

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**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, PÖYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE  
SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES  
CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC  
WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD  
FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE  
SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED (successor by merger to Banc of America Securities LLC)**

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**FACTUM OF THE AD HOC COMMITTEE OF PURCHASERS OF THE APPLICANT'S  
SECURITIES, INCLUDING THE CLASS ACTION PLAINTIFFS**

**MOTION TO VARY ADMINISTRATOR'S FEE  
(Motion Returnable January 29, 2015)**

**Siskinds LLP**

680 Waterloo Street, Box 2520  
London, ON N6A 3V8

**A. Dimitri Lascaris (LSUC#: 50074A)**

Tel: (519) 660-7844  
Fax: (519) 660-7845

**Serge Kalloghlian (LSUC#: 55557F )**

Tel: (416) 594-4392  
Fax: (416) 362-2610  
Email: serge.kalloghlian@siskinds.com

**Koskie Minsky LLP**

900-20 Queen Street West, Box 52  
Toronto, ON M5H 3R3

**Kirk M. Baert (LSUC#: 30942O)**

Tel: 416.595.2117  
Fax: 416.204.2889  
Email: kbaert@kmlaw.ca

**Jonathan Ptak (LSUC#: 45773F)**

Tel: 416.595.2149  
Fax: 416.204.2903  
Email: jptak@kmlaw.ca

**Paliare Roland Rosenberg Rothstein LLP**

250 University Avenue, Suite 501  
Toronto, ON M5H 3E5

**Ken Rosenberg (LSUC#: 21101H)**

**Massimo Starnino (LSUC#: 41048G)**

Tel: (416) 646-4300  
Fax: (416) 646-4301

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

**TO: ATTACHED SERVICE LIST**

**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**

**SERVICE LIST  
(as at January 2015)**

<b>TO: BENNETT JONES LLP</b> 3400 One First Canadian Place, P.O. Box 130 Toronto, Ontario M5X 1A4	<b>AND GOWLING LAFLEUR HENDERSON LLP</b> <b>TO:</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario M5X 1G5
Robert W. Staley Tel: 416.777.4857 Fax: 416.863.1716 Email: staleyr@bennettjones.com	Derrick Tay Tel: 416.369.7330 Fax: 416.862.7661 Email: derrick.tay@gowlings.com
Kevin Zych Tel: 416.777.5738 Email: zychk@bennettjones.com	Clifton Prophet Tel: 416.862.3509 Email: clifton.prophet@gowlings.com
Derek J. Bell Tel: 416.777.4638 Email: belld@bennettjones.com	Jennifer Stam Tel: 416.862.5697 Email: jennifer.stam@gowlings.com
Raj S. Sahni Tel: 416.777.4804 Email: sahnir@bennettjones.com	Ava Kim Tel: 416.862.3560 Email: ava.kim@gowlings.com
Jonathan Bell Tel: 416.777.6511 Email: bellj@bennettjones.com	Jason McMurtrie Tel: 416.862.5627 Email: jason.mcmurtrie@gowlings.com
Sean Zweig Tel: 416.777.6254 Email: zweigs@bennettjones.com	Lawyers for the Monitor
Lawyers for the Applicant, Sino-Forest Corporation	

AND **FTI CONSULTING CANADA INC.**  
TO: T-D Waterhouse Tower  
79 Wellington Street West  
Toronto-Dominion Centre, Suite 2010,  
P.O. Box 104  
Toronto, Ontario M5K 1G8

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

Jodi Porepa  
Tel: 416.649.8070  
Email: Jodi.porepa@fticonsulting.com

Monitor

AND **BAKER MCKENZIE LLP**  
TO: Brookfield Place  
2100-181 Bay Street  
Toronto, Ontario M5J 2T3

John Pirie  
Tel: 416.865.2325  
Fax: 416.863.6275  
Email: john.pirie@bakermckenzie.com

David Gadsden  
Tel: 416.865.6983  
Email: david.gadsden@bakermckenzie.com

Lawyers for Poyry (Beijing) Consulting  
Company Limited

AND **AFFLECK GREENE MCMURTY LLP**  
TO: 365 Bay Street, Suite 200  
Toronto, Ontario M5H 2V1

Peter Greene  
Tel: 416.360.2800  
Fax: 416.360.8767  
Email: pgreene@agmlawyers.com

Kenneth Dekker  
Tel: 416.360.6902  
Fax: 416.360.5960  
Email: kdekker@agmlawyers.com

Michelle E. Booth  
Tel: 416.360.1175  
Fax: 416.360.5960  
Email: mbooth@agmlawyers.com

Lawyers for BDO

AND **TORYS LLP**  
TO: 79 Wellington Street West  
Suite 3000, Box 270  
Toronto-Dominion Centre  
Toronto, Ontario M5K 1N2

John Fabello  
Tel: 416.865.8228  
Fax: 416.865.7380  
Email: jfabello@torys.com

David Bish  
Tel: 416.865.7353  
Email: dbish@torys.com

Andrew Gray  
Tel: 416.865.7630  
Email: agray@torys.com

Lawyers for the Underwriters named in Class  
Actions

AND **LENCZNER SLAGHT ROYCE SMITH**  
TO: **GRIFFIN LLP**  
Suite 2600, 130 Adelaide Street West  
Toronto, Ontario M5H 3P5

Peter H. Griffin  
Tel: 416.865.9500  
Fax: 416.865.3558  
Email: pgriffin@litigate.com

Peter J. Osborne  
Tel: 416.865.3094  
Fax: 416.865.3974  
Email: posborne@litigate.com

Linda L. Fuerst  
Tel: 416.865.3091  
Fax: 416.865.2869  
Email: lfuerst@litigate.com

Shara Roy  
Tel: 416.865.2942  
Fax: 416.865.3973  
Email: sroy@litigate.com

Lawyers for Ernst & Young LLP

AND **MERCHANT LAW GROUP LLP**  
TO: Saskatchewan Drive Plaza  
100-2401 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H8

E.F. Anthony Merchant, Q.C.  
Tel: 306.359.7777  
Fax: 306.522.3299  
tmerchant@merchantlaw.com

Lawyers for the Plaintiffs re Saskatchewan  
action

AND **GOODMANS LLP**  
TO: 333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Benjamin Zarnett  
Tel: 416.597.4204  
Fax: 416.979.1234  
Email: bzarnett@goodmans.ca

Robert Chadwick  
Tel: 416.597.4285  
Email: rchadwick@goodmans.ca

Brendan O'Neill  
Tel: 416.979.2211  
Email: boneill@goodmans.ca

Caroline Descours  
Tel: 416.597.6275  
Email: cdescours@goodmans.ca

Lawyers for Ad Hoc Committee of Bondholders

AND **ONTARIO SECURITIES COMMISSION**  
TO: Suite 1900, 20 Queen Street West  
Toronto, Ontario M5H 3S8

Hugh Craig  
Senior Litigation Counsel  
Tel: 416.593.8259  
Email: hcraig@osc.gov.on.ca

AND **OSLER, HOSKIN & HARCOURT LLP**

TO: 1 First Canadian Place  
100 King Street West  
Suite 6100, P.O. Box 50  
Toronto, Ontario M5X 1B8

Larry Lowenstein  
Tel: 416.862.6454  
Fax: 416.862.6666  
Email: llowenstein@osler.com

Edward Sellers  
Tel: 416.862.5959  
Email: esellers@osler.com

Geoffrey Grove  
Tel: (416) 862-4264  
Email: ggrove@osler.com

Lawyers for the Board of Directors of Sino-  
Forest Corporation

AND **SISKINDS LLP**

TO: 680 Waterloo Street  
P.O. Box 2520  
London, Ontario N6A 3V8

A. Dimitri Lascaris  
Tel: 519.660.7844  
Fax: 519.672.6065  
Email: dimitri.lascaris@siskinds.com

Charles M. Wright  
Tel: 519.660.7753  
Email: Charles.wright@siskinds.com

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

AND **COHEN MILSTEIN SELLERS & TOLL PLC**

TO: 1100 New York, Ave., N.W.  
West Tower, Suite 500  
Washington, D.C. 20005

Steven J. Toll  
Tel: 202.408.4600  
Fax: 202.408.4699  
Email: stoll@cohenmilstein.com

Matthew B. Kaplan  
Tel: 202.408.4600  
Email: mkaplan@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed Class  
re New York action

AND **KOSKIE MINSKY LLP**

TO: 20 Queen Street West, Suite 900  
Toronto, Ontario M5H 3R3

Kirk M. Baert  
Tel: 416.595.2117  
Fax: 416.204.2899  
Email: kbaert@kmlaw.ca

Jonathan Ptak  
Tel: 416.595.2149  
Fax: 416.204.2903  
Email: jptak@kmlaw.ca

Garth Myers  
Tel: 416.595.2102  
Fax: 416.977.3316  
Email: gmyers@kmlaw.ca

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

AND **COHEN MILSTEIN SELLERS & TOLL**  
TO: **PLC**

88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10005

Richard S. Speirs  
Tel: 212.838.7797  
Fax: 212.838.7745  
Email: rspeirs@cohenmilstein.com

Stefanie Ramirez  
Tel: 202.408.4600  
Email: sramirez@cohenmilstein.com

Attorneys for the Plaintiff and the Proposed  
Class re New York action

AND **THOMPSON HINE LLP**  
TO: 335 Madison Avenue – 12<sup>th</sup> Floor  
New York, New York 10017-4611

Yesenia D. Batista  
Tel: 212.908.3912  
Fax: 212.344.6101  
Email: yesenia.batista@thompsonhine.com

Irving Apar  
Tel: 212.908.3964  
Email: irving.apar@thompsonhine.com

Curtis L. Tuggle  
3900 Key Center, 127 Public Square  
Cleveland, Ohio 44114  
Tel: 216.566.5904  
Fax: 216.566.5800  
Email: Curtis.tuggle@thompsonhine.com

Lawyers for Senior Note Indenture Trustee

AND **LAW DEBENTURE TRUST COMPANY OF**  
TO: **NEW YORK**

400 Madison Avenue – 4<sup>th</sup> Floor  
New York, New York 10017

James D. Heaney  
Tel: 646-747-1252  
Fax: 212-750-1361  
Email: james.heaney@lawdeb.com

Senior Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: Global Corporate Trust

101 Barclay Street – 4<sup>th</sup> Floor East  
New York, New York 10286

David M. Kerr, Vice President  
Tel: 212.815.5650  
Fax: 732.667.9322  
Email: david.m.kerr@bnymellon.com

Convertible Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: 320 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario M5H 4A6

George Bragg  
Tel: 416.933.8505  
Fax: 416.360.1711 / 416.360.1737  
Email: George.bragg@bnymellon.com

Convertible Note Indenture Trustee

AND **THE BANK OF NEW YORK MELLON**  
TO: 12/F Three Pacific Place  
1 Queen's Road East, Hong Kong

Marelize Coetzee, Vice President  
Relationship Manager, Default Administration  
Group – APAC  
Tel: 852.2840.6626  
Mobile: 852.9538.5010  
Email: marelize.coetzee@bnymellon.com

Tin Wan Chung  
Tel: 852.2840.6617  
Fax: 852.2295-3283  
Email: tin.chung@bnymellon.com

Grace Lau  
Email: grace.lau@bnymellon.com

Convertible Note Indenture Trustee

AND **WARDLE DALEY BERNSTEIN LLP**  
TO: 2104 - 401 Bay Street, P.O. Box 21  
Toronto Ontario M5H 2Y4

Peter Wardle  
Tel: 416.351.2771  
Fax: 416.351.9196  
Email: pwardle@wdblaw.ca

Simon Bieber  
Tel: 416.351.2781  
Email: sbieber@wdblaw.ca

Erin Pleet  
Tel: 416.351.2774  
Email: eplet@wdblaw.ca

Lawyers for David Horsley

AND **LINKLATERS LLP**  
TO: 10<sup>th</sup> Floor, Alexandra House  
18 Chater Road  
Hong Kong China

Melvin Sng  
Tel: 852 2901 5234  
Fax: 852 2810 8133  
Email: Melvin.Sng@linklaters.com

Lawyers for Sino-Forest Corporation (Hong  
Kong)



AND **LINKLATERS LLP**  
TO: 10<sup>th</sup> Floor, Alexandra House  
18 Chater Road  
Hong Kong China

Hyung Ahn  
Tel: 852 2842 4199  
Fax: 852 2810 8133  
Email: hyung.ahn@linklaters.com

Samantha Kim  
Tel: 852.2842 4197  
Email: Samantha.Kim@Linklaters.com

Jon Gray  
Tel: 852.2842.4188  
Email: Jon.Gray@linklaters.com

Lawyers for Sino-Forest Corporation (U.S.)

AND **KING AND WOOD MALLESONS**  
TO: 9th Floor, Hutchison House  
Central, Hong Kong Island  
Hong Kong (SAR)

Edward Xu  
Tel: 852.2848.4848  
Fax: 852.2845.2995  
Email: Edward.Xu@hk.kwm.com

Helena Huang  
Tel: 852.2848.4848  
Email: Helena.huang@kingandwood.com

Tata Sun  
Tel: 852.2848.4848  
Email: tata.sun@kingandwood.com

Lawyers for Sino-Forest Corporation (PRC)

AND **APPLEBY GLOBAL**  
TO: Jayla Place, Wickham's Cay1  
P.O. Box 3190, Road Town  
Tortola VG1110 BVI

Eliot Simpson  
Tel: 284.852.5321  
Fax: 284.494.7279  
Email: esimpson@applebyglobal.com

Andrew Willins  
Tel: 284 852 5323  
Email: awillins@applebyglobal.com

Andrew Jowett  
Tel: 284 852 5316  
Email: ajowett@applebyglobal.com

Lawyers for Sino-Forest Corporation (BVI)

AND **THORNTON GROUT FINNIGAN LLP**  
TO: Suite 3200, 100 Wellington Street West  
P. O. Box 329, Toronto-Dominion Centre  
Toronto, Ontario M5K 1K7

James H. Grout  
Tel: 416.304.0557  
Fax: 416.304.1313  
Email: jgrout@tgf.ca

Kyle Plunkett  
Tel: 416-304-7981  
Fax: 416.304.1313  
Email: kplunkett@tgf.ca

Lawyers for the Ontario Securities Commission

AND **McCARTHY TETRAULT LLP**  
TO: Suite 2500, 1000 De La Gauchetiere St.  
West  
Montreal, Québec, H3B 0A2

Alain N. Tardif  
Tel: 514.397.4274  
Fax : 514.875.6246  
Email: atardif@mccarthy.ca

Mason Poplaw  
Tel: 514.397.4155  
Email: mpoplaw@mccarthy.ca

Céline Legendre  
Tel: 514.397.7848  
Email: clegendre@mccarthy.ca

Lawyers for Ernst & Young LLP

AND **CHAITONS LLP**  
TO: 5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

Harvey G. Chaiton  
Tel: 416.218.1129  
Fax: 416.218.1849  
Email: Harvey@chaitons.com

Lawyers for the Law Debenture Trust  
Company of New York

AND **RUETER SCARGALL BENNETT LLP**  
TO: 250 Yonge Street  
Suite 2200  
Toronto, Ontario M5B 2L7

Robert Rueter  
Tel: 416.869-3363  
Email: robert.rueter@rslawyers.com

Sara J. Erskine  
Tel: 416.597-5408  
Email: sara.erskine@rslawyers.com

Lawyers for Allen Chan

AND **PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**  
TO: 155 Wellington Street, 35<sup>th</sup> Floor  
Toronto, Ontario M5V 3H1

Ken Rosenberg  
Tel: 416.646.4304  
Fax: 416.646.4301  
Email: ken.rosenberg@paliareroland.com

Massimo (Max) Starnino  
Tel: 416.646.7431  
Email: max.starnino@paliareroland.com

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

AND **ERNST & YOUNG LLP**  
TO: 222 Bay Street, P.O. Box 251  
Toronto, Ontario M5K 1J7

Mike P. Dean  
Tel: 416-943-2134  
Fax: 416-943-3300  
Email: Mike.P.Dean@ca.ey.com

AND **FASKEN MARTINEAU LLP**  
TO: 333 Bay Street, Suite 2400,  
Bay-Adelaide Centre, Box 20  
Toronto, Ontario M5H 2T6

Stuart Brotman  
Tel: 416.865.5419  
Fax: 416.364.7813  
Email: sbrotman@fasken.com

Conor O'Neill  
Tel: 416 865 4517  
Email: coneill@fasken.com

Canadian Lawyers for the Convertible Note  
Indenture Trustee (The Bank of New York  
Mellon)

AND **EMMET, MARVIN & MARTIN, LLP**  
TO: 120 Broadway, 32nd Floor  
New York, NY 10271

Margery A. Colloff  
Tel: 212.238.3068 or 212.653.1746  
Fax: 212.238.3100  
Email: mcolloff@emmetmarvin.com

U.S. Lawyers for the Convertible Note  
Indenture Trustee (The Bank of New York  
Mellon)

AND **FRASER MILNER CASGRAIN LLP**  
TO: 77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto Ontario M5K 0A1

Neil S. Rabinovitch  
Tel: 416.863.4656  
Fax: 416 863 4592  
Email: neil.rabinovitch@fmc-law.com

Jane Dietrich  
Tel: 416.863.4467  
Email: jane.dietrich@fmc-law.com

Lawyers for Contrarian Capital  
Management, LLC

AND **LAPOINTE ROSENSTEIN MARCHAND  
MELANÇON, S.E.N.C.R.L.**  
TO: 1250, boul. René-Lévesque Ouest, bureau 1400  
Montréal (Québec) Canada H3B 5E9

Bernard Gravel  
Tel: 514.925.6382  
Fax: 514.925.5082  
Email: bernard.gravel@lrmm.com

Bruno Floriani  
Tel: 514.925.6310  
Email: bruno.floriani@lrmm.com

Québec counsel for Pöyry (Beijing) Consulting  
Company Ltd.

AND **CLYDE & COMPANY**  
TO: 390 Bay Street, Suite 800  
Toronto, Ontario M5H 2Y2

Mary Margaret Fox  
Tel: 416.366.4555  
Fax: 416.366.6110  
Email: marymargaret.fox@clydeco.ca

Paul Emerson  
Tel: 416.366.4555  
Email: paul.emerson@clydeco.ca

Lawyers for ACE INA Insurance and Chubb  
Insurance Company of Canada

AND **DAVIS LLP**  
TO: 1 First Canadian Place, Suite 6000  
PO Box 367  
100 King Street West  
Toronto, Ontario M5X 1E2

Susan E. Friedman  
Tel: 416.365.3503  
Fax: 416.777.7415  
Email: [sfriedman@davis.ca](mailto:sfriedman@davis.ca)

Bruce Darlington  
Tel: 416.365.3529  
Fax: 416.369.5210  
Email: [bdarlington@davis.ca](mailto:bdarlington@davis.ca)

Brandon Barnes  
Tel: 416.365.3429  
Fax: 416.369.5241  
Email: [bbarnes@davis.ca](mailto:bbarnes@davis.ca)

Lawyers for Kai Kat Poon

AND **DAVIES WARD PHILLIPS &  
VINEBERG LLP**  
TO: 155 Wellington Street West  
Toronto, ON M5V 3J7

Jay Swartz  
Tel: 416.863.5520  
Fax: 416.863.0871  
Email: [jswartz@dwpv.com](mailto:jswartz@dwpv.com)

James Doris  
Tel: 416.367.6919  
Fax: 416.863.0871  
Email: [jdoris@dwpv.com](mailto:jdoris@dwpv.com)

Canadian Counsel for the Plaintiff and the  
Proposed Class re New York action

AND **RICKETTS, HARRIS LLP**  
TO: Suite 816, 181 University Ave  
Toronto ON M5H 2X7

Gary H. Luftspring  
Tel: 647.288.3362  
Fax: 647.260.2220  
Email: [GLuftspring@rickettsharris.com](mailto:GLuftspring@rickettsharris.com)

Lawyers for Travelers Insurance Company of  
Canada

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## PART I – OVERVIEW

1. This motion is for an order authorizing additional fees of NPT RicePoint Class Action Services Inc. (“NPT”), the administrator of the settlement between the Ad Hoc Committee of Purchasers of the Sino-Forest’s Securities and Ernst & Young LLP (the “E&Y Settlement”), to reflect an increased number of unexpected claims filed in the E&Y Settlement beyond NPT’s estimate in its proposal to administer the E&Y Settlement, and a corresponding increase in the amount of time required for NPT to administer the settlement.

2. The original fee proposed by NPT (the “Fee”) of \$580,000 that was approved by this Court was based on the estimate that 18,200 claims would be filed in the E&Y Settlement, and that the E&Y Settlement would take 5,500 hours to administer. NPT’s settlement administration proposal provided that class counsel could return to this Court for authorization of additional fees for the administrator if there was a material increase in claims filed in the E&Y Settlement. Such a material increase has occurred and claims were filed in in the E&Y Settlement at an unprecedented rate: over 49,625 claims have now been filed, 2.73 times greater than could have been anticipated based on historic claims processed in other securities cases. NPT has spent 9,761.35 hours processing claims, and NPT expects that an additional 2,300 – 2,500 hours will be required to finalize the administration of the E&Y Settlement. This is 3,761.35 more hours than could have been expected and that would have been required for its proposal.

3. Given this material increase in claims filed and the corresponding increase in the time required to process these claims, this Court should approve an increase in NPT’s fee from \$580,000 to \$1,439,125.00, which reflects the additional work NPT has and must still perform to

administer the E&Y Settlement. It would be unfair to the administrator if additional fees were not granted given the immense amount of additional work required to administer this settlement.

## PART II - THE FACTS

### **(a) NPT's Proposal to Administer the E&Y Settlement**

4. This Court approved an order appointing NPT as the administrator of the E&Y Settlement and permitting the payment of the costs of administration of the E&Y Settlement to NPT.<sup>1</sup> NPT's proposal to administer the E&Y Settlement (the "Proposal") provided for payment to NPT an administration fee of \$580,000, not including taxes and disbursements, assuming the estimate of claims turned out to be correct. If additional claims were made, the proposal which this Court approved provided that NPT could seek approval for further fees given the additional work required.<sup>2</sup>

5. The calculation of NPT's Fee was based on NPT's estimate of its cost to administer the E&Y Settlement if 18,200 claims were filed (18,200 forecasted claims x \$32 per claim) and an estimate that the time to administer of the E&Y Settlement would not exceed 5,800 hours. The estimate of 18,200 claims included a 30% safety factor over and above the actual base forecast of 14,000 claims. These estimates were based on NPT's extensive experience administering securities class actions. and the take-up rate in other actions. The take-up rate in this action grossly exceeded past experience in other actions.<sup>3</sup> The Proposal also provided that class counsel

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1 Order of Justice Morawetz dated March 20, 2013, Exhibit "A" to the Affidavit of David Weir sworn January 20, 2015, Motion Record, Tab 3(A), p. 17; Order of Justice Morawetz dated October 23, 2013, Exhibit "B" to the Affidavit of David Weir sworn January 20, 2015, Motion Record, Tab 3(B), p. 37; Order of Justice Morawetz dated December 27, 2013, Exhibit "C" to the Affidavit of David Weir sworn January 20, 2015, Motion Record, Tab 3(C), p. 51; Affidavit of David Weir sworn January 20, 2015 at paras. 3 - 5, Motion Record, Tab 3, p. 10.

2 Affidavit of Serge Kalloghlian sworn October 16, 2013 at para. 20, Exhibit "D" to the Affidavit of David Weir sworn January 20, 2015, Motion Record, Tab 3(D), pp. 71 - 72.

3 Affidavit of David Weir sworn January 20, 2015 at paras. 10 - 13, Motion Record, Tab 3, p. 12.

could return this Court to seek approval of an increase in NPT's Fee in the event that there was a material increase from the NPT's estimated claims filed and the actual claims filed pursuant to the E&Y Settlement.<sup>4</sup>

**(b) The Number of Claims Filed & the Time Expended by NPT in Administering the Settlement**

6. There were 49,625 claims received pursuant to the E&Y Settlement. This is 2.73 times greater than the estimate of 18,200 which was based on take-up rates in other securities settlements. In addition, the percentage of deficient claims in the E&Y Settlement is projected to be three (3) times the average deficiency rate of other securities class actions that NPT has administered. As a result, NPT expects it will be required to expend a total of 12,261.35 hours to administer the E&Y Settlement. This is over 2.1 times greater than the estimate of 5,500 hours based on other actions.<sup>5</sup>

7. Given the material increase in claims filed, the complexity of the administration, and the corresponding increase in time NPT must expend to administer the E&Y Settlement, an increase in payment to NPT to \$1,439,125.00 (49,625 claims x \$29 per claim) is fair, reasonable, and appropriate. NPT has agreed to reduce the per claim cost from \$32 to \$29 in recognition of the economies of scale it has been able to achieve.<sup>6</sup>

**(c) Payment Will Come From Interest Accrued on the E&Y Settlement**

8. The requested increase in NPT's fee will not be deducted from the corpus of the \$117,000,000 settlement fund paid by E&Y. As of December 16, 2014, \$1,304,791.27 of interest

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<sup>4</sup> Affidavit of David Weir sworn January 20, 2015 at para. 9, Motion Record, Tab 3, pp. 11–12.

<sup>5</sup> Affidavit of David Weir sworn January 20, 2015 at paras. 14 - 17, Motion Record, Tab 3, p. 13.

<sup>6</sup> Affidavit of David Weir sworn January 20, 2015 at para. 20, Motion Record, Tab 3, p. 14.



has been earned on the settlement fund. The increase in NPT's fee will therefore not exceed the interest accrued on the E&Y Settlement fund.

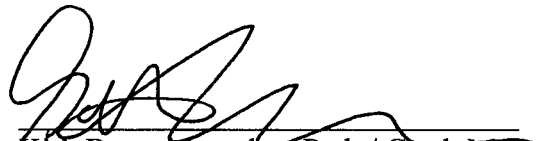
**(d) Timing of Distribution of Settlement Funds**

9. Finally, NPT is nearing the final stages of the administration of the E&Y Settlement and expects to be proceeding to distribution in early-2015.<sup>7</sup>

**PART IV - ORDER REQUESTED**

10. The Ad Hoc Committee of Purchasers of the Sino-Forest's Securities respectfully request an order increasing the fee of NPT to administer the E&Y Settlement from \$580,000 to \$1,439,125.00, plus disbursements and taxes.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

  
Kirk Baert / Jonathan Ptak / Garth Myers

**Class Counsel**

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<sup>7</sup> Affidavit of David Weir sworn January 20, 2015 at para. 19, Motion Record, Tab 3, p. 13.

**SCHEDULE "A"**

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**SCHEDULE "B"**

***Class Proceedings Act, 1992, S.O. 1992, c. 6:***

**Court may determine conduct of proceeding**

**12.** The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate. 1992, c. 6, s. 12.

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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION  
The Trustees of the Labourer's Pension Fund of and Sino-Forest Corporation, et al.  
Central and Eastern Canada, et al.

Plaintiffs

Defendants

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

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM OF THE PLAINTIFFS**

**(Motion to Vary Administrator's Fee,  
returnable January 29, 2015)**

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

Kirk Baert (LSUC# 309420)

Jonathan Ptak (LSUC#: 45773F)

Garth Myers (LSUC#: 62307G)

Tel: (416) 595-2117 / Fax: (416) 204-2889

**SISKINDS LLP**

680 Waterloo Street  
London, ON N6A 3V8

A. Dimitri Lascaris (LSUC#: 50074A)

Serge Kalloghlian (LSUC#: 55557F)

Tel: (519) 660-7844 / Fax: (519) 660-7845

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

250 University Avenue, Suite 501  
Toronto, ON M5H 3E5

Ken Rosenberg (LSUC#: 21101H)

Massimo Starnino (LSUC#: 41048G)

Tel: (416) 646-4300 / Fax: (416) 646-4301

Lawyers for the plaintiffs