

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
COMPRISE 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*

**SUPPLEMENTARY MOTION RECORD OF THE PLAINTIFFS
(Claims and Distribution Protocol Approval, returnable December 13, 2013)**

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TO: THE ATTACHED SERVICE LIST

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

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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., TO 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 Bane of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF DAVID W. LEAPARD

I, DAVID W. LEAPARD, of Gray Court, South Carolina, MAKE OATH AND SAY:

1. I am one of the lead plaintiffs in the action *Leopard v. Chan, et al.* Case No. 1:12-cv-01726 (AT), currently in the United States District Court for the Southern District of New York (the "U.S. Action"), and I have knowledge of the matters herein deposed. I submit this Affidavit in connection with the motion for approval of the proposed Claims and Distribution Protocol and request for counsel fees. 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. On August 5, 2011, I purchased 200 shares of Sino-Forest Corp. ("Sino-Forest") common stock on the over-the-counter market. Those shares were still held on August 25, 2011 and I have been advised by my counsel that the shares were cancelled pursuant to Sino-Forest's pending insolvency proceeding.

3. I have reviewed the proposed claims process for the distribution of the proceeds from the 117 million (CAD) settlement with Ernst & Young. (the "Claims and Distribution Protocol"). I believe that it provides a fair and reasonable method for distributing the settlement. It awards compensation based on (a) the losses suffered by each claimant attributable to the alleged misrepresentations; and (b) the strengths of different types of claims that the claimant advances against Ernst & Young. This means that persons with stronger claims would receive more on a per dollar basis than persons with weaker claims. I believe this makes a fair distinction among different claims as it reflects the risks of different claims. The distribution protocol was developed with the assistance and concurrence of my counsel, Cohen Milstein.

4. Under the proposed Claims and Distribution Protocol, my claims against Ernst & Young would be fall within the category of common stock purchasers between March 18, 2008 and August 25, 2011.

5. I have been advised that my counsel, Cohen Milstein will submit a fee and expense request to be paid from the E&Y Settlement. Counsel has advised me that, to date, they have incurred \$1,281,143 (US) in legal fees and \$148,920 (US) in unreimbursed out-of-

pocket costs. The amounts relate to the class proceedings and the insolvency proceedings in both the U.S. and Canada, in connection with representing the interests of securities purchasers in the U.S. I am informed the fee request is \$2,340,000 (CAD). Based on the factors discussed below, I am satisfied that this amount is fair and reasonable.¹

6. The fees sought by Cohen Milstein in the litigation are based on the firm's prosecution of the action on a contingent fee basis with the possibility of no recovery particularly given the risks of the litigation and magnitude of the alleged fraud. The fees sought are consistent with the significant risks assumed by counsel in taking on this litigation, both in time expended and out-of-pocket costs over a two year period. I have received periodic updates on this action and it is apparent that the prosecution of this action is highly complex and resource-intensive. The complexity of this litigation is magnified because of the multiple cross jurisdiction proceedings in numerous courts both in Canada and the U.S., and due to the added complexities related to Sino-Forest's insolvency. I am advised by Mr. Speirs and I believe that my counsel has committed a significant amount of time, money and resources to advance this action and will continue to do so as they pursue claims against the other defendants.

7. In addition, I am advised that the amount requested is also less than the average fees typically requested in contingent class action litigation in the U.S. and Canada. My retainer agreement with Cohen Milstein provides that if there was no recovery, counsel would be paid nothing for the time and resources they committed and risked losing all its out-of-pocket expenses. The retainer also provided that if there is a recovery, such as the Ernst & Young settlement, then counsel would be paid accordingly subject to the Court approving the reasonableness of counsel's fee request.

8. In light of the substantial risks of possibly no recovery for counsel and the substantial commitment of time, money and resources expended by Cohen Milstein on behalf of the Class, I support the requested fees.

¹ At the current exchange rate of approximately .95, the fee request in U.S. dollars is \$2,223,000.

9. I swear this affidavit in support of the motion for approval of the Claims and Distribution Protocol and approval of Cohen Milstein's request for fees and reimbursement of expenses and for no other or improper purpose.

SWORN TO BEFORE ME at the _____
in the _____ on
November 19, 2013.

David W. Leopard
DAVID W. LEAPARD

Commissioner for Taking Affidavits

Linda Bill

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

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WEST, CREDIT SUISSE SECURITIES (CANADA), INC., TO SECURITIES INC., DUNDEE
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(USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor
by merger to Bane of America Securities LLC)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF IMAD M. FATHALLAH



I, IMAD M. FATHALLAH, of London, United Kingdom, MAKE OATH AND SAY:

1. I am president of IMF Finance SA ("IMF") one of the lead plaintiffs in the action *Leopard v. Chan, et al.* Case No. 1:12-cv-01726 (AT), currently pending in the United States District Court for the Southern District of New York (the "U.S. Action"), and I have knowledge of the matters herein deposed. I submit this Affidavit in connection with the motion for approval of the proposed Claims and Distribution Protocol and request for counsel fees. 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. IMF is a private investment fund that purchased \$500,000.00 (US) Sino-Forest 6.25% Guaranteed Senior Notes due 2017 on October 15, 2010, which were still held on August 25, 2011.

3. I have reviewed the proposed claims process for the distribution of the proceeds from the 117 million (CAD) settlement with Ernst & Young. (the "Claims and Distribution Protocol"). I believe that it provides a fair and reasonable method for distributing the settlement. It awards compensation based on (a) the losses suffered by each claimant attributable to the alleged misrepresentations; and (b) the strengths of different types of claims that the claimant advances against Ernst & Young. This means that persons with stronger claims would receive more on a per dollar basis than persons with weaker claims. I believe this makes a fair distinction among different claims as it reflects the risks of different claims.

4. Under the proposed Claims and Distribution Protocol, my claims against Ernst & Young would be fall within the category of notes purchased between July 17, 2008 and August 25, 2011.

5. I have been advised that IMF's counsel, Cohen Milstein will submit a fee and expense request to be paid from the E&Y Settlement. Counsel has advised me that, to date, they have incurred \$1,281,143 (US) in legal fees and \$148,920 (US) in unreimbursed out-of-pocket costs. The amounts relate to the class proceedings and the insolvency proceedings in



both the U.S. and Canada, in connection with representing the interests of securities purchasers in the U.S. I am informed the fee request is \$2,340,000 (CAD). Based on the factors discussed below, I am satisfied that this amount is fair and reasonable.¹

6. The fees sought by Cohen Milstein in the litigation are based on the firm's prosecution of the action on a contingent fee basis with the possibility of no recovery particularly given the risks of the litigation and magnitude of the alleged fraud. The fees sought are consistent with the significant risks assumed by counsel in taking on this litigation, both in time expended and out-of-pocket costs over a two year period. I have received periodic updates on this action and it is apparent that the prosecution of this action is highly complex and resource-intensive. The complexity of this litigation is magnified because of the multiple cross jurisdiction proceedings in numerous courts both in Canada and the U.S., and due to the added complexities related to Sino-Forest's insolvency. I am advised by Mr. Speirs and I believe that my counsel has committed a significant amount of time, money and resources to advance this action and will continue to do so as they pursue claims against the other defendants.

7. In addition, I am advised that the amount requested is also less than the average fees typically requested in contingent class action litigation in the U.S. and Canada. The retainer agreement with IMF provides that if there was no recovery, counsel would be paid nothing for the time and resources they committed and risked losing all its out-of-pocket expenses. The retainer also provided that if there is a recovery, such as the Ernst & Young settlement, then counsel would be paid accordingly subject to the Court approving the reasonableness of counsel's fee request.

8. In light of the substantial risks of possibly no recovery for counsel and the substantial commitment of time, money and resources expended by IMF's counsel on behalf of the Class, I support the requested fees.

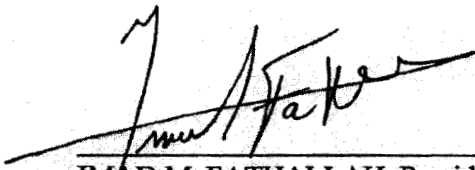
¹ At the current exchange rate of approximately .95, the fee request in U.S. dollars is \$2,223,000.



9. I swear this affidavit in support of the motion for approval of the Claims and Distribution Protocol and approval of Cohen Milstein's request for fees and reimbursement of expenses and for no other or improper purpose.

SWORN TO BEFORE ME at the _____
in the _____ on
November __, 2013.

Commissioner for Taking Affidavits



IMAD M. FATHALLAH, President
IMF Finance SA

**SUPPLEMENTAL MOTION RECORD
OF THE PLAINTIFFS
(Claims and Distribution Protocol Approval,
returnable December 13, 2013)**

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