



Court File No.: CV-13-10279-00CL

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

THE HONOURABLE Mr.) Tuesday, THE 20th
JUSTICE Pany) January
) DAY OF MARCH, 2015

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

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

**NOTICE PROCEDURE ORDER
(In respect of a Distribution Motion)**

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Fund**") for an order approving the form of notice of a motion to distribute the proceeds of a sale of shares in Med-Eng Systems Inc. ("**Med-Eng**") currently remaining in escrow (the "**Remaining Proceeds**") pursuant to an escrow agreement dated September 17, 2007 (the "**Escrow Agreement**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the affidavit of Paul Echenberg sworn December 15, 2014, the affidavit of Donna Parr sworn December 15, 2014, and the affidavit of Paul Echenberg sworn January 19, 2015, and on hearing the submissions of counsel for the Fund, the Offeree Shareholders, as defined below, and the Monitor, no one else appearing although properly served as appears from the Affidavit of Emilia Moon-de Kemp, sworn January 19, 2015:


1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that a motion to determine the distribution of the Remaining Proceeds shall be heard on March 3, 2015 at 10:00 a.m. (the **“Distribution Motion”**). MAP

3. THIS COURT ORDERS AND DECLARES that the form of notice for the Distribution Motion and the form and content of a disclosure statement to be attached thereto, are hereby approved in the form appended as Schedule “A” (the **“Notice and Disclosure”**), and shall be delivered to the former minority shareholders of Med-Eng (the **“Minority Shareholders”**) and the service list.

4. THIS COURT ORDERS AND DECLARES that the mailing by ordinary mail of the Notice and Disclosure to each Minority Shareholder, on or before January 23, 2015, to the most recent address on the list maintained by Robert Chapman, formerly of McCarthy Tétrault LLP, counsel for the Offeree Shareholders (as defined in the Settlement Approval Order) in respect of the SPA (as defined in the Settlement Approval Order), shall be sufficient service of the Distribution Motion.

5. THIS COURT ORDERS that any Minority Shareholder who objects to the proposed distribution set out in the Notice and Disclosure must give notice in writing of such objection and the reasons for the objection in the form attached to the Notice and Disclosure to FTI Consulting Canada Inc. (the **“Monitor”**) on or before 5:00 p.m. on February 23, 2015, and the Monitor is hereby directed to post such objection on the Monitor’s website and to file a copy with the Court.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 23 2015



SCHEDULE "A"

NOTICE TO FORMER SELLING SHAREHOLDERS OF

MED-ENG SYSTEMS INC.

PLEASE TAKE NOTICE that the Ontario Superior Court of Justice issued an order (the "**Order Approving Settlement**") approving a settlement of certain litigation which is defined in the Order Approving Settlement as the "AVC Litigation". Attached to this notice is a copy of the Order Approving Settlement. Capitalized terms used in this notice have the meanings set out in the Order Approving Settlement.

PLEASE TAKE NOTICE that the AVC Litigation has now been settled in accordance with the Minutes of Settlement. Accordingly, the Settlement Proceeds, totalling \$28 million were paid to AVC on December 23, 2014 from the Indemnification Escrow Fund (as defined in the Escrow Agreement) and the Mutual Full and Final Release (as defined in the Minutes of Settlement) has been executed and delivered. The Remaining Proceeds, which totaled \$15,832,358.82 as of January 2, 2015, continue to be held in escrow pursuant to the Escrow Agreement.

PLEASE TAKE NOTICE that a hearing will be held on March [], 2015 at 10:00 a.m. at 330 University Avenue, 8th floor, Toronto, Ontario, in the Ontario Superior Court of Justice (Commercial List), to consider the proposal by the Offeree Shareholders that the Remaining Proceeds be distributed as follows:

To each of the Offeree Shareholders, an amount equal to the professional costs they incurred in their efforts to secure the release of the Remaining Proceeds, including fees and disbursements of the advisors and experts of the Offeree Shareholders incurred in connection with:

- (i) The AVC Litigation;
- (ii) The claim of AVC in the Fund's proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") including the

motion and cross motions brought in respect of the conduct of AVC's claim;

- (iii) The negotiation of the settlement of the AVC Litigation;
 - (iv) The motion in the CCAA Proceedings for the approval of the settlement;
 - (v) The implementation of the settlement; and
 - (vi) This motion, the Distribution Motion and the distribution of the Remaining Proceeds;
- (b) After payment of the amounts set out in (a) above, the balance to each of the former selling shareholders of Med-Eng pro rata based on their holdings of Med-Eng shares at the time of the sale of such shares.

PLEASE TAKE NOTICE that the total of professional costs included in (a) above is approximately \$4.7 million and that a description of the professional costs and the basis for the proposed distribution are set out in the Disclosure Statement attached to this Notice and in the affidavit of Paul Echenberg sworn on January 19, 2015. You can find this affidavit and the rest of the court materials related to this motion at <http://cfcanada.fticonsulting.com/gcfl>.

PLEASE TAKE NOTICE that if you object to such distribution and wish to oppose the granting of the order sought by the Offeree Shareholders at the court hearing on March [], 2015, you must deliver a Notice of Objection on or before 5:00 p.m. (Toronto Time) on February 23, 2015, in the attached form to the following address:

FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor
TD Waterhouse Tower
79 Wellington Street, West

Suite 2010, P.O. Box 104

Toronto, Ontario, Canada, M5K 1G8

Fax 416-649-8101

Email: growthworkscanadianfundltd@fticonsulting.com

Attn: Paul Bishop and Jodi Porepa

SUMMARY

Objection Deadline: 5:00 p.m. (Toronto Time) on February 23, 2015

Court Hearing: 10:00 a.m. on March [], 1015

Court :Location: 330 University Avenue, 8th Floor, Toronto, Ontario.

DATED this 23rd day of January, 2015

NOTICE OF OBJECTION

I, [insert name of former shareholder of Med-Eng] object to the distribution of the Remaining Proceeds in the manner proposed by the Offeree Shareholders.

The following are my reasons for my objection:

I hereby certify that

1. I am a former shareholder of Med-Eng.
2. I held [insert number of shares] of Med-Eng on the closing of the sale of my shares to Allen-Vanguard Corporation.
3. I have attached any documentation in my possession that supports the reasons for my objection.

Dated:

Signature:

Witness signature:

Witness name:

DISCLOSURE STATEMENT

To: The former Minority Shareholders of Med-Eng Systems Inc., as defined in the Share Purchase Agreement, dated as of August 3, 2007 (the "**Share Purchase Agreement**"), and as listed in schedule 4.1(f) of the Escrow Agreement made as of September 17, 2007 among the Offeree Shareholders, Richard L'Abbé, 1062455 Ontario Inc., GrowthWorks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited, Schroder Ventures Holding Limited, Allen-Vanguard Corporation, Med-Eng Systems Inc. and Computershare Trust Company of Canada (the "**Escrow Agreement**").

Re: In the Matter of GrowthWorks Canadian Fund Ltd., Superior Court of Justice (Commercial List), Court File No. CV-13-10279-00CL Superior Court of Justice (Commercial List), Court File No. CV-13-10279-00CL ("**GrowthWorks CCAA Proceedings**");

Richard L'Abbé et al. v. Allen-Vanguard Corporation et al., Ontario Superior Court File No. 08-CV-43188; Allen-Vanguard Corporation v. Richard L'Abbé et al., Ontario Superior Court File No. 08-CV-43544 (the "**Allen-Vanguard Litigation**").

In 2007, the former majority shareholders of Med-Eng Systems Inc. ("**Med-Eng**") entered into the Share Purchase Agreement as "Offeree Shareholders" with Allen-Vanguard Corporation ("**Allen-Vanguard**"), whereby Allen-Vanguard agreed to purchase all of the shares of Med-Eng, including the shares you formerly owned, for an aggregate purchase price of approximately \$650 million. The share purchase transaction closed in September 2007.

You have already received almost 94% of your share of the proceeds of this sale. As part of the sale purchase transaction, however, \$40 million of the purchase price (the "**Escrow Amount**") was set aside in escrow pursuant to the provisions of the Escrow Agreement. The purpose of the Escrow Agreement was to make the Escrow Amount available to compensate Allen-Vanguard if the representations and warranties that Med-Eng made in the Share Purchase Agreement were incorrect or false and Allen-Vanguard suffered losses as a result.

In September 2008, Allen-Vanguard gave the Offeree Shareholders notice that it believed that Med-Eng's representations and warranties were false and that it intended to seek recovery of the entire Escrow Amount for its resulting damages. In November, 2008, the Offeree Shareholders started a law suit for the release of the Escrow Amount based on their position that there had been no relevant breaches of representation or warranty.

In addition to defending the Offeree Shareholders' law suit, Allen-Vanguard started another law suit claiming that Med-Eng's representations and warranties were not accurate and

that the Escrow Amount should therefore be paid to Allen-Vanguard. Because both law suits involved the Share Purchase Agreement and the Escrow Agreement, they have proceeded together as the Allen-Vanguard Litigation. In February, 2013, Allen-Vanguard sought and obtained an order from the court permitting it to amend its statement of claim, increasing its claim for damages in the Allen-Vanguard Litigation from \$40 million to \$650 million. Also, in October, 2013, GrowthWorks Canadian Fund Ltd. ("**GrowthWorks**") obtained creditor protection in the GrowthWorks CCAA Proceedings which impacted the course of the Allen-Vanguard Litigation.

Since it started in November 2008, the Allen-Vanguard Litigation has been pursued diligently by the Offeree Shareholders. A detailed history of the Allen-Vanguard Litigation is set out in an affidavit that has been filed in the GrowthWorks CCAA Proceedings. You can find this affidavit and the rest of the court materials related to this motion at <http://cfcanda.fticonsulting.com/gcfl>.

The Allen-Vanguard Litigation has been complex, intensely contested and expensive, involving the production of over 15,000 documents, approximately 10 contested motions, more than 20 case conferences and 35 days of examinations for discovery. The trial was scheduled for 11 weeks starting in March 2015. In total, the Offeree Shareholders spent more than \$4.7 million in legal and other professional expenses in pursuing the release of the Escrow Funds for benefit of all former shareholders of Med-Eng.

After extensive and difficult negotiations and in order to avoid the further expense and risks that would be incurred in going ahead with the scheduled 11 week trial, in December 2014 the Offeree Shareholders entered into a settlement agreement with Allen-Vanguard, which was approved by the Ontario Superior Court of Justice (the "**Court**") on December 18, 2014. Under the terms of the settlement agreement, Allen-Vanguard received \$28 million of the Escrow Amount at the end of December 2014.

The balance of the Escrow Amount, together with accumulated interest (the "**Remaining Escrow Fund Balance**") which totalled \$15,832,358.82 as of January 2, 2015, will be distributed to all of the former shareholders of Med-Eng in accordance with an order of the Court that will be made in the GrowthWorks CCAA Proceedings.

GrowthWorks has applied to the Court in the Growthworks CCAA Proceedings for an order that the Remaining Escrow Fund Balance be distributed to the former shareholders of Med-Eng in proportion to their respective shareholdings, **after first deducting the Offeree Shareholders' out of pocket expenses for legal fees and disbursements incurred as result of the Allen-Vanguard Litigation (the "Litigation Expenses")**. The Escrow Agreement does not expressly state that the Litigation Expenses must be reimbursed to the Offeree Shareholders. However, as such expenses were incurred for the benefit of all former shareholders of Med-Eng, the Offeree Shareholders believe it is fair that they recoup

their expenses before the Remaining Escrow Fund Balance is distributed. Over more than 6 years, the Offeree Shareholders have devoted many hours of their time and attention to the conduct of the Allen-Vanguard Litigation but they do not seek compensation for their own time and effort. They seek to recoup only their out of pocket expenses

The Offeree Shareholders will be supporting GrowthWorks' motion to the Court for an order for distribution of the Remaining Escrow Fund Balance first to the Offeree Shareholders to reimburse them for their Litigation Expenses and then pro rata to all former shareholders of Med-Eng. As a former shareholder of Med-Eng entitled to a portion of the Remaining Escrow Fund Balance, you may object to the distribution proposed by the Offeree Shareholders by delivering a notice of objection to the Monitor in the attached form and may appear to make submissions to the Court at the hearing to be held to consider the GrowthWorks' motion at 330 University Avenue, Toronto, Ontario at **10:00 a.m.** on March*, 2015. Whether or not you object and/or appear to make submissions at that hearing, the Court may make the order requested by the Offeree Shareholders.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

Court File No. CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

**NOTICE PROCEDURE ORDER
(In respect of the Distribution Motion)**

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