

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE REGIONAL SENIOR
JUSTICE MORAWETZ

MONDAY, THE 20th DAY
OF APRIL, 2015

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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, POYRY (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 Bank of America Securities LLC)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by Chubb Insurance Company of Canada ("Chubb") for:

- (a) a declaration that all funds paid out by Chubb under the Chubb Policy as detailed in the Affidavit of Paula Kargas constitute Loss that reduces the Limit of Liability under the Chubb Policy, for all purposes;
- (b) an order authorizing Travelers Insurance Company of Canada ("Travelers") to reimburse Chubb to the extent of Chubb's Overpayment of Loss;
- (c) a declaration that Travelers' reimbursement of the Overpayment to Chubb constitutes Loss that reduces the Limit of Liability under the Travelers Policy, for all purposes; and
- (d) such further and other relief as counsel may advise and this Honourable Court permit,

was heard on April 20, 2015, at the Court House, 330 University Avenue, Toronto, Ontario;

WHEREAS ACE INA Insurance ("ACE") issued Policy No. DO 024464 (the "ACE Policy") covering Sino-Forest Corporation, its Subsidiaries (as defined in the ACE Policy) and their directors and officers (the "Sino-Forest Insureds");

AND WHEREAS Chubb issued first excess Policy No. 8209-4449 (the "Chubb Policy") covering the Sino-Forest Insureds;

AND WHEREAS there are two further excess layers of coverage provided by certain Underwriters at Lloyd's, London ("Lloyds"), which issued second excess Policy No. XTFF0420 (the "Lloyds Policy") and by Travelers, which issued third excess Policy No. 10181108 (the "Travelers Policy"), (all of the policies herein collectively the "Policies");

AND WHEREAS with certain exceptions not material to this motion, the Chubb Policy, the Lloyds Policy and the Travelers Policy are excess and follow form to the ACE Policy;

AND WHEREAS the ACE Policy bears a \$15,000,000 Limit of Liability (the "ACE Limit");

AND WHEREAS the Chubb Policy bears a \$15,000,000 Limit of Liability (the "Chubb Limit");

AND WHEREAS the Lloyds Policy bears a \$15,000,000 Limit of Liability (the "Lloyds Limit");

AND WHEREAS the Travelers Policy bears a \$15,000,000 Limit of Liability (the "Travelers Limit");

AND WHEREAS this court issued its Order on July 24, 2014 confirming that ACE exhausted the ACE Limit (the "Horsley Settlement Order");

AND WHEREAS Chubb has paid out \$15,000,000 on behalf of Sino-Forest Insureds and exhausted the Chubb Limit;

AND WHEREAS Chubb has further paid out \$1,033,296.59 on behalf of Sino-Forest Insureds over and above the Chubb Limit (the "Overpayment");

AND WHEREAS all amounts paid by Chubb constitute Loss (as defined by the ACE Policy and set forth in the Affidavit of Paula Kargas) under the Policies, such that the amounts constituting the Overpayment would have, but for the Overpayment, been the responsibility of Lloyds;

AND WHEREAS the Lloyds Limit under the Lloyds Policy is exhausted, precluding reimbursement from Lloyds;

AND WHEREAS Travelers is prepared to reimburse Chubb for the Overpayment, provided that it receives the necessary protection in the form of the relief sought herein;

AND ON READING the materials filed and on hearing the submissions of counsel;

1. **THIS COURT ORDERS AND DECLARES** that all funds paid by Chubb under the Chubb Policy as detailed in the Affidavit of Paula Kargas constitute Loss under the Policies, and reduce the Chubb Limit for all purposes and as against all persons or entities potentially covered and/or all persons seeking to assert a claim under the Policies or the Chubb Policy;
2. **THIS COURT ORDERS AND DECLARES** that Travelers shall reimburse Chubb in the amount of the Overpayment;
3. **THIS COURT ORDERS AND DECLARES** that reimbursement by Travelers to Chubb of the Overpayment constitutes Loss under the Policies, and reduces the Travelers Limit for all purposes and as against all persons or entities potentially covered and/or all persons seeking to assert a claim under the Policies or the Travelers Policy, to the extent of the amount reimbursed;

4. **THIS COURT ORDERS AND DECLARES** that all persons and entities provided with notice of this Motion, including all Sino-Forest Insureds under the Policies, shall be bound by the declarations made in, and the terms of, this Order.

Morawetz J.

**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 AND ARRANGEMENT OF SINO-FOREST CORPORATION**

**THE TRUSTEES OF THE LABOURER'S PENSION FUND OF
CENTRAL AND EASTERN CANADA et al**
Plaintiffs

v. **SINO-FOREST CORPORATION et al**
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

O R D E R

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