

**NEW YORK STATE BAR ASSOCIATION  
INTERNATIONAL SECTION  
SEASONAL MEETING**

**Montreal, Quebec  
October 25, 2018**

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**ACROSS A WELL-TRAVELED BORDER:  
EXPERIENCE IN U.S. - CANADIAN  
INSOLVENCY PROCEEDINGS**

Chair: Mark Bloom, Greenberg Traurig, LLP, Miami  
Panelists: Regional Senior Judge Geoffrey B. Morawetz, Ontario Superior  
Court of Justice, Toronto  
Judge Martin Glenn, U.S. Bankruptcy Court, New York  
Denis Ferland, Davies Ward Phillips & Vineberg LLP, Montreal

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**Sino-Forest**

Sino-Forest Corporation (SFC):

- Canadian public holding company
- Subsidiaries owned forestry assets mainly located in China
- Common shares listed on Toronto Stock Exchange
- \$1.8 billion unsecured notes.



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### Sino-Forest Insolvency

- Muddy Waters Report: June 2011 – SFC is a “near total fraud” and a “Ponzi scheme”
- SFC obtains Initial Order under CCAA, which includes stay of proceedings against SFC and subsidiaries



The black vertical line indicates the date Muddy Waters publicised its report and short position

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### Sino-Forest

#### Class Actions

- **\$9.2 billion** in damages sought by shareholders and noteholders in proposed class action against SFC, underwriters and auditors
- Underwriters and auditors claim they are indemnified by SFC

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### Sino-Forest Equity Claims

- Subordinate to debt claims under CCAA
- SFC sought declaration that:
  - shareholder claims are equity claims
  - auditor and underwriter indemnity claims against SFC, stemming from the shareholder claims, are equity claims

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## Sino-Forest

### Equity Claims – as defined in s.2 of the CCAA

- “equity claim” means a claim that is in respect of an equity interest, including a claim for, among others, ...
  - d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission... of a purchase or sale of an equity interest, or
  - e) contribution or indemnity in respect of a claim referred to in ... paragraphs (a) to (d);
- “equity interest” means ... a share in the company ...

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## Sino-Forest

### Third Party Release & Recognition

- \$117 million settlement proposed between auditors and class action claimants
- Conditional on:
  - Third-party releases which preclude any right to contribution or indemnity against auditors.
    - Granted in Ontario
  - Chapter 15 recognition order in United States
    - Granted in United States Bankruptcy Court for the Southern District of New York.

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## CASE REFERENCES

- *Sino-Forest Corporation (Re)*, 2012 ONCA 816 (definition of equity claims)
- *Sino-Forest Corporation (Re)*, 2012 ONSC 7050 (approval of plan of arrangement)
- *Labourers’ Pension Fund of Central and Eastern Canada v. Sino Forest Corporation*, 2013 ONSC 1078 (approval of settlement with third party release)
- *Labourers’ Pension Fund of Central and Eastern Canada v. Sino Forest Corporation*, 2013 ONCA 456 (approval of plan of arrangement containing third party release)

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- *Nortel Networks Corporation (Re), 2009 ONSC 39492*  
*(Asset Sale approval with joint hearing)*
- *Nortel Networks Corporation (Re), 2013 ONSC 1757*  
*(allocation of proceeds to be determined by joint trial)*

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