

**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**

SUPPLEMENTARY MOTION RECORD

(Motion Returnable October 9 and 10, 2012)

October 3, 2012

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including the Representative Plaintiffs in
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TO: THE SERVICE LIST

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THE GLOBE AND MAIL 

September 27, 2012

Former Sino-Forest CFO leaves company

By Andy Hoffman

David Horsley was chief financial officer from 2005 to 2012

Sino-Forest Corp., the Canada-based Chinese timber firm that collapsed under the weight of fraud allegations in 2011, says former chief financial officer David Horsley is no longer employed by the company.

Mr. Horsley was the top Canadian-based executive at the TSX-listed forestry firm and served as CFO from October, 2005, until April, 2012, when Sino-Forest was hit with enforcement notices by the Ontario Securities Commission.

In May, 2012, Mr. Horsley was one of several respondents named in a series of allegations made by the OSC. At the time, the OSC alleged Mr. Horsley had not complied with securities laws and had not acted in the public interest.

The regulator did not, however, accuse Mr. Horsley of participating in fraudulent activity it alleged was conducted by other executives, including Sino-Forest's former chairman and chief executive officer Allen Chan. Mr. Horsley had remained an employee at the company after resigning as CFO.

Late Wednesday, Sino-Forest disclosed it had received a second enforcement notice from the OSC that "adds a further allegation similar in nature," to the allegations made in May.

On Thursday, Sino-Forest said Mr. Horsley "has ceased to be employed by the company."

Mr. Horsley did not respond to a call to his mobile phone requesting comment.

Once Canada's largest publicly traded forest firm with a market value in excess of \$6-billion, Sino-Forest's shares have been delisted from the Toronto Stock Exchange and the company is now insolvent. It is in creditor protection administered by an Ontario court.

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Sino-Forest Announces Personnel Change

TORONTO, CANADA – September 27, 2012 – Sino-Forest Corporation (“Sino-Forest” or the “Company”) announced today that David Horsley has ceased to be employed by the Company.

Mr. Horsley was the Senior Vice President and Chief Financial Officer of the Company from October of 2005 until April of 2012. In April 2012 Mr. Horsley resigned as Chief Financial Officer, at the Company's request, following the receipt by the Company and certain of its former officers, including Mr. Horsley, on April 5, 2012, of "Enforcement Notices" from Staff of the Ontario Securities Commission. Enforcement Notices typically are issued by staff of the Commission at or near the end of an investigation, identify issues that have been the subject of investigation, and advise that staff contemplate commencing formal proceedings in relation to those issues.

On May 22, 2012, together with the Company and others, Mr. Horsley was named as a respondent in a proceeding commenced by staff of the Ontario Securities Commission.

Mr. Horsley continued at Sino-Forest after resigning as Chief Financial Officer of the Company until he ceased to be employed by the Company on September 27, 2012.

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FP STREET

Follow the Money

Sino-Forest shareholders turn to Joe Groia



PETER KOVEN | Sep 26, 2012 5:20 PM ET | Last Updated: Sep 26, 2012 5:23 PM ET
More from Peter Koven



Retail investors holding shares of Sino-Forest Corp. have turned to veteran securities lawyer Joe Groia to try to get a voice for themselves and wring some value from the insolvent Chinese forestry firm.

Mr. Groia has not agreed to act in an official capacity yet, but he is doing some pro bono investigative work to see if there is a strategy he can pursue on behalf of shareholders.

“For me to say we have a gameplan would be putting the cart before the horse at this stage,” he said in an interview. “I’m not altogether sure there’s a lot that can be done. But we want to look carefully at potential sources of recovery.”

Ever since short seller Muddy Waters LLC published a report accusing Sino-Forest of fraud last year, the retail shareholders have been furious about how the process played out. They believe the Ontario Securities Commission over-reacted when it halted the stock, and that they are being wrongly shoved aside as the CCAA process plays out.

Shareholders were initially told they might receive a portion of the new company that would emerge from Sino’s restructuring transaction, but that is no longer the case. They were also removed from the litigation trust that was set up to pursue a lawsuit against Muddy Waters. They were originally supposed to receive as much as 100% of it.

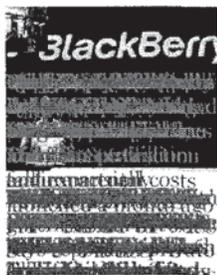
Mr. Groia referred to the shareholders’ plight as a “very complicated situation.”



“You could turn this into a very good law school examination question. It’s not something that’s going to have a quick and easy solution.”

Mr. Groia is best known for his successful defence of Bre-X geologist John Felderhof. The Law Society of Upper Canada recently said that he violated civility rules during that trial.

Most Popular



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CANADA

COUR SUPÉRIEURE
(recours collectif)

PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

NO : 200-06-000132-111

GUINING LIU
REQUÉRANT

C.

SINO-FOREST CORPORATION ET AUTRES
INTIMÉS

**REQUÊTE DU REQUÉRANT POUR PERMISSION D'AMENDER
(Art. 1016 C.p.c.)**

**À L'HONORABLE JUGE JEAN-FRANÇOIS ÉMOND, DE LA COUR SUPÉRIEURE DU QUÉBEC,
JUGE DÉSIGNÉ POUR ENTENDRE TOUTES LES PROCÉDURES AYANT TRAIT À CETTE
AFFAIRE, LE REQUÉRANT EXPOSE CE QUI SUIT :**

1. Le 9 juin 2011, le requérant a déposé une requête pour autorisation d'exercer un recours collectif, sous le titre : «*Motion to authorize the bringing of a Class Action and to obtain the status of representative*»;
2. Le 3 août 2012, le requérant a déposé une requête pour permission d'amender la requête pour autorisation d'exercer un recours collectif;
3. Par jugement rendu le 30 août 2012, cette honorable Cour a accueilli la requête pour permission d'amender;
4. En vue de la présentation de la requête pour obtenir l'autorisation d'exercer un recours collectif pour fins de règlement et pour l'approbation de la transaction intervenue avec l'intimée Pöyry (Beijing) Consulting Company Limited, le requérant désire obtenir la permission d'amender de nouveau afin de clarifier le statut d'un requérant, de limiter le nombre d'intimées et de cerner les causes d'action;

5. La présente demande d'amendement a pour but de corriger la demande d'amendement du 3 août 2012;
6. Ces amendements sont nécessaires afin que le recours collectif du Québec puisse suivre son cours, et ce, considérant que la transaction avec Pöyry a été approuvée le 25 septembre 2012 dans le recours collectif de l'Ontario;

Ajout d'un requérant

7. Le jugement du 30 août 2012 autorise l'ajout de Monsieur Ilan Toledano à titre de requérant. Le but de l'amendement visait plutôt l'ajout de la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Ilan Toledano à titre de personne désignée;
8. Condex Wattco inc. a fait l'achat de 835 actions de Sino durant la période visée par le recours collectif;
9. Monsieur Toledano est à l'emploi de Condex Wattco inc.;
10. L'amendement proposé est dans le meilleur intérêt des membres, car Monsieur Toledano est une personne bien renseignée dans le domaine des valeurs mobilières et se montre apte à représenter adéquatement les membres;
11. Le requérant demande la permission d'ajouter la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Toledano à titre de personne désignée;

Ajout et retrait des intimées

12. Après analyse, les causes d'action du recours collectif reposent sur la responsabilité des intimées sur le marché secondaire prévue à l'article 225.4 de la *Loi sur les valeurs mobilières* (ci-après «*LVM*») ainsi que sur la faute en vertu de la responsabilité extracontractuelle prévue à l'article 1457 *C.c.Q.*;
13. Les allégations concernant le marché primaire n'étant plus requises, l'ajout des preneurs fermes à titre d'intimées devient sans objet et risque de provoquer des contestations des autres intimées qui pourraient retarder le déroulement de l'audition du recours collectif;
14. Les membres du groupe ne subissent aucun préjudice par le retrait des preneurs fermes à titre d'intimées;
15. Pour sa part, l'ajout de BDO Limited à titre d'intimée demeure dans l'intérêt du groupe;
16. Le requérant demande la permission d'ajouter, à titre d'intimée, la partie ci-dessous :

Un cabinet de vérificateurs;

- BDO Limited (connu sous BDO MCCABE LO LIMITED);

17. Le requérant demande la permission de retirer, à titre d'intimées, les parties ci-dessous :

Des preneurs fermes

- 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.;
- BANC OF AMERICA SECURITIES LLC.

Modification de l'intitulé du recours collectif

18. L'article 225.4 *LVM* prévoit que l'action en dommages-intérêts intentée en vertu de cette section de la loi doit être préalablement autorisée par le tribunal;
19. L'amendement proposant la modification de l'intitulé de la requête pour autorisation est dans le meilleur intérêt des membres;
20. Le requérant demande la permission de modifier l'intitulé de la requête pour autorisation qui se lira dorénavant comme suit : *Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative* ainsi que l'ajout des allégations et conclusions liées à la *Loi sur les valeurs mobilières* et le *Code civil du Québec*;
21. La présente requête est bien fondée en faits et en droit;

PAR CES MOTIFS, PLAISE À LA COUR :

ACCUEILLIR la requête;

PERMETTRE au requérant d'amender la requête pour autorisation d'exercer un recours collectif afin d'y ajouter la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Toledano à titre de personne désignée;

PERMETTRE au requérant d'amender la requête pour autorisation d'exercer un recours collectif afin d'ajouter, à titre d'intimée, la partie ci-dessous :

- BDO LIMITED (connu sous BDO MCCABE LO LIMITED);

PERMETTRE au requérant d'amender la requête pour autorisation d'exercer un recours collectif afin de retirer, à titre d'intimées, les parties ci-dessous :

- 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.;
- BANC OF AMERICA SECURITIES LLC.

PERMETTRE au requérant d'amender la requête pour autorisation d'exercer un recours collectif afin de modifier l'intitulé de la requête pour autorisation qui se lira dorénavant comme suit : «*Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative*» ainsi que l'ajout des allégations et conclusions liées à la *Loi sur les valeurs mobilières* et le *Code civil du Québec*;

Le tout selon le texte du document intitulé : «*Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative*» joint à cette requête pour permission d'amender;

LE TOUT sans frais, sauf en cas de contestation.

Québec, ce 1^{er} octobre 2012

SISKINDS, DESMEULES, S.E.N.C.R.L.
Me Samy Elnemr, procureur du requérant

DÉCLARATION SOLENNELLE

Je soussignée, BARBARA ANN CAIN, avocate, exerçant ma profession au 43, rue Buade, bureau 320, Québec, Québec, déclare solennellement ce qui suit :

1. Je suis l'un des procureurs du requérant en la présente instance;
2. Tous les faits allégués à la présente requête sont vrais;

EN FOI DE QUOI, J'AI SIGNÉ,
à Québec, ce octobre 2012

Barbara Ann Cain

Déclaré solennellement devant moi
à Québec, ce octobre 2012

Commissaire à l'assermentation pour tous les districts judiciaires de Québec

AVIS DE PRÉSENTATION**À : Me Mason Poplaw et Me Céline Legendre**

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Procureurs de Pöyry (Beijing) Consulting Company Limited

Mr Michael Eizenga

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Me Dominique Gibbens

Fasken Martineau DuMoulin SENCRL
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800 place Victoria
Bureau 3700
Montréal QC H4Z 1E9
Procureurs des preneurs fermes

PRENEZ AVIS que la présente requête pour obtenir la permission d'amender sera présentée pour adjudication devant l'Honorable juge Jean-François Émond, de la Cour supérieure du Québec, à un endroit et un moment à être fixé lors d'une conférence de gestion de l'instance.

Québec, ce 1^{er} octobre 2012

SISKINDS, DESMEULES, S.E.N.C.R.L.
Me Samy Elnemr, procureur du requérant

**COUR SUPÉRIEURE
(RECOURS COLLECTIF)**

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-06-000132-111

DATE : OCTOBRE 2012

EN PRÉSENCE DE L'HONORABLE JEAN-FRANÇOIS ÉMOND, J.C.S.

GUINING LIU

Requérant

c.

**SINO-FOREST CORPORATION ET
AL.**

Intimés

JUGEMENT

- [1] VU la nouvelle demande pour permission d'amender la requête pour autorisation d'exercer un recours collectif;
- [2] CONSIDÉRANT l'absence de contestation;
- [3] CONSIDÉRANT que cette demande d'amendement a pour but de clarifier le statut d'un requérant, de limiter le nombre d'intimées et de cerner les causes d'action;
- [4] CONSIDÉRANT que cette demande d'amendement a pour but de corriger la demande d'amendement du 3 août 2012 dont jugement a résulté le 30 août 2012;

- [5] **CONSIDÉRANT** que cette demande d'amendement ne retardera pas l'audition de la requête pour autorisation d'exercer un recours collectif;

PAR CES MOTIFS, LE TRIBUNAL:

- [6] **PERMET** au requérant d'amender sa requête pour autorisation d'exercer un recours collectif de la manière qui suit :

- **AJOUTER** la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Toledano à titre de personne désignée;
- **AJOUTER** à titre d'intimée BDO Limited (connu sous BDO MCCABE LO LIMITED);
- **RETIRER** à titre d'intimées les parties qui suivent :
 - 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.;
 - BANC OF AMERICA SECURITIES LLC.

- [7] **PERMET** la modification de l'intitulé de la requête pour autorisation qui se lira dorénavant comme suit : «*Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative*» ainsi que l'ajout des allégations et conclusions liées à la *Loi sur les valeurs mobilières* et le *Code civil du Québec*.

- [8] **LE TOUT** sans frais.

Me Simon Hébert et Me Samy Elnemr
Siskinds, Desmeules s.e.n.c.r.l.
Procureurs du Requéant
(casier 15)

Me Bernard Gravel et Me Bruno Floriani
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Procureurs de PÖYRY (BEIJING) CONSULTING COMPANY LIMITED

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Procureurs d'ERNST & YOUNG LLP

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Procureurs de Sino-Forest Corporation

Me Dominique Gibbens
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Bureau 3700
Montréal QC H4Z 1E9
Procureurs des preneurs fermes

Date de l'audience : le •

Montréal, le 1^{er} octobre 2012

Par télécopieur et par courriel

L'Honorable Jean-François Émond, j.c.s.
PALAIS DE JUSTICE DE QUÉBEC
300, boul. Jean-Lesage
Québec (Québec) G1K 8K6

OBJET : Guining Liu c. Sino-Forest Corporation et als.
C.S.Q.: 200-06-000132-111
N/  : 67-101

Monsieur le juge,

Il me fait plaisir de vous informer que le soussigné fait dorénavant partie du bureau Siskinds Desmeules à Montréal et agira avec Me Simon Hébert dans le dossier cité en rubrique pour le compte des membres du recours collectif.

Le 30 août dernier, vous avez accueilli la requête pour permission d'amender la requête en autorisation d'exercer un recours collectif. Les amendements visaient l'ajout d'un requérant et de plusieurs intimés.

Depuis votre jugement, il y a eu des développements qui nécessitent votre attention en vertu de l'article 1016 *C.p.c.*, et ce, afin que nous puissions procéder lors de l'audition prévue les 30 et 31 octobre 2012 pour la présentation de la requête pour obtenir l'autorisation d'exercer un recours collectif pour fins de règlement et pour l'approbation de la transaction intervenue avec l'intimée Pöyry (Beijing) Consulting Company Limited.

Après réflexion, nous croyons qu'il serait dans l'intérêt des membres et de la justice de vous soumettre une nouvelle demande d'amendement afin de corriger certains aspects de l'amendement initial. À cet effet, nous avons pris l'initiative de discuter du contenu de la présente avec nos collègues en défense afin qu'aucune partie ne soit pris par surprise.

Par souci de clarté, nous aborderons chacun des points nécessitant votre attention dans une rubrique distincte.

Ajout d'un requérant

Au paragraphe 4 de votre jugement, vous avez autorisé l'ajout de Monsieur Ilan Toledano à titre de requérant. Nous souhaitons préciser que notre but était plutôt l'ajout de la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Toledano à titre de personne désignée. Nous comprenons que notre requête omettait cet aspect important.

Nous demandons respectueusement la permission en vertu de l'article 1016 *C.p.c.* d'ajouter la compagnie Condex Wattco inc. à titre de requérante ainsi que Monsieur Toledano à titre de personne désignée.

Ajout et retrait des intimées

Au paragraphe 4 de votre jugement, vous avez autorisé l'ajout des intimées suivants :

- a) Un cabinet de vérificateurs :
 - BDO Limited;
- b) Des preneurs fermes :
 - 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.;
 - BANC OF AMERICA SECURITIES LLC.

Suite à l'analyse de notre dossier, nous sommes d'opinion que l'ajout des preneurs fermes n'est pas requis puisque tel qu'il appert de notre *Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative*, ci-jointe, les causes d'action du recours collectif reposent sur la responsabilité des intimées sur le marché secondaire prévue à l'article 225.4 de la *Loi sur les valeurs mobilières* (ci-après «*LVM*») ainsi que sur la faute en vertu de la responsabilité extracontractuelle prévue à l'article 1457 *C.c.Q.*

Par conséquent, l'ajout des preneurs fermes à titre d'intimées devient sans objet et risque de provoquer des contestations des autres intimées qui pourraient retarder le déroulement de l'audition du recours collectif.

Les membres du groupe ne subissent aucun préjudice par le retrait des preneurs fermes à titre d'intimées.

Pour sa part, l'ajout de BDO Limited à titre d'intimée demeure dans l'intérêt du groupe.

À la lumière de ce qui précède, nous demandons respectueusement la permission en vertu de l'article 1016 *C.p.c.* de retirer les preneurs fermes à titre d'intimées afin que l'amendement vise à ajouter seulement BDO Limited.

Modification de l'intitulé du recours collectif

L'article 225.2 et suivants *L.V.M.* prévoient les recours possibles suite à la diffusion d'informations fausses ou trompeuses sur le marché secondaire.

Particulièrement, l'article 225.4 *LVM* prévoit que l'action en dommages-intérêts intentée en vertu de cette section de la loi doit être préalablement autorisée par le tribunal.

L'article 225.4 *LVM* prévoit donc son propre mécanisme de filtrage, tel que décrit par votre collègue l'Honorable Marc-André Blanchard, j.c.s., dans l'affaire *121851 Canada inc. c. Theratechnologies inc. et al.* (2012 QCCS 699).

Conformément à l'article 225.5 *LVM*, la requête pour autorisation a été transmise à l'Autorité des marchés financiers.

À lumière de ce qui précède, le requérant doit obtenir l'autorisation du tribunal pour exercer une action en dommages-intérêts en vertu de la *LVM* et il doit également obtenir l'autorisation du tribunal pour exercer un recours collectif en vertu du *Code de procédure civile*.

L'amendement proposant la modification de l'intitulé de la requête pour autorisation est dans le meilleur intérêt des membres.

Nous demandons respectueusement la permission en vertu de l'article 1016 *C.p.c.* de modifier l'intitulé de la requête pour autorisation qui se lira dorénavant comme suit : *Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative* ainsi que l'ajout des allégations et conclusions liées à la *Loi sur les valeurs mobilières* et le *Code civil du Québec*.

Commentaire

Nous réalisons qu'il s'agit d'une situation légèrement inusitée où nous requérons l'amendement une seconde fois aux fins de corriger l'amendement initial. Il s'agit d'un dossier qui connaît une évolution particulière qui nécessite que le tribunal utilise la

discrétion qui lui est conférée en vertu de l'article 1045 *C.p.c.* afin d'assurer la protection des intérêts des membres.

Afin d'éviter tout délai, nous joignons à la présente les documents suivants:

- Requête pour permission d'amender;
- Requête amendée intitulée «*Amended Motion for leave to plead the cause of action contained in Title VIII, Chapter II, Division II of the QSA and to Authorize the bringing of a class action and to obtain the status of representative*»;
- Une copie d'un projet de jugement.

Nous proposons que l'audition de la requête pour permission d'amender se fasse par l'entremise d'une conférence téléphonique ou autre selon votre discrétion.

Espérant le tout conforme, veuillez agréer, Monsieur le juge, l'expression de nos sentiments distingués.

SISKINDS, DESMEULES, AVOCATS

Samy Elnemr, avocat
SE/cb

p.j.

c.c. par courriel: Mes Mason Poplaw et Céline Legendre (pour Ernst & Young)
Mes Bernard Gravel et Bruno Floriani (pour Pöyry)
Me Michael A. Eizenga (pour Sino)
Mes Dominique Gibbens et Alain Riendeau (pour les preneurs
fermes)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC
NO: 200-06-000132-111

(Class Action)
SUPERIOR COURT

GUINING LIU;

Petitioner;

and

CONDEX WATTCO INC., legal person
established for a private interest, having its had
office at 55 Ave Milton Montréal (Québec) H8R
1K6;

Petitioner;

and

Ian Toledano, acting as designated person for
Condex Wattco inc.;

Designated Person;

V.

SINO-FOREST CORPORATION;

and

ERNST & YOUNG LLP;

and

**BDO LIMITED (formerly known as BDO
MCCABE LO LIMITED)** having its head office
at 25th Floor, Wing On Centre, 111 Connaught
Road Central, Hong Kong, China;

and

ALLEN T.Y. CHAN;

and

W. JUDSON MARTIN;

and

KAI KIT POON;

and

DAVID J. HORSLEY;

and

WILLIAM E. ARDELL;

and

JAMES P. BOWLAND;

and
JAMES M.E. HYDE;
 and
EDMUND MAK;
 and
SIMON MURRAY;
 and
PETER WANG;
 and
GARRY J. WEST;
 and
**PÖYRY (BEIJING) CONSULTING
 COMPANY LIMITED;**
 Defendants;

**AMENDED MOTION FOR LEAVE TO PLEAD THE CAUSE OF ACTION
 CONTAINED IN TITLE VIII, CHAPTER II, DIVISION II OF THE QUÉBEC
 SECURITIES ACT ("QSA") AND TO AUTHORIZE THE BRINGING OF A CLASS
 ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
 (Article 1002 C.C.P. and following and 225.4 QSA and following)**

**TO [...] THE HONOURABLE [...] JUSTICE JEAN-FRANÇOIS ÉMOND OF THE
 [...] SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF QUÉBEC, [...] AND
 PRESIDING OVER THE PRESENT CLASS ACTION, THE PETITIONERS
 RESPECTFULLY DECLARE THE FOLLOWING :**

General presentation

1. The Petitioners wish to institute a class action on behalf of the following group, of which he is a member (the "Group"):

"All persons or entities (other than 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 families of the individual named defendants) who purchased or otherwise acquired, in the secondary market [...], common shares, notes or other equity or debt securities of or relating to Sino-Forest Corporation, from and including [...] March 19, 2007 to and including June 2, 2011 (the "Class Period"), and who are resident in Quebec or who were resident in Quebec at the time of their acquisition of those securities."

or such other group definition as may be approved by the Court;

2. Sino-Forest Corporation (along with its subsidiaries, "Sino") is a public company and its shares were listed for trading at all material times on the Toronto Stock Exchange (the "TSX") under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the OTC market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH";
3. At all material times, Sino purported to be a legitimate enterprise operating as a commercial forest plantation operator in the People's Republic of China ("PRC"). At all material times, Sino overstated the nature of its forestry operations, including the value of its forestry assets and the amount of its revenue and net income, and misrepresented the fact that its financial reporting had complied with Canadian GAAP, when in fact it had not done so;
4. The relief that the Petitioners seek[...] includes the following:

- a) damages in an amount equal to the losses that it and the other Members of the Group suffered as a result of purchasing or acquiring the securities of Sino at inflated prices during the Class Period;
- b) a declaration [...] the 2005 Annual Consolidated Financial Statements (filed on **SEDAR** on March 31, 2006), Q1 2006 Financial Statements (filed on **SEDAR** on May 11, 2006), the 2006 Annual Consolidated Financial Statements (filed on **SEDAR** on March 19, 2007), 2006 **AIF** (filed on **SEDAR** on March 30, 2007), 2006 Annual **MD&A** (filed on **SEDAR** on March 19, 2007), Management Information Circular dated April 27, 2007 (filed on **SEDAR** on May 4, 2007), Q1 2007 **MD&A** (filed on **SEDAR** on May 14, 2007), Q1 2007 Financial Statements (filed on **SEDAR** on May 14, 2007), **June 2007 Prospectus**, Q2 2007 **MD&A** (filed on **SEDAR** on August 13, 2007), Q2 2007 Financial Statements (filed on **SEDAR** on August 13, 2007), Q3 2007 **MD&A** (filed on **SEDAR** on November 12, 2007), Q3 2007 Financial Statements (filed on **SEDAR** on November 12, 2007), 2007 Annual Consolidated Financial Statements (filed on **SEDAR** on March 18, 2008), 2007 **AIF** (filed on **SEDAR** on March 28, 2008), 2007 Annual **MD&A** (filed on **SEDAR** on March 18, 2008), Amended 2007 Annual **MD&A** (filed on **SEDAR** on March 28, 2008), Management Information Circular dated April 28, 2008 (filed on **SEDAR** on May

6, 2008), Q1 2008 **MD&A** (filed on **SEDAR** on May 13, 2008), Q1 2008 Financial Statements (filed on **SEDAR** on May 13, 2008), **July 2008 Offering Memorandum**, Q2 2008 **MD&A** (filed on **SEDAR** on August 12, 2008), Q2 2008 Financial Statements (filed on **SEDAR** on August 12, 2008), Q3 2008 **MD&A** (filed on **SEDAR** on November 13, 2008), Q3 2008 Financial Statements (filed on **SEDAR** on November 13, 2008), 2008 Annual Consolidated Financial Statements (filed on **SEDAR** on March 16, 2009), 2008 Annual **MD&A** (filed on **SEDAR** on March 16, 2009), Amended 2008 Annual **MD&A** (filed on **SEDAR** on March 17, 2009), 2008 **AIF** (filed on **SEDAR** on March 31, 2009), Management Information Circular dated April 28, 2009 (filed on **SEDAR** on May 4, 2009), Q1 2009 **MD&A** (filed on **SEDAR** on May 11, 2009), Q1 2009 Financial Statements (filed on **SEDAR** on May 11, 2009), **June 2009 Prospectus, June 2009 Offering Memorandum**, Q2 2009 **MD&A** (filed on **SEDAR** on August 10, 2009), Q2 2009 Financial Statements (filed on **SEDAR** on August 10, 2009), Q3 2009 **MD&A** (filed on **SEDAR** on November 12, 2009), Q3 2009 Financial Statements (filed on **SEDAR** on November 12, 2009), **December 2009 Prospectus, December 2009 Offering Memorandum**, 2009 Annual **MD&A** (filed on **SEDAR** on March 16, 2010), 2009 Audited Annual Financial Statements (filed on **SEDAR** on March 16, 2010), 2009 **AIF** (filed on **SEDAR** on

March 31, 2010), Management Information Circular dated May 4, 2010 (filed on **SEDAR** on May 11, 2010), Q1 2010 **MD&A** (filed on **SEDAR** on May 12, 2010), Q1 2010 Financial Statements (filed on **SEDAR** on May 12, 2010), Q2 2010 **MD&A** (filed on **SEDAR** on August 10, 2010), Q2 2010 Financial Statements (filed on **SEDAR** on August 10, 2010), **October 2010 Offering Memorandum**, Q3 2010 **MD&A** (filed on **SEDAR** on November 10, 2010), Q3 2010 Financial Statements (filed on **SEDAR** on November 10, 2010), 2010 Annual **MD&A** (March 15, 2011), 2010 Audited Annual Financial Statements (filed on **SEDAR** on March 15, 2011), 2010 **AIF** (filed on **SEDAR** on March 31, 2011), and Management Information Circular dated May 2, 2011 (filed on **SEDAR** on May 10, 2011) (the "Impugned Documents") contained one or more misrepresentations, including the Statement that Sino's Financial Statements complied with Canadian generally accounting principles (GAAP), which was, when made, a misrepresentation, both at law and within the meaning of the securities legislation;

- c) a declaration that Sino [...] is vicariously liable for the acts and/or omissions of 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 (the "Individual Defendants"), and of its other officers, directors and employees;

- d) a declaration that Ernst & Young LLP ("E&Y") is vicariously liable for the acts and/or omissions of each of its officers, directors, partners and employees; [...]
- e) a declaration that Pöyry (Beijing) Consulting Company Limited ("Pöyry") is vicariously liable for the acts and/or omissions of each of its officers, directors, partners and employees; and
- f) a declaration that BDO Limited ("BDO") is vicariously liable for the acts and/or omissions of each of its officers, directors, partners and employees.

The Petitioner

- 5. The Petitioner Liu is one of thousands of investors who purchased shares of Sino during the Class Period and continued to hold shares of Sino when the price of Sino's securities declined due to the correction of the misrepresentations alleged herein;
- 5.1 The Petitioner Condex/Wattco inc. (CW) is a legal person established for a private interest that had, at all times during the 12 months period preceding this motion for authorization, not more than 50 persons bound to it by contract of employment;
- 5.2 The Petitioner Condex/Wattco inc. designated Mr Ilan Toledano to act as designated person for purposes of this litigation;

6. During the Class Period, the Petitioner Liu made net purchases of 1,000 Sino shares over the TSX. [Particulars of the Petitioner's Class Period transactions are attached hereto as P-1];
- 6.1 During the Class Period, CW made purchases of 835 Sino shares over the TSX. [Particulars of CW's Class Period transactions are attached hereto as exhibit P-2];

The Defendants

7. The defendant Sino purports to be a commercial forest plantation operator in the PRC. Sino is a corporation formed under the *Canada Business Corporations Act*, RSC 1985, c C-44 (the "CBCA");
8. At the material times, Sino was a reporting issuer in all provinces of Canada, and had its registered office located in Mississauga, Ontario. At the material times, Sino's shares were listed for trading on the TSX under the ticker symbol "TRE," on the Berlin exchange as "SFJ GR," on the OTC market in the United States as "SNOFF" and on the Tradedgate market as "SFJ TH." Sino's securities are also listed on alternative trading systems in Canada and elsewhere including, without limitation, AlphaToronto and PureTrading. Sino also has various debt instruments, derivatives and other securities which are publicly traded in Canada and elsewhere;
9. The defendants 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 and Garry J. West (the "D&Os") are officers and/or directors of Sino. Each of them is a director[...] and/or officer[...] of Sino within the meaning of the [...] QSA;

10. [...]

10.1 The defendant E&Y was Sino's auditor from August 13, 2007 through the end of the Class Period, and thereafter until April 4, 2012, on which date E&Y resigned as the company's auditor. E&Y was also engaged as Sino's auditor from Sino's creation through February 19, 1999, when E&Y abruptly resigned during audit season and was replaced by the now-defunct Arthur Andersen LLP. E&Y was also Sino's auditor from 2000 to 2004, when it was replaced by BDO. E&Y is an expert of Sino within the meaning of the QSA;

10.2 E&Y, in providing what it purported to be "audit" services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, E&Y was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on E&Y's statements relating to Sino, which they did to their detriment;

10.3 E&Y consented to the inclusion in the June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for various years, as alleged more particularly below, and E&Y's audit

reports were in fact included or incorporated by reference into such offering documents;

11. [...]

11.1 BDO is the successor of BDO McCabe Lo Limited, the Hong Kong, China based auditing firm that was engaged as Sino's auditor during the period of March 21, 2005 through August 12, 2007, when it resigned at Sino's request, and was replaced by E&Y. BDO is an expert of Sino within the meaning of the *QSA*;

11.2 During the term of its service as Sino's auditor, BDO provided what it purported to be "audit" services to Sino, and in the course thereof made statements that it knowingly intended to be, and which were, disseminated to Sino's current and prospective security holders. At all material times, BDO was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons rely on BDO's statements relating to Sino, which they did to their detriment;

11.3 BDO consented to the inclusion in each of the June 2007 and December 2009 Prospectuses and the July 2008, June 2009 and December 2009 Offering Memoranda, of its audit reports on Sino's Annual Financial Statements for 2005 and 2006, and BDO's audit reports were in fact included or incorporated by reference into such offering documents;

11.4 E&Y's and BDO's annual Auditors' Report was made "to the shareholders of Sino-Forest corporation," which included the Class Members. Indeed, s. 1000.11 of

the Handbook of the Canadian Institute of Chartered Accountants states that “the objective of financial statements for profit-oriented enterprises focuses primarily on the information needs of *investors and creditors*” [emphasis added];

- 11.5 Sino’s shareholders, including numerous Members of the Group, appointed E&Y as auditors of Sino-Forest by shareholder resolutions passed on various dates, including on June 21, 2004, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011;
- 11.6 Sino’s shareholders, including numerous Class Members, appointed BDO as auditors of Sino-Forest by resolutions passed on May 16, 2005, June 5, 2006 and May 28, 2007;
- 11.7 During the Class Period, with the knowledge and consent of BDO or E&Y (as the case may be), Sino’s audited annual financial statements for the years ended December 31, 2006, 2007, 2008, 2009 and 2010, together with the report of BDO or E&Y thereon (as the case may be), were presented to the shareholders of Sino (including numerous Class Members) at annual meetings of such shareholders held in Toronto, Canada on, respectively, May 28, 2007, May 26, 2008, May 25, 2009, May 31, 2010 and May 30, 2011. As alleged elsewhere herein, all such financial statements constituted Impugned Documents;
- 11.8 Pöyry is an international forestry consulting firm which purported to provide certain forestry consultation services to Sino. Pöyry is an expert of Sino within the meaning of the *QSA*;

11.9 Pöyry, in providing what it purported to be “forestry consulting” services to Sino, made statements that it knowingly intended to be, and which were, disseminated to Sino’s current and prospective security holders. At all material times, Pöyry was aware of that class of persons, intended to and did communicate with them, and intended that that class of persons would rely on Pöyry’s statements relating to Sino, which they did to their detriment;

11.10 Pöyry consented to the inclusion in the June 2007, June 2009 and December 2009 Prospectuses, as well as the July 2008, June 2009, December 2009 and October 2010 Offering Memoranda, of its various reports, as detailed below;

Sino’s Continuous Disclosure Obligations

12. As a reporting issuer in Québec, Sino was required throughout the Class Period to issue and file with SEDAR:

- within 60 days of the end of each quarter, quarterly interim financial statements prepared in accordance with GAAP including a comparative statement to the end of each of the corresponding periods in the previous financial year;
- within 140 days of the end of the fiscal year, annual financial statements prepared in accordance with GAAP, including comparative financial statements relating to the period covered by the preceding financial year; and
- contemporaneously with each of the above, management’s discussion and analysis of each of the above financial statements.

13. The Defendants issued the disclosure documents referenced herein pursuant to their statutory obligation to do so, and also for the specific purpose of attracting investment in Sino's securities, and inducing members of the public to purchase those securities;

The Defendants' Misrepresentations

14. Throughout the Class Period, Sino falsely purported to be a legitimate enterprise operating as a commercial forest plantation operator in the PRC. As part of its obligations as a reporting issuer in Québec (and elsewhere), Sino issued the Impugned Documents. In those documents, Sino made statements concerning the nature of its business, its revenues, profitability, future prospects and compliance with the laws of the PRC and of Canada, implicitly and explicitly and through documents incorporated by reference;
15. In fact, such statements were materially false and/or misleading. During the Class Period, Sino overstated its forestry assets, misrepresented its revenue recognition practices, falsely maintained that its financial statements complied with Canadian GAAP [...], issued materially misleading statements regarding Chinese law and Sino's compliance therewith, and failed to disclose certain related party transactions, among other misrepresentations;
16. On June 2, 2011, however, the truth was at least partially revealed. As a result, the market value of Sino's securities fell dramatically, and the market value for Sino's shares in particular fell by in excess of 70% on extraordinarily heavy

trading volume. Trading of Sino common shares was halted on the TSX after a decline in excess of 24% on June 2. When trading resumed on the TSX on June 3, Sino shares fell in excess of a further 63%, for a two-day drop in excess of nearly 73%;

The Defendants' Fault

The Defendants Owed Duties to the Members of the Group

17. The Defendants owed a duty to the Petitioners and to persons and entities similarly situated, at law and under provisions of the [...] QSA and article 1457 of the *Civil Code of Québec*, to disseminate promptly, or to ensure that prompt dissemination of truthful, complete and accurate statements regarding Sino's business and affairs, and promptly to correct previously-issued, materially inaccurate information, so that the price of Sino's publicly-traded securities was based on complete, accurate and truthful information;
18. At all times material to the matters complained of herein, each of the Defendants knew or ought reasonably to have known that the trading price of Sino's publicly traded securities was directly influenced by the statements disseminated by the Defendants concerning the business and affairs of Sino;
19. As such, the Defendants knew or ought reasonably to have known that a failure to ensure that Sino's disclosures referenced herein were materially accurate and materially complete would cause Sino's securities to become inflated, and thus would cause damage to persons who invested in Sino's securities while their price remained inflated by such false statements;

The Defendants Violated their Duties

20. Certain statements made by Sino and the D&Os in the Impugned Documents were materially false and/or misleading. [...] Petitioners and the Members of the Group relied on such statements directly or indirectly or via the instrumentality of the markets on which Sino securities traded. When the truth was revealed and true value of Sino's securities became clear, [...] Petitioners and the Members of the Group were injured thereby. [...] Petitioners and the Group plead [...] a fault in violation of the general private law duty of diligence owed to them in the circumstances accordingly with article 1457 of the *Civil Code of Québec* as against Sino and the D&Os;
21. Sino's internal controls, which were designed and/or maintained by the D&Os, were inadequate or ignored. The D&Os owed a duty of care to the Petitioners and the Members of the Group to properly design and/or maintain such internal controls. The Petitioners and the Group plead a fault accordingly with article 1457 of the *Civil Code of Québec* as against the D&Os in connection thereto;
22. E&Y and BDO made statements in certain of the Impugned Documents that were continuous disclosure documents that the audited financial statements contained or incorporated by reference therein "present fairly, and in all material respects, the financial position of [Sino] [...] and the results of its operations and cash flows [...] in accordance with Canadian generally accepted accounting principles" (or similar language). Such statements were materially false and/or misleading, and E&Y and BDO lacked a reasonable basis to make such statements when E&Y

and BDO made them. E&Y and BDO knowingly prepared [...] their reports for use by Sino's security holders and prospective security holders. The Petitioners and the Group relied on such statements directly or indirectly or via the instrumentality of the markets on which Sino securities traded. When the truth was revealed and the true value of Sino's securities became clear, the Petitioners and the Group were injured thereby. In respect of Sino's continuous disclosure documents, the Petitioners and the Group plead a fault [...] in violation of the general private law duty of diligence owed to them in the circumstances accordingly with article 1457 of the *Civil Code of Québec* as against E&Y and BDO;

23. [...]

24. Pöyry made statements regarding the nature of Sino's operations in reports dated on or about May 31, 2011, May 27, 2011, April 23, 2010 and April 2, 2009. Such statements were materially false and/or misleading, and Pöyry lacked a reasonable basis to make such statements when Pöyry made such statements. Pöyry knowingly prepared its reports for use by Sino's security holders and prospective security holders. The Petitioners and the Members of the Group relied on such statements directly or indirectly or via the instrumentality of the markets on which Sino securities traded. When the truth was revealed and true value of Sino's securities became clear, the Petitioners and the Members of the Group were injured thereby. The Petitioners and the Members of the Group plead a fault [...] in violation of the general private law duty of diligence owed to

them in the circumstances accordingly with article 1457 of the *Civil Code of Québec* as against Pöyry;

25. At all times material to the matters complained of herein, each of the Defendants ought to have known that Sino's disclosure documents described herein were materially misleading as detailed above. Accordingly, the Defendants have violated their duties to the Petitioners and to persons or entities similarly situated;
26. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and in the best interests of the Petitioner and the other Members of the Group. The Defendants' conduct failed to meet the requirements imposed by the duty not to harm others by reason of wrongful conduct under the *Civil Code of Québec*,
27. The Defendants failed to meet the standard of care required by issuing Sino's disclosure documents during the relevant period, which were materially false and/or misleading as described above;
28. The fault of the Defendants resulted in the damage to the Petitioners and Members of the Group as pleaded;

The Relationship Between Sino's Disclosures and the Price of Sino's Securities

29. The price of Sino's securities was directly affected during the Class Period by the issuance of the disclosure documents described herein. The Defendants were

- aware at all material times of the effect of Sino's disclosures upon the price of its Sino's securities;
30. The disclosure documents referenced above were filed, among other places, with SEDAR and the TSX and thereby became immediately available to, and were reproduced for inspection by, the Members of the Group, other members of the investing public, financial analysts and the financial press;
 31. Sino routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Sino's securities. Sino provided either copies of the above referenced documents or links thereto on its website;
 32. Sino regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of press releases on newswire services in Canada, the United States and elsewhere. The price of Sino's securities was directly affected each time SINO communicated new material information about Sino's financial results to the public;
 33. Sino was the subject of analysts' reports that incorporated material information contained in the disclosure documents referred to above, with the effect that any recommendations in such reports during the Class Period were based, in whole or in part, upon that information;

34. Sino's securities were and are traded on efficient and automated markets. The price at which Sino's securities traded promptly incorporated material information about Sino's business and affairs, including the omissions and/or misrepresentations described herein, which were disseminated to the public through the documents referred to above and distributed by Sino, as well as by other means;

Misrepresentations under the [...] QSA– Secondary Market

35. Each of the Impugned Documents is a "Core Document" within the meaning of the [...] QSA;
36. Each of the Impugned Documents contained one or more misrepresentations;
37. Each of the D&Os was an officer and/or director of Sino at all material times. Each of the D&Os authorized, permitted or acquiesced in the release of some or all of the Impugned Documents;
38. Sino is a reporting issuer within the meaning of the [...] QSA;
39. Pöyry is an expert within the meaning of the [...] QSA;
40. E&Y is an expert within the meaning of the [...] QSA;
- 40.1 BDO is an expert within the meaning of the [...] QSA;

41. The Petitioners and the Group assert the causes of action set forth in Title VIII, Chapter II, Division II of the [...] QSA as against Sino, Pöyry, the D&Os, [...] E&Y and BDO and will seek leave, if and as required, in connection therewith;
42. [...]
43. [...]
44. [...]
45. [...]

Vicarious Liability of Sino, E&Y, BDO and Pöyry

46. Sino is vicariously liable for the acts and omissions of the Individual Defendants particularized in this [...] Amended Petition;
47. The acts or omissions particularized and alleged herein to have been done by Sino were authorized, ordered and done by the Defendants and other agents, employees and representatives of Sino, while engaged in the management, direction, control transaction of the business and affairs of Sino. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Sino;
- 47.1 E&Y is vicariously liable for the acts and omissions of its directors, officers, partners and employees particularized in this Amended Petition;

- 47.2 The acts or omissions particularized and alleged herein to have been done by E&Y were authorized, ordered and done by the representatives and agents of E&Y, while engaged in the management, direction, or control of the business and affairs of E&Y. Such acts and omissions are, therefore, not only the acts and omissions of such representatives and agents, but are also the acts and omissions of E&Y;
- 47.3 BDO is vicariously liable for the acts and omissions of its directors, officers, partners and employees particularized in this Amended Petition;
- 47.4 The acts or omissions particularized and alleged herein to have been done by BDO were authorized, ordered and done by the representatives and agents of BDO, while engaged in the management, direction, or control of the business and affairs of BDO. Such acts and omissions are, therefore, not only the acts and omissions of such representatives and agents, but are also the acts and omissions of BDO;
- 47.5 Pöyry is vicariously liable for the acts and omissions of its directors, officers, partners and employees particularized in this Amended Petition;
- 47.6 The acts or omissions particularized and alleged herein to have been done by Pöyry were authorized, ordered and done by the representatives and agents of Pöyry, while engaged in the management, direction, or control of the business and affairs of Pöyry. Such acts and omissions are, therefore, not only the acts

and omissions of such representatives and agents, but are also the acts and omissions of Pöyry;

Damages

48. As a result of the acts and omissions described above, the Petitioners and the other Members of the Group were induced to over-pay substantially for Sino's securities. Such persons and entities have suffered damages equivalent to the loss in market value that occurred when Sino corrected the Misrepresentations;
49. The Petitioners and other Members of the Group are also entitled to recover, as damages or costs, the costs of administering the plan to distribute the recovery in this action;

Conditions required to institute a class action

50. The composition of the Group makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:
 - The number of persons included in the group is estimated to be several thousand;
 - The names and addresses of persons included in the group are not known to the Petitioners (but are likely to be known to Defendants);
 - All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible.

51. The claims of the Members of the Group raise identical, similar or related questions of fact or law, namely:
- Did the Defendants authorize or issue false and/or misleading public information?
 - Did the Defendants' Misrepresentations cause the share price of Sino's stock to be artificially inflated during the Class Period?
 - Did the Defendants therefore commit a fault towards the Petitioners and the other Members of the Group, thereby engaging their liability?
 - What prejudice was sustained by the Petitioners and the Members of the Group as a result of the Defendants' faults?
 - Are the Defendants jointly responsible for the damages sustained by each of the members?
52. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

Nature of the action and conclusions sought

53. The action that the Petitioners wish[...] to institute for the benefit of the Members of the Group is an action in damages;
54. The conclusions that the Petitioners wish[...] to introduce by way of a motion to institute proceedings are:

GRANT the [...] Petitioners' action against the Defendants, under the cause of action contained in Title VIII, Chapter II, Division II of the QSA and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the Civil Code of Quebec;

CONDEMN Defendants to pay to the Members of the Group compensatory damages for all monetary losses;

GRANT the class action of the Petitioners on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including expert fees and notice expenses;

55. The Petitioners suggests that this class action be exercised before the Superior Court in the district of Québec for the following reasons:

- A great number of the Members of the Group resides in the judicial district of [...] Québec and in the appeal district of Québec;
- [...] The Petitioners' lawyers have an office in the district of Québec.

56. The Petitioners, who [...] are requesting to obtain the status of representatives, will fairly and adequately protect and represent the interest of the Members of the Group for the following reasons:

- They [...] understand the nature of the action;
- They are [...] available to dedicate the time necessary for an action to collaborate with Members of the Group; and
- Their [...] interests are not antagonistic to those of other Members of the Group.

57. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE leave under the cause of action contained in Title VIII, Chapter II, Division II of the QSA and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioners the status of representative of the persons included in the group herein described as:

“All persons or entities (other than 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 families of the individual named defendants) who purchased or otherwise acquired, in the secondary market [...],

common shares, notes or other equity or debt securities of or relating to Sino-Forest Corporation, from and including [...] March 19, 2007 to and including June 2, 2011 (the "Class Period"), and who are resident in Québec or who were resident in Québec at the time of their acquisition of those securities."

or such other class definition as may be approved by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- Did the Defendants authorize or issue false and/or misleading public information?
- Did the Defendants' Misrepresentations cause the share price of Sino's stock to be artificially inflated during the Class Period?
- Did the Defendants therefore commit a fault towards the Petitioners and the Members of the Group, thereby engaging their liability?
- What prejudice was sustained by the Petitioners and the Members of the Group as a result of the Defendants' faults?
- Are the Defendants jointly responsible for the damages sustained by each of the Members of the Group?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the [...] Petitioners action against the Defendants, under the cause of action contained in Title VIII, Chapter II, Division II of the QSA and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation and under article 1457 of the Civil Code of Québec;

DECLARE that the Defendants made the Misrepresentations during the Class Period;

DECLARE that the Defendants made the Misrepresentations negligently;

DECLARE that Sino, E&Y, BDO and Pöyry are vicariously liable for the acts and/or omissions of the Individual Defendants;

CONDEMN Defendants to pay to the Members of the Group compensatory damages in the amount of \$386 million, or such other sum as this Court finds appropriate for all monetary losses;

GRANT the class action of the Petitioners on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including expert fees and notice fees;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members of the Group;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs [...], including the costs of all publications of notices.

Québec, [...] October 1st, 2012

SISKINDS, DESMEULES, S.E.N.C.R.L.
Lawyer for the Petitioners

SCHEDULE 1
NOTICE TO DEFENDANT

Take notice that the plaintiff has filed this action or application in the office of the Superior Court of the judicial district of Québec.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of Québec located at 300, boul. Jean-Lesage, Québec, G1K 8K6 within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on November 23, 2012, at 9h00 a.m., in room 3.14 of the courthouse. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the plaintiff or the plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Québec, [...] October 1st, 2012

SISKINDS, DESMEULES, S.E.N.C.R.L.
Lawyers for the Petitioners

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUÉBEC
NO: 200-06-000132-111**

**(Class Action)
SUPERIOR COURT**

GUINING LIU

Petitioner;

and

CONDEX WATTCO INC.

Petitioner;

and

Ian Toledano

Designated Person

V.

SINO-FOREST CORPORATION & ALS.

Defendants;

LIST OF EXHIBITS

EXHIBIT P-1: Particulars of the Petitioner's Liu.

EXHIBIT P-2: Particulars of CW.

Québec, [...] October 1st, 2012

SISKINDS, DESMEULES, S.E.N.C.R.L.
Lawyers for the Petitioners

**CITATION The Trustees of the Labourers' Pension Fund of Central and Eastern
Canada v. Sino Forest Corporation, 2012 ONSC 5398
COURT FILE NO.: CV-11-431153-00CP
DATE: September 25, 2012**

**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)

*A. Dimitri Lascaris, Serge Kalloghlian, and
S. Sajjad Nematollahi for the Plaintiffs*

*Peter Osborne, Shara Roy, and Brendon
Grey for the Defendant Ernst & Young LLP*

*John Fabello for the Defendants 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 Banc of America Securities LLC*

*Kenneth Dekker for the Defendant BDO
Limited*

*John J. Pirie and David Gadsden for the
Defendant Pöyry (Beijing) Consulting
Company Limited*

SUISSE SECURITIES (USA) LLC and)	<i>Emily Cole and Megan Mackey</i> for Allen
MERRILL LYNCH, PIERCE, FENNER &)	Chan
SMITH INCORPORATED (successor by)	
merger to Banc of America Securities LLC))	<i>Michael Eizenga</i> for Sino-Forest
Defendants)	Corporation , W. Judson Martin, and Kai Kit
)	Poon
)	
)	
Proceeding under the <i>Class Proceedings</i>)	HEARD: September 21, 2012
<i>Act, 1992</i>		

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] This is a motion for approval of a partial settlement in a proposed class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6.

[2] The Plaintiffs are: Labourers' Pension Fund of Central and Eastern Canada ("Labourers"), the Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario ("Operating Engineers"), Sjunde AP-Fonden ("AP7"), David Grant, and Robert Wong.

[3] The Defendants are: 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 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).

[4] In this action, the Plaintiffs allege that Sino Forest misstated in its public filings its financial statements, misrepresented its timber rights, overstated the value of its assets, and concealed material information about its business operations from investors. There is a companion proposed class action in Québec. The Plaintiffs claim damages of \$9.2 billion on behalf of resident and non-resident shareholders and noteholders of Sino-Forest.

[5] The Plaintiffs in Ontario and Québec have reached a settlement with one of the defendants, Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"). The Settlement Agreement is subject to court approval in Ontario and Québec. The litigation is continuing against the other defendants.

[6] The Plaintiffs bring a motion for an order: (a) certifying the action for settlement purposes as against Pöyry (Beijing); (b) appointing the Plaintiffs as representative plaintiffs for the class; (c) approving the settlement as fair, reasonable, and in the best interests of the class; and (d) approving the form and method of dissemination of notice to the class of the certification and settlement of the action.

[7] The motion for settlement approval is not opposed by the Defendants.

[8] Up until the morning of the fairness hearing motion, three groups of Defendants objected to the settlement; namely: (a) Ernst & Young LLP; (b) BDO Limited; and (c) 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 Banc of America Securities LLC (collectively the “Underwriters”).

[9] When the Plaintiffs and Pöyry (Beijing) and various other Pöyry entities agreed to amend their settlement arrangements to provide extensive discovery rights against the Pöyry entities, the opposition disappeared.

[10] While I originally I had misgivings, I have concluded that the court should approve the settlement as fair, reasonable, and in the best interests of the class members of the consent certification. Accordingly, I grant the Plaintiffs’ motion.

B. FACTUAL BACKGROUND

[11] On July 20, 2011, the Plaintiffs commenced this action.

[12] Of the Plaintiffs, Labourers’ and Operating Engineers are specified multi-employer pension plans. AP7 is a Swedish National Pension Fund and is part of Sweden’s national pension system. David Grant is an individual residing in Calgary, Alberta. Robert Wong is an individual residing in Kincardine, Ontario.

[13] All the Plaintiffs purchased Sino Forest shares or Sino Forest Notes and lost a great deal of money.

[14] All of the Plaintiffs, especially the institutional investors, would appear to be sophisticated. They are capable of understanding the issues and competent to give instructions to their lawyers about the tactics and strategies of this massive litigation.

[15] I mention this last point because their lawyers urged me that in weighing the fairness of the settlement to the class members, I should give considerable deference to the astuteness of the Plaintiffs and to the wisdom of their experienced lawyers about the advantages and disadvantages of the proposed settlement. See *Metzler Investment GmbH v Gildan Activewear Inc.*, 2011 ONSC 1146 at para. 31.

[16] In their action, the Plaintiffs allege that in its public filings, Sino Forest misstated its financial statements, misrepresented its timber rights, overstated the value of its assets, and concealed material information about its business and operations from

investors. As a result of these alleged misrepresentations, Sino Forest's securities allegedly traded at artificially inflated prices for many years.

[17] The Defendant Pöyry (Beijing) was one of several affiliated entities that appraised the value of Sino Forest's assets. Some of the Pöyry valuation reports were incorporated by reference into various offering documents. Some of the valuation reports were made publicly available through SEDAR and Pöyry valuation reports were posted on Sino Forest's website.

[18] In their statement of claim, the Plaintiffs allege that Pöyry (Beijing) is liable for: (a) negligence and under s. 130 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 to primary market purchasers of Sino-Forest shares and (b) is liable for negligence and under Part XXIII.1 of the *Act* to purchasers of Sino Forest's securities in the secondary markets.

[19] Only one Pöyry entity has been named as a defendant. The affiliated Pöyry entities have not been named as defendants.

[20] On January 26, 2012, the Plaintiffs filed an amended notice of action and a Statement of Claim. Around this time, The Plaintiffs and Pöyry (Beijing) began settlement discussions. Those discussions culminated in a Settlement Agreement made as of March 20, 2012.

[21] In its original form, the terms of the Settlement Agreement were as follows:

- Pöyry (Beijing) will provide information and cooperation to the Plaintiffs for the purpose of pursuing the claims against the other defendants.
- Pöyry (Beijing) is required to provide an evidentiary proffer relating to the allegations in this action. (This evidentiary proffer was made and apparently was very productive and the harbinger of useful information.)
- Pöyry (Beijing) is required to provide relevant documents within the possession, custody or control of Pöyry (Beijing) and its related entities, including: (a) documents relating to Sino-Forest, the Auditors or the Underwriters, or any of them, as well as the dates, locations, subject matter, and participants in any meetings with or about Sino-Forest, the Auditors, the Underwriters, or any of them; (b) documents provided by Pöyry (Beijing) or any of its related entities to any state, federal, or international government or administrative agency concerning the allegations raised in the proceedings; and (c) documents provided by Pöyry (Beijing) or any of its related entities to Sino Forest's Independent Committee or the ad hoc committee of noteholders.
- Pöyry (Beijing) is obliged to use reasonable efforts to make available directors, officers or employees of Pöyry (Beijing) and its related entities for interviews with Class Counsel, and to provide testimony at trial and affidavit evidence.
- The Plaintiffs will release their claims against Pöyry (Beijing) and its related entities.

- The Non-settling Defendants will be subject to a bar order that precludes any right to contribution or indemnity against Pöyry (Beijing) and its related entities, but preserves the non-settling defendants' rights of discovery as against Pöyry (Beijing) and Pöyry Management Consulting (Singapore) PTE. LTD. ("Pöyry (Singapore)").
- Pöyry (Beijing) will consent to certification for the purpose of settlement.
- Pöyry (Beijing) will pay the first \$100,000 of the costs of providing the notice of certification and settlement, and half of any such costs over \$100,000.

[22] The Settlement Agreement is subject to court approval in Ontario and Québec.

[23] As already noted above, Ernst & Young, BDO, and the Underwriters objected to the original version of the proposed settlement, but hard upon the hearing of the fairness motion, they withdrew their opposition because of a revised version of the settlement that preserved and extended their rights of discovery as against the Pöyry entities.

[24] The revised terms of the settlement agreement included, among other things, the following provisions:

- The Court shall retain jurisdiction over the Plaintiffs, the Pöyry Parties (Pöyry (Beijing), Pöyry Management Consulting (Singapore) Pte. Ltd., Pöyry Forest Industry Ltd., Pöyry Forest Industry Pte. Ltd, Pöyry Management Consulting (Australia) Pty. Ltd., Pöyry Management Consulting (NZ) Ltd., JP Management Consulting (Asia-Pacific) Ltd.), Pöyry PLC, and Pöyry Finland OY for all matters all of these parties are declared to have attorned to the jurisdiction of this Court.
- After all appeals or times to appeal from the certification of this action against the Non-Settling Defendants have been exhausted, any Non-Settling Defendant is entitled to the following:
 - documentary discovery and an affidavit of documents from any and all of Pöyry (Beijing), and the "Pöyry Parties";
 - oral discovery of a representative of any Pöyry Party, the transcript of which may be read in at trial solely by the Non-Settling Defendants as part of their respective cases in defending the Plaintiffs' allegations concerning the Proportionate Liability of the Releasees and in connection with any claim [described below] by a Non-Settling Defendant against a Pöyry Party for contribution and indemnity;
 - leave to serve a request to admit on any Pöyry Party in respect of factual matters and/or documents;
 - the production of a representative of any Pöyry Party to testify at trial, with such witness or witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants;
 - leave to serve *Evidence Act* notices on any Pöyry Party; and

- discovery shall proceed pursuant to an agreement between the Non-Settling Defendants and the Pöyry Parties in respect of a discovery plan, or failing such agreement, by court order.
- The Pöyry Parties, Pöyry PLC, and Pöyry Finland OY shall, on a best efforts basis, take steps to collect and preserve all documents relevant to the matters at issue in the within proceeding.
- If any Pöyry Party fails to satisfy its reasonable obligations a Non-Settling Defendant may make a motion to this Court to compel reasonable compliance. If such an Order is made, and not adhered to by the Pöyry Party, a Non-Settling Defendant may then bring a motion to lift the Bar Order and to advance a claim for contribution, indemnity or other claims over against the Pöyry Party.
- If an Order is made permitting a claim to be advanced against a Pöyry Party by a Non-Settling Defendant any limitation period applicable to such a claim, whether in favour of a Pöyry Party or a Non-Settling Defendant, shall be deemed to have been tolled as of the date of the settlement approval order.

C. SUPPORT FOR THE SETTLEMENT AGREEMENT

[25] On May 17, 2012, the Plaintiffs distributed notice of the fairness hearing. No objections were filed by putative class members.

[26] The Plaintiffs' lawyers recommend the settlement for four reasons:

- (1) Although the Plaintiffs' central allegation against Pöyry (Beijing) is that its valuation reports on Sino Forest's assets contained misrepresentations, Pöyry (Beijing)'s, four reports (and one press release) contain exculpatory language that would pose significant challenges to establishing liability;
- (2) Pöyry (Beijing) is located in the People's Republic of China, and serious difficulties exist with respect to serving documents, compelling evidence, and enforcing any judgment, especially because compliance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention") has already proven untimely;
- (3) The Plaintiffs' recourse against Pöyry (Beijing) may be limited to the collection of insurance proceeds (€2 million) from Pöyry (Beijing)'s insurer; and
- (4) Pöyry (Beijing) is well-positioned to provide useful and valuable information and documents that would be helpful in the prosecution of the claims against the remaining defendants.

[27] As emerged from the argument at the fairness hearing, the last reason is by far the most significant reason that the Plaintiffs' lawyers recommend the settlement. They urged me that the direct claim against Pöyry (Beijing) is weak and not worth the effort, but the information available from the Pöyry entities and the swiftness of its availability

would be enormously valuable in the litigation battles for leave to assert an action under the Ontario *Securities Act*, to obtaining certification against the non-settling defendants, to succeeding on the merits, and to facilitating settlement overtures and negotiations.

[28] The Plaintiffs' lawyers urged me that the releases of the Pöyry entities and the risks of the bar order, which risks included the Plaintiffs having to take on the risk and task of contesting the non-settling defendants' efforts to attribute all or the greater proportion of responsibility onto the Pöyry entities was in the best interests of the class.

D. THE WITHDRAWN OPPOSITION OF BDO, ERNST & YOUNG AND THE UNDERWRITERS

[29] In connection with BDO's audits of the annual financial statements of Sino Forest for the years ended December 31, 2005 and December 31, 2006, BDO obtained and reviewed the Pöyry Asset Valuations and members of its audit team met with individuals from JP Management and Pöyry New Zealand and attended site visits at Sino Forest plantations with Pöyry staff.

[30] In its statement of defence, BDO will deny the allegations of negligence, and it will deliver a crossclaim against Pöyry (Beijing).

[31] BDO has already commenced an action against a Pöyry Beijing affiliate, Pöyry Management Consulting (Singapore) Pte. Ltd. ("Pöyry Singapore"), seeking contribution and indemnity in connection with the claims advanced against BDO in this action.

[32] The Pöyry valuations were relied upon by the Defendant Ernst & Young in its role as auditor of Sino Forest from 2007 to 2012. Ernst & Young submits that the Plaintiffs' claims against it are inextricably linked to the claims the Plaintiffs advance against Pöyry (Beijing).

[33] Ernst & Young has commenced a separate action against Pöyry (Beijing) and the other Pöyry entities seeking contribution, indemnity and other relief emanating from the claim made by the plaintiffs against Ernst & Young.

[34] It was the position of the underwriters that the Pöyry entities and their valuation reports played significant roles in presenting Sino Forest's business to the market for many years and before the involvement of the Underwriters.

[35] The Underwriters have commenced an action seeking contribution and indemnity against seven Pöyry entities in respect of their involvement Sino Forest's disclosure and any liability that may be found after trial.

[36] Ernst & Young, BDO, and the Underwriters in their factums opposing the court approving the settlement disparaged the settlement as providing nothing of benefit to the class and as unfair to the non-settling defendants who had substantial claims of contribution and indemnity against the Pöyry entities whom they submit were at the centre of the events of this litigation.

E. CERTIFICATION FOR SETTLEMENT PURPOSES

[37] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, the court shall certify a proceeding as a class proceeding if: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims of the class members raise common issues of fact or law; (d) a class proceeding would be the preferable procedure; and (e) there is a representative plaintiff who would adequately represent the interests of the class without conflict of interest and who has produced a workable litigation plan.

[38] Where certification is sought for the purposes of settlement, all the criteria for certification still must be met; *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 22. However, compliance with the certification criteria is not as strictly required because of the different circumstances associated with settlements; *Bellaire v. Daya*, [2007] O.J. No. 4819 (S.C.J.) at para. 16; *National Trust Co. v. Smallhorn*, [2007] O.J. No. 3825 (S.C.J.) at para. 8; *Bonanno v. Maytag Corp.*, [2005] O.J. No. 3810 (S.C.J.); *Bona Foods Ltd. v. Ajinomoto U.S.A. Inc.*, [2004] O.J. No. 908 (S.C.J.); *Gariepy v. Shell Oil Co.*, [2002] O.J. No. 4022 (S.C.J.) at para. 27; *Nutech Brands Inc. v. Air Canada*, [2008] O.J. No. 1065 (S.C.J.) at para. 9.

[39] Subject to approval of the settlement, in my opinion, the Plaintiffs' action satisfies the criterion for certification under the *Class Proceedings Act, 1992*. Their pleading discloses two causes of action against Pöyry (Beijing); namely: (1) misrepresentations in relation to the assets, business and transactions of Sino-Forest contrary to Part XXIII.1 and section 130 of the Ontario *Securities Act*; and (2) negligence in the preparation of its opinions and reports about the nature and value of Sino Forest's assets. Thus, the first criterion is satisfied.

[40] There is an identifiable class in which all class members have an interest in the resolution of the proposed common issue. Thus, the second criterion is satisfied. The proposed class is defined as:

All persons and entities, wherever they may reside, who acquired Sino'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 person and entities who acquired Sino'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.*

*Class Period is defined as the period from and including March 19, 2007 to and including June 2, 2011.

*Excluded Persons is defined 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.

[41] The Plaintiffs propose the following common issue, as agreed to between the parties to the Settlement Agreement:

Did [Pöyry (Beijing)] make misrepresentations as alleged in this Proceeding during the Class Period concerning the assets, business or transactions of Sino-Forest? If so, what damages, if any, did Settlement Class Members suffer?

[42] I am satisfied that this question satisfies the third criterion.

[43] I am also satisfied that assuming that the settlement agreement is approved, a class proceeding is the preferable procedure and the Plaintiffs are suitable representative plaintiffs.

[44] Thus, I conclude that the action against Pöyry (Beijing) should be certified as a class action for settlement purposes.

F. SETTLEMENT APPROVAL

[45] To approve a settlement of a class proceeding, the court must find that in all the circumstances the settlement is fair, reasonable, and in the best interests of those affected by it: *Dabbs v. Sun Life Assurance*, [1998] O.J. No. 1598 (Gen. Div.) at para. 9, aff'd (1998), 41 O.R. (3d) 97 (C.A.); leave to appeal to the S.C.C. ref'd, [1998] S.C.C.A. No. 372; *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 68-73.

[46] In determining whether to approve a settlement, the court, without making findings of facts on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement: *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 10.

[47] While a court has the jurisdiction to reject or approve a settlement, it does not have the jurisdiction to rewrite the settlement reached by the parties: *Dabbs v. Sun Life Assurance Co. of Canada, supra*, at para. 10.

[48] In determining whether a settlement is fair and reasonable and in the best interests of the class members, an objective and rational assessment of the pros and cons of the settlement is required: *Al-Harazi v. Quizno's Canada Restaurant Corp.*, [2007] O.J. No. 2819 (S.C.J.) at para. 23.

[49] A settlement must fall within a zone of reasonableness. Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending upon the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation: *Parsons v. The Canadian Red Cross Society, supra*, at para. 70; *Dabbs v. Sun Life Assurance, supra*.

[50] When considering the approval of negotiated settlements, the court may consider, among other things: likelihood of recovery or likelihood of success; amount and nature of discovery, evidence or investigation; settlement terms and conditions; recommendation and experience of counsel; future expense and likely duration of litigation and risk; recommendation of neutral parties, if any; number of objectors and

nature of objections; the presence of good faith, arms length bargaining and the absence of collusion; the degree and nature of communications by counsel and the representative plaintiffs with class members during the litigation; information conveying to the court the dynamics of and the positions taken by the parties during the negotiation: *Dabbs v. Sun Life Assurance Company of Canada*, *supra*; *Parsons v. The Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at paras. 71-72; *Frohlinger v. Nortel Networks Corp.*, [2007] O.J. No. 148 (S.C.J.) at para. 8.

[51] There is an initial presumption of fairness when a settlement is negotiated arms-length: *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 113-114; *CSL Equity Investments Ltd. v. Valois*, [2007] O.J. No. 3932 (S.C.J.) at para. 5.

[52] The court may give considerable weight to the recommendations of experienced counsel who have been involved in the litigation and are in a better position than the court or the class members, to weigh the factors that bear on the reasonableness of a particular settlement: *Kranjcec v. Ontario*, [2006] O.J. No. 3671 (S.C.J.) at para. 11; *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 142.

[53] In assessing the reasonableness of a settlement agreement, the court is entitled to consider the non-monetary benefits, including the provision of cooperation: *Nutech Brands Inc. v. Air Canada*, [2009] O.J. No. 709 (SCJ) at paras 29-30, 36-37; *Osmun v Cadbury Adams Canada Inc.*, [2010] O.J. No. 1877 (S.C.J.), *aff'd* 2010 ONCA 841, leave to appeal to S.C.C. *ref'd* [2011] S.C.C.A. No. 55.

[54] The court may approve a settlement with a “bar order” in which the plaintiff settles with some defendants and agrees only to pursue claims of several liability against the remaining defendants: *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (S.C.J.); *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 134-39; *Millard v. North George Capital Management Ltd.*, [2000] O.J. No. 1535 (S.C.J.); *Garipey v. Shell Oil Co.*, [2002] O.J. No. 4022 (S.C.J.); *McCarthy v. Canadian Red Cross Society*, [2001] O.J. No. 2474 (S.C.J.); *Bona Foods Ltd. v. Ajinomoto U.S.A. Inc.*, [2004] O.J. No. 908 (S.C.J.); *Attis v. Canada (Minister of Health)*, [2003] O.J. No. 344 (S.C.J.), *aff'd* [2003] O.J. No. 4708 (C.A.); *Osmun v. Cadbury Adams Canada Inc.*, *supra*.

[55] In the case at bar, before the settlement agreement between the Plaintiffs and Pöyry (Beijing) was revised at the eleventh hour, I had serious misgivings about approving the proposed settlement. I was concerned about whether the non-settling Defendants were being fairly treated, and I was concerned about whether the Plaintiffs should take on the risk and burden of contesting the apportionment of liability in crossclaims and third party claims that normally would not be their concern.

[56] Subject to what the Plaintiffs might submit during the oral argument, the Defendants’ arguments in their factums appeared to me to make a strong case that the non-settling Defendants’ ability to defend themselves by shifting the blame exclusively on the Pöyry entities and the non-settling Defendants’ ability to advance their

substantive claims for contribution and indemnity were unfairly compromised by the release of all the Pöyry entities and the protection afforded all of them by a bar order.

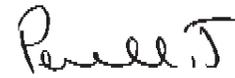
[57] Subject to what the Plaintiffs might submit during the oral argument, I was concerned whether the release and bar order was in the class members' best interests in the circumstances of this case, where it is early days in assessing the extent to which the non-settling Defendants could succeed in establishing their claims of contribution and indemnity.

[58] However, with the non-settling Defendants, apparently being content with the revised settlement arrangement, and with the assertive and confident recommendation of the Plaintiffs and their lawyers made during oral argument that the proposed settlement is in the best interests of the class members and will increase the likelihood of success in obtaining leave under the *Securities Act* and certification under the *Class Proceedings Act, 1992* and perhaps success in encouraging a settlement, my conclusion is that the court should approve the settlement.

[59] I know from the carriage motion that the lawyers for the Plaintiffs have expended a great deal of forensic energy investigating and advancing this litigation and it is true that they are in a better position than the court to weigh the factors that bear on the reasonableness of a particular settlement, particularly a tactically and strategically motivated settlement in ongoing litigation.

G. CONCLUSION

[60] For the above reasons, I grant the Plaintiffs' motion without costs.



Perell, J.

Released: September 25, 2012

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino Forest Corporation, 2012 ONSC 5398

**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, SJÜNDE AP-FONDEN, DAVID GRANT and ROBERT WONG

Plaintiff

- 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

REASONS FOR DECISION

Perell, J.

Released: September 25, 2012.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	_____ , THE _____
)	
JUSTICE MORAWETZ)	DAY OF OCTOBER, 2012

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

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

ORDER

THIS MOTION made by the Ad Hoc Committee of Purchasers of the Applicant's Securities (the "**Moving Party**"), for, among other things, an order limiting the scope of the stay of proceedings, directions regarding voting on the plan of compromise and restructuring filed by Sino-Forest Corporation ("**Sino-Forest**") with this court (the "**Plan**"), and production of certain documents in the possession, control and power of the Applicant on a non-confidential basis, was heard this day, at the courthouse at 330 University Avenue, Toronto, Ontario,

ON READING the materials listed in Appendix A to this order and on hearing the submissions of counsel for the Moving Party, Sino-Forest, various of Sino-Forest's current and former directors and officers, the Monitor, an ad hoc Committee of Bondholders, Ernst & Young LLP, BDO, and certain underwriters of Sino-Forest's securities,

1. **THIS COURT ORDERS** that the manner of service of the Moving Party's motion materials is validated, that the time for service of those motion

materials is abridged and that their service on any party not already served is dispensed with, such that this motion is properly returnable today.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the stay of proceedings imposed by the initial order in these proceedings dated March 30, 2012, as it may be extended from time to time (the “**Initial Order**”), shall not apply to the following motions (the “**Class Action Motions**”):
 - (i) a motion certifying the action styled *Trustees of the Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation et al.* (Toronto) Court File No. CV-11-431153-00CP (the “**Ontario Class Action**”) as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
 - (ii) a motion for authorization, in the Quebec Superior Court proceeding bearing Court File No. 200-06-000132-111, Siskinds Desmeules SENC (the “**Quebec Class Action**” and, together with the Ontario Class Action, the “**Class Actions**”), to commence a class action under the Quebec *Code of Civil Procedure*, RSQ c C-25;
 - (iii) a motion for leave to proceed with statutory secondary market claims in the Ontario Class Action pursuant to s. 138.3 of the *Securities Act*, R.S.O. 1990, c. S.5;

- (iv) a motion for leave to proceed with the statutory secondary market claims in the Quebec Class Action pursuant to article 225.4 of the *Securities Act*, RSQ c V-1-1, to be filed; and
- (v) a motion for leave to add CONDEX Wattco Inc. as a plaintiff in the Quebec Class Action with Ilan Toledano as its representative, to be filed, and a motion to amend the pleading in the Quebec Class Action to plead the *Securities Act*, RSQ c V-1-1 and add BDO Limited as a party.

VOTING AND REPRESENTATION

3. **THIS COURT ORDERS AND DECLARES** that the persons described in the Appendix B to this order (the “**Class Members**”) are entitled to vote on the Plan, as part of a single class composed of the class members of each of the Ontario and Quebec Class Actions.
4. **THIS COURT ORDERS** that the Plaintiffs in the Class Actions (the “**Class Action Plaintiffs**”) are hereby appointed as representatives of Class Members for the purposes of these proceedings and in any related or ensuing receivership, bankruptcy or other insolvency proceeding that has or may be brought before this Court in respect of Sino-Forest (the “**Insolvency Proceedings**”), including, without limitation, for the purposes of voting on the Plan and settling or compromising claims by the Class Members in the Insolvency Proceedings.
5. **THIS COURT ORDERS** that the Class Members bound by this Order specifically exclude the Excluded Persons as described in Appendix B.

6. **THIS COURT ORDERS** that Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP are hereby appointed as counsel for the Class Members in the Insolvency Proceedings for any issues affecting the Class Members in the Insolvency Proceedings.
7. **THIS COURT ORDERS** that all reasonable legal, financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be incurred by the Class Action Plaintiffs and their counsel, shall be paid out of any recovery made by the Class Action Plaintiffs and their counsel on behalf of the Class Members, whether as part of these proceedings or as part of the Class Actions, in accordance with the applicable retainer agreements and as may be approved by this court, either as part of these proceedings or as part of the Class Actions.
8. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Class Members by advertisement in the national edition of the Globe and Mail, the Wall Street Journal, and La Presse, at the expense of Sino-Forest, on such terms as agreed upon by the Class Action Plaintiffs, Sino-Forest and the Monitor.
9. **THIS COURT ORDERS** that the Class Action Plaintiffs, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
10. **THIS COURT ORDERS** that any individual Class Member who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and substantially in the form attached as Appendix C hereto

and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in the Insolvency Proceedings.

11. **THIS COURT ORDERS** that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

PRODUCTION OF DOCUMENTS

12. **THIS COURT ORDERS** the Applicant to make the documents listed in Confidential Appendix A to the Moving Party's Notice of Motion dated September 24, 2012 available to the Class Action Plaintiffs on a non-confidential basis.
-

APPENDIX A MOTION MATERIALS**1. TO BE COMPLETED**

APPENDIX
DEFINITION OF CLASS MEMBERS

All persons and entities, wherever they may reside who acquired **Sino'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's Securities** during the **Class Period** who are resident of Canada or were resident of Canada at the time of the acquisition, except the **Excluded Persons**.

For the purposes of the foregoing:

“Sino” means Sino Forest Corporation, its affiliates and subsidiaries.

“Securities” means Sino’s common shares, notes or other securities defined in the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

“Class Period” means the period from and including March 19, 2007 to and including June 2, 2011.

“Excluded Persons” means any defendant to the action commenced in Ontario Superior Court of Justice bearing (Toronto) Court File No. 11-CV-431153CP, 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 the following persons: Allen T.Y. Chan a.k.a Tak Yuen 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 and Garry J. West.

APPENDIX C: OPT-OUT LETTER

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****OPT-OUT LETTER**

FTI Consulting Inc.
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto, Ontario M5K 1G8

Attention: Greg Watson
 Tel: 416.649.8100
 Fax: 416.649.8101
 Email: greg.watson@fticonsulting.com

I, _____, am a Class Member, as defined in the Order of Mr. Justice Morawetz dated October 10, 2012 (the "Order").

Under that Order, Class Members who do not wish to be represented by the Class Action Plaintiffs and to have Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP act as their representative counsel may opt out.

I hereby notify the Monitor that I do not wish to be bound by the Order and will be separately represented to the extent I wish to appear in these proceedings.

 Date

 Name:

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

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

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY MOTION RECORD
(Motion Returnable October 9 and 10, 2012)**

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A. Dimitri Lascaris / Charles M. Wright
Tel: 519.672.2121 / Fax: 519.672.6065

Lawyers for the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Representative Plaintiffs in the Ontario Class Action