIM ORR BARRISTERS P.C.**  
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Toronto, Ontario  
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Michael C. Spencer (LSUC #59637F)  
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Lawyers for the Objectors (Appellants),  
Invesco Canada Ltd., Northwest & Ethical  
Investments L.P., Comité Syndical National  
de Retraite Bâtirente Inc., Matrix Asset  
Management Inc., Gestion Férique and  
Montrusco Bolton Investments Inc.

**TO: THE SERVICE LIST**

Court of Appeal File No.:  
Commercial 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 File No.:  
Superior Court File No.: CV-10-414302CP

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

-and- SINO-FOREST CORPORATION, et al.

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**NOTICE OF APPEAL**

**KIM ORR BARRISTERS P.C.**  
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Toronto, Ontario M5V 1H2  
  
Michael C. Spencer (LSUC #59637F)  
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Lawyers for the Objectors (Appellants), Invesco Canada  
Ltd., Northwest & Ethical Investments L.P., Comité  
Syndical National de Rétraite Bâtierte Inc., Matrix Asset  
Management Inc., Gestion Férique and Montrusco Bolton  
Investments Inc.

This is Exhibit.....<sup>V</sup>.....referred to in the  
 affidavit of.....Tanya Jemec.....  
 sworn before me, this.....22.....  
 day of.....April.....2013.....

**Tanya Jemec**

**From:** Megan McPhee  
**Sent:** Thursday, April 18, 2013 6:09 PM  
**To:** staleyr@bennettjones.com; belld@bennettjones.com; sahnir@bennettjones.com;  
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 ken.rosenberg@paliareroland.com; max.starnino@paliareroland.com; sfriedman@davis.ca;  
 bdarlington@davis.ca; bbarnes@davis.ca; hcraig@osc.gov.on.ca  
**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** Sino-Forest: motion returnable May 1

Counsel,

We are in the process of preparing our factum with respect to the Motion for Directions scheduled for May 1. To that end, please advise whether you will consent to any or all of the following:

1. consolidation of the present motion for leave to appeal (Settlement Approval Order and Representation Dismissal Order) with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 ("Sanction Order"), and, should leave be granted, all related appeals;
2. an order directing that the hearings of the motions for leave to appeal and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order be consolidated and heard together before a panel of three judges, orally;
3. an order expediting the hearing of these motions for leave to appeal and all such appeals (Sanction Order, Settlement Approval Order, and Representation Dismissal Order);
4. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary;
5. an order permitting service of any materials related to these motion to be done by email, with proof of receipt being unnecessary for purposes of filing;
6. an order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and,
7. if necessary, an order waiving or abridging the time for service and filing and validating any late service with respect to the motion for directions and the leave to appeal motions.



We would appreciate a reply by noon tomorrow so that we can draft our factum accordingly.

Thank you,

Megan

Megan B. McPhee P.C.



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April 19, 2013

**BY EMAIL**

Megan McPhee  
Kim Orr Barristers P.C.  
19 Mercer Street, 4th floor  
Toronto, Ontario  
M5V 1H2

Dear Ms. McPhee:

**Re: In the Matter of Sino-Forest Corporation  
S.C.J. Court File No.: CV-12-9667-00CL**

We write in respect to the motion for directions brought by your clients in the Court of Appeal and returnable May 1, 2013, which notice of motion was served on us on April 18, 2013, and your email dated April 18, 2013.

With respect to the relief sought on the motion for directions, Ernst & Young takes the following positions. For ease of reference, we have used the defined terms in your clients' notice of motion:

- 1) Consolidation of leave to appeal motions – Your clients' motion for leave to appeal the Sanction Order was commenced on December 27, 2013 and proceeded in the ordinary course in writing. Under Rule 61.03.1, the time for the Court to hear that motion has expired by more than a month. Under the circumstances and subject to the Court's holding, it is not appropriate to consolidate that leave to appeal motion with your clients' leave to appeal the Settlement Order/Representation Dismissal Order, particularly since you now seek an oral hearing. Ernst & Young opposes this relief;
- 2) Consolidation of leave motions and appeal – The test for leave to appeal is distinct and should be satisfied before the hearing of any appeal on the merits. It is not the Court's practice to hear leave motions and appeals together and your clients' materials present no compelling reason why this practice should not be followed. Ernst & Young opposes this relief;

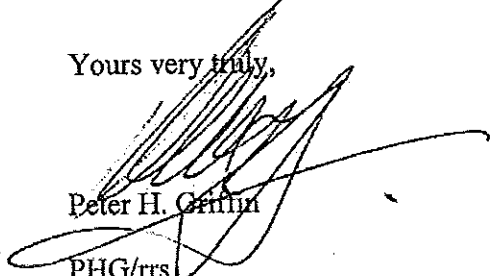
*W*  
This is Exhibit ..... referred to in the  
affidavit of *TAM* *Jevec* .....  
sworn before me, this *22* .....  
day of *April* ..... 20*13*.  
*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

Page 2

- 3) Oral hearing of leave motion – It is not the Court’s practice to hear leave motions orally and your clients’ materials present no compelling reason usual practice of hearing leave motions in writing should not be followed. However, if the Court is inclined to hear the leave motion orally, Ernst & Young does not oppose this relief, so long as it does not delay a determination;
- 4) Expedited hearing of the leave motion and any appeal – Your clients’ motions are holding up the CCAA process and foreign recognition of that process and may impact the schedule set in the class action proceedings. The motions for leave, and any appeals if granted, should be dealt with as expeditiously as possible;
- 5) Representative status – Your clients seek leave to appeal from a decision denying them representative status in the CCAA and class action proceedings. There is no basis to seek such relief separately for the purposes of the motion for directions, leave to appeal or any appeal, if granted. Ernst & Young opposes this relief;
- 6) Service by email – Ernst & Young consents to service in the manner approved by The Honourable Justice Morawetz in the Initial Order dated March 30, 2012;
- 7) Transfer of Superior Court materials – Ernst & Young consents to the transfer of the full record before The Honourable Justice Morawetz for the motion heard February 4, 2013. The material before His Honour on December 7, 2012 is not necessary for the current leave motion; and
- 8) Abridging service and late service – Ernst & Young opposes such relief. The Rules should be complied with in respect of motions and appeals before the Court of Appeal.

We note that you scheduled this motion for May 1, 2013 without consulting any of the parties who indicated (at your request) that they would participate in the leave motions and any appeals. Your clients’ motion record and factum are to be served and filed today. Ernst & Young will serve and file its materials as required by the Rules.

Yours very truly,



Peter H. Griffin

PHG/rrs

cc. Service List



**Tanya Jemec**

---

**From:** Kirk M. Baert [kbaert@kmlaw.ca]  
**Sent:** Friday, April 19, 2013 1:45 PM  
**To:** Shara N. Roy; Megan McPhee; staleyr@bennettjones.com; belld@bennettjones.com; sahnir@bennettjones.com; bellj@bennettjones.com; zweigs@bennettjones.com; derrick.tay@gowlings.com; clifton.prophet@gowlings.com; jennifer.stam@gowlings.com; ava.kim@gowlings.com; jason.mcmurtrie@gowlings.com; greg.watson@fticonsulting.com; Jodi.porepa@fticonsulting.com; john.pirie@bakermckenzie.com; david.gadsden@bakermckenzie.com; pgreene@agmlawyers.com; kdekker@agmlawyers.com; mbooth@agmlawyers.com; jfabello@torys.com; dbish@torys.com; agray@torys.com; Peter Griffin; Peter J. Osborne; Linda Fuerst; bzarnett@goodmans.ca; rchadwick@goodmans.ca; boneill@goodmans.ca; cdescours@goodmans.ca; llowenstein@osler.com; esellers@osler.com; ggrove@osler.com; dimitri.lascaris@siskinds.com; Charles.wright@siskinds.com; Jonathan Ptak; Jonathan Bida; Garth Myers; ecole@millerthomson.com; jmarin@millerthomson.com; pwardle@wdblaw.ca; sbieber@wdblaw.ca; epleet@wdblaw.ca; atardif@mccarthy.ca; mpoplaw@mccarthy.ca; clegendre@mccarthy.ca; jgrout@tgf.ca; kplunkett@tgf.ca; ken.rosenberg@paliarerland.com; max.starnino@paliarerland.com; sfriedman@davis.ca; bdarlington@davis.ca; bbarnes@davis.ca; hcraig@osc.gov.on.ca  
**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** RE: Sino-Forest: motion returnable May 1

Megan,

We agree with the positions taken by EY.

**Kirk M. Baert**  
Partner  
Koskie Minsky LLP | Barristers & Solicitors

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**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** RE: Sino-Forest: motion returnable May 1

Megan,

Attached is our response.

Shara

---

**From:** Megan McPhee [mailto:MBM@kimorr.ca]  
**Sent:** Thursday, April 18, 2013 6:09 PM  
**To:** [staley@bennettjones.com](mailto:staley@bennettjones.com); [belld@bennettjones.com](mailto:belld@bennettjones.com); [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com); [belli@bennettjones.com](mailto:belli@bennettjones.com); [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com); [derrick.tay@gowlings.com](mailto:derrick.tay@gowlings.com); [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com); [jennifer.stam@gowlings.com](mailto:jennifer.stam@gowlings.com); [ava.kim@gowlings.com](mailto:ava.kim@gowlings.com); [jason.mcmurtrie@gowlings.com](mailto:jason.mcmurtrie@gowlings.com); [greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com); [jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com); [john.pirie@bakermckenzie.com](mailto:john.pirie@bakermckenzie.com); [david.gadsden@bakermckenzie.com](mailto:david.gadsden@bakermckenzie.com); [pgreene@agmlawyers.com](mailto:pgreene@agmlawyers.com); [kdekker@agmlawyers.com](mailto:kdekker@agmlawyers.com); [mbooth@agmlawyers.com](mailto:mbooth@agmlawyers.com); [jfabello@torys.com](mailto:jfabello@torys.com); [dbish@torys.com](mailto:dbish@torys.com); [agray@torys.com](mailto:agray@torys.com); Peter Griffin; Peter J. Osborne; Linda Fuerst; Shara N. Roy; [bzarnett@goodmans.ca](mailto:bzarnett@goodmans.ca); [rhadwick@goodmans.ca](mailto:rhadwick@goodmans.ca); [bonnell@goodmans.ca](mailto:bonnell@goodmans.ca); [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca); [llowenstein@osler.com](mailto:llowenstein@osler.com); [esellers@osler.com](mailto:esellers@osler.com); [ggrove@osler.com](mailto:ggrove@osler.com); [dimitri.lascaris@siskinds.com](mailto:dimitri.lascaris@siskinds.com); [Charles.wright@siskinds.com](mailto:Charles.wright@siskinds.com); [kbaert@kmlaw.ca](mailto:kbaert@kmlaw.ca); [jptak@kmlaw.ca](mailto:jptak@kmlaw.ca); [jbida@kmlaw.ca](mailto:jbida@kmlaw.ca); [gmyers@kmlaw.ca](mailto:gmyers@kmlaw.ca); [ecole@millerthomson.com](mailto:ecole@millerthomson.com); [jmarin@millerthomson.com](mailto:jmarin@millerthomson.com); [pwardle@wdblaw.ca](mailto:pwardle@wdblaw.ca); [sbieber@wdblaw.ca](mailto:sbieber@wdblaw.ca); [epleet@wdblaw.ca](mailto:epleet@wdblaw.ca); [atardif@mccarthy.ca](mailto:atardif@mccarthy.ca); [mpoplaw@mccarthy.ca](mailto:mpoplaw@mccarthy.ca); [clegendre@mccarthy.ca](mailto:clegendre@mccarthy.ca); [jgrout@tqf.ca](mailto:jgrout@tqf.ca); [kplunkett@tqf.ca](mailto:kplunkett@tqf.ca); [ken.rosenberg@paliareroland.com](mailto:ken.rosenberg@paliareroland.com); [max.starnino@paliareroland.com](mailto:max.starnino@paliareroland.com); [sfriedman@davis.ca](mailto:sfriedman@davis.ca); [bdarlington@davis.ca](mailto:bdarlington@davis.ca); [bbarnes@davis.ca](mailto:bbarnes@davis.ca); [hcraig@osc.gov.on.ca](mailto:hcraig@osc.gov.on.ca)  
**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** Sino-Forest: motion returnable May 1

Counsel,

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6. an order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and,
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We would appreciate a reply by noon tomorrow so that we can draft our factum accordingly.

Thank you,

Megan

Megan B. McPhee P.C.



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**Megan McPhee**

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**From:** Rob Staley [StaleyR@bennettjones.com]**Sent:** Friday, April 19, 2013 2:16 PM**To:** Kirk M. Baert; Shara N. Roy; Megan McPhee; Derek Bell; Raj Sahni; Jonathan Bell; Sean Zweig; derrick.tay@gowlings.com; clifton.prophet@gowlings.com; jennifer.stam@gowlings.com; ava.kim@gowlings.com; jason.mcmurtrie@gowlings.com; greg.watson@fticonsulting.com; Jodi.porepa@fticonsulting.com; john.pirie@bakermckenzie.com; david.gadsden@bakermckenzie.com; pgreene@agmlawyers.com; kdekker@agmlawyers.com; mbooth@agmlawyers.com; jfabello@torys.com; dbish@torys.com; agray@torys.com; Peter Griffin; Peter J. Osborne; Linda Fuerst; bzarnett@goodmans.ca; rchadwick@goodmans.ca; boneill@goodmans.ca; cdescours@goodmans.ca; llowenstein@osler.com; esellers@osler.com; ggrove@osler.com; dimitri.lascaris@siskinds.com; Charles.wright@siskinds.com; Jonathan Ptak; Jonathan Bida; Garth Myers; ecole@millerthomson.com; jmarin@millerthomson.com; pwardle@wdblau.ca; sbieber@wdblau.ca; epleet@wdblau.ca; atardif@mccarthy.ca; mpoplaw@mccarthy.ca; clegendre@mccarthy.ca; jgrout@tgf.ca; kplunkett@tgf.ca; ken.rosenberg@paliareroland.com; max.starnino@paliareroland.com; sfriedman@davis.ca; bdarlington@davis.ca; bbarnes@davis.ca; hcraig@osc.gov.on.ca**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec**Subject:** RE: Sino-Forest: motion returnable May 1

As does Sino-Forest.

---

**From:** Kirk M. Baert [mailto:kbaert@kmlaw.ca]**Sent:** 19 April 2013 1:45 PM**To:** Shara N. Roy; Megan McPhee; Rob Staley; Derek Bell; Raj Sahni; Jonathan Bell; Sean Zweig; derrick.tay@gowlings.com; clifton.prophet@gowlings.com; jennifer.stam@gowlings.com; ava.kim@gowlings.com; jason.mcmurtrie@gowlings.com; greg.watson@fticonsulting.com; Jodi.porepa@fticonsulting.com; john.pirie@bakermckenzie.com; david.gadsden@bakermckenzie.com; pgreene@agmlawyers.com; kdekker@agmlawyers.com; mbooth@agmlawyers.com; jfabello@torys.com; dbish@torys.com; agray@torys.com; Peter Griffin; Peter J. Osborne; Linda Fuerst; bzarnett@goodmans.ca; rchadwick@goodmans.ca; boneill@goodmans.ca; cdescours@goodmans.ca; llowenstein@osler.com; esellers@osler.com; ggrove@osler.com; dimitri.lascaris@siskinds.com; Charles.wright@siskinds.com; Jonathan Ptak; Jonathan Bida; Garth Myers; ecole@millerthomson.com; jmarin@millerthomson.com; pwardle@wdblau.ca; sbieber@wdblau.ca; epleet@wdblau.ca; atardif@mccarthy.ca; mpoplaw@mccarthy.ca; clegendre@mccarthy.ca; jgrout@tgf.ca; kplunkett@tgf.ca; ken.rosenberg@paliareroland.com; max.starnino@paliareroland.com; sfriedman@davis.ca; bdarlington@davis.ca; bbarnes@davis.ca; hcraig@osc.gov.on.ca**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec**Subject:** RE: Sino-Forest: motion returnable May 1

Megan,

We agree with the positions taken by EY.

**Kirk M. Baert**

Partner

Koskie Minsky LLP | Barristers &amp; Solicitors

Suite 900 | Box 52 | 20 Queen Street West  
Toronto | Ontario | Canada | M5H3R3  
Tel: (416) 595-2117 | Fax: (416) 204-2889  
E-mail: [kbaert@kmlaw.ca](mailto:kbaert@kmlaw.ca)Please visit our web site at [www.kmlaw.ca](http://www.kmlaw.ca)

---

**From:** Shara N. Roy [mailto:sroy@litigate.com]**Sent:** April-19-13 1:33 PM

**To:** Megan McPhee; [staley@bennettjones.com](mailto:staley@bennettjones.com); [belld@bennettjones.com](mailto:belld@bennettjones.com); [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com); [bellj@bennettjones.com](mailto:bellj@bennettjones.com); [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com); [derrick.tay@gowlings.com](mailto:derrick.tay@gowlings.com); [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com); [jennifer.stam@gowlings.com](mailto:jennifer.stam@gowlings.com); [ava.kim@gowlings.com](mailto:ava.kim@gowlings.com); [jason.mcmurtrie@gowlings.com](mailto:jason.mcmurtrie@gowlings.com); [greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com); [Jodi.porepa@fticonsulting.com](mailto:Jodi.porepa@fticonsulting.com); [john.pirie@bakermckenzie.com](mailto:john.pirie@bakermckenzie.com); [david.gadsden@bakermckenzie.com](mailto:david.gadsden@bakermckenzie.com); [pgreene@agmlawyers.com](mailto:pgreene@agmlawyers.com); [kdekker@agmlawyers.com](mailto:kdekker@agmlawyers.com); [mbooth@agmlawyers.com](mailto:mbooth@agmlawyers.com); [jfabello@torys.com](mailto:jfabello@torys.com); [dbish@torys.com](mailto:dbish@torys.com); [agray@torys.com](mailto:agray@torys.com); Peter Griffin; Peter J. Osborne; Linda Fuerst; [bzarnett@goodmans.ca](mailto:bzarnett@goodmans.ca); [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca); [boneill@goodmans.ca](mailto:boneill@goodmans.ca); [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca); [lloenstein@osler.com](mailto:lloenstein@osler.com); [esellers@osler.com](mailto:esellers@osler.com); [ggrove@osler.com](mailto:ggrove@osler.com); [dimitri.lascaris@siskinds.com](mailto:dimitri.lascaris@siskinds.com); [Charles.wright@siskinds.com](mailto:Charles.wright@siskinds.com); Kirk M. Baert; Jonathan Ptak; Jonathan Bida; Garth Myers; [ecole@millerthomson.com](mailto:ecole@millerthomson.com); [jmarin@millerthomson.com](mailto:jmarin@millerthomson.com); [pwardle@wdblaw.ca](mailto:pwardle@wdblaw.ca); [sbieber@wdblaw.ca](mailto:sbieber@wdblaw.ca); [epleet@wdblaw.ca](mailto:epleet@wdblaw.ca); [atardif@mccarthy.ca](mailto:atardif@mccarthy.ca); [mpoplaw@mccarthy.ca](mailto:mpoplaw@mccarthy.ca); [clegendre@mccarthy.ca](mailto:clegendre@mccarthy.ca); [jgrout@tgf.ca](mailto:jgrout@tgf.ca); [kplunkett@tgf.ca](mailto:kplunkett@tgf.ca); [ken.rosenberg@paliarerland.com](mailto:ken.rosenberg@paliarerland.com); [max.starnino@paliarerland.com](mailto:max.starnino@paliarerland.com); [sfriedman@davis.ca](mailto:sfriedman@davis.ca); [bdarlington@davis.ca](mailto:bdarlington@davis.ca); [bbarnes@davis.ca](mailto:bbarnes@davis.ca); [hcraig@osc.gov.on.ca](mailto:hcraig@osc.gov.on.ca)

**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec

**Subject:** RE: Sino-Forest: motion returnable May 1

Megan,

Attached is our response.

Shara

---

**From:** Megan McPhee [<mailto:MBM@kimorr.ca>]

**Sent:** Thursday, April 18, 2013 6:09 PM

**To:** [staley@bennettjones.com](mailto:staley@bennettjones.com); [belld@bennettjones.com](mailto:belld@bennettjones.com); [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com); [bellj@bennettjones.com](mailto:bellj@bennettjones.com); [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com); [derrick.tay@gowlings.com](mailto:derrick.tay@gowlings.com); [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com); [jennifer.stam@gowlings.com](mailto:jennifer.stam@gowlings.com); [ava.kim@gowlings.com](mailto:ava.kim@gowlings.com); [jason.mcmurtrie@gowlings.com](mailto:jason.mcmurtrie@gowlings.com); [greg.watson@fticonsulting.com](mailto:greg.watson@fticonsulting.com); [Jodi.porepa@fticonsulting.com](mailto:Jodi.porepa@fticonsulting.com); [john.pirie@bakermckenzie.com](mailto:john.pirie@bakermckenzie.com); [david.gadsden@bakermckenzie.com](mailto:david.gadsden@bakermckenzie.com); [pgreene@agmlawyers.com](mailto:pgreene@agmlawyers.com); [kdekker@agmlawyers.com](mailto:kdekker@agmlawyers.com); [mbooth@agmlawyers.com](mailto:mbooth@agmlawyers.com); [jfabello@torys.com](mailto:jfabello@torys.com); [dbish@torys.com](mailto:dbish@torys.com); [agray@torys.com](mailto:agray@torys.com); Peter Griffin; Peter J. Osborne; Linda Fuerst; Shara N. Roy; [bzarnett@goodmans.ca](mailto:bzarnett@goodmans.ca); [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca); [boneill@goodmans.ca](mailto:boneill@goodmans.ca); [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca); [lloenstein@osler.com](mailto:lloenstein@osler.com); [esellers@osler.com](mailto:esellers@osler.com); [ggrove@osler.com](mailto:ggrove@osler.com); [dimitri.lascaris@siskinds.com](mailto:dimitri.lascaris@siskinds.com); [Charles.wright@siskinds.com](mailto:Charles.wright@siskinds.com); [kbaert@kmlaw.ca](mailto:kbaert@kmlaw.ca); [jptak@kmlaw.ca](mailto:jptak@kmlaw.ca); [jbida@kmlaw.ca](mailto:jbida@kmlaw.ca); [gmyers@kmlaw.ca](mailto:gmyers@kmlaw.ca); [ecole@millerthomson.com](mailto:ecole@millerthomson.com); [jmarin@millerthomson.com](mailto:jmarin@millerthomson.com); [pwardle@wdblaw.ca](mailto:pwardle@wdblaw.ca); [sbieber@wdblaw.ca](mailto:sbieber@wdblaw.ca); [epleet@wdblaw.ca](mailto:epleet@wdblaw.ca); [atardif@mccarthy.ca](mailto:atardif@mccarthy.ca); [mpoplaw@mccarthy.ca](mailto:mpoplaw@mccarthy.ca); [clegendre@mccarthy.ca](mailto:clegendre@mccarthy.ca); [jgrout@tgf.ca](mailto:jgrout@tgf.ca); [kplunkett@tgf.ca](mailto:kplunkett@tgf.ca); [ken.rosenberg@paliarerland.com](mailto:ken.rosenberg@paliarerland.com); [max.starnino@paliarerland.com](mailto:max.starnino@paliarerland.com); [sfriedman@davis.ca](mailto:sfriedman@davis.ca); [bdarlington@davis.ca](mailto:bdarlington@davis.ca); [bbarnes@davis.ca](mailto:bbarnes@davis.ca); [hcraig@osc.gov.on.ca](mailto:hcraig@osc.gov.on.ca)

**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec

**Subject:** Sino-Forest: motion returnable May 1

Counsel,

We are in the process of preparing our factum with respect to the Motion for Directions scheduled for May 1. To that end, please advise whether you will consent to any or all of the following:

1. consolidation of the present motion for leave to appeal (Settlement Approval Order and Representation Dismissal Order) with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 ("Sanction Order"), and, should leave be granted, all related appeals;
2. an order directing that the hearings of the motions for leave to appeal and the appeals of the Sanction Order, Settlement Approval Order, and Representation Dismissal Order be consolidated and heard together before a panel of three judges, orally;

3. an order expediting the hearing of these motions for leave to appeal and all such appeals (Sanction Order, Settlement Approval Order, and Representation Dismissal Order);
4. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary;
5. an order permitting service of any materials related to these motion to be done by email, with proof of receipt being unnecessary for purposes of filing;
6. an order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and,
7. if necessary, an order waiving or abridging the time for service and filing and validating any late service with respect to the motion for directions and the leave to appeal motions.

We would appreciate a reply by noon tomorrow so that we can draft our factum accordingly.

Thank you,

Megan

Megan B. McPhee P.C.



**KIM·ORR**  
BARRISTERS P.C.

Kim Orr Barristers P.C.  
19 Mercer Street, 4th floor  
Toronto, Ontario  
M5V 1H2

Tel: 416 349 6574  
Fax: 416 598 0601

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**Tanya Jemec**

---

**From:** Megan McPhee  
**Sent:** Friday, April 19, 2013 2:27 PM  
**To:** Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** FW: Sino-Forest: motion returnable May 1

---

**From:** Simon Bieber [mailto:SBieber@wdblaw.ca]  
**Sent:** Friday, April 19, 2013 7:50 AM  
**To:** Megan McPhee  
**Subject:** RE: Sino-Forest: motion returnable May 1

Megan,

We are monitoring the appeal but do not intend to take a position on it or make submissions. Accordingly, while I don't think I can consent to any of this, we will not oppose it.

Simon

**Simon Bieber**  
Partner

t 416.351.2781  
f 416.351.9196  
sbieber@wdblaw.ca

**WardleDaleyBernstein LLP**  
2104 - 401 Bay Street, P.O. Box 21  
Toronto ON M5H 2Y4 Canada

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---

**From:** Megan McPhee [mailto:MBM@kimorr.ca]  
**Sent:** Thursday, April 18, 2013 6:09 PM  
**To:** staleyr@bennettjones.com; belld@bennettjones.com; sahnir@bennettjones.com; bellj@bennettjones.com; zweigs@bennettjones.com; derrick.tay@gowlings.com; clifton.prophet@gowlings.com; jennifer.stam@gowlings.com; ava.kim@gowlings.com; jason.mcmurtrie@gowlings.com; greg.watson@fticonsulting.com; Jodi.porepa@fticonsulting.com; john.pirie@bakermckenzie.com; david.gadsden@bakermckenzie.com; pgreene@agmlawyers.com; kdekker@agmlawyers.com; mbooth@agmlawyers.com; jfabello@torys.com; dbish@torys.com; agray@torys.com; pgriffin@litigate.com; posborne@litigate.com; lfuerst@litigate.com; sroy@litigate.com; bzarnett@goodmans.ca; rchadwick@goodmans.ca; boneill@goodmans.ca; cdescours@goodmans.ca; llowenstein@osler.com; esellers@osler.com; ggrove@osler.com; dimitri.lascaris@siskinds.com; Charles.wright@siskinds.com; kbaert@kmlaw.ca; jptak@kmlaw.ca; jbida@kmlaw.ca; gmyers@kmlaw.ca;

ecole@millerthomson.com; jmarin@millerthomson.com; Peter Wardle; Simon Bieber; Erin Pleet;  
 atardif@mccarthy.ca; mpoplaw@mccarthy.ca; clegendre@mccarthy.ca; jgrout@tgf.ca; kplunkett@tgf.ca;  
 ken.rosenberg@paliaroland.com; max.starnino@paliaroland.com; sfriedman@davis.ca; bdarlington@davis.ca;  
 bbarnes@davis.ca; hcraig@osc.gov.on.ca

**Cc:** Won Kim; Michael Spencer; Yonatan Rozenszajn; Tanya Jemec

**Subject:** Sino-Forest: motion returnable May 1

Counsel,

We are in the process of preparing our factum with respect to the Motion for Directions scheduled for May 1. To that end, please advise whether you will consent to any or all of the following:

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7. if necessary, an order waiving or abridging the time for service and filing and validating any late service with respect to the motion for directions and the leave to appeal motions.

We would appreciate a reply by noon tomorrow so that we can draft our factum accordingly.

Thank you,

Megan

Megan B. McPhee P.C.



Kim Orr Barristers P.C.  
 19 Mercer Street, 4th floor  
 Toronto, Ontario  
 M5V 1H2

Tel: 416 349 6574  
 Fax: 416 598 0601

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**Tanya Jemec**

---

**From:** Megan McPhee  
**Sent:** Friday, April 19, 2013 2:27 PM  
**To:** Michael Spencer; Yonatan Rozenszajn; Tanya Jemec  
**Subject:** FW: Sino-Forest: motion returnable May 1

---

**From:** Emily Cole [mailto:ecole@millerthomson.com]  
**Sent:** Friday, April 19, 2013 6:01 AM  
**To:** Megan McPhee  
**Subject:** Re: Sino-Forest: motion returnable May 1

Megan:  
 We are not a party to the proceeding and do not take any position.  
 Best,  
 Emily

---

**From:** "Megan McPhee" [MBM@kimorr.ca]  
**Sent:** 04/18/2013 06:08 PM AST  
**To:** <staley@bennettjones.com>; <belld@bennettjones.com>; <sahnir@bennettjones.com>; <bellj@bennettjones.com>; <zweigs@bennettjones.com>; <derrick.tay@gowlings.com>; <clifton.prophet@gowlings.com>; <jennifer.stam@gowlings.com>; <ava.kim@gowlings.com>; <jason.mcmurtrie@gowlings.com>; <greg.watson@fticonsulting.com>; <Jodi.porepa@fticonsulting.com>; <john.pirie@bakermckenzie.com>; <david.gadsden@bakermckenzie.com>; <pgreene@agmlawyers.com>; <kdekker@agmlawyers.com>; <mbooth@agmlawyers.com>; <jfabello@torys.com>; <dbish@torys.com>; <agray@torys.com>; <pgriffin@litigate.com>; <posborne@litigate.com>; <lfuerst@litigate.com>; <sroy@litigate.com>; <bzarnett@goodmans.ca>; <rhadwick@goodmans.ca>; <boneill@goodmans.ca>; <cdescours@goodmans.ca>; <llowenstein@osler.com>; <esellers@osler.com>; <ggrove@osler.com>; <dimitri.lascaris@siskinds.com>; <Charles.wright@siskinds.com>; <kbaert@kmlaw.ca>; <jptak@kmlaw.ca>; <jbida@kmlaw.ca>; <gmyers@kmlaw.ca>; Emily Cole; Joe Marin; <pwardle@wdblawn.ca>; <sbieber@wdblawn.ca>; <epleet@wdblawn.ca>; <atardiff@mccarthy.ca>; <mpoplawn@mccarthy.ca>; <cllegendre@mccarthy.ca>; <jgrout@tgf.ca>; <kplunkett@tgf.ca>; <ken.rosenberg@paliareroland.com>; <max.starnino@paliareroland.com>; <sfriedman@davis.ca>; <bdarlington@davis.ca>; <bbarnes@davis.ca>; <hcraig@osc.gov.on.ca>  
**Cc:** "Won Kim" <WJK@kimorr.ca>; "Michael Spencer" <MCS@kimorr.ca>; "Yonatan Rozenszajn" <YR@kimorr.ca>; "Tanya Jemec" <TTJ@kimorr.ca>  
**Subject:** Sino-Forest: motion returnable May 1

Counsel,

We are in the process of preparing our factum with respect to the Motion for Directions scheduled for May 1. To that end, please advise whether you will consent to any or all of the following:

1. consolidation of the present motion for leave to appeal (Settlement Approval Order and Representation Dismissal Order) with the pending motion for leave to appeal from the order dated December 10, 2012 of the Honourable Mr. Justice Morawetz, Court of Appeal File No.: M42068 ("Sanction Order"), and, should leave be granted, all related appeals;
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- the Sanction Order, Settlement Approval Order, and Representation Dismissal Order be consolidated and heard together before a panel of three judges, orally;
3. an order expediting the hearing of these motions for leave to appeal and all such appeals (Sanction Order, Settlement Approval Order, and Representation Dismissal Order);
  4. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary;
  5. an order permitting service of any materials related to these motion to be done by email, with proof of receipt being unnecessary for purposes of filing;
  6. an order transferring the materials filed on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013) and on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012) to the Court of Appeal, and allowing the parties to rely on these materials for the motions for leave to appeal the Sanction Order, Settlement Approval Order, and Representation Dismissal Order, and, should leave be granted, all related appeals; and,
  7. if necessary, an order waiving or abridging the time for service and filing and validating any late service with respect to the motion for directions and the leave to appeal motions.

We would appreciate a reply by noon tomorrow so that we can draft our factum accordingly.

Thank you,

Megan

Megan B. McPhee P.C.



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Toronto, Ontario  
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Court of Appeal File No.: M42404  
Commercial 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 File No.: M42404  
Superior Court File No.: CV-10-414302CP

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

-and- SINO-FOREST CORPORATION, et al.

Defendants

**COURT OF APPEAL FOR ONTARIO**

(Proceeding Commenced at Toronto)

**AFFIDAVIT OF TANYA T. JEMEC**  
sworn April 22, 2013

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