

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

COURT OF APPEAL FOR ONTARIO

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

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 MOTION
(Motion For Directions)**

**THE APPELLANTS (MOVING PARTIES), 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. (“Appellants”), will make a motion to a judge of the Court of Appeal for Ontario on May 1, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen St. West, Toronto, Ontario.

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

PROPOSED TIME REQUIRED FOR HEARING: One hour

THIS MOTION IS FOR:

1. an Order waiving or abridging the notice, service and filing obligations pursuant to the *Rules of Civil Procedure* with respect to this motion for directions;
2. if necessary, an Order waiving or abridging the service, notice and filing obligations pursuant to the *Rules of Civil Procedure* and validating any late service and/or filing of the Notice of Motion for Leave to Appeal from the orders dated March 20, 2013 of Justice Morawetz, being the Settlement Approval Order and Representation Dismissal Order;
3. an Order directing that all materials related to this motion, the motions for leave to appeal, and, should leave be granted, all related appeals, may be served by electronic mail, and that proof of receipt of that email is not necessary to validate service for the purpose of filing the materials with the Court;
4. an Order consolidating the present motion for leave to appeal 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;

5. 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;
6. 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;
7. 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
8. an Order granting leave to the Appellants to act as the representative party for the purposes of this proposed appeal, if necessary.

THE GROUNDS FOR THE MOTION ARE:

1. The present motion for leave to appeal 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 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") restructuring plans;

2. 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;
3. The proposed within appeals raise serious issues of importance to the parties which affect the parties, the capital markets and the administration of justice in Canada;
4. The Plan of Compromise and Reorganization of Sino-Forest Corporation has been implemented and the *CCAA* litigation stay has expired. The proposed appeal and this motion for directions will not unduly hinder the progress of the *CCAA* proceeding;
5. The Applicant and Respondents in this proceeding will not suffer prejudice if the relief sought herein is granted;
6. The Service List is lengthy and service by facsimile is onerous for the parties. Service by electronic mail is a just, fair, efficient and expeditious manner for effecting service;
7. The Initial Order of Justice Morawetz under the *CCAA* proceedings, dated March 30, 2012, provided that “the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website”;
8. It would be an efficient use of resources to transfer the materials filed on the hearings before Justice Morawetz to the Court of Appeal;

9. The *CCAA*, in particular, sections 6, 13, and 14 thereof;
10. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*;
11. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
12. Rules 1.04, 2.01, 6.01, 10, 16.08, 37, and 61 of the *Rules of Civil Procedure*;
13. Section 11.2 of the *Practice Direction Concerning Civil Appeals in the Court of Appeal*; and
14. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Sections 6(1)(b), 7(2) and 134(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
3. Sections 13 and 14 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

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

1. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Settlement Approval Order and Representation Dismissal Order (motion heard February 4, 2013);
2. The motion materials filed below on the hearing before Justice Morawetz giving rise to the Sanction Order (motion heard December 7, 2012);
3. All orders made, and the Monitor's reports filed, in the *CCAA* proceedings; and
4. such other documents as counsel may advise and this Honourable Court may permit.

April 17, 2012

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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 MOTION
(Motion For Directions)

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