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

*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 AND 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, 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*

**MOTION RECORD OF THE PLAINTIFFS**
**FEE APPROVAL**
**(Returnable May 11, 2015)**

April 13, 2015

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**TO : THE ATTACHED SERVICE LIST**

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

***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**

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

*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 AND ARRANGEMENT OF SINO-FOREST CORPORATION**

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

*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 -**

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION**
**FEE APPROVAL**
**(Returnable May 11, 2015)**

The Ad Hoc Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Ontario Class Action", respectively), will make a motion to the Honourable Regional Senior Chief Justice Morawetz on May 11, 2015, at 10:00 a.m., at 330 University Avenue, 8th Floor, Toronto, Ontario, or at such other time and place as the Court may direct.

**PROPOSED METHOD OF HEARING:** The motion will be heard orally.

**THE MOTION IS FOR:**

(a) an order approving the fees of Siskinds LLP, Koskie Minsky LLP and Siskinds Desmeules (collectively "Canadian Class Counsel") in the amount of $5,517,207, plus $717,236.91 in HST (totaling $6,234,443.91);

(b) an order approving the disbursements of Canadian Class Counsel in the amount of $289,614.50, inclusive of taxes; and

(c) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

(a) On July 20, 2011, this action was commenced against 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) (the "Dealers") and other defendants in Ontario under the *Class Proceedings Act, 1992*;

(b) there were also class actions commenced in Québec, Saskatchewan and New York in respect of Sino-Forest and other defendants.

(c) the Ontario action and the Québec action advance claims against the Dealers;

(d) the New York Action only advanced claims against Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC);

(e) Siskinds Desmeules is counsel in the Québec action and Cohen Milstein Sellers & Toll PLLC is counsel in the New York action;

(f) all of the class actions arose following allegations against Sino-Forest by a research analyst and short-seller, Muddy Waters, which were made on June 2, 2011;

(g) following these allegations, Sino-Forest began a steep financial decline;

(h) by March 2012, Sino-Forest was insolvent and sought protection from its creditors under the *Companies Creditors' Arrangement Act* (the "*CCAA*");

(i) the case against the Dealers on behalf of primary market purchasers of Sino-Forest's securities was factually and legally distinct from the case against Sino-Forest, its officers and directors, and its auditors, and represented unique legal and evidentiary challenges;

(j) there has been an extensive amount of work done by Canadian Class Counsel to advance the action against the Dealers. There have been numerous motions in the action, including a certification motion, exchange of numerous expert reports and fact affidavits, lengthy cross-examinations in Toronto and New York, and extensive settlement discussions;

(k) in addition, Canadian Class Counsel devoted a tremendous amount of time and resources participating in the *CCAA* proceeding in order to ensure that the security claims against the auditors, Dealers and other solvent defendants in this action were minimally affected in any restructuring of Sino-Forest, and preparing for and arguing the motion for certification and leave under the Ontario *Securities Act*;

(l) the plaintiffs engaged in extensive, hard-fought, arm's length negotiations with the Dealers and in November 2014, the plaintiffs reached a settlement with the Dealers. The settlement provides for payment of $32.5 million in full settlement of all claims that relate to Sino-Forest as against the Dealers, subject to court approval;

(m) the settlement agreement with Dealers is an excellent settlement and is fair, reasonable and in the best interests of securities claimants, particularly in light of the nature of the claims against the Dealers and the inherent risks, costs and delay associated with continued litigation;

(n) Canadian Class Counsel have acted in these proceedings on a contingency fee basis and collectively seek approval of $5,517,207, plus $717,236.91 in HST (totaling $6,234,443.91) in respect of legal fees;

(o) the requested fee accords with the plaintiffs' contingency fee retainer agreement with class counsel and is equivalent to approximately 17% of the total settlement, and 17.5% of the settlement notionally allocation to the Canadian class actions;

(p) the fee request represents fair and reasonable compensation, given the significant risks from the outset of this action and the success achieved as against the Dealers;

(q) from the outset, this action has had significant risk, largely because the most culpable defendants, Sino-Forest and its senior officers have little or no means to satisfy a large judgement;

(r) Canadian Class Counsel committed to expending millions of dollars in time, money and other resources to prosecute this action with the significant risk of little or no compensation to match this commitment;

(s) the representative plaintiffs in the Ontario and Québec class actions support the fee request and consider it reasonable, with the exception of Robert Wong, who has an objection.

(t) *Companies Creditors' Arrangement Act,* R.S.C. 1985, c. C-36;

(u) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

(v) *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

(w) such further and other grounds as this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the affidavits of Charles Wright sworn April 13, 2015 (in respect of settlement approval) and April 13, 2015 (in respect of fee approval);

(b) the affidavit of Garth Myers sworn April 8, 2015; and

(c) such further and other material as counsel may advise and this Honourable Court may permit.

April 13, 2015

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**TO: THE ATTACHED SERVICE 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-12-9667-00-CL

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

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

# NOTICE OF MOTION
# FEE APPROVAL
# (MAY 11, 2015)

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

***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**

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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**

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

*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 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*

# AFFIDAVIT OF CHARLES M. WRIGHT

019

**(Filed in respect of the motion for Class Counsel fee approval)**
**(Sworn April 13, 2015)**

I, CHARLES WRIGHT, of the City of London, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner at Siskinds LLP, who along with Koskie Minsky LLP, are counsel for the plaintiffs in this action. Accordingly, I have knowledge of the matters herein deposed. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information and I believe such information to be true.

2. I swear this affidavit in support of the motion for approval of class counsel fees, and for no other or improper purpose.

**BACKGROUND**

3. These proceedings relate to the precipitous decline of Sino-Forest Corporation following allegations on June 2, 2011 that there was fraud at the company and that its public disclosure contained misrepresentations regarding its business and affairs.

4. Siskinds LLP and Koskie Minsky LLP are counsel to the plaintiffs in this action that was commenced on July 20, 2011 against 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) (the "Dealers") and other defendants in Ontario under the *Class Proceedings Act, 1992*.

5. Siskinds Desmeules, an affiliate of Siskinds LLP, is counsel to the plaintiffs in an action commenced in Québec styled as *Guining Liu v. Sino-Forest Corporation.*

6. Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") is counsel to the plaintiffs in an action commenced in New York styled (the "US Plaintiffs") as *Leopard v. Sino-Forest Corporation*

7. On March 30, 2012, Sino-Forest applied for and was granted protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* ("*CCAA*").

8. In December 2014, a hard-fought settlement was reached with the Dealers (the "Dealers Settlement"). The Dealers Settlement provides for payment of $32.5 million by the Dealers in full settlement of all claims that relate to Sino-Forest as against the Dealers, subject to court approval.

9. I also swore an affidavit in support of the motion for approval of the settlement, which is attached hereto as **Exhibit "A".** I adopt the content of that affidavit in respect of my views expressed herein, and which provides helpful background and context.

**ACTING AS CLASS COUNSEL**

10. I have acted as class counsel in many class proceedings since I was called to the Bar in 1995, including over 50 different class actions, and I have been involved in the negotiation of over 50 class action settlements.

11. First, class proceedings involve a significant commitment of time and financial resources. These actions are typically taken on a contingency fee basis. It is common to

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dedicate thousands of lawyer hours and hundreds of thousands of dollars in disbursements to a particular case. Significant investigation and expert expenses are typical.

12. Second, class proceedings are highly adversarial and are often protracted. The concept that class proceedings often settle soon after the motion for certification is not correct. Cases are increasingly continuing beyond certification, through productions, examination for discovery and trial. The defendants tend to be well-resourced. The defendants bring motions for almost any dispute and appeal almost all decisions. A scorched-earth approach is common. As a result, costs are high and litigation proceeds slowly.

13. Third, there are a number of risks arising from the class proceedings procedure:

(a) the risk that the action will not be certified as a class proceeding;

(b) the risk that a large number of class members opt out;

(c) the risk that the defendant successfully moves to decertify a class proceeding;

(d) the risk that an award of aggregate damages on a class-wide basis is denied and individual issues trials are ordered;

(e) the risk that individual issues trials are ordered but are not economically feasible;

(f) the risk that the court does not approve a settlement agreement after lengthy, time-consuming and expensive negotiations; and

(g) the risk that the court does not approve class counsel fees, or approves them only at a reduced rate.

14. Fourth, class counsel's obligation to the class do not end at settlement approval, even where all defendants settle and the litigation is at an end. Class Counsel typically perform the following work as part of settlement administration, including:

(a) identifying class members;

(b) advising and instructing class members with questions concerning the settlement agreement and claims process;

(c) providing information to class members, including relevant documents;

(d) assisting class members with claim forms, if necessary;

(e) providing documentation to the accountants and financial advisors of class members to assist with determinations of tax implications of settlement proceeds;

(f) facilitating the claims process;

(g) monitoring settlement implementation to ensure the processed are be followed;

(h) liaising with the claims administrator; and

(i) overall coordination of the settlement distribution.

## CLASS COUNSEL'S EFFORTS IN ADVANCING THE ONTARIO AND QUEBEC ACTIONS

15. There has been significant progress and considerable efforts by Canadian Class Counsel to advance the Ontario and Québec actions. These efforts are detailed in paragraphs 18 – 40 of my affidavit sworn April 13, 2015 in support of settlement approval.

16. In summary, counsel for the plaintiffs in this and the Québec action have taken the following steps to advance claims against the defendants:

(a) undertook a preliminary investigation of the allegations against the defendants;

(b) prepared for and argued a motion for carriage of the Ontario action;

(c) prepared for and argued a motion for directions in the Ontario action, including a request for an order for substituted services, compelling insurance information, and requiring delivery of statements of defence;

(d) undertook further investigations and prepared voluminous materials for the motion for certification of the Ontario action as a class proceeding under the *Class Proceedings Act, 1992* and the motion for leave to proceed with statutory misrepresentation claims under the *Securities Act*;

(e) negotiated the litigation funding agreement between the plaintiffs in this action and CFI and brought a motion for approval of the agreement;

(f) negotiated and settled with the defendant Pöyry (Beijing) Company Limited ("Pöyry (Beijing)");

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(g) prepared for and argued the motions for certification for settlement purposes and approval of the Pöyry (Beijing) settlement in Ontario and Québec;

(h) obtained and reviewed evidence from Pöyry (Beijing);

(i) designed and implemented a notice program and opt out process for the Ontario and Québec actions;

(j) prepared for, argued or attended approximately 26 motions and other appearances in the Sino-Forest *CCAA* proceeding;

(k) prepared proofs of claim in the *CCAA* proceeding for the Ontario and Québec actions, including detailed claims submissions;

(l) reviewed tens of thousands of Chinese and English documents in the Sino-Forest data-room for mediation;

(m) prepared for and attended the two-day all-party mediation in August 2012;

(n) undertook extensive negotiations over the course of more than six months in respect of the Sino-Forest plan of compromise and restructuring (the "Plan") to ensure the claims in the Ontario and Québec class actions were minimally affected, particularly as it related to non-debtor defendants;

(o) prepared for and attended at a two-day mediation with Ernst & Young in November 2012, which resulted in a settlement;

(p) prepared for and made submissions in support of the motion to sanction the Plan, along with responding to a motion for leave to appeal from the sanction order by certain objectors;

(q) designed and implemented a notice program for the Ernst & Young settlement approval hearings;

(r) prepared for and argued the motion for settlement approval of the Ernst & Young settlement and responded to the efforts of certain objectors to appeal the settlement approval order including a motion for leave to appeal to the Court of Appeal, a motion to quash a purported direct appeal to the Court of Appeal and an application for leave to the Supreme Court of Canada;

(s) prepared plan of allocation to distribute the Ernst & Young settlement and other materials for approval of the plan of allocation and the within motion;

(t) moved for and obtained recognition of the Ernst & Young settlement in Québec and the United States;

(u) designed and implemented a notice program for the approval hearings of the settlement with David Horsley;

(v) prepared for and argued the motion for settlement approval of the Horsley settlement, which was heard concurrently with a motion for recognition and

enforcement of the order approving the Horley settlement in the United States;

(w) began review of more than 1 million Chinese and English documents;

(x) proposed amendments to the statement of claim to assert additional claims under U.S. law against the Dealers and others;

(y) amended the Québec pleading;

(z) delivered eight (8) expert reports from two (2) experts on US federal and New York state law responding to expert reports filed by the Dealers;

(aa) prepared for and cross-examined twelve (12) defendant experts and fact witnesses in Toronto, New York, and Hong Kong, including two (2) experts and two (2) fact witnesses that swore affidavits in support of the Dealers' opposition to the plaintiffs' motion for certification and to amend the claim;

(bb) prepared for and defended five (5) experts and six (6) proposed representative plaintiff from cross-examination;

(cc) posed and responded to written interrogatories in respect of a clerk affidavit and a solicitor affidavit;

(dd) delivered notices of motion to strike an expert report and a clerk affidavit delivered by the Dealers;

(ee) made extensive documentary requests to the Dealers, including transaction information relating to the sale and purchase of Sino-Forest securities;

(ff) continued to prepare for and litigate issues relating to class certification against multiple defendants and multiple counsel;

(gg) drafted factums for the plaintiffs' motions for leave, certification, to amend the statement of claim, and to strike the Dealers affidavits;

(hh) prepared for and argued a refusals motion and a motion to strike affidavits;

(ii) undertook extensive, protracted and hard-fought negotiations with the defendants to settle the form of the leave and certification orders on a consent or unopposed basis;

(jj) argued an outstanding issue before Justice Perell against Sino-Forest, Judson Martin, Simon Murray and Edmund Mak in respect to their opposition to leave and certification of claims made on behalf of former noteholders;

(kk) responded to numerous class member inquiries;

(ll) attended two (2) separate mediations in the fall and winter of 2014 with the Dealers;

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(mm) undertook extensive, protracted and hard-fought negotiations with the Dealers to reach the Dealers settlement; and

(nn) designed and implemented a notice program for the approval hearings of the settlement with the Dealers.

**STEPS LEADING TO PROPOSED SETTLEMENT WITH THE DEALERS**

17. By order dated July 25, 2012, this Court ordered mediation of the claims in the Ontario and Québec actions. The all-party mediation took place on September 4 and 5, 2012. It did not result in a settlement with any of the parties. However, it provided the starting point for further bilateral negotiations with the Dealers.

18. Following the failed court-ordered mediation in September 2012, Class Counsel continued settlement discussions with counsel to the Dealers.

19. On September 17, 2014, Class Counsel and the Dealers attended a mediation before Justice Goudge. In advance of this mediation, Class Counsel and the Dealers prepared lengthy mediation briefs, and Class Counsel requested and was provided with back-up information from the Dealers' damages analyses. This mediation did not result in a settlement.

20. On November 10, 2014, Class Counsel and the Dealers again re-attended a mediation before Justice Goudge and again engaged in hard-fought negotiations, finally resulting in an agreement in principle. Settlement negotiations continued

21. The protracted settlement negotiations with the Dealers were conducted on an adversarial, arm's length basis.

**CANADIAN CLASS COUNSEL'S TIME AND DISBURSEMENTS**

22. Canadian Class Counsel and insolvency counsel have already expended more than $11.1 million in docketed time (without HST) and more than $2.8 million in disbursements. The following is a summary of counsel's docketed time and disbursements since this matter was opened three years ago in June 2011:

| **DOCKETED TIME** | | | |
|---|---|---|---|
| | **Hours** | **Hourly rate (avg)** | **Time-value** |
| **Siskinds LLP** | | | |
| A. Dimtri Lascaris (1992 NY; 2004 ON) | 2121.70 | $618.36 | $1,311,967.50 |
| Charles M. Wright (1995) | 760.4 | $666.16 | $506,550.00 |
| Michael Robb (2002) | 566.90 | $515.50 | $292,237.50 |
| Daniel E. Bach (2006) | 1562.70 | $418.21 | $653,540.00 |
| Serge Kalloghlian (2008) | 2470 | $319.85 | $790,030.50 |
| Sajjad Nematollahi (2012) | 2001.1 | $243.12 | $486,507.50 |
| Dawn Sullivan (1999) | 547.2 | $330.13 | $180,645.00 |
| Other lawyers, students & clerks | 6517.50 | $143.14 | $932,943.00 |
| **Subtotal** | **16547.50** | | **$5,154,421.00** |
| **Siskinds Desmeules** | | | |
| Sammy Elnemr | 237.80 | $300.00 | $71,340.00 |
| Simon Hebert | 565.67 | $249.96 | $141,392.50 |
| Other lawyers, students & clerks | 48.15 | $186.13 | $8,962.50 |
| **Subtotal** | **851.62** | | **$221,695.00** |
| **Koskie Minsky LLP** | | | |
| Mark Zigler (1980) | 144.7 | 924.17 | $117,500.00 |
| Kirk M. Baert (1990) | 1,850.1 | 966.16 | $1,616,099.50 |
| Michael Mazzuca (1992) | 258.7 | 866.18 | $191,979.00 |
| Jonathan Ptak (2002) | 1,537.6 | 641.28 | $877,902.50 |
| Simon Archer (2002) | 520.9 | 605.00 | $255,353.50 |
| Jonathan Bida (2007) | 2,104.9 | 475.00 | $810,830.00 |
| James Harnum (2011) | 155.4 | 337.50 | $46,502.50 |
| Garth Myers (2012) | 1,612.5 | 306.60 | $402.596.00 |
| Other lawyers, students & clerks | 2,373.60 | 147.27 – 271.09 | $455,034.30 |
| **Subtotal** | **10,558.4** | | **$4,371,603.896** |
| **Paliare Roland** | | | |
| Ken Rosenberg (1981) | 550.35 | $900 | $495,315.00 |
| Massimo Starnino (1998) | 1,091.00 | $600 | $653,745.00 |
| Lindsay Scott (2011) | 507.40 | $356 | $180,739.00 |
| Other lawyers, students & clerks | 237.20 | $276 | $65,463.50 |

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| | | | |
|---|---|---|---|
| **Subtotal** | **2,385.95** | | **$1,395,262.50** |
| **Total Docketed Time** | **30,343.47** | | **$11,142,982.40** |
| **Total Disbursements** | | | **$2,801,663.29** |
| **TOTAL DOCKETED TIME AND DISBURSEMENTS** | | | **$13,944,645.69** |

23. The following is a summary of counsel's docketed time and disbursements since the hearing to approve Horsley fee and disbursement request on July 24, 2014:

| **DOCKETED TIME** | | | |
|---|---|---|---|
| | **Hours** | **Hourly rate (avg)** | **Time-value** |
| **Siskinds LLP** | | | |
| A. Dimtri Lascaris (1992 NY; 2004 ON) | 129.5 | $675.00 | $87,412.50 |
| Charles M. Wright (1995) | 86.2 | $700.00 | $60,340.00 |
| Dawn Sullivan (1999) | 80.2 | $350.00 | $28,070.00 |
| Michael Robb (2002) | 26.5 | $550.19 | $14,580.00 |
| Daniel E. Bach (2006) | 184.1 | $486.67 | $89,595.50 |
| Serge Kalloghlian (2008) | 105.2 | $372.12 | $39,147.00 |
| Sajjad Nematollahi (2012) | 337.6 | $293.43 | $99,062.50 |
| Other lawyers, students & clerks | 461.1 | $153.49 | $70,775.50 |
| **Subtotal** | **1410.40** | | **$488,983.00** |
| **Siskinds Desmeules** | | | |
| Sammy Elnemr | 0.60 | $250.00 | $150.00 |
| Simon Hebert | 21.70 | $300.00 | $6,510.00 |
| Other lawyers, students & clerks | 0.60 | $175.00 | $105.00 |
| **Subtotal** | **22.90** | | **$6,765.00** |
| **Koskie Minsky LLP** | | | |
| Mark Zigler (1980) | 8.4 | 925.00 | $7,770.00 |
| Kirk M. Baert (1990) | 240.40 | 975.00 | $230,860.00 |
| Michael Mazzuca (1992) | 15.9 | 887.50 | $13,680.00 |
| Jonathan Ptak (2002) | 425.4 | 650.00 | $269,580.00 |
| James Harnum (2011) | 35.7 | 375.00 | $13,387.50 |
| Garth Myers (2012) | 612.5 | 312.50 | $181,067.50 |
| Other lawyers, students & clerks | 463.7 | 75 - 317 | $99,353.80 |
| **Subtotal** | **1,802.50** | | **$815,698.80** |
| **Paliare Roland** | | | |
| Ken Rosenberg (1981) | 6.70 | $900.00 | $6,030.00 |
| Massimo Starnino (1998) | 5.10 | $600.00 | $3,060.00 |
| Subtotal | 11.80 | | $9,090.00 |
| **Total Docketed Time** | **3,247.60** | | **$1,320,536.80** |
| Printing & copying | | | **$26,878.43** |
| Expert fees | | | **$123,254.69** |

courts in other class proceedings, Kessler Topaz will be paid from the counsel fees awarded to Canadian Class Counsel. In this case, Canadian Class Counsel has agreed that Kessler Topaz will be paid from the overall fee request, as an agency fee. Accordingly, there is no additional fee request for Kessler Topaz.

28. Considering the amount of work required, the steps taken, the division of work and responsibility between the firms, the amount of time spent was very reasonable in all of the circumstances.

**CLASS COUNSEL'S FEE REQUEST**

29. Siskinds LLP, Koskie Minsky LLP (collectively "Canadian Class Counsel"), along with insolvency counsel Paliare Roland Rosenberg Rothstein LLP, have acted in these proceedings on a contingency fee basis. They collectively seek approval of $5,517,207, plus $717,236.91 in HST (totaling $6,234,443.91), plus $289,614.50 for their disbursements incurred.

30. The requested fees are consistent with the plaintiffs' contingency fee retainer agreement with Canadian Class Counsel. Attached as **Exhibits "B(1) to B(5)"** are the retainer agreements for the plaintiffs.

31. I understand that Cohen Milstein, counsel to the plaintiffs in the New York action, seeks fees of $194,620.00 (exclusive of tax).

32. The approved settlement with the Dealers provides for a total payment of $32.5 million. Consistent with prior settlements, the plaintiffs and class counsel in the Ontario, Québec and New York actions have reached a reasonable notional allocation of that

| | |
|---|---|
| Foreign counsel fees | **$66,842.43** |
| Other disbursements | **$72,627.34** |
| **Total Disbursements** | **$289,614.50** |
| **TOTAL DOCKETED TIME AND DISBURSEMENTS** | **$1,610,151.30** |

24. The disbursement comprise expert fees, foreign counsel fees, printing and copying costs and other disbursements.

25. Siskinds LLP, Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP have devoted a team of lawyers to the class proceeding and insolvency proceeding. This was necessary given the complexity of factual and legal issues and the volume of motions and other hearings brought at the same time and often with short timelines. The work was properly allocated and divided to avoid duplication of effort and to efficiently advance the litigation.

26. Siskinds Desmeules, an affiliate of Siskinds LLP, is counsel to the plaintiffs in the Québec action and has appeared in motions before the Québec court. Their fees and disbursements will be paid out of any compensation to Siskinds LLP.

27. Canadian Class Counsel has also been assisted by the U.S. firm of Kessler Topaz Meltzer & Check LLP, who are experts in United States securities law. In addition, by virtue of its extensive experience and accomplishments in securities class actions, Kessler Topaz is well positioned to contribute on a broad array of issues, including the selection of appropriate consulting or testifying experts, an assessment of class damages, the review and analysis of documentary evidence produced in the litigation, and the preparation of witnesses or counsel for cross-examinations or examinations for discovery. Kessler Topaz has docketed time of US $405,147.00 and disbursements of US $6,346.02. Consistent with the direction of Ontario

settlement amount between the Canadian and US claims for the purposes of determining class counsel fees.

33. The settlement and proposed distribution protocol allocates $22.5 million to primary market share claims and $10 million to primary market note claims. The US action did not include primary market share claims, and the plaintiffs in that action did not make a claim against TD, one of the Initial Note Purchasers who purchased approximately 2.7% of one of the Note offerings. Consequently, the settlement funds allocated by Class Counsel to primary market share claims and to TD in respect of its note offering do not form part of the notional allocation to US claims. Canadian and US counsel have agreed to a gross allocation of $31,526,900 to Canada and $973,100 to the United States, which reflects a 90% / 10% split for the claims asserted in the two actions. This is consistent with prior settlements and is appropriate under all the circumstances.

34. This notional allocation is based on the relative class sizes of the Canadian and US class actions and the worked performed by the law firms. Accordingly, Canadian Class Counsel request fees based on a recovery of $31,526,900 million and US Class Counsel request fees based on a recovery of $973,100.

35. For clarity, this notional allocation has no bearing on the actual distribution of settlement proceeds to Securities Claimants, which will depend on actual claims filed.

***Fees of Canadian Class Counsel Pursuant to the Retainer Agreement***

36. The retainer agreements provide for a sliding scale of compensation for class counsel depending on the monetary level of success and the stage of the litigation, as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $40 million and $60 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | **twenty-five percent (25%)** | **twenty percent (20%)** | **fifteen percent (15%)** | **ten percent (10%)** |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the commencement of the Common Issues trial; | **twenty-seven and a half percent (27.5%)** | **twenty-two and a half percent (22.5%)** | **seventeen and a half percent (17.5%)** | **twelve and a half percent (12.5%)** |
| If the Action is settled after the commencement of the Common Issues trial or is determined by judgment after the trial. | **thirty percent (30.0%)** | **twenty-five percent (25.0%)** | **twenty percent (20.0%)** | **fifteen percent (15.0%)** |

37. This grid is meant to ensure that class counsel is paid in a manner that is tied directly to the stage of the action (reflecting anticipated work done) and degree of success achieved in the action, while at the same time ensuring the overall fees are not excessive. Accordingly, the grid provides that the larger the recovery as against each defendant, the less class counsel will be paid as a percentage of that recovery.

38. In addition, the fee grid provides that class counsel is paid less on a particular settlement if that settlement is reached early in the proceeding. There are three different time periods contemplated: (a) settlement before a certification decision; (b) settlement after a certification decision and before the commencement of the common issues trial; and (c) settlement after the commencement of trial or a judgment after trial.

39. These different time periods are meant to reflect the resources that class counsel had expended in pursuing the claims and securing recovery. For instance, had the defendants all settled the action within 30 days of its commencement in July 2011, class counsel would have

committed relatively few resources to the action. In contrast, had the action proceeded to a common issues trial and success achieved only through judgment, class counsel would have committed an enormous amount of resources to this litigation. The grid is meant to take into account this increasing level of resources, but uses objective measures of stages in the proceeding in order to determine when the next level of compensation would be awarded.

40. On the face of the retainer agreement, the second row of the grid applies as there was a certification decision in the Ontario class action in September 2012 relating to the settlement with Pöyry (Beijing) Company Limited, and the court certified the balance of the action in January 2015. Additionally, on the face of the retainer agreement the first and second columns of the grid apply, as the recovery from the Dealers is above $20 million and below $40 million. If the second row and first and second column of the grid were applied, class counsel would receive fees of $8,093,552.50, representing 25.6% of the settlement amount notionally allocated to Canadian purchasers, plus HST and repayment of disbursements.

41. Although the retainer agreement does not specifically refer to successive settlements, interpreting it this way is consistent with the purpose of this grid, which is to acknowledge the resources that class counsel has expended in respect of each class of defendants and the very different cases on both the facts and the law which apply to each class of defendants. Recovery pursuant to the Ernst & Young and Horsley settlements is not tied to the recovery in the Dealers Settlement, given that the claims advanced against the Dealers are distinct in fact and law from those advanced against Ernst & Young or Horsley.

42. Under all of the circumstances, Canadian Class Counsel is seeking a lower fee of 17.5% of the Canadian allocation, or $5,517,207.50, plus HST and repayment of

disbursements. This fee will be shared among all of Canadian class counsel, including Koskie Minsky LLP, Siskinds LLP, Siskinds, Desmeules (Quebec City), Paliare Roland Rosenberg Rothstein LLP (insolvency counsel), and our U.S. agent, Kessler Topaz Meltzer & Check, LLP. This proposed fee request reflects that the case against the Dealers is distinct in fact and law and much more difficult than the case against David Horsley, for which a smaller fee of 15% was sought.

43. We believe that a fee award of $5,517,207.50 plus HST and disbursements is fair and reasonable in all of the circumstances at this time.

***The Plaintiffs' Position on the Fee Request***

44. The representative plaintiffs in the Ontario action have approved the fee request.

45. The descriptions of the Ontario Plaintiffs are provided at paragraph 41 of my affidavit sworn April 13, 2015 in support of settlement approval, which is attached hereto as **Exhibit "A"**.

46. I am advised by Jonathan Ptak of Koskie Minsky that the trustees of the Labourers' Pension Fund of Central and Eastern Canada and the trustees of the International Union of Operating Engineers support the fee request and have instructed Class Counsel to seek approval of it. I am advised by Daniel Bach and Serge Kalloghlian of Siskinds LLP that the fee request is acceptable to David Grant, AP7, and Davis. Robert Wong has indicated that he objects to the fee request. His objection is attached and marked as **Exhibit "C"**.

***Factors In Assessing Reasonableness Of Class Counsel Fees***

47. The requested fees of Canadian Class Counsel together reflect a percentage of 17.5% of the settlement amount notionally allocated to Canadian claims. In our view, this amount is fair and reasonable.

48. The prosecution of these claims has involved significant risks and the result achieved for claims against the Dealers was excellent in the circumstances. These are explained in detail in paragraphs 56 – 76 of my affidavit sworn April 13, 2015 in support of settlement approval (attached as **Exhibit "A").** In particular,

(a) Canadian Class Counsel took on significant risk for claims against the Dealers because of the legal impediments to establishing liability and recovering damages against underwriters under Canadian and U.S. law, even where there is wrongdoing;

(b) Canadian Class Counsel took on the risk of no success, while at the same time having to devote a massive commitment of time, money and other resources to the prosecution of this action. Canadian Class Counsel has already committed millions of dollars in resources to this action, including 30,343.47 lawyer hours and out-of-pocket disbursements exceeding $2.8 million;

(c) Canadian Class Counsel achieved significant success against the Dealers by extracting the largest underwriter settlement in Canadian history;

(d) the settlement fund paid by the Dealers represents approximately 40% of all of the fees received by the Dealers pursuant to Sino-Forest's security offerings; and

(e) Canadian Class Counsel is of the view that this settlement represents a significant component of the damages sustained by class members with primary market share claims.

***The Quantum Of Fees Reflects The Complexity Of This Case***

49. The quantum of requested fees by Canadian Class Counsel reflects the complexity and challenges of this case. The quantum of professional fees expended by Sino-Forest's "independent committee" of directors (the "IC") and in the *CCAA* proceeding demonstrate the

complexity and enormous undertaking required in attempting to understand Sino-Forest's affairs and the allegations against it.

50. The IC expended in excess $50 million in conducting their 8-month investigation of the allegations against Sino-Forest. They produced three reports, the last of which noted that the IC could not complete its mandate and was terminating its investigation.

51. Similarly, significant professional costs were incurred in Sino-Forest's restructuring. The monitor reported cash outflow for professional fees throughout the *CCAA* proceeding. From March 31, 2012 to November 2, 2012 (7 months), cash outflow in respect of professional fees totalled $34,175,000. I am not aware of amounts for professional fees for the 3 months from November 2, 2012 to January 30, 2013, when the Plan was implemented.

**CONCLUSION**

52. The fee of $5,517,207.50 plus HST and disbursements sought on this motion is fair and reasonable given the work done, the results achieved, and the risks undertaken.

SWORN BEFORE ME at the City of London in the Province of Ontario, on April 13, 2015.

Commissioner for Taking Affidavits

CHARLES WRIGHT

*THIS IS EXHIBIT "A" REFERRED TO IN THE*
*AFFIDAVIT OF CHARLES M. WRIGHT*
*SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

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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**

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

*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 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*

## AFFIDAVIT OF CHARLES M. WRIGHT

**(Filed in respect of the motion for settlement and plan of allocation and distribution approval)**
**(Sworn April 13, 2015)**

**I, CHARLES M. WRIGHT**, of the City of London, in the Province of Ontario AFFIRM:

1. I am a partner at Siskinds LLP, who, along with Koskie Minsky LLP (together, "Class Counsel"), are counsel to the plaintiffs (the "Class Plaintiffs") in the above-captioned class proceeding (the "Ontario Action").

2. For the purposes of the above-captioned proceeding under the CCAA (the "CCAA Proceedings"), Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland") acts together with Class Counsel to represent the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the Class Plaintiffs (together, the "Ontario Plaintiffs").

3. Siskinds Desmeules, sencrl, ("Desmeules") an affiliate of Siskinds LLP, is counsel to the plaintiffs in a parallel class proceeding in the Province of Québec Superior Court styled as *Guining Liu v Sino-Forest Corporation, et al.*, File No. 200-06-000132-111 (the "Québec Action").

4. Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") is counsel to the plaintiffs in a parallel class proceeding in the District Court of the Southern District of New York (the "US Plaintiffs") styled as *David Leapard, et al v Allen TY Chan, et al*, Case Number 1:12-cv-01726 (AT) (the "US Action").

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5. I have knowledge of the matters deposed to below. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information and believe such information to be true.

## A. NATURE OF THIS MOTION

6. The Ontario Plaintiffs, the US Plaintiffs, and 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) (the "Dealers") have entered into Minutes of Settlement in order to resolve all causes of action, claims and/or demands, on all counts howsoever arising and in all jurisdictions, made against the Dealers, including the Class Actions (as defined in Sino-Forest's Plan of Compromise and Reorganization (the "Plan") (the "Dealers Settlement"). The Dealers Settlement is marked and attached hereto as **Exhibit "A"**. Appended as Schedule "A" to the Dealers Settlement is the form of a draft settlement approval order (the "Settlement Order") that was agreed to by the parties and will be sought for approval of the Dealers Settlement. Unless otherwise defined or the context requires otherwise, all capitalized terms in this affidavit have the meanings attributed to them in the Settlement Order.

7. The Ontario Plaintiffs and the US Plaintiffs are also seeking approval of a Claims and Distribution Protocol and approval of Class Counsel fees in respect of the Dealers Settlement.

8. I affirm this affidavit in support of the motion brought by the Ontario Plaintiffs for approval of the Dealers Settlement and the Claims and Distribution Protocol and approval of

Class Counsel fees. An additional affidavit has also been filed in respect of approval of Class Counsel fees.

## B. OVERVIEW OF THE SETTLEMENT

### (i) The Dealers' Roles with Sino-Forest

9. From the commencement of this action, the allegations, claims, and the very basis for the case against the Dealers, was has been and remains fundamentally distinct in fact and law from the case against Sino-Forest, its officers and directors, and its auditors. The Dealers were various financial institutions that served as underwriters in one or more of Sino-Forest's public offerings of shares and notes during the class period. The Dealers can be broken down into two (2) groups:

(a) Credit Suisse Securities (Canada), Inc. ("Credit Suisse"), TD Securities Inc. ("TD"), Dundee Securities Corporation ("Dundee"), RBC Dominion Securities Inc. ("RBC"), Scotia Capital Inc. ("Scotia"), CIBC World Markets Inc. ("CIBC"), Merrill Lynch Canada Inc. ("Merrill"), Canaccord Financial Ltd. ("Cannacord"), and Maison Placements Canada Inc. ("Maison") served as underwriters in one or more of Sino-Forest's public offerings of shares during the class period (collectively, the "Share Underwriters"); and

(b) TD, Credit Suisse Securities (USA) LLC ("Credit Suisse USA"), and Merrill Lynch Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC) ("Banc of America") served as initial purchasers in one or more of Sino-Forest's public offerings of notes during the Class Period (collectively, the "Initial Note Purchasers").

10. During the Class Period, Sino-Forest raised money pursuant to seven offerings of securities (collectively, the "Offerings"):

*Note Offerings*

(a) an offering of notes due 2013 in July 2008 (the "July 2008 Note Offering") pursuant to an Offering Memorandum dated July 17, 2008 (the July 2008 Offering Memorandum"). Banc of America and Credit Suisse USA acted as initial purchasers of the July 2008 Note Offering;

(b) an offer to exchange Sino-Forest's Guaranteed Senior Notes due 2011 for new notes in June 2009 (the "June 2009 Note Offering") offered pursuant to an

Exchange Offer Memorandum dated June 24, 2009 (the "July 2009 Offering Memorandum"). Credit Suisse USA acted as initial purchaser for the June 2009 Note Offering;

(c) an offering of notes due 2016 in December 2009 (the "December 2009 Note Offering") pursuant to a Final Offering Memorandum, dated December 10, 2009 (the "December 2009 Offering Memorandum"). Banc of America, Credit Suisse USA, and TD acted as initial purchasers for the December 2009 Note Offering; and

(d) an offering of notes due 2017 in October 2010 (the "October 2010 Note Offering") pursuant to a Final Offering Memorandum dated October 14, 2010 (the "October 2010 Offering Memorandum"). Banc of America and Credit Suisse USA acted as initial purchasers for the October 2010 Note Offering.

***Share Offerings***

(e) an offering of shares in June 2007 (the "June 2007 Share Offering") pursuant to a Short Form Prospectus, dated June 5, 2007 (the "June 2007 Prospectus"). Dundee, CIBC, Merrill, and Credit Suisse acted as underwriters in the June 2007 Share Offering;

(f) an offering of shares in June 2009 (the "June 2009 Share Offering") pursuant to a Final Short Form Prospectus, dated June 1, 2009 (the "June 2009 Prospectus"). Dundee, Merrill, Credit Suisse, Scotia, and TD acted as underwriters in the June 2009 Share Offering; and

(g) an offering of shares in December 2009 (the December 2009 Share Offering") pursuant to a Final Short Form Prospectus, dated December 10, 2009 (the "December 2009 Prospectus"). Dundee, Merrill, Credit Suisse, Scotia, CIBC, RBC, Maison, Canaccord, and TD acted as underwriters in the December 2009 Share Offering.

(together, the "Offerings")

## C. BACKGROUND OF THE ACTION

11. On June 2, 2011, Muddy Waters Research ("Muddy Waters") released a research report alleging fraud against Sino-Forest and alleging that it "massively exaggerates its assets." The release of this report was immediately followed by a dramatic decline in Sino-Forest's share price.

12. On June 1, 2011, the day prior to the publication of the Muddy Waters report, Sino-Forest's common shares closed at $18.21. After the Muddy Waters report became public, Sino-Forest shares fell to $14.46 on the TSX (a decline of 20.6%), at which point trading was halted. When trading resumed the next day, Sino-Forest's shares fell to a close of $5.23 (a decline of 71.3% from June 1).

13. Sino-Forest's notes also fell in value following the Muddy Waters report. On May 9, 2012 an auction was held to settle the credit derivative trades for Sino-Forest credit default swaps ("CDS"). CDS are essentially an insurance contract for debt instruments, and the price set in that auction represents the market's view of the value of the notes as of May 9, 2012. The CDS auction price was 29% of the notes' face values.

14. On August 26, 2011, the Ontario Securities Commission (the "OSC") issued a temporary cease-trade order in respect of Sino's securities, and staff of the Ontario Securities Commission commenced proceedings against Sino-Forest and certain of its officers and directors and Ernst & Young. Staff of the OSC did not commence proceedings against any of the Dealers. The OSC enforcement proceedings against Ernst & Young were settled pursuant to a no-contest settlement whereby Ernst & Young neither admitted nor denied the OSC's allegations. Pursuant to the OSC settlement, Ernst & Young agreed to pay $8 million in respect of allegations relating to both Sino-Forest and another issuer, Zungui Haixi.

15. On January 10, 2012, Sino-Forest issued a press release stating, among other things, that its historical financial statements and related auditors reports should not be relied upon.

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16. On March 30, 2012, Sino-Forest filed for protection from its creditors under the CCAA and obtained a stay of proceedings against it, its subsidiaries and directors and officers, including the Ontario Action.

17. On May 9, 2012, Sino-Forest's shares were delisted from the TSX. Ernst & Young resigned as Sino-Forest's auditors effective April 4, 2012. No new auditors were appointed.

## D. CLASS ACTIONS AGAINST THE DEALERS RELATING TO SINO-FOREST

18. On July 20, 2011, the Ontario Action was commenced under the *Class Proceedings Act, 1992* (the "CPA") against Sino-Forest, the Dealers, and other defendants on behalf of persons that had purchased Sino-Forest securities in the period from March 19, 2007 to June 2, 2011 (the "Class Period"). The plaintiffs allege that Sino-Forest misstated its financial statements, overstated the value of its assets, and concealed material information about its business and operations from investors in its public filings. With respect to the Dealers, the plaintiffs allege in summary, that the Dealers failed to conduct a reasonable investigation into Sino-Forest in connection with any of the offerings of Sino-Forest's securities. The Dealers assert that they were duly diligent. As a result, Sino-Forest's securities allegedly traded at artificially inflated prices for many years.

19. Before commencing the Ontario Action and since that time, Class Counsel has conducted an extensive investigation into the Muddy Waters allegations and the affairs of Sino-Forest, the Dealers, and the other defendants with the assistance of:

(a) the Dacheng law firm, one of China's largest law firms ("Dacheng"), who was retained on the day after the Muddy Waters report was issued;

(b) a Hong-Kong based investigator specializing in financial fraud;

(c) two separate Toronto-based firms that specialize in forensic accounting, generally accepted accounting principles and generally accepted auditing standards;

(d) a lawyer qualified to practice in the Republic of Suriname, where Sino-Forest purported to own, through an affiliate, certain timber assets;

(e) a financial economist who specializes in the treatment of damages in securities class actions; and

(f) a consultant specializing in regulation of the investment industry.

20. Class Counsel has been working with Desmeules and Cohen Milstein in a coordinated manner:

(a) on June 9, 2011, Desmeules, a Québec city law firm affiliated with Siskinds, commenced the Québec Action against Sino-Forest, and certain other defendants in the Québec Superior Court. The Dealers are no longer defendants in the Québec Action; and

(b) on January 27, 2012, the Washington, DC-based law firm of Cohen Milstein commenced the US Action against Sino-Forest, Banc of America, Credit Suisse (USA), and other defendants in the New York Supreme Court. The US Action was transferred from the New York state court to the federal District Court for the Southern District of New York in March 2012. By way of Order of the United States District Court Southern District of New York dated January 4, 2013, David Leapard, IMF Finance SA and Myong Hyoon Yoo were appointed as the lead plaintiffs and Cohen Milstein as lead counsel to represent the interests of the proposed class.

21. In Ontario, there were also two other proposed class proceedings commenced relating to Sino-Forest: *Smith et al. v. Sino-Forest Corporation et al.*, commenced on June 8, 2011, and *Northwest & Ethical Investments L.P. et al. v. Sino-Forest Corporation et. al.*, commenced on September 26, 2011. *Smith et al. v. Sino-Forest Corporation et al.* did not make any claims against Credit Suisse Securities (USA) LLC or Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC), the two primary Initial Note Purchasers.

22. In December 2011, there was a motion to determine which of the three actions in Ontario should be permitted to proceed and which should be stayed. By order dated January 6, 2012, the Honourable Justice Perell granted carriage to the Ontario Plaintiffs.

23. In February 2015, the Class Plaintiffs filed the Second Fresh as Amended Statement of Claim. The Second Fresh as Amended Statement of Claim was served on the Dealers in May 2013, and the Ontario Plaintiffs subsequently brought a motion for leave to file the amended pleading. The Second Fresh as Amended Statement of Claim included amendments containing additional claims and allegations against the Initial Note Purchasers, including breaches of US federal law and New York State common law, and allegations that the purported private Note Offerings were public offerings. In addition, Davis New York Venture Fund, Inc. and Davis Selected Advisers L.P. were added as proposed representative plaintiffs. These two proposed representative plaintiffs were added in order to bolster the claim against the Initial Note Purchasers because they purchased Sino-Forest notes in the primary market. Attached and marked as **Exhibit "B"** is a copy of the Second Fresh as Amended Statement of Claim.

## E. PLAINTIFFS' MOTIONS FOR CERTIFICATION AND LEAVE

24. In March and April 2012, the Class Plaintiffs brought (a) a motion for certification of the Ontario Action as a class action under the CPA; and (b) a motion for leave to proceed with statutory claims under Part XXIII.1 of the *OSA*. The Class Plaintiffs filed voluminous motion records in support of their motions, comprising evidence from their investigations and expert reports. The motion records included:

(a) an affidavit of Steven Chandler, a senior law enforcement official from Hong Kong who was involved in investigating Sino in China;

(b) 6 affidavits of Alan Mak, an expert in forensic accounting;

(c) an affidavit of Dennis Deng, a lawyer qualified to practice in the People's Republic of China, and a partner in the Dacheng law firm;

(d) an affidavit of Carol-Ann Tjon-Pian-Gi, a lawyer qualified to practice in the Republic of Suriname;

(e) 4 affidavits of Adam Pritchard, an expert in US securities law; and

(f) 3 affidavits of Patrick Borchers, an expert in New York State law.

25. A settlement in principle was reached between the Ontario Plaintiffs and the Dealers shortly before the hearing of the motions for certification and leave. The certification and leave motions were heard on January 15, 2015. Certification was adjourned as against the Dealers. Leave and certification were granted by Justice Perell as against the remaining defendants.

## F. SINO-FOREST'S INSOLVENCY

26. On March 30, 2012, Sino-Forest commenced the CCAA Proceedings and obtained an order for an interim stay of proceedings against the company, its subsidiaries, and its directors and officers. Pursuant to an order on May 8, 2012, the stay of proceedings was extended to all other defendants in the action, including the Dealers.

27. From the outset, it was apparent to counsel to the Ontario Plaintiffs that the CCAA Proceedings presented a material risk to the Ontario Plaintiffs; namely, that in order to effect a restructuring that generated as much value as possible for Sino-Forest's creditors, there could be a plan of arrangement that had the effect of imposing an unfavourable settlement on the Ontario Plaintiffs or releases for third parties, including the Dealers.

28. Consequently, Class Counsel immediately entered into negotiations with other stakeholders in the CCAA Proceedings, and took a number of steps to vigorously represent the

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interests of the purchasers of Sino-Forest's securities. The following were among Class Counsel's main objectives:

(a) reserving the Ontario Plaintiffs' rights to object to various features of the CCAA Proceedings, so as to generate and/or preserve momentum for the Ontario Plaintiffs' claims and positions;

(b) ensuring that a Claims Process was established that identified the universe of stakeholders having an interest in the CCAA Proceedings while ensuring the recognition of the totality of the representative claim advanced by the Ontario Plaintiffs;

(c) establishing a process for the mediation in the CCAA Proceeding through which the positions of the various stakeholders would be defined; and

(d) obtaining access to information that would permit Class Counsel to make informed recommendations to the Ontario Plaintiffs and the court in connection with the terms of any Plan.

29. To further these objectives, Class Counsel took a number of steps in the CCAA Proceedings. Attached hereto as **Exhibit "C"** is a list of steps taken by Class Counsel, including bringing and appearing in response to twenty-five (25) motions, engaging in extensive and protracted negotiations with respect to the terms of the Plan of Reorganization, obtaining the right to file a representative claim so as to protect the interests of the putative Class, obtaining a data room of confidential non-public documents from Sino-Forest, and engaging in multiple formal and informal, group and individual mediation and negotiation sessions with other stakeholders regarding the Class Members' claims. As a result of the Ontario Plaintiffs' efforts, their claims against the Dealers emerged from Sino-Forest's CCAA proceedings relatively unscathed.

30. As part of the negotiation of the Plan, the Dealers compromised rights of indemnification against subsidiaries of Sino-Forest - entities outside the CCAA proceeding - in exchange for (a) a release of claims in respect of the Litigation Trust; and (b) a cap on noteholder-related damages

of $150 million. Obtaining these protections were essential aspects of the Dealers non-opposition to the CCAA Plan.

## G. SETTLEMENT WITH PÖYRY (BEIJING)

31. The Ontario Plaintiffs engaged in settlement discussions with Pöyry (Beijing) Consulting Company Limited ("Pöyry (Beijing)"), a defendant in these proceedings, starting in January 2012. Following arm's-length negotiations, the Ontario Plaintiffs entered into a settlement with Pöyry (Beijing) in March 2012. On September 25, 2012, the Ontario Action was certified as a class proceeding as against Pöyry (Beijing) for the purposes of settlement and the settlement was approved between the class and Pöyry (Beijing).

## H. COURT-ORDERED MEDIATION

32. On July 25, 2012, this Court ordered the various constituencies in the CCAA Proceedings to attend a mediation. On September 4 and 5, 2012, the Ontario Plaintiffs attended an all-parties mediation, which included the Dealers. The mediation was conducted with the assistance of the Honourable Justice Newbould, acting as mediator. Extensive mediation briefs were filed by all parties. The mediation did not result in a settlement with any of the parties, including Dealers, at that time.

## I. SETTLEMENT WITH ERNST & YOUNG

33. In November 2012, the Ontario Plaintiffs engaged in a further mediation with Ernst & Young, which resulted in the Ernst & Young Settlement and the Ernst & Young Release (all as defined in the Plan). Pursuant to the Ernst & Young Settlement, Ernst & Young was required to pay $117 million. The Ernst & Young Settlement was conditional upon obtaining orders in the

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CCAA proceedings and in the United States Bankruptcy Court resolving all claims against Ernst & Young in relation to Sino.

34. The framework of the Ernst & Young Settlement is contained at Article 11.1 of the Plan and was the template for a similar framework for Named Third Party Defendants contained at Article 11.2 of the Plan (discussed below).

35. Pursuant to a motion brought by the Ontario Plaintiffs, the Ernst & Young Settlement was approved by this Court on March 20, 2013. The Ontario Plaintiffs then brought a motion for approval of the method of distribution of the Ernst & Young Settlement funds and a claims filing procedure. The motion was granted on December 27, 2013.

36. In connection with both of these hearings, extensive notice was given of these proceedings. To date, over 47,000 claims have been filed in connection with the Ernst & Young Settlement.

## J. SETTLEMENT WITH DAVID HORSLEY

37. In July 2014, the Ontario Superior Court approved a settlement between David Horsley, Sino-Forest's former CEO, the Ontario Plaintiffs, and the Litigation Trust (the "Horsley Settlement"). The Horsley Settlement also utilized the framework contained in Article 11.2 of the Plan. The Horsley Settlement provided for payment of $4.2 million in respect of the claims advanced in the Class Actions.

## K. SETTLEMENT FRAMEWORK IN ARTICLE 11.2 OF THE PLAN

38. Article 11.2 of the Plan provides the Ontario Plaintiffs with the ability to complete further settlements within the context of the CCAA proceedings, subject to further court approval. The

Dealers Settlement contemplates that the settlement will be effected through Article 11.2 of the Plan. Pursuant to the Plan, the Dealers are a Named Third Party Defendant under the Plan. In order to effect a Named Third Party Defendant Settlement through Article 11.2 of the Plan, the settlement must be approved by the court and the court must issue a Named Third Party Defendant Settlement Order. The proposed draft Settlement Order, appended as Schedule "A" to the Minutes of Settlement, is such an order.

## L. SETTLEMENT WITH THE DEALERS

39. The negotiations leading to the Dealers Settlement were conducted on an adversarial, arm's-length basis. Following the failed court-ordered mediation in September 2012, Class Counsel continued settlement discussions with counsel to the Dealers:

(a) the Dealers and Class Counsel engaged in ongoing settlement discussions and exchanged settlement offers in September 2012 and October 2012;

(b) the parties appeared before Justice Stephen Goudge on August 26, 2014 for a full-day mediation, and both sides provided extensive mediation briefs; and

(c) the parties again appeared before Justice Goudge on November 10, 2014 for a full-day mediation.

40. After extensive negotiation, an agreement in principle was reached on November 10, 2014. The key terms of the Dealers Settlement are as follows:

(a) the Dealers have paid CDN$32.5 million (less $250,000 allocated to notice costs) into an interest bearing trust account with a Canadian Schedule 1 bank in Ontario to be administered in accordance with orders of the court;

(b) the Dealers Settlement is conditional on, among other things, no part of the $32.5 million settlement fund being allocated to the Litigation Trustee, and the issuance of the Settlement Order and the US Recognition Order;

(c) the Dealers Settlement will become effective ("Effective Date") when:

(i) the Settlement Order has been obtained and either (i) all appeal rights have expired; or (ii) the applicable final appellate court has upheld the Settlement Order; and

(ii) the US Recognition Order has been obtained and either (i) all appeal rights have expired; or (ii) the applicable final appellate court has upheld the US Recognition Order;

(d) the Class Settlement Fund will be paid into the Settlement Trust within fifteen (15) days following the Effective Date. Upon payment of the Class Settlement Fund, the Ontario Action and the Québec Action will be dismissed against the Dealers, and the representative plaintiffs in the US Action shall cause the US Action to be dismissed against the Dealers;

(e) after the close of pleadings in the Ontario Action, Credit Suisse, TD, Dundee, and Merrill will provide the Class Plaintiffs with non-privileged documents and information relevant to certified common issues relating to BDO Limited and agree to preserve relevant non-privileged documents relating to BDO Limited until the conclusion of the action;

(f) following the Effective Date,

(i) no further proceedings shall be commenced by anyone against the Dealers in respect of any Causes of Action (as defined in the Plan), other than as necessary to complete the Dealers Settlement;

(ii) The plaintiffs in the Ontario Action, Québec Action, and US Action agree not to claim from the non-settling defendants in any of the actions that portion of damages that corresponds to the proportionate share of liability of the Dealers; and

(iii) the plaintiffs in the Ontario Action, Québec Action, and US Action and their counsel agree not to cooperate with any other party in advancing claims against the Dealers. However, such plaintiffs reserve all rights with respect to the prosecution of the claims remaining against the non-settling defendants.

## M. THE ONTARIO PLAINTIFFS SUPPORT THE SETTLEMENT

41. The Ontario Plaintiffs are:

(a) the trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers Fund"). The Labourers Fund is a multi-employer pension plan providing benefits for employees working in the construction industry. The trustees of the Labourers Fund manage more than $2.5 billion of assets. During the period from March 19, 2007 to June 2, 2011 the Labourers Fund purchased Sino-Forest common shares. Most of those shares were purchased in the secondary market over the TSX. The Labourers Fund also purchased Sino-Forest

common shares pursuant to a prospectus that Sino-Forest issued. As at the day before the issuance of the Muddy Waters report, the Labourers Fund held a total of approximately 128,700 Sino-Forest shares.

(b) the trustees of the International Union of Operating Engineers ("OE Fund"). The OE Fund is a multi-employer pension plan providing pension benefits for operating engineers in Ontario. The trustees of the OE Fund manage approximately $1.5 billion of assets. During the period from March 19, 2007 to June 2, 2011, the OE Fund purchased Sino-Forest common shares over the TSX and held approximately 324,100 such shares at the day before the issuance of the Muddy Waters report.

(c) Sjunde AP-Fonden ("AP7"), the Swedish National Pension Fund. AP7 manages billions of dollars in assets. During the period from March 19, 2007 to June 2, 2011, AP7 purchased common shares over the TSX and held 139,398 shares as at the day before the issuance of the Muddy Waters report;

(d) David Grant is an individual resident in Calgary, Alberta. During the period from March 19, 2007 to June 2, 2011, he purchased 100 of the Sino-Forest 6.25% Guaranteed Senior Notes due 2017 pursuant to an offering memorandum. Mr. Grant continued to hold these notes as at the day before the issuance of the Muddy Waters report;

(e) Robert Wong is an individual residing in Kincardine, Ontario. Mr. Wong purchased hundreds of thousands Sino-Forest shares from 2002 (when he first became a Sino shareholder) through June 2011. During the period from March 19, 2007 to June 2, 2011, he purchased Sino-Forest common shares in the secondary market over the TSX and 30,000 shares pursuant to a prospectus that Sino issued. Mr. Wong continued to hold 508,700 Sino common shares at the day before the issuance of the Muddy Waters report;

(f) Davis Selected Advisers, L.P. is an asset management firm. Davis New York Venture Fund, Inc. is a fund managed by Davis Selected Advisers L.P. (together with Davis Selected Advisers, L.P, "Davis") Davis was the second-largest shareholder of Sino-Forest, holding approximately 12.6% of Sino's outstanding common shares prior to the issuance of the Muddy Waters report.

42. Collectively, the Ontario Plaintiffs owned in excess of 22.7 million common shares at the day before the issuance of the Muddy Waters report, and those shares had a market value immediately prior to the issuance of the Muddy Waters report of over $413 million. The Ontario Plaintiffs also owed Sino-Forest notes that had a market value immediately prior to the issuance of the Muddy Waters report of over $31.1 million.

43. I am advised by Jonathan Ptak of Koskie Minsky that the trustees of the Labourers Fund and the OE Fund support the Dealers Settlement and have instructed Class Counsel to seek approval of it. I am advised by Daniel Bach and Serge Kalloghlian of Siskinds LLP that Robert Wong, David Grant, AP7, and Davis also support the settlement and have instructed Class Counsel to seek approval of it.

## N. FACTORS CONSIDERED IN ASSESSING THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

### (i) Experience of Class Counsel

44. Siskinds LLP and Koskie Minsky LLP both have extensive experience litigating and resolving complex class action litigation similar to this case. In addition, Kessler Topaz Meltzer and Check LLP, counsel to AP7, are one of the leading US class action firms with particular expertise in securities class actions.

45. Siskinds has been lead or co-lead counsel to the plaintiffs in well over 100 class proceedings and has successfully resolved over 60 such proceedings, in areas such as securities, competition (price-fixing), product liability (particularly with respect to pharmaceuticals and medical products), the environment and consumer claims. To the date of this affidavit, Siskinds has had approximately 20 securities class actions and 2 derivative proceeding settlements approved by courts.

46. Koskie Minsky has prosecuted class actions at all levels of court in Ontario as well as before the Supreme Court of Canada, and has been responsible for shaping class actions law through leading cases including *Cloud v The Attorney General of Canada, Pearson v Inco Ltd, Caputo v Imperial Tobacco,* and *Markson v MBNA Canada Bank.* Koskie Minsky has prosecuted

actions for securities fraud, pension fund and investment claims, intellectual property violations, environmental damage and residential school abuse, among others.

47. Koskie Minsky has acted for shareholders in securities class actions, including *Lawrence v Atlas Cold Storage Holdings Inc, Toevs v Yorkton, Frohlinger v Nortel Networks Corp, Millwright Regional Council of Ontario Pension Trust Fund (Trustees of) v. Celestica Inc, Bayens v. Kinross Gold Corporation,* and *Coffin v Atlantic Power Corporation.*

48. Paliare Roland has appeared as counsel in many CCAA restructuring proceedings, and has acted for a variety of stakeholders in those proceedings, including stakeholders acting in representative capacities. Past engagements include, among others, advising and appearing on behalf of a number of institutional and other investors including various dissident noteholders in connection with the restructuring of Canada's non-bank asset backed commercial paper market, advising and appearing on behalf of the Superintendent of Financial Services in his capacity as administrator of Ontario's Pension Benefits Guarantee Fund in connection with the restructuring of Nortel Networks Corporation and its global subsidiaries, advising and appearing on behalf of the United Steelworkers in connection with the Stelco restructuring, as well as in connection with the restructuring of a variety of other steel mills, pulp mills, and manufacturing facilities across Ontario, and advising and appearing on behalf of the Air Line Pilots Association in connection with the restructuring of Air Canada. Paliare Roland also appeared as counsel to the committee of non-unionized Québec employees in the restructuring of Fraser Papers, as counsel to a committee of former employees in the Cinram restructuring, and, most recently, as class counsel in the CCAA proceedings relating to the Lac Megantic train derailment.

49. As a result of Class Counsel's involvement in other cases, we have gained considerable experience in the settlement mechanics and imperatives, damages methodologies, and risks associated with this type of litigation.

50. Class Counsel recommend the approval of the Dealers Settlement. In our view, its terms, including the consideration available to securities claimants, are fair and reasonable in the circumstances. The Dealers Settlement will deliver an immediate benefit to securities claimants on claims that faced risks. I explain below our rationale for recommending to the Ontario Plaintiffs, and to this Court, the compromise of the claims advanced against the Dealers in this action.

**(ii) Information Supporting Settlement**

51. In assessing our clients' position and the proposed settlement, we had access to and considered the following sources of information:

(a) all of Sino-Forest's public disclosure documents and other publicly available information with respect to Sino-Forest, including:

  (i) Sino-Forest's prospectuses;

  (ii) Sino-Forest's offering memoranda;

(b) the available trading data for Sino-Forest's securities, including significant production by the Dealers of the location of primary market purchasers of Sino-Forest's securities;

(c) non-public documents uploaded by Sino-Forest into the data-room established in the CCAA Proceedings for purposes of the global mediation, which included the documents listed at Schedule "A" to the July 30, 2012 Order of Justice Morawetz, which is marked and attached hereto as **Exhibit "D";**

(d) the responsive insurance policies of TD, Dundee, RBC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC);

(e) the input and opinions of our insolvency law experts and insurance coverage experts;

(f) the input and opinion of Frank C. Torchio, the President of Forensic Economics, Inc., who has consulted or given independent damage opinions in securities fraud lawsuits for over 20 years.

(g) the input of an expert in the obligations and duties of underwriters;

(h) the input of Professor Adam C. Pritchard, an expert in U.S. Federal securities law;

(i) the input of Professor Patrick Borchers, an expert in New York State law;

(j) the mediation briefs provided by the parties, including the Dealers, at the global mediation in September, 2012 and in the mediation in September 2014;

(k) input from experienced U.S. securities counsel, Kessler Topaz Meltzer & Check, LLP; and

(l) input from experienced U.S. securities counsel Cohen Milstein, U.S. Plaintiffs' Counsel.

52. In our view, Class Counsel had more than adequate information available from which to make an appropriate recommendation concerning the resolution of the claims as against the Dealers.

**(iii) Claims advanced against the Dealers**

53. The Ontario Action advances claims against all of the Dealers and covers all of the Offerings. The Ontario Action is advanced on behalf of the following class defined as:

(a) all persons and entities, wherever they may reside, who acquired Sino's Securities during the Class Period 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 acquisition and who acquired Sino's Securities outside of Canada, except: those persons resident or domiciled in the Province of Québec at the time they acquired Sino's Securities, and who are not precluded from participating in a class action by virtue of Article 999 of the Québec *Code of Civil Procedure*, RSQ, c C-25, and except the Excluded Persons; and

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(b) all persons and entities, wherever they may reside, who acquired Sino's Securities during the Class Period by distribution in Canada in an Offering, or are resident of Canada or were resident of Canada at the time of acquisition and acquired Sino's Securities by offering outside of Canada, except the Excluded Persons.

54. The Ontario Action asserts the following claims against the Dealers:

***Claims against Share Underwriters***

(a) s. 130 of the Ontario *Securities Act* for liability in a prospectus;

(b) negligence; and

(c) unjust enrichment.

***Claims against Initial Note Purchasers***

(d) negligence;

(e) New York State common law negligent misrepresentation;

(f) breach of s. 12(a)(2) of the US Securities Act of 1933; and

(g) unjust enrichment.

55. The US Action only advances claims against Banc of America and Credit Suisse (USA). The US Action does not advance claims against the balance of the Dealers, including any of the Share Underwriters. The US Action is advanced on behalf of the following class defined as:

(a) all persons or entities who, from March 19, 2007 through August 26, 2011 purchased the common stock of Sino-Forest on the Over-the-Counter market and who were damaged thereby; and

(b) all persons or entities who, during the Class Period, purchased debt securities issued by Sino- Forest other than in Canada and who were damaged thereby.

**(iv) Risks and Limitations to the Success of Claims against the Dealers**

56. It has always been Class Counsel's view that the primary market claims against the Dealers had merit. However, a number of factors in this case presented a significant risk to the ultimate success and recovery from the Dealers. These risks weighed in favour of settlement with the Dealers. It is Class Counsel's view that the Dealers Settlement is an excellent settlement and

is fair and reasonable and in the best interests of securities claimants. Class Counsel's assessment of the Dealers Settlement and our recommendation of it rest primarily on the following factors, in addition to the general risks of proceeding with complex litigation.

**(a) Only primary market purchasers have valid claims against the Dealers**

57. Although the claims asserted against all other defendants in the Class Actions are for primary and secondary market transactions, the valid claims against the Dealers are for primary market purchases only in respect of Sino-Forest's offerings by way of prospectus and offering memoranda. Claims are not asserted on behalf of secondary market purchasers of Sino-Forest's securities who did not purchase their securities from the Dealers.

**(b) Purchasers of securities on the primary market must hold their securities until the end of the class period**

58. The only security holders who have valid claims against the Dealers are those who acquired their securities in the primary market and held those notes until the end of the class period. Securities holders who purchased Sino-Forest securities on the primary market and sold their securities before the end of the class period did not suffer any damages since the artificial inflation remained in the price. As a result, the valid claims against the Dealers are further limited to class members with primary market claims who purchased Sino-Forest securities and held such securities until the end of the class period. The plaintiffs' damages expert Frank C. Torchio has opined that if liability is established with respect to all offerings, damages for such claims are as low as $77.3 million for shares and US$366 million for notes as against all of the Defendants (not just the Dealers). In addition, as discussed below, the Plan contains a $150 million damages cap for note claims against the Initial Note Purchasers. Therefore, given the settlements already accomplished and the payments made thereunder, and the Pierrenger terms

of the other settlements (which include that the plaintiffs could only pursue the portion of the damages that reflect the remaining defendants' several liability), the damages which could be obtained from the Dealers could be far less than the total damages as calculated by Mr. Torchio.

**(c) Certain primary market claims may not be covered in any class action**

59. The Ontario Action advances primary market claims on behalf of all persons and entities who:

(a) acquired securities during the class period by distribution in Canada;

(b) are resident in Canada or were resident of Canada at the time at the time of acquisition and acquired securities by offering outside of Canada;

(c) acquired securities during the class period on the TSX or other secondary market in Canada; or

(d) are resident in Canada or were resident of Canada at the time of acquisition and who acquired securities outside of Canada.

60. The class is defined by reference to individuals and entities, not by transactions. It has always been the position of Class Counsel that as long as an individual or entity falls within any one category of the Ontario Action class definition, all of the individual or entity's transactions would be subject to recovery in the Ontario Action, provided the claims can be proven. However, there is a risk that a court may interpret the class definition in the Ontario Action to exclude all individuals and entities residing outside of Canada that purchased Sino-Forest's securities on the primary market outside of Canada.

61. The Dealers have provided documentation that under 10% of the July 2008, December 2009 and October 2010 Note Offerings were sold in Canada. The Dealers have also provided documentation that under 50% of the June 2007, June 2009 and December 2009 Share Offerings

were sold in Canada. There is a risk that non-residents may not be captured by the Ontario Action class definition. Finally, the US Action class definition does not capture primary market share purchasers, and does not name as a defendant TD, who was an Initial Note Purchaser in the December 2009 Note Offering.

**(d) Liability limited by Ernst & Young, Pöyry (Beijing), and Horsley settlements:**

62. Pursuant to the Pöyry (Beijing), Ernst & Young and Horsley settlements, the remaining defendants in the Class Proceedings may not be liable for any of the proportionate liability of Pöyry (Beijing), Ernst & Young and Horsley, as may be found by a court at trial. It is likely that the Dealers would argue that they relied on Ernst & Young and Horsley, and Sino-Forest's senior management, who may be assigned a significant proportion of liability, thereby limiting any amount that could be collected from the Dealers at trial.

**(e) Unjust enrichment claims may face significant challenges**

63. The plaintiffs in the Ontario Action claim for unjust enrichment in respect of the fees earned by the Dealers pursuant to the primary market offerings. However, the Dealers have asserted that such fees were paid by Sino-Forest, and not by primary market purchasers. In addition, the Dealers have asserted that such fees were paid pursuant to a valid contract, which may be found to be a juridical reason for the alleged enrichment. As a result, there is risk associated with such claims.

64. The Ontario Action also claims for unjust enrichment in respect of the fees earned by the Dealers when such Dealers sold Sino-Forest securities to their clients on the secondary market. There is very significant risk associated with these claims. For example, the entities that sold securities to class members on the secondary market may have been separate corporate entities

from those that participated in the primary market offerings, and such entities may not be named defendants in the Ontario and US Actions. In addition, the securities were purchased from financial institutions pursuant to valid contracts of purchase and sale, which may constitute a juristic reason for the payment of fees associated with each purchase. The degree of risk associated with such claims against the Dealers on behalf of secondary market purchasers is so high that the proposed Claims and Distribution Protocol does not contemplate any distribution to secondary market purchasers from the Dealers Settlement Fund.

**(f) Some noteholders may have received consideration pursuant to Sino-Forest's restructuring**

65. The subset of noteholders who satisfy the criteria identified above for a primary market claim will likely include some who were noteholders when Sino-Forest's CCAA restructuring occurred. Pursuant to that restructuring, they may have been distributed some value for their notes. Whatever distribution was received by Sino-Forest's noteholders pursuant to the CCAA proceedings would further reduce any damages sustained by noteholders.

**(g) The CCAA Plan caps the value of note claims against the Initial Note Purchasers at $150 million**

66. Pursuant to the Plan, the maximum liability of all note claims (both secondary and primary) is capped at $150 million. The $150 million cap was agreed to by the Ontario Plaintiffs as part of a negotiation whereby the Dealers did not oppose the Plan. A portion of that capped amount will likely be paid out of the Ernst & Young and Horsley settlement funds. Therefore, the potential recovery in respect of primary market claims may be even further reduced.

**(h) Only common law claims against Initial Note Purchasers**

67. The Ontario *Securities Act* does not contain any statutory claims against underwriters on behalf of primary market note purchasers. Only Canadian common law claims can be asserted on

behalf of noteholders against the Initial Note Purchasers. Such claims may pose significant challenges, including:

(a) The court may have concluded that based on concerns over indeterminate liability or for other reasons, the Initial Note Purchasers did not owe a duty of care to Note purchasers.

(b) The Note offering memoranda explicitly state that the Dealers made no representations concerning the quality of Sino-Forest's securities.

(c) In order for the Canadian common law claims against the Initial Note Purchasers, each class member may be required to individually prove reliance or causation.

68. As a result, there was a risk that the common law note claims may not have been certified, and if certified, may not have been successful on the merits.

**(i) Challenges for US law claims**

69. The Ontario Action also asserts claims against the Initial Note Purchasers pursuant to the common law of New York State and US Federal law. Both of these claims would have faced significant challenges by the Initial Note Purchasers. In response to the US law claims asserted in the Ontario Action, the Dealers filed five (5) affidavits from Michael Chepiga, a retired senior partner of the New York law firm Simpson Thatcher & Bartlett, LLP. Mr. Chepiga opined that the Second Fresh as Amended Statement of Claim does not allege facts that establish the elements of the claim for breach of section 12(a)(2) of the *Securities Act* or negligent misrepresentation under New York law. Mr. Chepiga opined that a claim pursuant to section 12(a)(2) was only available in respect of a public offering of securities, and Sino-Forest's notes were distributed pursuant to private offerings. The Dealers also filed an affidavit from Edward Greene, Senior Counsel from Cleary Gottlieb Steen and Hamilton and the former Director of the Division of Corporation Finance of the US Securities and Exchange Commission. Mr. Greene

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opined that the claim for section 12(a)(2) was not applicable to the facts alleged by the Second Fresh as Amended Statement of Claim.

70. The Ontario Plaintiffs relied on affidavits from Professor Adam C. Pritchard and Professor Patrick Borchers to support their claims pursuant to US law. Professor Pritchard opined that notwithstanding that a note offering memoranda may purport to distribute notes privately, the determination of whether an offering is public or private turns on whether the class of persons who purchase the securities are a class of persons that need the protections of the *Securities Act*, including their level of sophistication. In the circumstances, the Ontario Plaintiffs have pleaded that notwithstanding the purported characterization of Sino-Forest's note distributions as private, they were distributed to unsophisticated individuals such that they were rendered public offerings. Professor Borchers opined that the Ontario Plaintiffs' Statement of Claim disclosed the cause of action of negligent misrepresentation pursuant to New York State common law against the Initial Note Purchasers writers.

71. Although the Ontario Plaintiffs relied on affidavits from Professor Adam C. Pritchard and Professor Patrick Borchers to support their claims pursuant to US law, there was a risk that such claims would not be certified or successful at trial.

**(j) Challenges in establishing Dealers liability**

72. We had insight into the Underwriting process and due diligence as a result of documents and cooperation flowing from the Horsley settlement. It is likely that the Dealers would have asserted that they met the standard of care for the Share and Note Offerings. The Share Underwriters would likely have claimed that they had experience dealing with forestry issuers and Chinese issuers, and that they completed comprehensive due diligence for each prospectus

offering. The Dealers would likely have claimed that they hired and relied upon legal counsel for each offering, and relied upon forestry expertise and valuation reports prepared on behalf of Sino-Forest as well as the financial statements audited by Ernst & Young and BDO Limited. In addition, the Initial Note Purchasers would likely have argued that they had no due diligence obligation at all, given that they made explicit statements in the offering memoranda that they made no representations concerning the quality of Sino-Forest's securities. These due diligence defences added additional risk, particularly with respect to the Note claims where the Dealers made explicit statements that the Dealers made no representations concerning the quality of Sino-Forest's securities.

**(k) Alternative damages analyses would have been considered**

73. If entirely successful, the claims asserted against the Dealers could result in an award for significant damages. I have reviewed various expert reports by Mr. Torchio regarding damages in this action. Mr. Torchio is the president of Forensic Economics, Inc., and has consulted or given independent opinions on damages in securities fraud lawsuits for over 20 years. In this course of this litigation, Mr. Torchio provided his opinion that total estimated damages to primary market claimants, from all defendants, runs into the hundreds of millions of dollars.

74. We were guided by the advice of Mr. Torchio, but were also cognizant that it is common and expected for defendants to produce opinions that make different assumptions and put forth lower damages figures. Indeed, in the course of settlement discussions in this case, certain defendants insisted that far more conservative damages figures were appropriate.

75. It is also important to recognize that Mr. Torchio opines on total estimated damages from all defendants, and that damages attributable to the Dealers could only be a subset of this figure.

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His opinions are based in large part on trading models and various assumptions, the results of which could vary from the actual trading patterns of securities claimants.

76. Moreover, the actual damages to be paid may only be for claims filed. For a variety of reasons, less than 100% of class members generally file claims. Although claims rates vary from case to case, it is almost never the case in a matter of this nature that all class members file claims. Therefore, actual payable damages could be some portion of Mr. Torchio's figures if the matter proceeded to trial and the defendants succeeded in establishing that damages should be based only on claims filed.

## O. CONCLUSION ON SETTLEMENT APPROVAL

77. The $32.5 million settlement represents a significant component of the total estimated damages associated with primary market share claimants (being $77.3 million), which reflects the availability of statutory claims under the *Securities Act*, and thus, fewer challenges in respect of establishing these claims. Although claims on behalf of primary market noteholders are significantly discounted, these claims suffer from significantly greater risk. The quantum of the settlement also represents approximately 40% of the commissions received by the Dealers in respect of the offerings of Sino-Forest securities as estimated by the plaintiffs based on the plaintiffs' review of publically available material, a very significant percentage.

78. Finally, we believe the Dealers settlement is the largest underwriter settlement in Canadian history. It is worth noting that such settlements are rare. I am aware of only five (5) underwriter settlements in Canadian history:

(a) *Zaniewicz v. Zungui Haixi Corporation*: $750,000 from underwriters;

(b) *McKenna v. Gammon Gold*: $13.25 million from the issuer, officers and underwriters combined;

(c) *Lawrence v. Atlas Cold Storage*: $40 million from the issuer, accountant, officers and underwriters combined;

(d) *Gould v. BMO*: $3,750,000 from underwriters; and

(e) *CC&L Dedicated Enterprise Fund (Trustee of) v. Fisherman*: $85 million from issuer, officers, underwriters, and auditors.

79. In light of all the above considerations, it is Class Counsel's opinion that the Dealers Settlement is fair and reasonable to securities claimants. Class Counsel recommends that the Court approve the settlement.

## P. PROPOSED CLAIMS AND DISTRIBUTION PROTOCOL

80. The proposed Claims and Distribution Protocol attached at **Exhibit "E"** creates a claims-based process for securities claimants to seek compensation from the Dealers Settlement fund. The proposed Claims and Distribution Protocol is designed to provide compensation based on the strength of each category of claims as against the Dealers. Therefore, a claim for purchases with fewer litigation challenges would receive more on a per dollar-of-loss basis than a claim for purchases with a greater litigation challenges.

81. Under the proposed Claims and Distribution Protocol, each claimant would file a claim with the details of their trading in Sino-Forest securities. Securities claimants who had previously participated in the Ernst & Young settlement will receive a notice of settlement with a prepopulated data set requiring their consent to participate in the Dealers Settlement. The claims administrator would use this information to first determine the different categories of purchases made and then, for each category, determine the claimant's losses.

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82. Only claims on behalf of individuals who purchased notes and shares in the following offerings and held such notes and shares until June 2, 2011 are eligible for compensation pursuant from the Dealers Settlement Fund:

(a) distribution of common shares pursuant to the Final Short-Form Prospectus dated June 5, 2007;

(b) distribution of common shares pursuant to the Final Short-Form Prospectus dated June 1, 2009;

(c) distribution of common shares pursuant to the Final Short-Form Prospectus dated December 10, 2009;

(d) distribution of the 5.00% Convertible Senior Notes due 2013 (the "2013 Notes") pursuant to the Offering Memorandum dated July 17, 2008;

(e) distribution of the 10.25% Guaranteed Senior Notes due 2014 (the "2014 Notes") pursuant to the Exchange Offer Memorandum dated June 24, 2009;

(f) distribution of the 4.25% Convertible Senior Notes due 2016 (the "2016" Notes") pursuant to the Offering Memorandum dated December 10, 2009; and

(g) Distribution of the 6.25% Guaranteed Senior Notes due 2017 (the "2017 Notes") pursuant to the Offering Memorandum dated October 14, 2010.

(the "Securities Claimants")

83. Any amounts remaining after the initial distribution to Securities Claimants would be held in trust for the purposes of future disbursements in the Ontario, Quebec or US Class Actions. If there are further monetary settlements, further distributions to Securities Claimants would be determined by motion.

## Q. CALCULATION OF LOSSES[1]

84. In order to distribute the funds fairly, the losses of individual Claimants must be determined. Experts in securities cases employ various techniques to measure damages suffered by individual Claimants. In this litigation, Class Counsel retained Frank Torchio of Forensic Economics. Mr. Torchio is an economist and has advised plaintiffs and defendants in financial valuations, financial-economic analysis and analysis of the response of stock prices to public information in securities fraud lawsuits for over 20 years. Mr. Torchio has testified in trials, arbitrations and out of court examinations in U.S. and Canadian securities litigation matters.

85. In developing the Ernst & Young Claims and Distribution Protocol, we received advice from Mr. Torchio, including how to determine which shares are deemed sold when securities are sold in a given period and the use of netting, whereby losses are offset by profits of sales of securities during the period when such securities were inflated. Such information is equally applicable with respect to claims made to the Dealers Settlement Fund.

86. Class Counsel believe that the methods to be employed under the Claims and Distribution Protocol are fair, well-recognized methods.

87. To determine the Claimant's losses, the adjusted cost base ("ACB") of the Claimant's securities must first be determined. This is done by applying the "first-in-first-out" methodology ("FIFO") to the securities on a per-security, per account basis.

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[1] The Dealers have no knowledge of, involvement in and take no position regarding the allocation of settlement funds paid by the Dealers.

88. The securities will then be divided into the different categories set out at paragraph 9 of the Claims and Distribution Protocol (and discussed in the section below). For each category of securities held by a Claimant, the losses for those purchases are calculated as follows:

| **Time of Sale of Securities**[2] | **Damages** |
|---|---|
| Sold before June 2, 2011 | No damages |
| Sold from June 3 to August 25, 2011 | (#of Securities sold) X (ACB - Sale Price) |
| Sold or held after August 25, 2011 | |
| *Shares* | (#of shares sold or held) X (ACB per share - CAD$1.40) |
| *2013 Notes* | (#of notes sold or held) X (ACB per note - USD$283) |
| *2014 Notes* | (#of notes sold or held) X (ACB per note - USD$276.20) |
| *2016 Notes* | (#of notes sold or held) X (ACB per note - USD$283) |
| *2017 Notes* | (#of notes sold or held) X (ACB per note - USD$289.80) |

89. For securities sold or held after August 25, 2011, the loss per security is calculated by subtracting the holding price of the securities as of August 26, 2011 (as estimated by Forensic Economics) from the ACB of the security.

90. If a Claimant sold Sino-Forest securities before June 2, 2011, that claimant may have inadvertently profited from the alleged misconduct at Sino-Forest. In order to remove the impact of these sales, profits attributable to the artificial inflation of such securities (to be determined by Forensic Economics in consultation with Class Counsel) will be offset by subtracting them from the Claimant's losses.

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2 For the purposes of these calculations, in respect of the Notes, each US$1,000 principal amount of the Notes shall be deemed 1 (one) note.

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## R. *PRIMA FACIE* DIVISION BETWEEN SHARES AND NOTES

91. As a result of the greater risk associated with the primary market note claims as compared to primary market share claims, Class Counsel believes that it is fair and reasonable to allocate the Dealers Settlement Fund in the manner contemplated in the following proportions:

(a) 69.23% of the aggregate amount available for distribution in the Dealers Settlement Fund shall be allocated to claims made in respect of purchases of shares; and

(b) 30.769% of the aggregate amount available for distribution in the Dealers Settlement Fund shall be allocated to claims made in respect of purchases of the notes.

92. Some of the risks considered were the following:

(a) unlike the claims of persons who purchased Sino-Forest shares under a prospectus, there is no statutory claim in Ontario against an underwriter for purchases of securities by offering memoranda, and these claims are therefore dependent on Ontario common law claims or claims under U.S. law;[3]

(b) there is a risk that a significant proportion of primary market note claims may be found to be excluded from the Ontario Action, the Quebec Action, and the US Action class definitions;

(c) some primary market note claimants likely received a distribution pursuant to Sino-Forest's insolvency;

(d) the Plan capped all Note claims (primary and secondary market) at $150 million whereas there is no such cap for Share claims; and

(e) the Dealers made explicit statements in the offering memoranda that they made no representations concerning the quality of Sino-Forest's securities.

## S. RISK ADJUSTMENT FACTORS

93. There are 6 categories of securities purchases in the Claims and Distribution Protocol:

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[3] Section 130.1 of the *Securities Act* provides a statutory claim against Sino-Forest only.

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***Primary Market Share Claimant Categories:***

(a) primary market share purchases (pursuant to a prospectus) in June 2009 and December 2009;

(b) primary market share purchases (pursuant to a prospectus) in June 2007;

***Primary Market Note Claimant Categories:***

(c) Canadian primary market note purchases (pursuant to an offering memorandum) for the 2013, 2014, 2016 and 2017 notes;

(d) non-Canadian primary market note purchases (pursuant to an offering memorandum) for the 2017 notes;

(e) non-Canadian primary market note purchases (pursuant to an offering memorandum) for the 2013, 2014, and 2016 notes if CCAA claim was filed; and

(f) non-Canadian primary market note purchases (pursuant to an offering memorandum) for the 2013, 2014, and 2016 notes if no CCAA claim was filed.

### *1. Primary market share purchases (June 2009 and December 2009 offering)*

94. Claims for purchases of shares in the June 2009 and December 2009 prospectus offering have a risk factor of 1.0, which means that no discount is being applied to those claims relative to other primary market share claims. The absence of a discount reflects that among the primary market share claims, these claims face the fewest challenges and are the strongest share claims against the Dealers. In particular, claimants who purchased in these two offerings have a claim under section 130 of the *Securities Act* and therefore would have succeeded on their claims if they had established that there was a misrepresentation in the relevant part of the prospectus at issue, and that the Dealers did not act diligently in connection with the offering. There were no liability limits for these claims, no leave requirement, no limitation period issues and no requirement to establish a duty of care or reliance.

*2. Primary market share purchases (June 2007 offering)*

95. Claims for purchases of shares in the June 2007 prospectus offering have a risk factor of 0.30. This discount reflects the absence of a statutory claim for purchasers of shares in the June 2007 offering. Section 138 of the *Securities Act* states that statutory claims for prospectus offerings may not be commenced after the earlier of 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or three years after the date of the transaction giving rise to the cause of action. In this case, the applicable limitation period would be three years after the date of the transaction giving rise to the cause of action, which would have been in 2010, a year before this action was commenced.

96. The only claims asserted on behalf of primary market purchases in June 2007 offering are common law claims for negligence and unjust enrichment. The negligence and unjust enrichment claims against the Share Underwriters would have faced additional challenges as compared to the statutory claims. For example, the common law negligence claims require proof of causation, which could be difficult for each Class Member to prove, and some courts have refused to certify common law claims for securities class actions. With respect to the claim for unjust enrichment, the Share Underwriters may assert that any fees paid to them were paid by Sino-Forest, and not by primary market share purchasers. In addition, the Dealers may assert that such fees were paid pursuant to a contract, which may be found to be a juridical reason for the alleged enrichment. As a result, there is additional risk associated with such claims.

*3. Canadian primary market note purchases (2013, 2014, 2016 and 2017 Notes)*

97. Claims for purchases by notes in the 2013, 2014, 2016 and 2017 Note Offerings by Canadians or in a distribution in Canada have a risk factor of 1.0, which means that no discount is being applied to those claims relative to other primary market Note claims.

98. The absence of a discount reflects that these Note claims face the fewest challenges and are the strongest claims against the Dealers among the Note claims. In particular, Canadians or purchasers of these Notes in a distribution in Canada squarely fit within the Ontario and Quebec Actions' class definitions, and a CCAA claim was filed for these claims.

*4. Non-Canadian primary market note purchases (2017 Notes)*

99. Claims for purchases by notes in the 2017 Note Offering by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of 1.0. These claims are covered in the class definition in the US Action, and a CCAA claim was filed for these claims.

*5. Non-Canadian primary market note purchases (2013, 2014, and 2016 Notes) if CCAA claim filed*

100. Claims for purchases by notes in the 2013, 2014, 2016 Note Offerings by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of 0.50. This risk factor reflects the risk that these claimants may not be included in the Ontario, Quebec or US Class Actions class definitions.

*6. Non-Canadian primary market note purchases (2013, 2014, and 2016 Notes) if no CCAA claim filed*

101. Claims for purchases by notes in the 2013, 2014, and 2016 Note Offerings by non-Canadians and individuals or entities who purchased in a distribution outside of Canada have a risk factor of 0.01. These claims may be found to be outside of the Ontario, Quebec or US Class Actions class definitions, and a claimant may face the claims bar unless there was an individual CCAA proof of claim filed. These claims are assigned a risk adjustment factor of 0.01.

## T. SUPPORT OF THE CLAIMS AND DISTRIBUTION PROTOCOL

102. I am advised by Jonathan Ptak of Koskie Minsky that the trustees of the Labourers Fund and the OE Fund support the Dealers Settlement and have instructed Class Counsel to seek approval of the Claims and Distribution Protocol.

103. I am advised by Daniel Bach and Serge Kalloghlian of Siskinds LLP that David Grant, AP7 and Davis support the proposed Claims and Distribution Protocol and have instructed Class Counsel to seek approval of it. Robert Wong has indicated that he has the following objection to the proposed Claims and Distribution Protocol: "With respect to claims in the underwriter settlement, the Administrator should not have the discretion to accept late claims. Instead, Court approval should be required."

## U. SCOPE OF CLAIMS PROCESS

104. The claims administrator will review claims pursuant to the above protocol and determine a claimant's share of the net settlement fund. Claims assessed at less than $5 will not be paid out as it will likely cost more than $5 to process and pay such claims.

## V. ADMINISTRATION PROPOSAL

105. Class Counsel proposes to appoint NPT RicePoint ("NPT") as the Administrator of the Settlement Trust. NPT provides notice and administrative services for class actions and was appointed the administrator of the Ernst & Young Settlement Trust by Court order. For the purposes of this settlement and providing the Notice to US investors, NPT has affiliated with Gilardi & Co., an experienced notice and administrative services firm in the US, to provide Notice to those Securities Claimants who are US investors as described above.

106. NPT is a privately held Canadian firm affiliated with NPT LLP, one of the largest independent Chartered Accountants firms in Southwestern Ontario with over 60 full time employees. NPT has administered or been appointed claims administrator on over 25 class action settlements and distributed over 100 million dollars over the past nine years. I am advised by David Weir, president of NPT, and believe that NPT has acted or is acting as claims administrator in the following securities class actions:

(a) *Zaniewicz v Zungui Haixi Corp et al*: Settlement Fund: CAD $10,850,000;

(b) *Sorensen v easyhome Ltd et al*: Settlement Fund: CAD $2,250,000;

(c) *McKenna v Gammon Gold Inc. et al: Settlement Fund*: CAD $13,250,000;

(d) *Dobbie v Arctic Glacier Income Fund et al*: Settlement Fund: CAD $13,750,000;

(e) *Nor-Dor Developments Limited v Redline Communications Group Inc et al*: Settlement Fund: CAD $3,600,000;

(f) *Devlin v Canadian Superior Energy Inc. et al*: Settlement Fund: CAD $5,200,000;

(g) *Metzler v Gildan Activewear Inc. et al*: Settlement Fund: CAD $22,500,000;

(h) *O'Neil v SunOpta et al*: Settlement Fund: CAD $11,250,000;

(i) *Wheeler v China National Petroleum Corp. et al*: Settlement Fund: CAD $9,900,000;

(j) *McCann v CP Ships et al: Settlement* Fund: CAD $12,800,000; and

(k) *Marcontonio & Audette v TV Pacific Inc.*: Settlement Fund: CAD $2,100,000.

107. NPT has provided Class Counsel with an administration proposal, attached hereto as **Exhibit "F"**. The proposal provides for payment to NPT of:

(a) a setup fee of $32,350;

(b) existing claimants:

(i) payment of $6.50 per claim in respect of non-disputed claims;

(ii) payment of $25 per claim in respect of disputed claims;

(c) new claimants: payment of $23 per claim; and

(d) any additional case specific disbursements, including printing, postage, and bank fees. plus applicable taxes.

108. We believe that the proposed fees are:

(a) proportionate to the size of the settlement;

(b) competitive with market rates;

(c) reflective of a realistic amount of time to be spent administering this settlement, and using the appropriate level of person at a reasonable hourly rate;

(d) consistent with the fees for the administration of other class action settlements we have been involved in; and

(e) consistent with the work required in the proposed administration program.

109. I believe that NPT has the requisite expertise and capability to effectively execute its duties as Administrator. I also believe that the fees are fair and reasonable in all the circumstances.

**SWORN** before me at the City of Toronto, in the Province of Ontario, this 13th day of April, 2015.

A Commissioner, etc.

Charles M. Wright

**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-12-9667-00-CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

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

*THIS IS EXHIBIT "B-1" REFERRED TO IN THE AFFIDAVIT OF CHARLES M. WRIGHT SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

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**CONTINGENCY FEE JOINT RETAINER AGREEMENT**

BETWEEN:

**THE BOARD OF TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA**

**- and -**

**THE BOARD OF TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO**

herein collectively called the "Clients"
OF THE FIRST PART

**- and -**

**KOSKIE MINSKY LLP and SISKINDS LLP**

herein called the "Class Counsel"
OF THE SECOND PART

Proceeding under the *Class Proceedings Act, 1992*

**RECITALS**

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Labourers") and the Trustees of the International Union of Operating Engineers, Local 793 Pension Plan for Operating Engineers in Ontario ("Operating Engineers"), retain Siskinds LLP and Koskie Minsky LLP to commence an action against Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited, certain of Sino-Forest's senior officers or directors and any other parties who may have potential liability in respect of Sino-Forest's public disclosure, to seek to have such action certified as a class proceeding, and to take all necessary steps to prosecute the action.

The Clients acknowledge and understand that they are retaining Class Counsel jointly and that Class Counsel may receive and act on instructions from the Labourers and the Operating Engineers in respect of this retainer. In addition, as a joint retainer, no information received in connection with this matter from either the Labourers or the Operating Engineers can

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be treated as confidential from the other. If a conflict develops between the Labourers and the Operating Engineers that cannot be resolved by the procedures set out in this retainer, Class Counsel cannot continue to act for both and may have to withdraw completely.

The Clients acknowledge and understand that Class Counsel will be paid fees in the Action (defined below) only in the event of success. The Clients' agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Clients understand that the agreement shall not have any force and effect, unless approved by the Superior Court of Justice pursuant to the *Class Proceedings Act*, 1992.

The Clients acknowledge and agree that Class Counsel fees and disbursements owing under this agreement are a first charge on any Recovery (defined below) in the Action, which includes any amount actually recovered by an award, judgment, settlement, or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amounts separately identified or specified as costs and/or disbursements.

**DEFINITIONS**

1. For the purpose of this agreement, the following words shall have the meanings set out below:

   (a) **"*Act*"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

   (b) **"Action"** means an action, brought under the *Act* or similar legislation in another province, in the Ontario Superior Court of Justice in Toronto against Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited and certain of Sino-Forest's senior officers or directors or any similarly constituted action to be commenced, relating to alleged misrepresentations in Sino-Forest's public disclosure.

   (c) **"Class"** means the class asserted from time to time in the **Action** including any subclass;

   (d) **"Common Issues"** means the common issues of fact or law as approved by the **Court** in the **Action**;

   (e) **"Court"** means the Ontario Superior Court of Justice;

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(f) **"CPF"** means the Class Proceedings Fund;

(g) **"Defendants"** mean the defendants to the **Action** at any given time and in particular include Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited, certain of Sino-Forest's senior officers or directors and any other parties whom Class Counsel identify as having potential legal liability in respect of the transactions;

(h) **"Fee Agreement"** means a written agreement between a proposed representative plaintiff and counsel respecting fees and disbursements;

(i) **"Recovery"** means the amount actually recovered by award, judgment, settlement or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amount separately identified or specified as costs and/or disbursements;

(j) **"Sino-Forest"** means Sino-Forest Corporation;

(k) **"Success"** means judgment or award in favour of some or all **Class** members or a settlement that benefits some or all of the **Class** members; and

(l) **"Usual Hourly Rates"** means the usual hourly rates charged from time to time by Class Counsel, their partners, associates and persons employed by their law firms, and all other persons in any other law firms involved in the **Action.**

**THE PARTIES AGREE AS FOLLOWS:**

**SCHEDULES FORM PART OF THIS AGREEMENT**

2. The parties agree that the schedules to this agreement shall form part of this agreement.

**EFFECTIVE DATE**

3. This agreement shall be effective as of the date it has been executed by all parties.

**RETAINER OF CLASS COUNSEL**

4. The Clients have retained and authorized Class Counsel to:

(a) act as counsel for them (in their capacity as trustees) and for the Class in the Action, in the prosecution and trial of the Common Issues, including any and all appeals, and in the assessment of and recovery of damages;

(b) take all steps in and in relation to the Action which they consider necessary, including adding any other defendants;

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(c) use such persons and resources from their firms or any other firms as they consider necessary and their services shall be deemed to be provided as members of Class Counsel's law firms; and

(d) consult, retain and engage all experts, consultants and other persons they consider necessary.

**NEGOTIATIONS**

5. The Clients hereby authorize Class Counsel, in their discretion, to enter into negotiations with any or all of the Defendants for the purpose of reaching a settlement. The Clients understand that any settlement affecting the Class is subject to approval of the Court. The Clients agree and acknowledge that any negotiations are for the purpose of reaching a settlement of the claims of the Class, not simply the individual claims of the Clients.

6. In the event the Clients choose to settle their respective individual claims without settling the claims of the Class, the Clients expressly agree and acknowledge that Class Counsel is permitted to be retained by another member of the Class to assert the claims on behalf of the Class. In such event, privileged communications between Class Counsel and the Clients made for the purpose of advancing the claims of the Class and Class Counsel's work product created for the purpose of advancing the claims of the Class may be disclosed to the new plaintiff and may be used on behalf of and for the benefit of the Class.

**USUAL HOURLY RATES**

7. The current Usual Hourly Rates of Class Counsel and some, but not all, of the persons who will provide professional services in relation to the Action are set out in **Schedule A** to this agreement. The Usual Hourly Rates are the current usual hourly rates charged by Class Counsel on other class action matters.

8. Class Counsel and all other persons providing professional services may, from time to time, increase their Usual Hourly Rates for the purposes of this agreement if done in the usual and ordinary course of their businesses.

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**CLASS COUNSEL'S FEES AND DISBURSEMENTS**

9. Whether or not Success is achieved in the Action, Class Counsel shall be paid all costs recovered in the Action from the Defendants, irrespective of the scale, including any disbursements, applicable taxes and any interest payable thereon and any other amount paid by the Defendants as costs. Class Counsel are authorized to settle the amount of costs awarded on any motion, appeals or the trial of the Common Issues.

10. Except for any costs paid to Class Counsel as provided in paragraph 9 above, Class Counsel shall only be paid its fees upon achieving Success in the Action, whether by obtaining judgment on any of the Common Issues in favour of some or all Class members or by obtaining a settlement that benefits one or more of the Class members. The fees shall be paid by a lump sum payment to the extent possible, or (if a lump sum payment is not possible) by periodic payments, out of the proceeds of any judgment, order or settlement awarding or providing monetary relief, damages, interest or costs to the Class or any Class member.

11. In the event of Success, Class Counsel shall be paid an amount equal to

    (a) any disbursements not already paid to Class Counsel by the Defendants as costs plus applicable taxes and interest thereon in accordance with s. 33(7)(c) of the *Act*; plus

    (b) an amount equal to a percentage of Recovery plus HST where the applicable percentage rate shall be as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | **twenty-five percent (25%)** | **twenty percent (20%)** | **fifteen percent (15%)** | **ten percent (10%)** |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the | **twenty-seven and a half percent (27.5%)** | **twenty-two and a half percent (22.5%)** | **seventeen and a half percent (17.5%)** | **twelve and a half percent (12.5%)** |

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| | | | | |
|---|---|---|---|---|
| commencement of the Common Issues trial; | | | | |
| If the Action is settled after the commencement of the Common Issues trial or is determined by judgment after the trial. | **thirty percent (30.0%)** | **twenty-five percent (25.0%)** | **twenty percent (20.0%)** | **fifteen percent (15.0%)** |

12. Class Counsel may make any motion for the approval of their fees. The amount to be paid for Class Counsel fees is in the sole discretion of the Court considering fee approval but will not exceed any percentage provided for in this Agreement.

13. Class Counsel and the Clients understand that if the Court orders that the Clients pay some portion of the costs incurred by the defendants in this litigation while Siskinds LLP is counsel of record, in the absence of funding, Siskinds LLP will indemnify the Clients against any such award and the Clients will not personally have to satisfy such an award. In consideration for such indemnification, each of the percentage rates under paragraph 11(b) above shall be increased by five percent (5.0%). In the event that funding becomes available from the CPF or a third party financier, the increase of five percent (5%) in the rates set out in paragraph 11(b) in consideration of the indemnification in this paragraph shall not apply.

**FUNDING FROM THE CLASS PROCEEDINGS FUND**

14. The Clients acknowledge that:

(a) Class Counsel, on their behalf, may apply for financial support from the CPF or a third party financer;

(b) as a result, if provided, the CPF or a third party financer may advance payment for some disbursements or indemnify the Clients and other plaintiffs for any adverse cost award;

(c) in consideration for the CPF providing financial support and indemnification of the Clients or other plaintiffs,

(i) the CPF would be entitled to a ten percent (10%) levy of the amount of the award or settlement funds, if any, to which one or more persons in

the Class is entitled, plus the repayment of any financial support received from the CPF; and

(ii) there is a charge on any award or settlement fund in favour of the CPF for the amounts referred to in (b) and (c); and

(d) in the event a third party financer provides financial support and/or an indemnification of the Clients or other plaintiffs, it is highly likely that the third party financer would seek entitlement to a percentage of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled and possible the repayment of any financial support received, and that such percentage could range from five to ten percent (5% to 10%) of Recovery.

15. The Clients acknowledge and agree that Class Counsel may seek direct reimbursement for disbursements or the payment of adverse cost awards from the CPF or a third party funder.

**DISBURSEMENTS**

16. From any Recovery, the Class shall pay Class Counsel for all disbursements they reasonably incur in and in relation to the Action and any other action authorized by this agreement. Recoverable disbursements shall include all amounts reasonably incurred in connection with the Action, the trial of the Common Issues, the settlement of the Action, the assessment of and recovery of damages for the Class members, or any appeals relating to or arising out of the Action and any other action commenced, including but not limited to expenses incurred for investigation, court fees, duplication, travel, including business class travel, lodging, long distance telephone calls, the cost of a toll-free telephone line, the cost of specialized computer equipment and management systems software, computer consultants, public relations consultants, website(s), courier, postage, telecopier, imaging, including the cost of imaging for file closing purposes, and all services provided to Class Counsel by consultants, experts and agents retained by or at the direction of Class Counsel.

17. Except as provided in paragraphs 9 and 16 above, the Clients will have no liability or obligation for the disbursements of Class Counsel, including, without limitation, the fees and disbursements of third parties retained by Class Counsel pursuant to paragraph 4 above or otherwise.

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**CLIENTS' OBLIGATION TO THE CLASS**

18. The Clients acknowledge the obligation to act in the best interests of the Class and that Class Counsel are not obliged to follow instructions from the Clients which are not in the best interests of the Class. In the event of a disagreement between the Clients and Class Counsel concerning whether certain instructions are in the best interests of the Class, the matter shall be submitted to the Court, or for arbitration.

19. The Clients will cooperate in the prosecution of this Action, including attending for any oral examinations if required.

20. The Clients will ensure that any document relating to its transactions in securities of Sino-Forest Corporation, including electronic records such as email, have been set aside and protected from destruction.

**JOINT RETAINER AND CONFLICT BETWEEN THE CLIENTS**

21. The Clients acknowledge that they are jointly retaining Class Counsel. As such, Class Counsel shall receive and act on instructions from the Labourers and the Operating Engineers.

22. In the event that a conflict arises between the Labourers and the Operating Engineers that cannot be resolved, Class Counsel shall, at its discretion, either (i) forthwith move to the Court for directions, or (ii) refer the matter for decision to an arbitrator, who shall be a retired Justice of the Ontario Superior Court, selected by Class Counsel at its sole discretion. Costs of any such arbitration shall be considered a disbursement made in connection with this retainer.

23. The Clients acknowledge and agree that in the event of a conflict that is not resolved through the procedures set out in paragraph 22, in such event Class Counsel may be retained or act for either of them or any other Class member and the Clients hereby consent to Class Counsel being retained or acting for either of them or another Class member regardless of a conflict between the Labourers and the Operating Engineers.

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**TERMINATION OF AGREEMENT**

24. If the Clients or Class Counsel wish to terminate their relationship, the Clients or Class Counsel will forthwith move to the Court for directions.

25. The Clients acknowledge that Class Counsel will incur significant time and financial risk in the conduct and carriage of the Action and any other action they commence in that the fees and disbursements (apart from costs recovered and those paid by CPF or a third party financer) are payable only upon Success and only out of the Recovery. In the event that any of the Clients engage another lawyer to act in the Action or otherwise terminates this agreement and the Action and/or any other action is a Success, in whole or in part, Class Counsel shall be paid fees and disbursements in accordance with the terms of this agreement as if Success was achieved or, if this agreement is not approved, in such manner as the Court directs.

**CONFIDENTIALITY**

26. The Clients acknowledge being advised that the communications between Class Counsel and the Clients relating to the claims of the Class are privileged but that such privilege may be lost if the Clients were to disclose such information to third persons and that the interests of the Class could thereby be adversely affected. The Clients agree to protect the confidentiality of such information and not to disclose such information to any third person.

27. The Clients agree that the Class Counsel's files and documents, compiled in connection with their investigation and prosecution of this matter, constitute the work product and property of Class Counsel, over which Class Counsel have complete control with respect to its use and/or disclosure.

**AN ESTIMATE OF CLASS COUNSEL'S FEES**

28. The Clients or Class Counsel acknowledge that it is difficult to estimate what the expected fee will be. However, given the proposed pleadings in the Action and Class Counsel's fees in other cases, Class Counsel estimate that the legal fees may be in the

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range of $5 to 20 million or more depending on the work done and the Recovery. An example of how this agreement operates is set out in **Schedule B** to this agreement.

**INTERIM DISTRIBUTIONS**

29. The Court may authorize interim payments to Class Counsel and/or to the Class.

**REMUNERATION OF THE CLIENT**

30. The Clients acknowledge that they are not entitled to receive any payment or fee out of the Recovery for acting as a representative plaintiff in the Action unless ordered by the Court.

**COURT APPROVAL**

31. Subject to this agreement being approved by the Court, it shall bind Class Counsel, the Clients, and all members of the Class who do not opt out of the Action as well as their respective heirs, executors, administrators, successors and assigns.

**AMENDMENTS AND ENTIRE AGREEMENT**

32. This agreement may be amended from time to time, in writing by the Clients and Class Counsel, before it is approved by the Court.

33. It is agreed that there is no oral representation, warranty, collateral agreement, or condition that affects this agreement. Amendments to this agreement may be made in writing duly executed by parties. This Agreement may be signed in counterparts.

**COUNTERPARTS**

34. This agreement may be executed by the Clients and Class Counsel in separate counterparts, with signatures by facsimile being acceptable, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

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**INDEPENDENT LEGAL ADVICE**

36. The Clients acknowledge that before signing this agreement they were advised of and had the opportunity to obtain independent legal advice with respect to the meaning and effect of this agreement and with respect to jointly retaining Class Counsel.

July ____, 2011

Joseph Mancinelli, Chair, Trustee of the Labourers' Pension Fund of Central and Eastern Canada

July ____, 2011

Carmen Principato, Vice-Chair, Trustee of the Labourers' Pension Fund of Central and Eastern Canada

July ____, 2011

Brian Foote, Trustee of the International Union Of Operating Engineers, Local 793 Pension Plan for Operating Engineers in Ontario

July ____, 2011

Michael Gallagher, Trustee of the International Union Of Operating Engineers, Local 793 Pension Plan for Operating Engineers in Ontario

July ____, 2011

(Witness)

**Siskinds LLP**
**per:**

July ____, 2011

(Witness)

**Koskie Minsky LLP**
**per:**

**INDEPENDENT LEGAL ADVICE**

35. The Clients acknowledge that before signing this agreement they were advised of and had the opportunity to obtain independent legal advice with respect to the meaning and effect of this agreement and with respect to jointly retaining Class Counsel.

July ____, 2011

Joseph Mancinelli, Chair, Trustee of the Labourers' Pension Fund of Central and Eastern Canada

July ____, 2011

Carmen Principato, Vice-Chair, Trustee of the Labourers' Pension Fund of Central and Eastern Canada

July 22, 2011

Brian Foote, Trustee of the International Union Of Operating Engineers, Local 793 Pension Plan for Operating Engineers in Ontario

July 29, 2011

Michael Gallagher, Trustee of the International Union Of Operating Engineers, Local 793 Pension Plan for Operating Engineers in Ontario

DS
Aug
July 10, 2011

(Witness)

**Siskinds LLP**
**per:** Daniel Bach

July ____, 2011

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(Witness)

Koskie Minsky LLP
per:
Aug. 8/11

**Schedule A**

| Lawyer | Usual Hourly Rate as of January 1, 2011 |
|---|---|
| Kirk M. Baert | $840 |
| A. Dimitri Lascaris | $585 |
| Michael Mazzuca | $715 |
| Michael Robb | $475 |
| Jonathan Ptak | $500 |
| Jonathan Bida | $350 |
| Stephanie Dickson | $200 |
| Student-at-law or summer student | $185 |

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**Schedule B – How the Fee Agreement Operates**

| **One Example (note: this is an illustration only)** | **Amounts** |
|---|---|
| Action is settled before a decision on a certification motion | |
| Recovery, inclusive of disbursements, paid by the Defendants | $25,000,000 |
| Disbursements incurred by Class Counsel including taxes of $5,752.21 | $50,000 |

**In the above example, what would be the amount of Class Counsel's fee?**

1. In addition to their disbursements plus applicable taxes, Class Counsel would request fees equal to 25% of the first $20 million and 20% of the remaining $5 million.

2. Accordingly, Class Counsel would be paid $50,000 for disbursements plus $6 million for its fees (exclusive of HST), subject to approval by the Court, which will assess if the amount is fair and reasonable under the circumstances.

**What is the total amount payable to the Class Proceedings Fund (CPF) if such funding is put in place?**

3. In exchange for the indemnity it provides to the Clients, and for funding it provides towards disbursements, the CPF is required to be paid a levy of 10% of net settlement proceeds (net of Class Counsel fees), plus reimbursement for any disbursements and taxes paid by it. The amounts paid to the CPF are separate and apart from any funds given to Class Counsel, and are required by statute.

**What is the additional amount payable towards Class Counsel's fees in the absence of funding?**

4. In consideration for Siskinds LLP providing an indemnity to the Clients, Class Counsel would request an addition 5% of the settlement for Class Counsel fees. Class Counsel would request fees equal to 30% of the first $20 million and 25% of the remaining $5 million. Accordingly, subject to Court approval, Class Counsel would be paid $50,000 for disbursements plus $7.25 million for its fees (exclusive of HST).

**What is the amount available for the Class?**

5. In this illustration, the Class would recover either $16,353,000 if there is CPF funding or $16,757,500 if there is no funding:

***CPF Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($6,000,000) |
| Less: 13% for HST on fees | ($780,000) |
| Less: Amount payable for Disbursements | ($50,000) |
| Subtotal | $18,170,000 |
| Less: 10% payable to Class Proceedings Fund | ($1,817,000) |
| Balance available for Class | $16,353,000 |

***No Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($7,250,000) |
| Less: 13% for HST on fees | ($942,500) |
| Less: Amount payable for Disbursements | ($50,000) |
| Balance available for Class | $16,757,500 |

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*THIS IS EXHIBIT "B-2" REFERRED TO IN THE AFFIDAVIT OF CHARLES M. WRIGHT SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

**CONTINGENCY FEE RETAINER AGREEMENT**

**BETWEEN:**

**SJUNDE AP-FONDEN**

herein called the "Client"
OF THE FIRST PART

- and -

**KOSKIE MINSKY LLP and SISKINDS LLP**

herein called the "Class Counsel"
OF THE SECOND PART

Proceeding under the *Class Proceedings Act, 1992*

**RECITALS**

Sjunde AP-Fonden ("AP7"), retains Siskinds LLP and Koskie Minsky LLP to commence an action against Sino-Forest Corporation, Ernst & Young LLP, 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., certain of Sino-Forest's senior officers or directors and any other parties who may have potential liability in respect of Sino-Forest's public disclosure, to seek to have such action certified as a class proceeding, and to take all necessary steps to prosecute the action.

The Client acknowledges and understands that Class Counsel will be paid fees in the Action (defined below) only in the event of success. The Client's agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Client understands that the agreement shall not have any force and effect, unless approved by the Superior Court of Justice pursuant to the *Class Proceedings Act, 1992*.

The Client acknowledges and agrees that Class Counsel fees and disbursements owing under this agreement are a first charge on any Recovery (defined below) in the Action, which includes any amount actually recovered by an award, judgment, settlement, or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amounts separately identified or specified as costs and/or disbursements.

Class Counsel acknowledge and agree that Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") will be included in all communications with Client in any form (written, oral, electronic, in person, etc.). Class Counsel acknowledge and agree that Kessler Topaz shall be retained as United States securities law experts in this action and shall be compensated for their services under the terms of a separately negotiated agreement.

**DEFINITIONS**

1. For the purpose of this agreement, the following words shall have the meanings set out below:

   (a) **"*Act*"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

   (b) **"Action"** means an action commenced in the Ontario Superior Court of Justice in Toronto against Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited and certain of Sino-Forest's senior officers or directors or any similarly constituted action to be commenced. The issued notice of action is attached as **Schedule A**;

   (c) **"Base Fee"** means an amount calculated by multiplying the **Usual Hourly Rates** by the number of hours expended by each person in relation to the **Action**;

   (d) **"Class"** means the class asserted from time to time in the Action including any subclass;

   (e) **"Common Issues"** means the common issues of fact or law as approved by the Court in the Action;

   (f) **"Court"** means the Ontario Superior Court of Justice;

   (g) **"CPF"** means the Class Proceedings Fund;

(h) **"Defendants"** mean the defendants to the Action at any given time and in particular include Sino-Forest Corporation, Ernst & Young LLP, 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., certain of Sino-Forest's senior officers or directors and any other parties whom Class Counsel identify as having potential legal liability in respect of the transactions;

(i) **"Fee Agreement"** means a written agreement between a proposed representative plaintiff and counsel respecting fees and disbursements;

(j) **"Recovery"** means the amount actually recovered by award, judgment, settlement or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amount separately identified or specified as costs and/or disbursements;

(k) **"Sino-Forest"** means Sino-Forest Corporation;

(l) **"Success"** means judgment or award in favour of some or all Class members or a settlement that benefits some or all of the Class members; and

(m) **"Usual Hourly Rates"** means the usual hourly rates charged from time to time by Class Counsel, their partners, associates and persons employed by their law firms, and all other persons in any other law firms involved in the Action.

**THE PARTIES AGREE AS FOLLOWS:**

**SCHEDULES FORM PART OF THIS AGREEMENT**

2. The parties agree that the schedules to this agreement shall form part of this agreement.

**EFFECTIVE DATE**

3. This agreement shall be effective as of the date it has been executed by all parties.

**RETAINER OF CLASS COUNSEL**

4. The Client has retained and authorized Class Counsel to:

(a) act as counsel for them (in their capacity as trustees) and for the Class in the Action, in the prosecution and trial of the Common Issues, including any and all appeals, and in the assessment of and recovery of damages;

(b) take all steps in and in relation to the Action which they consider necessary, including adding any other defendants;

(c) use such persons and resources from their firms or any other firms as they consider necessary and their services shall be deemed to be provided as members of Class Counsel's law firms; and

(d) consult, retain and engage all experts, consultants and other persons they consider necessary.

**NEGOTIATIONS**

5. The Client hereby authorizes Class Counsel, in their discretion, to enter into negotiations with any or all of the Defendants for the purpose of reaching a settlement. The Client understands that any settlement affecting the Class is subject to approval of the Court. The Client agrees and acknowledge that any negotiations are for the purpose of reaching a settlement of the claims of the Class, not simply the individual claims of the Client. Class Counsel agree to advise Client of any settlement negotiations and also to seek Client's consent before settling any claims in this Action.

6. In the event the Client chooses to settle their respective individual claims without settling the claims of the Class, the Client expressly agrees and acknowledge that Class Counsel is permitted to be retained by another member of the Class to assert the claims on behalf of the Class. In such event, privileged communications between Class Counsel and the Client made for the purpose of advancing the claims of the Class and Class Counsel's work product created for the purpose of advancing the claims of the Class may be disclosed to the new plaintiff and may be used on behalf of and for the benefit of the Class.

**USUAL HOURLY RATES**

7. The current Usual Hourly Rates of Class Counsel and some, but not all, of the persons who will provide professional services in relation to the Action are set out in Schedule B to this agreement. The Usual Hourly Rates are the current usual hourly rates charged by Class Counsel on other class action matters.

8. Class Counsel and all other persons providing professional services may, from time to time, increase their Usual Hourly Rates for the purposes of this agreement if done in the usual and ordinary course of their businesses. Increases will be communicated to Client sixty (60) days prior to taking effect.

**CLASS COUNSEL'S FEES AND DISBURSEMENTS**

9. Whether or not Success is achieved in the Action, Class Counsel shall be paid all costs recovered in the Action from the Defendants, irrespective of the scale, including any disbursements, applicable taxes and any interest payable thereon and any other amount paid by the Defendants as costs. Class Counsel are authorized to settle the amount of costs awarded on any motion, appeals or the trial of the Common Issues.

10. Except for any costs paid to Class Counsel as provided in paragraph 9 above, Class Counsel shall only be paid its fees upon achieving Success in the Action, whether by obtaining judgment on any of the Common Issues in favour of some or all Class members or by obtaining a settlement that benefits one or more of the Class members. The fees shall be paid by a lump sum payment to the extent possible, or (if a lump sum payment is not possible) by periodic payments, out of the proceeds of any judgment, order or settlement awarding or providing monetary relief, damages, interest or costs to the Class or any Class member.

11. In the event of Success, Class Counsel shall be paid an amount equal to

    (a) any disbursements not already paid to Class Counsel by the Defendants as costs plus applicable taxes and interest thereon in accordance with s. 33(7)(c) of the *Act*; plus

    (b) an amount equal to a percentage of Recovery plus Harmonized Sales Tax (HST) where the applicable percentage rate shall be as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $40 million and $60 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | twenty-five percent (25%) | twenty percent (20%) | fifteen percent (15%) | ten percent (10%) |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the commencement of the Common Issues trial; | twenty-seven and a half percent (27.5%) | twenty-two and a half percent (22.5%) | seventeen and a half percent (17.5%) | twelve and a half percent (12.5%) |
| If the Action is settled after the commencement of the Common Issues trial or is determined by judgment after the trial. | thirty percent (30.0%) | twenty-five percent (25.0%) | twenty percent (20.0%) | fifteen percent (15.0%) |

12. Class Counsel may make any motion for the approval of their fees. The amount to be paid for Class Counsel fees is in the sole discretion of the Court considering fee approval.

13. Class Counsel and the Client understand that if the Court orders that the Client pay some portion of the costs incurred by the defendants in this litigation while Siskinds LLP is counsel of record, in the absence of funding, Siskinds LLP will indemnify the Client against any such award and the Client will not personally have to satisfy such an award. In consideration for such indemnification, each of the percentage rates under paragraph 11(b) above shall be increased by five percent (5.0%).

**FUNDING FROM THE CLASS PROCEEDINGS FUND**

14. The Client acknowledges that:

    (a) Class Counsel, on their behalf, may apply for financial support from the CPF or a third party financer;

(b) as a result, if provided, the CPF or a third party financer may advance payment for some disbursements or indemnify the Client and other plaintiffs for any adverse cost award;

(c) in consideration for the CPF providing financial support and indemnification of the Client or other plaintiffs,

(i) the CPF would be entitled to a ten percent (10%) levy of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled, plus the repayment of any financial support received from the CPF; and

(ii) there is a charge on any award or settlement fund in favour of the CPF for the amounts referred to in (b) and (c); and

(d) in the event a third party financer provides financial support and/or an indemnification of the Client or other plaintiffs, it is highly likely that the third party financer would seek entitlement to a percentage of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled and possible the repayment of any financial support received, and that such percentage could range from five to ten percent (5% to 10%) of Recovery.

15. The Client acknowledges and agree that Class Counsel may seek direct reimbursement for disbursements or the payment of adverse cost awards from the CPF or a third party funder.

**DISBURSEMENTS**

16. From any Recovery, the Class shall pay Class Counsel for all disbursements they reasonably incur in and in relation to the Action and any other action authorized by this agreement. Recoverable disbursements shall include all amounts reasonably incurred in connection with the Action, the trial of the Common Issues, the settlement of the Action, the assessment of and recovery of damages for the Class members, or any appeals relating to or arising out of the Action and any other action commenced, including but not limited to expenses incurred for investigation, court fees, duplication, travel, including business class travel, lodging, long distance telephone calls, the cost of a toll-free telephone line, the cost of specialized computer equipment and management systems software, computer consultants, public relations consultants, website(s), courier, postage, telecopier, imaging, including the cost of imaging for file

closing purposes, and all services provided to Class Counsel by consultants, experts and agents retained by or at the direction of Class Counsel.

17. Except as provided in paragraphs 9 and 16 above, the Client will have no liability or obligation for the legal fees, litigation expenses or disbursements of Class Counsel, including, without limitation, the fees, expenses and disbursements of third parties retained by Class Counsel pursuant to paragraph 4 above or otherwise.

**CLIENT'S OBLIGATION TO THE CLASS**

18. The Client acknowledges the obligation to act in the best interests of the Class and that Class Counsel are not obliged to follow instructions from the Client which are not in the best interests of the Class. In the event of a disagreement between the Client and Class Counsel concerning whether certain instructions are in the best interests of the Class, the matter shall be submitted to the Court, or for arbitration.

19. The Client will cooperate in the prosecution of this Action, including attending for any oral examinations if required. Class Counsel agree to reimburse Client for any costs (e.g., travel, lodging) incurred as a result of Client attending court proceedings or sitting for oral examinations, if and when such attendance or sitting is required.

20. The Client will ensure that any document relating to its transactions in securities of Sino-Forest Corporation, including electronic records such as email, have been set aside and protected from destruction.

**TERMINATION OF AGREEMENT**

21. If the Client or Class Counsel wish to terminate their relationship, the Client or Class Counsel will forthwith move to the Court for directions.

22. The Client acknowledges that Class Counsel will incur significant time and financial risk in the conduct and carriage of the Action and any other action they commence in that the fees and disbursements (apart from costs recovered and those paid by CPF or a third party financer) are payable only upon Success and only out of the Recovery. In the event that the Client engages another lawyer to act in the Action or otherwise

terminates this agreement and the Action and/or any other action is a Success, in whole or in part, Class Counsel shall be paid fees and disbursements in accordance with the terms of this agreement as if Success was achieved or, if this agreement is not approved, in such manner as the Court directs.

**CONFIDENTIALITY**

23. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the Class are privileged but that such privilege may be lost if the Client were to disclose such information to third persons, other than Client's legal advisors (i.e., Kessler Topaz and Setterwalls Advokatbyrå AB), and that the interests of the Class could thereby be adversely affected. The Client agrees to protect the confidentiality of such information and not to disclose such information to any third person.

24. The Client agrees that the Class Counsel's files and documents, compiled in connection with their investigation and prosecution of this matter, constitute the work product and property of Class Counsel, over which Class Counsel have complete control with respect to its use and/or disclosure.

**AN ESTIMATE OF CLASS COUNSEL'S FEES**

25. Both the Client and Class Counsel acknowledge that it is difficult to estimate what the expected fee will be. However, given the proposed pleadings in the Action and Class Counsel's fees in other cases, Class Counsel estimate that the legal fees may be in the range of $5 to 20 million or more depending on the work done and the Recovery. An example of how this agreement operates is set out in Schedule C to this agreement.

**INTERIM DISTRIBUTIONS**

26. The Court may authorize interim payments to Class Counsel and/or to the Class.

**REMUNERATION OF THE CLIENT**

27. The Client acknowledges that they are not entitled to receive any payment or fee out of the Recovery for acting as a representative plaintiff in the Action unless ordered by

the Court. This provision shall have no impact on Kessler Topaz or Setterwalls Advokatbyrå AB's ability to be compensated by Class Counsel.

**COURT APPROVAL**

28. Subject to this agreement being approved by the Court, it shall bind Class Counsel, the Client, and all members of the Class who do not opt out of the Action as well as their respective heirs, executors, administrators, successors and assigns.

**AMENDMENTS AND ENTIRE AGREEMENT**

29. This agreement may be amended from time to time, in writing by the Client and Class Counsel, before it is approved by the Court.

30. It is agreed that there is no oral representation, warranty, collateral agreement, or condition that affects this agreement. Amendments to this agreement may be made in writing duly executed by parties. This Agreement may be signed in counterparts.

**COUNTERPARTS**

31. This agreement may be executed by the Client and Class Counsel in separate counterparts, with signatures by facsimile being acceptable, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**INDEPENDENT LEGAL ADVICE**

32. The Client acknowledges that before signing this agreement they were advised of and had the opportunity to obtain independent legal advice with respect to the meaning and effect of this agreement.

October 11, 2011

**Sjunde AP-Fonden ("AP7")**
**Per:**
**Richard Gröttheim**
**Chief Executive Officer**

October 11, 2011

**Kessler Topaz Meltzer & Check, LLP**
**Per:**
**Sean M. Handler, Esquire**

October ____, 2011

(Witness)

**Siskinds LLP**
**Per:**

October ____, 2011

(Witness)

**Koskie Minsky LLP**
**Per:**

**Schedule B**

| Lawyer | Usual Hourly Rate as of January 1, 2011 |
|---|---|
| Kirk M. Baert | $840 |
| A. Dimitri Lascaris | $585 |
| Michael Mazzuca | $715 |
| Michael Robb | $475 |
| Charles Wright | $625 |
| Jonathan Ptak | $500 |
| Jonathan Bida | $350 |
| Daniel Bach | $375 |
| Stephanie Dickson | $200 |
| Law Clerk | $250 |
| Student-at-law or summer student | $185 |

**Schedule C – How the Fee Agreement Operates**

| **One Example (note: this is an illustration only)** | **Amounts** |
|---|---|
| Action is settled before a decision on a certification motion | |
| Recovery, inclusive of disbursements, paid by the Defendants | $25,000,000 |
| Disbursements incurred by Class Counsel including taxes of $5,752.21 | $50,000 |

**In the above example, what would be the amount of Class Counsel's fee?**

1. In addition to their disbursements plus applicable taxes, Class Counsel would request fees equal to 25% of the first $20 million and 20% of the remaining $5 million.

2. Accordingly, Class Counsel would be paid $50,000 for disbursements plus $6 million for its fees (exclusive of HST), subject to approval by the Court, which will assess if the amount is fair and reasonable under the circumstances.

**What is the total amount payable to the Class Proceedings Fund (CPF) if such funding is put in place?**

3. In exchange for the indemnity it provides to the Client, and for funding it provides towards disbursements, the CPF is required to be paid a levy of 10%, plus reimbursement for any disbursements and taxes paid by it. The amounts paid to the CPF are separate and apart from any funds given to Class Counsel, and are required by statute.

**What is the additional amount payable towards Class Counsel's fees in the absence of funding?**

4. In consideration for Siskinds LLP providing an indemnity to the Client, Class Counsel would request an addition 5% of the settlement for Class Counsel fees. Class Counsel would request fees equal to 30% of the first $20 million and 25% of the remaining $5 million. Accordingly, subject to Court approval, Class Counsel would be paid $50,000 for disbursements plus $7.25 million for its fees (exclusive of HST).

**What is the amount available for the Class?**

5. In this illustration, the Class would recover either $16,353,000 if there is CPF funding or $16,757,500 if there is no funding:

***CPF Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($6,000,000) |
| Less: 13% for HST on fees | ($780,000) |
| Less: Amount payable for Disbursements | ($50,000) |
| Subtotal | $18,170,000 |
| Less: 10% payable to Class Proceedings Fund | ($1,817,000) |
| Balance available for Class | $16,353,000 |

***No Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($7,250,000) |
| Less: 13% for HST on fees | ($942,500) |
| Less: Amount payable for Disbursements | ($50,000) |
| Balance available for Class | $16,757,500 |

*THIS IS EXHIBIT "B-3" REFERRED TO IN THE*
*AFFIDAVIT OF CHARLES M. WRIGHT*
*SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

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# CONTINGENCY FEE RETAINER AGREEMENT

BETWEEN:

**DAVID C. GRANT**

herein called the "Client"
OF THE FIRST PART

- and -

**SISKINDS LLP and KOSKIE MINSKY LLP**

herein called the "Class Counsel"
OF THE SECOND PART

Proceeding under the *Class Proceedings Act, 1992*

## RECITALS

David C. Grant ("Grant"), retains Siskinds LLP and Koskie Minsky LLP to commence an action against Sino-Forest Corporation, Ernst & Young LLP, 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., Banc of America Securities LLC, Credit Suisse (USA) Inc., Credit Suisse Securities (USA) LLC, Haywood Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, UBS Securities Canada Inc.certain of Sino-Forest's senior officers or directors and any other parties who may have potential liability in respect of Sino-Forest's public disclosure, to seek to have such action certified as a class proceeding, and to take all necessary steps to prosecute the action.

The Client acknowledges and understands that Class Counsel will be paid fees in the Action (defined below) only in the event of success. The Client's agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Client understands that the agreement shall not have any force and effect, unless approved by the Superior Court of Justice pursuant to the *Class Proceedings Act, 1992*.

The Client acknowledges and agrees that Class Counsel fees and disbursements owing under this agreement are a first charge on any Recovery (defined below) in the Action, which includes any amount actually recovered by an award, judgment, settlement, or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amounts separately identified or specified as costs and/or disbursements.

**DEFINITIONS**

1. For the purpose of this agreement, the following words shall have the meanings set out below:

   (a) **"*Act*"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

   (b) **"Action"** means an action commenced in the Ontario Superior Court of Justice in Toronto against Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited and certain of Sino-Forest's senior officers or directors or any similarly constituted action to be commenced. The issued notice of action is attached as **Schedule A**;

   (c) **"Base Fee"** means an amount calculated by multiplying the **Usual Hourly Rates** by the number of hours expended by each person in relation to the **Action**;

   (d) **"Class"** means the class asserted from time to time in the **Action** including any subclass;

   (e) **"Common Issues"** means the common issues of fact or law as approved by the **Court** in the **Action**;

   (f) **"Court"** means the Ontario Superior Court of Justice;

   (g) **"CPF"** means the Class Proceedings Fund;

   (h) **"Defendants"** mean the defendants to the **Action** at any given time and in particular include Sino-Forest Corporation, Ernst & Young LLP, 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., certain of Sino-Forest's senior officers or directors and any other parties whom Class Counsel identify as having potential legal liability in respect of the transactions;

(i) **"Fee Agreement"** means a written agreement between a proposed representative plaintiff and counsel respecting fees and disbursements;

(j) **"Recovery"** means the amount actually recovered by award, judgment, settlement or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amount separately identified or specified as costs and/or disbursements;

(k) **"Sino-Forest"** means Sino-Forest Corporation;

(l) **"Success"** means judgment or award in favour of some or all Class members or a settlement that benefits some or all of the Class members; and

(m) **"Usual Hourly Rates"** means the usual hourly rates charged from time to time by Class Counsel, their partners, associates and persons employed by their law firms, and all other persons in any other law firms involved in the **Action**.

**THE PARTIES AGREE AS FOLLOWS:**

**SCHEDULES FORM PART OF THIS AGREEMENT**

2. The parties agree that the schedules to this agreement shall form part of this agreement.

**EFFECTIVE DATE**

3. This agreement shall be effective as of the date it has been executed by all parties.

**RETAINER OF CLASS COUNSEL**

4. The Client has retained and authorized Class Counsel to:

(a) act as counsel for them (in their capacity as trustees) and for the Class in the Action, in the prosecution and trial of the Common Issues, including any and all appeals, and in the assessment of and recovery of damages;

(b) take all steps in and in relation to the Action which they consider necessary, including adding any other defendants;

(c) use such persons and resources from their firms or any other firms as they consider necessary and their services shall be deemed to be provided as members of Class Counsel's law firms; and

(d) consult, retain and engage all experts, consultants and other persons they consider necessary.

## NEGOTIATIONS

5. The Client hereby authorizes Class Counsel, in their discretion, to enter into negotiations with any or all of the Defendants for the purpose of reaching a settlement. The Client understands that any settlement affecting the Class is subject to approval of the Court. The Client agrees and acknowledge that any negotiations are for the purpose of reaching a settlement of the claims of the Class, not simply the individual claims of the Client. Class Counsel agree to advise Client of any settlement negotiations and also to seek Client's consent before settling any claims in this Action.

6. In the event the Client chooses to settle their respective individual claims without settling the claims of the Class, the Client expressly agrees and acknowledge that Class Counsel is permitted to be retained by another member of the Class to assert the claims on behalf of the Class. In such event, privileged communications between Class Counsel and the Client made for the purpose of advancing the claims of the Class and Class Counsel's work product created for the purpose of advancing the claims of the Class may be disclosed to the new plaintiff and may be used on behalf of and for the benefit of the Class.

## USUAL HOURLY RATES

7. The current Usual Hourly Rates of Class Counsel and some, but not all, of the persons who will provide professional services in relation to the Action are set out in **Schedule B** to this agreement. The Usual Hourly Rates are the current usual hourly rates charged by Class Counsel on other class action matters.

8. Class Counsel and all other persons providing professional services may, from time to time, increase their Usual Hourly Rates for the purposes of this agreement if done in the usual and ordinary course of their businesses. Increases will be communicated to Client sixty (60) days prior to taking effect.

## CLASS COUNSEL'S FEES AND DISBURSEMENTS

9. Whether or not Success is achieved in the Action, Class Counsel shall be paid all costs recovered in the Action from the Defendants, irrespective of the scale, including any

disbursements, applicable taxes and any interest payable thereon and any other amount paid by the Defendants as costs. Class Counsel are authorized to settle the amount of costs awarded on any motion, appeals or the trial of the Common Issues.

10. Except for any costs paid to Class Counsel as provided in paragraph 9 above, Class Counsel shall only be paid its fees upon achieving Success in the Action, whether by obtaining judgment on any of the Common Issues in favour of some or all Class members or by obtaining a settlement that benefits one or more of the Class members. The fees shall be paid by a lump sum payment to the extent possible, or (if a lump sum payment is not possible) by periodic payments, out of the proceeds of any judgment, order or settlement awarding or providing monetary relief, damages, interest or costs to the Class or any Class member.

11. In the event of Success, Class Counsel shall be paid an amount equal to

(a) any disbursements not already paid to Class Counsel by the Defendants as costs plus applicable taxes and interest thereon in accordance with s. 33(7)(c) of the *Act*; plus

(b) an amount equal to a percentage of Recovery plus Harmonized Sales Tax (HST) where the applicable percentage rate shall be as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $40 million and $60 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | **twenty-five percent (25%)** | **twenty percent (20%)** | **fifteen percent (15%)** | **ten percent (10%)** |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the commencement of the Common Issues trial; | **twenty-seven and a half percent (27.5%)** | **twenty-two and a half percent (22.5%)** | **seventeen and a half percent (17.5%)** | **twelve and a half percent (12.5%)** |
| If the Action is settled after the commencement of the Common Issues | **thirty percent (30.0%)** | **twenty-five percent** | **twenty percent (20.0%)** | **fifteen percent (15.0%)** |

| | | | | |
|---|---|---|---|---|
| trial or is determined by judgment after the trial. | | (25.0%) | | |

12. Class Counsel may make any motion for the approval of their fees. The amount to be paid for Class Counsel fees is in the sole discretion of the Court considering fee approval.

13. Class Counsel and the Client understand that if the Court orders that the Client pay some portion of the costs incurred by the defendants in this litigation while Siskinds LLP is counsel of record, in the absence of funding, Siskinds LLP will indemnify the Client against any such award and the Client will not personally have to satisfy such an award. In consideration for such indemnification, each of the percentage rates under paragraph 11(b) above shall be increased by five percent (5.0%).

**FUNDING FROM THE CLASS PROCEEDINGS FUND**

14. The Client acknowledges that:

    (a) Class Counsel, on their behalf, may apply for financial support from the CPF or a third party financer;

    (b) as a result, if provided, the CPF or a third party financer may advance payment for some disbursements or indemnify the Client and other plaintiffs for any adverse cost award;

    (c) in consideration for the CPF providing financial support and indemnification of the Client or other plaintiffs,

        (i) the CPF would be entitled to a ten percent (10%) levy of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled, plus the repayment of any financial support received from the CPF; and

        (ii) there is a charge on any award or settlement fund in favour of the CPF for the amounts referred to in (b) and (c); and

    (d) in the event a third party financer provides financial support and/or an indemnification of the Client or other plaintiffs, it is highly likely that the third party financer would seek entitlement to a percentage of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled and possible the repayment of any financial support received, and that

such percentage could range from five to ten percent (5% to 10%) of Recovery.

15. The Client acknowledges and agrees that Class Counsel may seek direct reimbursement for disbursements or the payment of adverse cost awards from the CPF or a third party funder.

**DISBURSEMENTS**

16. From any Recovery, the Class shall pay Class Counsel for all disbursements they reasonably incur in and in relation to the Action and any other action authorized by this agreement. Recoverable disbursements shall include all amounts reasonably incurred in connection with the Action, the trial of the Common Issues, the settlement of the Action, the assessment of and recovery of damages for the Class members, or any appeals relating to or arising out of the Action and any other action commenced, including but not limited to expenses incurred for investigation, court fees, duplication, travel, including business class travel, lodging, long distance telephone calls, the cost of a toll-free telephone line, the cost of specialized computer equipment and management systems software, computer consultants, public relations consultants, website(s), courier, postage, telecopier, imaging, including the cost of imaging for file closing purposes, and all services provided to Class Counsel by consultants, experts and agents retained by or at the direction of Class Counsel.

17. Except as provided in paragraphs 9 and 16 above, the Client will have no liability or obligation for the legal fees, litigation expenses or disbursements of Class Counsel, including, without limitation, the fees, expenses and disbursements of third parties retained by Class Counsel pursuant to paragraph 4 above or otherwise.

**CLIENT'S OBLIGATION TO THE CLASS**

18. The Client acknowledges the obligation to act in the best interests of the Class and that Class Counsel are not obliged to follow instructions from the Client which are not in the best interests of the Class. In the event of a disagreement between the Client and Class Counsel concerning whether certain instructions are in the best interests of the Class, the matter shall be submitted to the Court, or for arbitration.

19. The Client will cooperate in the prosecution of this Action, including attending for any oral examinations if required. Class Counsel agree to reimburse Client for any costs (e.g., travel, lodging) incurred as a result of Client attending court proceedings or sitting for oral examinations, if and when such attendance or sitting is required.

20. The Client will ensure that any document relating to its transactions in securities of Sino-Forest Corporation, including electronic records such as email, have been set aside and protected from destruction.

**TERMINATION OF AGREEMENT**

21. If the Client or Class Counsel wish to terminate their relationship, the Client or Class Counsel will forthwith move to the Court for directions.

22. The Client acknowledges that Class Counsel will incur significant time and financial risk in the conduct and carriage of the Action and any other action they commence in that the fees and disbursements (apart from costs recovered and those paid by CPF or a third party financer) are payable only upon Success and only out of the Recovery. In the event that the Client engages another lawyer to act in the Action or otherwise terminates this agreement and the Action and/or any other action is a Success, in whole or in part, Class Counsel shall be paid fees and disbursements in accordance with the terms of this agreement as if Success was achieved or, if this agreement is not approved, in such manner as the Court directs.

**CONFIDENTIALITY**

23. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the Class are privileged but that such privilege may be lost if the Client were to disclose such information to third persons, other than Client's legal advisors, and that the interests of the Class could thereby be adversely affected. The Client agrees to protect the confidentiality of such information and not to disclose such information to any third person.

24. The Client agrees that the Class Counsel's files and documents, compiled in connection with their investigation and prosecution of this matter, constitute the work product and property of Class Counsel, over which Class Counsel have complete control with respect to its use and/or disclosure.

**AN ESTIMATE OF CLASS COUNSEL'S FEES**

25. Both the Client and Class Counsel acknowledge that it is difficult to estimate what the expected fee will be. However, given the proposed pleadings in the Action and Class Counsel's fees in other cases, Class Counsel estimate that the legal fees may be in the range of $5 to 20 million or more depending on the work done and the Recovery. An example of how this agreement operates is set out in **Schedule C** to this agreement.

**INTERIM DISTRIBUTIONS**

26. The Court may authorize interim payments to Class Counsel and/or to the Class.

**REMUNERATION OF THE CLIENT**

27. The Client acknowledges that they are not entitled to receive any payment or fee out of the Recovery for acting as a representative plaintiff in the Action unless ordered by the Court.

**COURT APPROVAL**

28. Subject to this agreement being approved by the Court, it shall bind Class Counsel, the Client, and all members of the Class who do not opt out of the Action as well as their respective heirs, executors, administrators, successors and assigns.

**AMENDMENTS AND ENTIRE AGREEMENT**

29. This agreement may be amended from time to time, in writing by the Client and Class Counsel, before it is approved by the Court.

30. It is agreed that there is no oral representation, warranty, collateral agreement, or condition that affects this agreement. Amendments to this agreement may be made in writing duly executed by parties. This Agreement may be signed in counterparts.

**COUNTERPARTS**

31. This agreement may be executed by the Client and Class Counsel in separate counterparts, with signatures by facsimile being acceptable, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**INDEPENDENT LEGAL ADVICE**

32. The Client acknowledges that before signing this agreement they were advised of and had the opportunity to obtain independent legal advice with respect to the meaning and effect of this agreement.

October 24, 2011

(Witness)

David C. Grant

October 24, 2011

(Witness) Michael Robb

Per: DIMITRI LASCARIS

October 24, 2011

(Witness) Jonathan Bida

Koskie Minsky LLP
Per: KIRK M. BAERT



IMB

**Schedule B**

| Lawyer | Usual Hourly Rate as of January 1, 2011 |
|---|---|
| Kirk M. Baert | $840 |
| A. Dimitri Lascaris | $585 |
| Michael Mazzuca | $715 |
| Michael Robb | $475 |
| Charles Wright | $625 |
| Jonathan Ptak | $500 |
| Jonathan Bida | $350 |
| Daniel Bach | $375 |
| Stephanie Dickson | $200 |
| Law Clerk | $250 |
| Student-at-law or summer student | $185 |

## Schedule C – How the Fee Agreement Operates

| One Example (note: this is an illustration only) | Amounts |
|---|---|
| Action is settled before a decision on a certification motion | |
| Recovery, inclusive of disbursements, paid by the Defendants | $25,000,000 |
| Disbursements incurred by Class Counsel including taxes of $5,752.21 | $50,000 |

**In the above example, what would be the amount of Class Counsel's fee?**

1. In addition to their disbursements plus applicable taxes, Class Counsel would request fees equal to 25% of the first $20 million and 20% of the remaining $5 million.

2. Accordingly, Class Counsel would be paid $50,000 for disbursements plus $6 million for its fees (exclusive of HST), subject to approval by the Court, which will assess if the amount is fair and reasonable under the circumstances.

**What is the total amount payable to the Class Proceedings Fund (CPF) if such funding is put in place?**

3. In exchange for the indemnity it provides to the Client, and for funding it provides towards disbursements, the CPF is required to be paid a levy of 10%, plus reimbursement for any disbursements and taxes paid by it. The amounts paid to the CPF are separate and apart from any funds given to Class Counsel, and are required by statute.

**What is the additional amount payable towards Class Counsel's fees in the absence of funding?**

4. In consideration for Siskinds LLP providing an indemnity to the Client, Class Counsel would request an addition 5% of the settlement for Class Counsel fees. Class Counsel would request fees equal to 30% of the first $20 million and 25% of the remaining $5 million. Accordingly, subject to Court approval, Class Counsel would be paid $50,000 for disbursements plus $7.25 million for its fees (exclusive of HST).

**What is the amount available for the Class?**

5. In this illustration, the Class would recover either $16,353,000 if there is CPF funding or $16,757,500 if there is no funding:

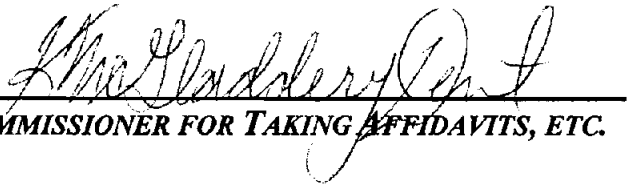
***CPF Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($6,000,000) |
| Less: 13% for HST on fees | ($780,000) |
| Less: Amount payable for Disbursements | ($50,000) |
| Subtotal | $18,170,000 |
| Less: 10% payable to Class Proceedings Fund | ($1,817,000) |
| Balance available for Class | $16,353,000 |

***No Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($7,250,000) |
| Less: 13% for HST on fees | ($942,500) |
| Less: Amount payable for Disbursements | ($50,000) |
| Balance available for Class | $16,757,500 |

*THIS IS EXHIBIT "B-4" REFERRED TO IN THE*
*AFFIDAVIT OF CHARLES M. WRIGHT*
*SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*



*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

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# CONTINGENCY FEE RETAINER AGREEMENT

BETWEEN:

**ROBERT WONG**

herein called the "Client"
OF THE FIRST PART

- and -

**SISKINDS LLP and KOSKIE MINSKY LLP**

herein called the "Class Counsel"
OF THE SECOND PART

Proceeding under the *Class Proceedings Act, 1992*

## RECITALS

Robert Wong (the "Client") hereby retains Siskinds LLP and Koskie Minsky LLP to commence an action against Sino-Forest Corporation, Ernst & Young LLP, 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., Banc of America Securities LLC, Credit Suisse (USA) Inc., Credit Suisse Securities (USA) LLC, Haywood Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, UBS Securities Canada Inc., certain of Sino-Forest's senior officers or directors and any other parties who may have potential liability in respect of Sino-Forest's public disclosure, to seek to have such action certified as a class proceeding, and to take all necessary steps to prosecute the action.

The Client acknowledges and understands that Class Counsel will be paid fees in the Action (defined below) only in the event of success. The Client's agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Client understands that the agreement shall not have any force and effect, unless approved by the Superior Court of Justice pursuant to the *Class Proceedings Act, 1992*.

The Client acknowledges and agrees that Class Counsel fees and disbursements owing under this agreement are a first charge on any Recovery (defined below) in the Action, which includes any amount actually recovered by an award, judgment, settlement, or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amounts separately identified or specified as costs and/or disbursements.

**DEFINITIONS**

1. For the purpose of this agreement, the following words shall have the meanings set out below:

   (a) "*Act*" means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

   (b) "**Action**" means an action commenced in the Ontario Superior Court of Justice in Toronto against Sino-Forest Corporation, Ernst & Young LLP, Pöyry (Beijing) Consulting Company Limited and certain of Sino-Forest's senior officers or directors or any similarly constituted action to be commenced. The issued notice of action is attached as **Schedule** A;

   (c) "**Base Fee**" means an amount calculated by multiplying the **Usual Hourly Rates** by the number of hours expended by each person in relation to the **Action**;

   (d) "**Class**" means the class asserted from time to time in the **Action** including any subclass;

   (e) "**Common Issues**" means the common issues of fact or law as approved by the **Court** in the **Action**;

   (f) "**Court**" means the Ontario Superior Court of Justice;

   (g) "**CPF**" means the Class Proceedings Fund;

   (h) "**Defendants**" mean the defendants to the **Action** at any given time and in particular include Sino-Forest Corporation, Ernst & Young LLP, 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., certain of Sino-Forest's senior officers or directors and any other parties whom Class Counsel identify as having potential legal liability in respect of the transactions;

(i) **"Fee Agreement"** means a written agreement between a proposed representative plaintiff and counsel respecting fees and disbursements;

(j) **"Recovery"** means the amount actually recovered by award, judgment, settlement or otherwise, including any amounts awarded or paid in any assessment of damages or other process ordered by the Court, excluding any amount separately identified or specified as costs and/or disbursements;

(k) **"Sino-Forest"** means Sino-Forest Corporation;

(l) **"Success"** means judgment or award in favour of some or all **Class** members or a settlement that benefits some or all of the **Class** members; and

(m) **"Usual Hourly Rates"** means the usual hourly rates charged from time to time by Class Counsel, their partners, associates and persons employed by their law firms, and all other persons in any other law firms involved in the **Action**.

**THE PARTIES AGREE AS FOLLOWS:**

**SCHEDULES FORM PART OF THIS AGREEMENT**

2. The parties agree that the schedules to this agreement shall form part of this agreement.

**EFFECTIVE DATE**

3. This agreement shall be effective as of the date it has been executed by all parties.

**RETAINER OF CLASS COUNSEL**

4. The Client has retained and authorized Class Counsel to:

(a) act as counsel for them (in their capacity as trustees) and for the Class in the Action, in the prosecution and trial of the Common Issues, including any and all appeals, and in the assessment of and recovery of damages;

(b) take all steps in and in relation to the Action which they consider necessary, including adding any other defendants;

(c) use such persons and resources from their firms or any other firms as they consider necessary and their services shall be deemed to be provided as members of Class Counsel's law firms; and

(d) consult, retain and engage all experts, consultants and other persons they consider necessary.

**NEGOTIATIONS**

5. The Client hereby authorizes Class Counsel, in their discretion, to enter into negotiations with any or all of the Defendants for the purpose of reaching a settlement. The Client understands that any settlement affecting the Class is subject to approval of the Court. The Client agrees and acknowledges that any negotiations are for the purpose of reaching a settlement of the claims of the Class, not simply the individual claims of the Client. Class Counsel agree to advise Client of any settlement negotiations and also to seek Client's consent before settling any claims in this Action.

6. In the event the Client chooses to settle their respective individual claims without settling the claims of the Class, the Client expressly agrees and acknowledges that Class Counsel is permitted to be retained by another member of the Class to assert the claims on behalf of the Class. In such event, privileged communications between Class Counsel and the Client made for the purpose of advancing the claims of the Class and Class Counsel's work product created for the purpose of advancing the claims of the Class may be disclosed to the new plaintiff and may be used on behalf of and for the benefit of the Class.

**USUAL HOURLY RATES**

7. The current Usual Hourly Rates of Class Counsel and some, but not all, of the persons who will provide professional services in relation to the Action are set out in **Schedule B** to this agreement. The Usual Hourly Rates are the current usual hourly rates charged by Class Counsel on other class action matters.

8. Class Counsel and all other persons providing professional services may, from time to time, increase their Usual Hourly Rates for the purposes of this agreement if done in the usual and ordinary course of their businesses. Increases will be communicated to Client sixty (60) days prior to taking effect.

**CLASS COUNSEL'S FEES AND DISBURSEMENTS**

9. Whether or not Success is achieved in the Action, Class Counsel shall be paid all costs recovered in the Action from the Defendants, irrespective of the scale, including any

disbursements, applicable taxes and any interest payable thereon and any other amount paid by the Defendants as costs. Class Counsel are authorized to settle the amount of costs awarded on any motion, appeals or the trial of the Common Issues.

10. Except for any costs paid to Class Counsel as provided in paragraph 9 above, Class Counsel shall only be paid its fees upon achieving Success in the Action, whether by obtaining judgment on any of the Common Issues in favour of some or all Class members or by obtaining a settlement that benefits one or more of the Class members. The fees shall be paid by a lump sum payment to the extent possible, or (if a lump sum payment is not possible) by periodic payments, out of the proceeds of any judgment, order or settlement awarding or providing monetary relief, damages, interest or costs to the Class or any Class member.

11. In the event of Success, Class Counsel shall be paid an amount equal to

(a) any disbursements not already paid to Class Counsel by the Defendants as costs plus applicable taxes and interest thereon in accordance with s. 33(7)(c) of the *Act*; plus

(b) an amount equal to a percentage of Recovery plus Harmonized Sales Tax (HST) where the applicable percentage rate shall be as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $40 million and $60 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | twenty-five percent (25%) | twenty percent (20%) | fifteen percent (15%) | ten percent (10%) |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the commencement of the Common Issues trial; | twenty-seven and a half percent (27.5%) | twenty-two and a half percent (22.5%) | seventeen and a half percent (17.5%) | twelve and a half percent (12.5%) |
| If the Action is settled after the commencement of the Common Issues | thirty percent (30.0%) | twenty-five percent | twenty percent (20.0%) | fifteen percent (15.0%) |

| | | | | |
|---|---|---|---|---|
| trial or is determined by judgment after the trial. | | (25.0%) | | |

12. Class Counsel may make any motion for the approval of their fees. The amount to be paid for Class Counsel fees is in the sole discretion of the Court considering fee approval.

13. Class Counsel and the Client understand that if the Court orders that the Client pay some portion of the costs incurred by the defendants in this litigation while Siskinds LLP is counsel of record, in the absence of funding, Siskinds LLP will indemnify the Client against any such award and the Client will not personally have to satisfy such an award. In consideration for such indemnification, each of the percentage rates under paragraph 11(b) above shall be increased by five percent (5.0%).

**FUNDING FROM THE CLASS PROCEEDINGS FUND**

14. The Client acknowledges that:

    (a) Class Counsel, on their behalf, may apply for financial support from the CPF or a third party financer;

    (b) as a result, if provided, the CPF or a third party financer may advance payment for some disbursements or indemnify the Client and other plaintiffs for any adverse cost award;

    (c) in consideration for the CPF providing financial support and indemnification of the Client or other plaintiffs,

        (i) the CPF would be entitled to a ten percent (10%) levy of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled, plus the repayment of any financial support received from the CPF; and

        (ii) there is a charge on any award or settlement fund in favour of the CPF for the amounts referred to in (b) and (c); and

    (d) in the event a third party financer provides financial support and/or an indemnification of the Client or other plaintiffs, it is highly likely that the third party financer would seek entitlement to a percentage of the amount of the award or settlement funds, if any, to which one or more persons in the Class is entitled and possible the repayment of any financial support received, and that

such percentage could range from five to ten percent (5% to 10%) of Recovery.

15. The Client acknowledges and agrees that Class Counsel may seek direct reimbursement for disbursements or the payment of adverse cost awards from the CPF or a third party funder.

**DISBURSEMENTS**

16. From any Recovery, the Class shall pay Class Counsel for all disbursements they reasonably incur in and in relation to the Action and any other action authorized by this agreement. Recoverable disbursements shall include all amounts reasonably incurred in connection with the Action, the trial of the Common Issues, the settlement of the Action, the assessment of and recovery of damages for the Class members, or any appeals relating to or arising out of the Action and any other action commenced, including but not limited to expenses incurred for investigation, court fees, duplication, travel, including business class travel, lodging, long distance telephone calls, the cost of a toll-free telephone line, the cost of specialized computer equipment and management systems software, computer consultants, public relations consultants, website(s), courier, postage, telecopier, imaging, including the cost of imaging for file closing purposes, and all services provided to Class Counsel by consultants, experts and agents retained by or at the direction of Class Counsel.

17. Except as provided in paragraphs 9 and 16 above, the Client will have no liability or obligation for the legal fees, litigation expenses or disbursements of Class Counsel, including, without limitation, the fees, expenses and disbursements of third parties retained by Class Counsel pursuant to paragraph 4 above or otherwise.

**CLIENT'S OBLIGATION TO THE CLASS**

18. The Client acknowledges the obligation to act in the best interests of the Class and that Class Counsel are not obliged to follow instructions from the Client which are not in the best interests of the Class. In the event of a disagreement between the Client and Class Counsel concerning whether certain instructions are in the best interests of the Class, the matter shall be submitted to the Court, or for arbitration.

19. The Client will cooperate in the prosecution of this Action, including attending for any oral examinations if required. Class Counsel agree to reimburse Client for any costs (e.g., travel, lodging) incurred as a result of Client attending court proceedings or sitting for oral examinations, if and when such attendance or sitting is required.

20. The Client will ensure that any document relating to its transactions in securities of Sino-Forest Corporation, including electronic records such as email, have been set aside and protected from destruction.

**TERMINATION OF AGREEMENT**

21. If the Client or Class Counsel wish to terminate their relationship, the Client or Class Counsel will forthwith move to the Court for directions.

22. The Client acknowledges that Class Counsel will incur significant time and financial risk in the conduct and carriage of the Action and any other action they commence in that the fees and disbursements (apart from costs recovered and those paid by CPF or a third party financer) are payable only upon Success and only out of the Recovery. In the event that the Client engages another lawyer to act in the Action or otherwise terminates this agreement and the Action and/or any other action is a Success, in whole or in part, Class Counsel shall be paid fees and disbursements in accordance with the terms of this agreement as if Success was achieved or, if this agreement is not approved, in such manner as the Court directs.

**CONFIDENTIALITY**

23. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the Class are privileged but that such privilege may be lost if the Client were to disclose such information to third persons, other than Client's legal advisors, and that the interests of the Class could thereby be adversely affected. The Client agrees to protect the confidentiality of such information and not to disclose such information to any third person.

24. The Client agrees that the Class Counsel's files and documents, compiled in connection with their investigation and prosecution of this matter, constitute the work product and property of Class Counsel, over which Class Counsel have complete control with respect to its use and/or disclosure.

## AN ESTIMATE OF CLASS COUNSEL'S FEES

25. Both the Client and Class Counsel acknowledge that it is difficult to estimate what the expected fee will be. However, given the proposed pleadings in the Action and Class Counsel's fees in other cases, Class Counsel estimate that the legal fees may be in the range of $5 million to 20 million or more depending on the work done and the Recovery. An example of how this agreement operates is set out in **Schedule C** to this agreement.

## INTERIM DISTRIBUTIONS

26. The Court may authorize interim payments to Class Counsel and/or to the Class.

## REMUNERATION OF THE CLIENT

27. The Client acknowledges that they are not entitled to receive any payment or fee out of the Recovery for acting as a representative plaintiff in the Action unless ordered by the Court.

28. Subject to the preceding paragraph, if the action is resolved successfully, Class Counsel will apply to the Court on behalf of the Client for payment of a reasonable honorarium to the Client, such payment to be made either out of the funds recovered for the Class or out of Class Counsel's fees, as the Court may direct. In support of that application, the Client will maintain a reasonably detailed record of the work and time that he devotes to the prosecution of this matter.

## COURT APPROVAL

29. Subject to this agreement being approved by the Court, it shall bind Class Counsel, the Client, and all members of the Class who do not opt out of the Action as well as their respective heirs, executors, administrators, successors and assigns.

**AMENDMENTS AND ENTIRE AGREEMENT**

30. This agreement may be amended from time to time, in writing by the Client and Class Counsel, before it is approved by the Court.

31. It is agreed that there is no oral representation, warranty, collateral agreement, or condition that affects this agreement. Amendments to this agreement may be made in writing duly executed by parties. This Agreement may be signed in counterparts.

**COUNTERPARTS**

32. This agreement may be executed by the Client and Class Counsel in separate counterparts, with signatures by facsimile being acceptable, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

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**INDEPENDENT LEGAL ADVICE**

33. The Client acknowledges that before signing this agreement they were advised of and had the opportunity to obtain independent legal advice with respect to the meaning and effect of this agreement.

October 25, 2011

(Witness)

Robert Wong

Robert Wong

October 26, 2011

(Witness)

Sinkinda LLP
Per:

October 26, 2011

(Witness)

Koskie Minsky LLP
Per:

1704332 1

**Schedule B**

| Lawyer | Usual Hourly Rate as of January 1, 2011 |
|---|---|
| Kirk M. Baert | $840 |
| A. Dimitri Lascaris | $585 |
| Michael Mazzuca | $715 |
| Michael Robb | $475 |
| Charles Wright | $625 |
| Jonathan Ptak | $500 |
| Jonathan Bida | $350 |
| Daniel Bach | $375 |
| Stephanie Dickson | $200 |
| Law Clerk | $250 |
| Student-at-law or summer student | $185 |

## Schedule C – How the Fee Agreement Operates

| One Example (note: this is an illustration only) | Amounts |
|---|---|
| Action is settled before a decision on a certification motion | |
| Recovery, inclusive of disbursements, paid by the Defendants | $25,000,000 |
| Disbursements incurred by Class Counsel including taxes of $5,752.21 | $50,000 |

**In the above example, what would be the amount of Class Counsel's fee?**

1. In addition to their disbursements plus applicable taxes, Class Counsel would request fees equal to 25% of the first $20 million and 20% of the remaining $5 million.

2. Accordingly, Class Counsel would be paid $50,000 for disbursements plus $6 million for its fees (exclusive of HST), subject to approval by the Court, which will assess if the amount is fair and reasonable under the circumstances.

**What is the total amount payable to the Class Proceedings Fund (CPF) if such funding is put in place?**

3. In exchange for the indemnity it provides to the Client, and for funding it provides towards disbursements, the CPF is required to be paid a levy of 10%, plus reimbursement for any disbursements and taxes paid by it. The amounts paid to the CPF are separate and apart from any funds given to Class Counsel, and are required by statute.

**What is the additional amount payable towards Class Counsel's fees in the absence of funding?**

4. In consideration for Siskinds LLP providing an indemnity to the Client, Class Counsel would request an addition 5% of the settlement for Class Counsel fees. Class Counsel would request fees equal to 30% of the first $20 million and 25% of the remaining $5 million. Accordingly, subject to Court approval, Class Counsel would be paid $50,000 for disbursements plus $7.25 million for its fees (exclusive of HST).

**What is the amount available for the Class?**

5. In this illustration, the Class would recover either $16,353,000 if there is CPF funding or $16,757,500 if there is no funding:

***CPF Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($6,000,000) |
| Less: 13% for HST on fees | ($780,000) |
| Less: Amount payable for Disbursements | ($50,000) |
| Subtotal | $18,170,000 |
| Less: 10% payable to Class Proceedings Fund | ($1,817,000) |
| Balance available for Class | $16,353,000 |

***No Funding***

| | |
|---|---|
| Recovery | $25,000,000 |
| Less: Amount payable to Class Counsel | ($7,250,000) |
| Less: 13% for HST on fees | ($942,500) |
| Less: Amount payable for Disbursements | ($50,000) |
| Balance available for Class | $16,757,500 |

*THIS IS EXHIBIT "B-5" REFERRED TO IN THE*
*AFFIDAVIT OF CHARLES M. WRIGHT*
*SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

## RETAINER and INSTRUCTIONS

1. Davis Selected Advisers, LP ("DSA"), hereby retains and employs the law firms of Siskinds LLP and Koskie Minsky LLP ("Counsel") to: (A) provide advice in relation to (I) a class proceeding being prosecuted by Counsel in Ontario against Sino-Forest Corp. ("Sino") and certain other defendants (the "Class Action") and (II) certain related litigation including a proceeding commenced in Ontario in April 2012 by Sino pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the "CCAA Proceeding"); and (B) upon further instructions from DSA, commence and prosecute a claim against Sino and certain other defendants arising from DSA's acquisition of Sino securities not covered under the Class Action (the "Action").

2. It is understood that DSA's solicitor-client relationship with Counsel is limited to the Class Action, the CCAA Proceeding and the Action. Further, DSA acknowledges and agrees that Counsel may continue to act as counsel to the plaintiffs and the putative class members in the Class Proceeding and the CCAA Proceeding, notwithstanding any conflict that may arise from such representation, which conflict (if any) DSA hereby waives.

3. DSA and Counsel agree that the Action is being and will be pursued, and that any other advice or representation given or rendered by Counsel to DSA under this retainer is being given or rendered, on a contingency basis such that legal fees and a disbursements reimbursement will be payable to Counsel only in the event of Success in the Action or the Class Action.

4. DSA acknowledges that, for purposes of this retainer, "Success" in the Action or the Class Action includes:

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(a) a final judgment rendered in favour of DSA in the Action or the class in the Class Action; and

(b) a settlement in the Action or the Class Action that benefits DSA.

5. DSA understands that, in the event of Success in the Action or the Class Action, Counsel will be entitled to a legal fee of 25% (twenty-five percent), plus disbursements, plus applicable taxes. DSA understands that the percentage legal fee will be calculated based on any monetary benefit received by DSA through the Action that is over and above any benefit received by DSA in the Class Action by virtue of DSA's being a member of the class in the Class Action, it being understood and agreed by DSA that, in respect of any benefit received by DSA in the Class Action by virtue of its being a member of the class in the Class Action, Counsel shall be entitled, in respect of such benefit, to the compensation provided for in Counsel's retainer agreements with the representative plaintiffs in the Class Action.

6. By way of example, if the defendant(s) pay by way of settlement of the Action $10,000,000 over and above any monetary benefit obtained by DSA through the Class Action, then Counsel will be entitled to a fee of $2,500,000, plus disbursements and taxes, plus any fee awarded to Counsel in the Class Action.

7. DSA understands that, for purposes of this retainer, "disbursements" includes, but is not limited to:

(a) Courier charges;
(b) Court filings Fees;
(c) Long Distance Charges;
(d) Mileage/Travel/Meals expenses;
(e) Photocopying/Printing expenses;

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(f) Postage;
(g) Research/Resource Material;
(h) Binding Supplies;
(i) Experts' Fees and Disbursements;
(j) Time Charge for Cross Examinations and Examinations for Discovery;
(k) Transcripts;
(l) Law Society Surcharge;
(m) Service of Documents;
(n) Court Reporters; and
(o) Fax Charges.

8. DSA understands that, for purposes of this retainer, "taxes" means Harmonized Sales Tax ("HST") applied to legal fees and disbursements, with the exception of court filing fees, which are not taxable. The HST is currently 13%, and is subject to change by the provincial and federal governments of Ontario and Canada.

9. DSA authorizes and hereby directs that any settlement funds be payable to Counsel, In Trust, and that any settlement funds will be applied to any unpaid fees and/or disbursements, including applicable taxes owing to Counsel, prior to settlement funds being distributed to DSA.

10. It is understood that at any time DSA may terminate its solicitor-client relationship upon written notice to Counsel. Similarly, Counsel reserves the right to withdraw as DSA's solicitor in the Action upon written notice at any time in the unlikely event of DSA's non-cooperation, non-payment of accounts, or other such valid cause. In the event of termination, DSA will be responsible for all fees, disbursements and applicable taxes incurred as at the date of termination. In the event of termination, DSA consents to an Order to remove Counsel as solicitors of record.

11. It is understood and agreed that in retaining Counsel to provide the legal services described in this Retainer that the collection, use, retention and disclosure of personal and other sensitive information may be required in order to fulfil those services and related obligations. DSA has read the Siskinds LLP Privacy Policy respecting the management of personal and sensitive information and understands that such information will be used by Counsel only for the purposes set out in this Retainer and for no other purpose without the express written consent pursuant to this Privacy Policy.

12. Counsel agrees that it will pay all disbursements with respect to the Action and that DSA shall not be responsible for any disbursements or legal fees relative to the Action, other than the contingency fee and disbursement reimbursement referenced above.

13. Siskinds agrees that it will indemnify and save DSA harmless from any costs awards made against DSA in the Action.

14. DSA understands that a reasonable settlement or judgment in this case could be in the range of $5,000,000 to $50,000,000, depending on several factors, including but not limited to, the strength of the evidence supporting the factual allegations set forth in the pleadings in the Action, the degree to which DSA can acquire access to that evidence, the strength of the expert evidence relating to the damages alleged to have been sustained by DSA, the ability of the defendants to pay any judgment and the impact of any insolvency or similar proceedings on the Action.

15. DSA acknowledges: (1) having been advised by Counsel that DSA retains the right to make all material decisions regarding the conduct of the Action; (2) having considered options for retaining counsel other than by way of a contingency fee agreement, including

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retaining them by way of an hourly-rate retainer; (3) that the standard hourly rates of the lawyers who are expected to be the principal lawyers in this matter are set out in Schedule "A," that such rates may be increased in the ordinary course of Counsel's business, and that DSA has been advised that hourly rates may vary among solicitors and that it can speak with other solicitors to compare rates; and (4) that all usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the common law, apply to this contingency fee agreement.

16. DSA accepts the terms and conditions as outlined herein, and acknowledges receipt of a copy of this Retainer and Instructions.

DATED at Toronto, Ontario this 10th day of April, 2012.

This agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

April 10, 2012

(Witness)

**DAVIS SELECTED ADVISERS, LP**
**Per: Thomas Tays, Chief Legal Officer**
*I have the authority to bind DSA*

April 10, 2012

(Witness)

**SISKINDS LLP**
**Per:** [illegible]

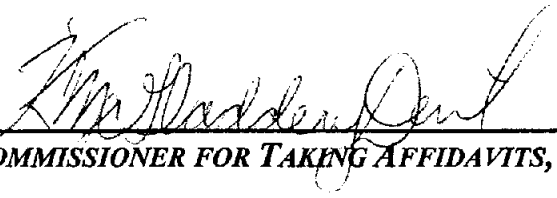
April 10, 2012

(Witness)

**KOSKIE MINSKY LLP**
**Per:** MARK BALLENT

MMB

*THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF CHARLES M. WRIGHT SWORN BEFORE ME, THIS 13TH DAY OF APRIL, 2015*



*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*

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Legal fees and settlement Legal fees.xls

| | | Canadian portion | Canadian fees | |
|---|---|---|---|---|
| Dealer settlement | settlement $32,500,000 | 90% $29,250,000 | requested $5,517,207 | This sum is too high |
| Horsley settlement | $4,200,000 | $3,780,000 | $567,000 | |
| E&Y settlement | $117,000,000 | $105,300,000 | $17,846,250 | |
| Poyry settlement | $0 | $0 | $0 | |
| | | $138,330,000 | $23,930,457 | |

The first page of fee retainer agreement listed all the individual defendants including E&Y,Poyry,Sino-Forest senior officers (that include Horsely), and the dealers. Section 11 (b) shows the fee payment for prosecuting all those listed above. Based on the section above, the fees for recovery of $ 138.33 million is $19.83 millions. Since the Poyry settlement provided no recovery, the certification for that settlement is not counted as certification towards fee calculation for the other settlements, fee calculation remained to be based on pre certification level.

Legal fees based on retainer agreement

| | First $20 million of any recovery | portion of recovery between $20millions & $40 millions | portion of recovery between $40millions & $60 millions | portion of recovery in excess of $60millions | |
|---|---|---|---|---|---|
| | 20 million | 20 million | 20 million | 78.33 million | |
| settlement before certification | 25% | 20% | 15% | 10% | total due |
| Fees due, million | $5.0000 | $4.0000 | $3.0000 | $7.8330 | $19.8330 |

Fees already paid,$million (Horsely & E&Y settlement) $18.4133

Remaining fees due, for dealer settlement, $million $1.4198

**Fees for the dealer settlement should be $1.5 millions only.**

**Alternative calculation is based on 10% of current recovery of $29,250,000.**
**The fees comes to $2,925,000**

(9)

# CONTINGENCY FEE RETAINER AGREEMENT

BETWEEN:

**ROBERT WONG**

herein called the "Client"
OF THE FIRST PART

- and -

**SISKINDS LLP and KOSKIE MINSKY LLP**

herein called the "Class Counsel"
OF THE SECOND PART

Proceeding under the *Class Proceedings Act, 1992*

## RECITALS

Robert Wong (the "Client") hereby retains Siskinds LLP and Koskie Minsky LLP to commence an action against Sino-Forest Corporation, Ernst & Young LLP, 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., Banc of America Securities LLC, Credit Suisse (USA) Inc., Credit Suisse Securities (USA) LLC, Haywood Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, UBS Securities Canada Inc., certain of Sino-Forest's senior officers or directors and any other parties who may have potential liability in respect of Sino-Forest's public disclosure, to seek to have such action certified as a class proceeding, and to take all necessary steps to prosecute the action.

The Client acknowledges and understands that Class Counsel will be paid fees in the Action (defined below) only in the event of success. The Client's agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Client understands that the agreement shall not have any force and effect, unless approved by the Superior Court of Justice pursuant to the *Class Proceedings Act, 1992*.

disbursements, applicable taxes and any interest payable thereon and any other amount paid by the Defendants as costs. Class Counsel are authorized to settle the amount of costs awarded on any motion, appeals or the trial of the Common Issues.

10. Except for any costs paid to Class Counsel as provided in paragraph 9 above, Class Counsel shall only be paid its fees upon achieving Success in the Action, whether by obtaining judgment on any of the Common Issues in favour of some or all Class members or by obtaining a settlement that benefits one or more of the Class members. The fees shall be paid by a lump sum payment to the extent possible, or (if a lump sum payment is not possible) by periodic payments, out of the proceeds of any judgment, order or settlement awarding or providing monetary relief, damages, interest or costs to the Class or any Class member.

11. In the event of Success, Class Counsel shall be paid an amount equal to

(a) any disbursements not already paid to Class Counsel by the Defendants as costs plus applicable taxes and interest thereon in accordance with s. 33(7)(c) of the *Act*; plus

(b) an amount equal to a percentage of Recovery plus Harmonized Sales Tax (HST) where the applicable percentage rate shall be as follows:

| | For the first $20 million of any Recovery | For the portion of the Recovery between $20 million and $40 million | For the portion of the Recovery between $40 million and $60 million | For the portion of the Recovery in excess of $60 million |
|---|---|---|---|---|
| If the Action is settled or there is judgment before the Court renders a decision on a certification motion | **twenty-five percent (25%)** | **twenty percent (20%)** | **fifteen percent (15%)** | **ten percent (10%)** |
| If the Action is settled or there is judgment after the Court renders a decision on a certification motion and before the commencement of the Common Issues trial; | **twenty-seven and a half percent (27.5%)** | **twenty-two and a half percent (22.5%)** | **seventeen and a half percent (17.5%)** | **twelve and a half percent (12.5%)** |
| If the Action is settled after the commencement of the Common Issues | **thirty percent (30.0%)** | **twenty-five percent** | **twenty percent (20.0%)** | **fifteen percent (15.0%)** |

**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-12-9667-00-CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(Commercial List)**

Proceedings Under the *Class Proceedings Act, 1992*

Proceeding commenced at **Toronto**

# AFFIDAVIT OF CHARLES WRIGHT


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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

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

The Trustees of the Labourer's Pension Fund of Central and Eastern Canada, et al.

Plaintiffs

and

Sino-Forest Corporation, et al.

Defendants

Superior Court File No: CV-10-414302

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**Commercial List**

Proceeding under the *Class Proceedings Act, 1992*
Proceeding commenced at Toronto

**MOTION RECORD OF THE PLAINTIFFS**
**Fee Approval**
**(Returnable May 11, 2015)**

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