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

FACTUM OF THE MOVING PARTY

PART I – NATURE OF THE MOTION

1. This is a motion brought by the Ad Hoc Committee of Purchasers of the Applicant's Securities (the "**Moving Party**"), for advice and direction regarding the impact of the stay of proceedings herein on the following proceedings in the action styled as *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al.* (the "**Ontario Plaintiffs**") *v. Sino-Forest Corporation et al.*, bearing (Toronto) Court File No. CV-11-431153-00CP (the "**Ontario Class Action**"), and if necessary an order lifting the stay for these proceedings:

   (a) a motion to approve a litigation indemnity agreement, originally scheduled for April 17, 2012 and now returnable May 17, 2012 (the "**Funding Motion**"); and

   (b) a motion pertaining to the settlement of the Ontario Class Action only as against the defendant Pöyry (Beijing) Consulting Company Limited

("**Pöyry**"), originally scheduled for April 17, 2012 and now returnable May 17, 2012, a parallel motion in a corresponding class action brought in the Quebec Superior Court, and any corollary proceedings (the "**Pöyry Settlement Motion**").

2. For certainty, we note that the relief sought in paragraph 2(c) of the Ontario Plaintiffs' Notice of Motion will be returnable on May 8, 2012 and the balance of the relief sought in that motion has been adjourned in accordance with the endorsements of this court made April 11 and 12, 2012.

PART II – OVERVIEW

3. Irrespective of whether the Funding Motion and the Pöyry Settlement Motion are or are not currently stayed as a result of these proceedings, the fundamental point is that they should not be stayed.

4. The persons seeking to stay proceedings have the burden of satisfying the court that the relief they seek is appropriate. They cannot do so in this case.

5. The Funding Motion and the Pöyry Settlement Motion do not negatively impact the Applicant's restructuring efforts, and the hearing of those motions is not oppressive or vexatious to any of the defendants to the Ontario Class Action. To the contrary, the Funding Motion effectively grants the other parties security for their costs in these proceedings and in the Ontario Class Action.

6. Similarly, the Pöyry Settlement Motion is a very positive development insofar as it should reduce the number of stakeholders having an interest in these proceedings, and is likely to narrow and shed light on central issues in these proceedings and in the Ontario Class Action.

PART II - THE FACTS

The Applicant and These Proceedings

7. Sino-Forest Corporation ("**SFC**" or the "**Applicant**") is a company incorporated under the laws of Canada and purports to be a commercial forest plantation operator in the People's Republic of China ("**PRC**") and elsewhere.

8. SFC obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("**CCAA**") pursuant to an order of this Court dated March 30, 2012 (the "**Initial Order**").

9. Pursuant to the Initial Order and a subsequent order made April 13, 2012, proceedings against SFC are stayed until June 1, 2012. Specifically, s. 17 of the Initial Order includes the following language:

> until and including April 29, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the

> Business or the Property are hereby stayed and suspended pending further Order of this Court.

The Ontario Class Action

10. At the time the Initial Order was made, SFC was one of twenty-six defendants to the Ontario Class Action.

11. The Ontario Class Action is brought by the Ontario Plaintiffs, which include a number of multi-employer Ontario pension funds, the Swedish National Pension Fund, and two individuals.

12. Following a contested motion, this court awarded the Ontario Plaintiffs carriage of the Ontario Class Action, to the exclusion of any other Class members. Since the start of these CCAA proceedings, the Ontario Plaintiffs have also received the support of significant international private equity funds.

13. The Amended Statement of Claim in the Ontario Class Action alleges that SFC, certain of its officers and directors, its auditors, and its underwriters made material misrepresentations regarding the operations and assets of SFC. The Claim seeks $6.5 billion in damages and is brought on behalf of:

> all persons and entities, wherever they may reside who acquired Sino-Forest's Securities during the Class Period by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter, and all persons and entities who acquired Sino-Forest's Securities during the Class Period who are resident of Canada or were resident of Canada at the time of

> acquisition and who acquired Sino's Securities outside of Canada, except the Excluded Persons (the "Class" or "Class Members").[1]

14. The Amended Claim defines "Excluded Persons" as the:

> Defendants, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of an individual defendant.[2]

15. The Amended Claim defines the Class Period as "the period from and including March 19, 2007 to and including June 2, 2011."[3]

16. The allegations in the Statement of Claim are not of the "kitchen sink" variety, or a shot in the dark resulting from the Muddy Waters Report. They are specific allegations, supported by the evidence of professionals in Canada and in the PRC. Some of the support for these allegations is summarized below.

The Evidence of Alan Mak

17. Alan Mak is an expert in forensic accounting from the Toronto-based firm of Rosen & Associates. Mr. Mak opines, *inter alia*, that:

    (a) From an accounting and financial reporting perspective, and based on publicly available information (including the Special Committee's ["SC"] reports), sufficient appropriate evidence does not exist to justify SFC's reporting of timber assets and revenues for the vast majority of SFC's standing timber activities in 2006 to 2010;

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[1] Affidavit of Daniel E.H. Bach, sworn April 11, 2012 at para. 16 ["Bach Affidavit"], Moving Party's Motion Record, Tab 2; Amended Statement of Claim, Exhibit "B" to Bach Affidavit, Moving Party's Motion Record, Tab 2B ["Amended Claim"].
[2] Bach Affidavit at para. 17, Moving Party's Motion Record, Tab 2; Amended Claim, Exhibit "B" to Bach Affidavit, Moving Party's Motion Record, Tab 2B.
[3] Bach Affidavit at para. 18, Moving Party's Motion Record, Tab 2; Amended Claim, Exhibit "B" to Bach Affidavit, Moving Party's Motion Record, Tab 2B.

(b) The annual audited financial statements of SFC for much or all of the period 2005-2010 should not have been issued to the public;

(c) The legal ownership and occurrence of *bona fide* economic transactions have not been established by SFC or by the investigation of the SC;

(d) Given the 'closed circuit' nature of SFC's standing timber business model, a serious possibility (if not high probability) is that SFC's entire standing timber business is an accounting fiction;

(e) SFC's timber assets, revenues and profits from at least 2006 to 2010 were grossly overstated;

(f) In direct contravention of Canadian GAAP, SFC grossly overstated its "cash flows from operating activities," a figure that is extensively relied upon by financial analysts to compute valuations of the company; and

(g) Ernst & Young and BDO failed to conduct their audits in accordance with Generally Accepted Auditing Standards, and failed to detect material misstatements in SFC's financial statements.[4]

The Evidence of Steven Chandler

18. Steven Chandler is a former senior law enforcement official from Hong Kong. Among other things, Mr. Chandler examined various business records that had been filed with the Administration of Industry and Commerce of the PRC, as well as certain filings with the Courts of Hong Kong. Based in part upon that examination, Mr. Chandler found, *inter alia*, that:

[4] Bach Affidavit at para. 26, Moving Party's Motion Record, Tab 2; Affidavit of Alan T. Mak, sworn in support of the Leave Motion, Moving Party's Motion Record, Tab 2A.

(a) A company from which SFC had claimed to have generated substantial sales was in fact a shell and never did any business from the time of its establishment;

(b) Neither SFC nor any of its subsidiaries appeared to have an interest in a Shanghai-based company of which SFC claimed to be part-owner;

(c) SFC failed to disclose that one of its officers was a major shareholder of a subsidiary of Homix Limited (a company discussed in the Martin Affidavit) at the time that Homix was acquired by SFC; and

(d) Contrary to statements made in the Final Report of the SC, maps are in fact allowed and have been widely used in the PRC for at least the last three years.[5]

The Evidence of Carol-Ann Tjon-Pian-Gi

19. Carol-Ann Tjon-Pian-Gi is a lawyer qualified to practice law in the Republic of Suriname. Ms. Tjon-Pian-Gi opines that although The Greenheart Group (a partially owned subsidiary of SFC) claims to have been granted well in excess of 150,000 hectares of forestry concessions in the Republic of Suriname, the *Forest Management Act* of the Republic of Suriname prohibits a person or legal entity, or various legal entities in which a person or legal entity has a majority interest, from being granted more than 150,000 hectares of forestry concessions.[6]

[5] Bach Affidavit at para. 23, Moving Party's Motion Record, Tab 2; Affidavit of Steven Gowan Chandler, sworn in support of the Leave Motion, Moving Party's Motion Record, Tab 2A.
[6] Bach Affidavit at para. 24, Moving Party's Motion Record, Tab 2; Affidavit of Carol-Ann Tjon-Pian-Gi, sworn in support of the Leave Motion, Moving Party's Motion Record, Tab 2A.

The Evidence of Dennis Deng

20. Dennis Deng is a partner in one of Beijing's leading law firms. Mr. Deng opines, *inter alia*, that:

(a) It is unlawful in the PRC, and potentially punishable with severe criminal penalties, for forestry companies or their representatives to give gifts to employees of forestry bureaus (it having been disclosed by the SC that "there are indications in emails and in interviews with [SFC] Suppliers that gifts and cash payments are made to forestry bureaus and forestry bureau officials");

(b) SFC's BVI subsidiaries are likely engaging in "business activities" in the PRC in violation of PRC law, and the unauthorized conduct of "business activities" in the PRC is potentially punishable with severe penalties;

(c) It is likely that certain of SFC's authorized intermediaries and suppliers refused to produce requested documentation to the SC because that documentation may demonstrate that they were engaging in illegal tax evasion; and

(d) In the PRC, standing timber may not be purchased without purchasing land use rights, and because foreign forestry companies are not allowed to purchase land use rights, the standing timber purchase contracts entered into by SFC's BVI subsidiaries are void and unenforceable under PRC law.[7]

Pending Motions in the Ontario Class Action

21. There are currently a number of motions pending in the Ontario Class Action, including:

[7] Bach Affidavit at para. 25, Moving Party's Motion Record, Tab 2; Affidavit of Dennis Deng, sworn in support of the Leave Motion, Moving Party's Motion Record, Tab 2A.

(a) the Funding Motion, in which the Ontario Plaintiffs seek approval of a litigation funding agreement reached between the Ontario Plaintiffs and Claims Funding International, PLC ("**CFI**"), and corollary relief, including an order that all communications between CFI, class counsel and the Ontario Plaintiffs are confidential, that CFI provide security for costs, and that class counsel and the Ontario Plaintiffs may provide documents to CFI on the condition that CFI and its staff are subject to the deemed undertaking pursuant to Rule 30.1.03 of the *Rules of Civil Procedure*; and,

(b) the Pöyry Settlement Motion, in which the Ontario Plaintiffs seek certification only as against the defendant, Pöyry for the purpose of implementing a settlement reached with Pöyry prior to the commencement of these proceedings. In order for this settlement to be effected, it will also have to be approved by way of motion by the Quebec Superior Court.[8]

PART III - ISSUES AND THE LAW

22. The Ontario Plaintiffs accept that this court has the jurisdiction to stay the Pöyry Settlement Motion and the Funding Motion. Accordingly, although there is a live issue as to whether those motions are presently stayed by the terms of the Initial Order (the Ontario Plaintiffs say that they are not), the real issue to be decided on April 20 is: "Should the Pöyry Settlement Motion and the Funding Motion be

[8] Bach Affidavit at para. 68, Moving Party's Motion Record, Tab 2.

stayed?"

23. The Ontario Plaintiffs say that:

(a) the parties seeking to stay the Pöyry Settlement Motion and the Funding Motion have the burden of persuading the court that circumstances exist warranting a comprehensive stay; and,

(b) the burden is not satisfied in this case.

A. The Burden

24. The court's jurisdiction to stay the Pöyry Settlement Motion and the Funding Motion arises under either s. 11.02 of the CCAA or pursuant to s. 106 of the *Courts of Justice Act* ("**CJA**"). In either case, the burden of satisfying the court that a stay is warranted is on the party seeking the stay.[9]

B. A Stay of the Pöyry Settlement and Funding Motions is not Warranted

25. Under either the CCAA or the CJA, a request for a stay is a discretionary remedy calling for an open-ended, fact-specific inquiry.

The CCAA Test

26. The court's jurisdiction to stay proceedings pursuant to the CCAA is specific to the debtor company. Section 11.02 provides:

[9] *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s-s. 11.02(3) ["*CCAA*"]; *Campeau v. Olympia & York Developments Ltd*. (1992), 14 C.B.R. (3d) 303 (Ont. Gen. Div.) at para. 21 ["*Campeau*"].

> 11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,
>
> > (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
> >
> > (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> >
> > (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.[10]

27. Pursuant to s. 11.02(3) of the CCAA, SFC has to satisfy the court that "circumstances exist that make the order appropriate".[11] This necessarily requires consideration of the purposes of the CCAA.

28. In the relatively recent case of *Canwest Global Communications Corp*., Justice Pepall (as she then was) articulated the purpose of the stay of proceedings as follows:

> 26 First I will address the legal principles applicable to the granting and lifting of a CCAA stay.
>
> 27 The stay provisions in the CCAA are discretionary and are extraordinarily broad. Section 11.02 (1) and (2) states: […].
>
> 28 The underlying purpose of the court's power to stay proceedings has frequently been described in the case law. It is the engine that drives the broad and flexible statutory scheme of the CCAA: *Stelco Inc., Re* and the key element of the CCAA process: *Canadian Airlines Corp., Re*. The power to grant the stay is to be interpreted broadly in order to permit the CCAA to accomplish its legislative purpose. As noted in *Lehndorff General Partner Ltd., Re*, the power to grant a stay extends to effect the position of a company's secured and unsecured creditors as well as other parties who could potentially jeopardize the success of the restructuring plan and the continuance of the company. As stated by Farley J. in that

[10] *CCAA*, s.11.02(1) (emphasis added).
[11] *CCAA*, s. 11.02(3).

case,

> "It has been held that the intention of the CCAA is to prevent any manoeuvres for positioning among the creditors during the period required to develop a plan and obtain approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed....The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the CCAA because this affect is offset by the benefit to all creditors and to the company of facilitating a reorganization. The court's primary concerns under the CCAA must be for the debtor and all of the creditors."[12]

29. Later, in the same case, Her Honour notes as follows:

> 32 As with the imposition of a stay, the lifting of a stay is discretionary. There are no statutory guidelines contained in the Act. According to Professor R.H. McLaren in his book "Canadian Commercial Reorganization: Preventing Bankruptcy", an opposing party faces a very heavy onus if it wishes to apply to the court for an order lifting the stay. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action: *ICR Commercial Real Estate (Regina) Ltd*. v. *Bricore Land Group Ltd*.. That decision also indicated that the judge should consider the good faith and due diligence of the debtor company.[13]

30. Thus, the courts use the extensive remedial powers granted to them by the CCAA to achieve the broad public objectives of the legislation – that is, to mitigate the damaging social and economic effects caused by the liquidation of a company's assets. Orders made within the CCAA framework should be focused and serve this ultimate policy objective. If an order does not further this objective, it is overbroad or unnecessary and not a proper use of the CCAA powers.

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[12] *Canwest Global Communications Corp* (2009), 2009 CarswellOnt 7882 (S.C.) (citations omitted) at paras. 26-28 ["*Canwest Global*"].
[13] *Ibid*. (citations omitted) at para. 32.

31. Thus, for example, in the *Campeau* case, Blair J. (as he was then) found that a stay may be appropriate where the impact of a proceeding could "seriously impair the debtor's ability to focus and concentrate its efforts on the business purpose of negotiating the compromise or arrangement".[14]

32. Similarly, in *Canwest*, Pepall J. (as she then was) provided the following list of circumstances in which a stay may be lifted:

> 33 Professor McLaren enumerates situations in which courts will lift a stay order. The first six were cited by Paperny J. in 2000 in *Canadian Airlines Corp., Re* and Professor McLaren has added three more since then. They are:
>
> > 1. When the plan is likely to fail.
> >
> > 2. The applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor).
> >
> > 3. The applicant shows necessity for payment (where the creditors' financial problems are created by the order or where the failure to pay the creditor would cause it to close and thus jeopardize the debtor's company's existence).
> >
> > 4. The applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors.
> >
> > 5. It is necessary to permit the applicant to take steps to protect a right which could be lost by the passing of time.
> >
> > 6. After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period.
> >
> > 7. There is a real risk that a creditor's loan will become unsecured during the stay period.
> >
> > 8. It is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period.

[14] *Campeau*, *supra* at para. 19.

9. It is in the interests of justice to do so.[15]

The CJA Test

33. Pursuant to s. 106 of the CJA, "a court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just."[16]

34. Recently, Strathy J. articulated the test for obtaining a stay of proceedings under s. 106 as follows:

> There is no dispute that I have jurisdiction to grant a stay where it would be just and convenient to do so. That jurisdiction should be exercised sparingly. The moving party must show that (a) continuation of the action would be unjust because it would be oppressive or vexatious to the moving party or would otherwise be an abuse of the process; and (b) the stay would not cause an injustice to the plaintiff.[17]

35. In *Campeau*, Blair J. (as he then was) similarly stressed that "the balance of convenience must weigh significantly in favour of granting the stay, as a party's right to have access to the courts must not be lightly interfered with."[18] He continues:

> The court must be satisfied that a continuance of the proceeding would serve as an injustice to the party seeking the stay, in the sense that it

[15] *Canwest Global, supra* at para. 33.
[16] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 106.
[17] *Trillium Motor World Ltd. v. General Motors of Canada Ltd.*, 2011 ONSC 1300, [2011] O.J. No. 889 at para. 170.
[18] *Campeau*, *supra* at para. 21.

> would be oppressive or vexatious or an abuse of the process of the court in some other way. The stay must not cause an injustice to the plaintiff.[19]

36. Blair J. also noted the fact-specific nature of the inquiry:

> Recently, Mr. Justice O'Connell has observed that this discretionary power is "highly dependent on the facts of each particular case": *Arab Monetary Fund* v. *Hashim* (unreported), [1992] O.J. No. 1330.[20]

Application of the Foregoing Principles to the Pöyry Settlement and Funding Motions

37. The Funding Motion and the Pöyry Settlement Motion do not have any material impact on SFC, its business or its property; staying those motions would not serve the objectives of the CCAA. The continuation of these limited aspects of the Ontario Class Action will not prejudice stakeholders in these proceedings, nor will it prejudice the defendants in the Ontario Class Action.

38. The Litigation Funding Agreement is a prudent step taken by the Class in order to ensure it is protected from the risk of an adverse costs award. The agreement does not involve any defendant, merely the Class and a non-party to the litigation.[21]

39. The Litigation Funding Agreement secures funding in the event of an adverse costs award against the Ontario Plaintiffs. It is difficult to see how the Funding Motion can be said to be contrary to the purpose of the CCAA or is oppressive or

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[19] *Ibid*.
[20] *Ibid*. at para. 15.
[21] Litigation Funding Agreement, s. 4, Exhibit "A" to the Affidavit of Michael G. Robb, sworn in support of the Funding Motion, Moving Party's Motion Record, Tab 2F.

vexatious to any of the defendants to the Ontario Class Action. To the contrary, the Funding Motion benefits SFC and the other defendants to the Class Action, insofar as they can be assured that funding will be available for any costs awards made in their favour.

40. Conversely, a stay of the Funding Motion would be prejudicial to the Ontario Plaintiffs inasmuch as it would leave them exposed for the costs of litigation that they are pursuing in a representative capacity.

41. The Pöyry Settlement is an agreement reached with a defendant in the Ontario Class Action prior to the commencement of these proceedings. In exchange for information and cooperation from Pöyry, the Class will release its claims against Pöyry and seek a standard bar order preventing claims for contribution, indemnity and other claims over in respect of the released claims. If it is later determined that the non-settling defendants have such rights of contribution, indemnity, or claim over against Pöyry, then the Class would not be entitled to claim or recover from the non-settling defendants the proportion of any judgment that the Ontario court would have apportioned to Pöyry.[22]

42. Given the carefully crafted "no claims over" provision, the Pöyry Settlement benefits the defendants to the Ontario Class Action, including SFC, by simplifying the Ontario Class Action and limiting the liability of all defendants.

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[22] Bach Affidavit at paras. 98-99, Moving Party's Motion Record, Tab 2; Sino Forest Class Action National Settlement Agreement dated March 20, 2012 ["Pöyry Settlement Agreement"], Exhibit "F" to Bach Affidavit in support of the Pöyry Settlement Motion, Moving Party's Motion Record, Tab 2E.

43. The Ontario Plaintiffs anticipate that the only thing that is required from SFC in connection with the Pöyry Settlement is production of SFC's shareholder listing as of June 2, 2011, so that notice of the settlement can be given to the Class. We expect that this information is available from SFC's transfer agent.

44. Moreover, we believe that identifying the members of the Class and running the opt-out period for the Class is an important exercise even for these CCAA proceedings. It is obviously beneficial to understand who the affected stakeholders are for the purposes of these proceedings. The certification and opt-out process pertaining to the Pöyry Settlement will determine precisely what claims form part of the class proceeding because anyone who does not opt out will be bound by subsequent court orders approving settlements in the Ontario Class Action.

PART IV - ORDER REQUESTED

45. An order, if necessary, validating and abridging the time for service and filing of this notice of motion and motion record, and dispensing with any further service thereof; and

46. An order directing that the Funding Motion and the Settlement Motion should proceed, subject to such procedural directions as may be given by the Honourable Mr. Justice Perell.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

April 17, 2012

Of counsel for the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Ontario Plaintiffs

SCHEDULE “A” - AUTHORITIES

1. *Campeau v. Olympia & York Developments Ltd*. (1992), 14 C.B.R. (3d) 303 (Ont. Gen. Div.).

2. *Canwest Global Communications Corp*. *Re*, 2009 CarswellOnt 7882, 61 C.B.R. (5th) 200 (S.C.J.).

3. *Trillium Motor World Ltd. v. General Motors of Canada Ltd.*, 2011 ONSC 1300, [2011] O.J. No. 889.

SCHEDULE "B" – STATUTES and REGULATIONS

1. *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985, C. C-36.

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(*a*) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(*a*);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(*a*) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(*b*) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2. *COURTS OF JUSTICE ACT*, R.S.O. 1990, CHAPTER C.43.

Stay of proceedings

> 106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
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