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

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.
(the "APPLICANT" or the "Fund")

MOTION RECORD OF CROSS-MOTION OF THE APPLICANT

(Motion re: Allen-Vanguard Mini-Trial Returnable February 11, 2014)

November 26, 2013

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TO THE SERVICE LIST:

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AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.
(the "**APPLICANT**" or the "**Fund**")

NOTICE OF CROSS-MOTION
(Motion re: Allen-Vanguard Mini-Trial
Returnable February 11, 2014)

THE APPLICANT will make a cross-motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, February 11, 2014 at 10:00 a.m. or as soon after that time as the cross-motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order directing the trial of certain issues raised in the action proceeding under Court File No. 08-CV-43544 (the "**Action**") as are more particularly described herein between the defendants (collectively the "**Offeree Shareholders**") and the Plaintiff Allen-Vanguard Corporation ("**Allen-Vanguard**") to be heard by way of mini-trial before a judge of the Ontario Superior Court of Justice (Commercial List), within these proceedings;

2. An order that the determination of such issues shall be binding on all of Allen-Vanguard and the Offeree Shareholders for all purposes including for the purposes of the Action and Court File No. 08-CV-43188;

3. An order that the issues to be determined at the mini-trial shall be the following:

   (a) Were the claims of Allen-Vanguard extinguished at law when it amalgamated with Allen-Vanguard Technologies Inc., formerly Med-Eng Systems Inc. ("**Med-Eng**"), on January 1, 2011;

   (b) Assuming Allen-Vanguard is capable of proving fraud on the part of the former management of Med-Eng, is it entitled under the Share Purchase Agreement, dated as of August 3, 2007 (the "**SPA**"), to seek damages from the Applicant and other Offeree Shareholders in excess of the "Indemnification Escrow Amount," as that term is defined in the SPA, for the alleged breaches and misrepresentations of Med-Eng;

4. An order that the mini-trial proceed as follows:

   (a) Affidavit evidence will be tendered as evidence-in-chief;

   (b) Cross-examinations on affidavits will occur in court, before the judge hearing the mini-trial;

   (c) No expert evidence will be required or allowed;

   (d) No witnesses apart from those who submit affidavit evidence shall be called to testify;

   (e) All documents that the parties intend to rely upon during the hearing of the mini-trial shall be identified no less than seven days prior to the commencement of the mini-trial;

5. An order declaring that Allen-Vanguard shall not take any steps in the Action that affect the Applicant in any way.

6. Costs of this motion.

THE GROUNDS FOR THE MOTION ARE:

1. On October 1, 2013, the Court granted protection to the Fund under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an initial order of the Honourable Mr. Justice Newbould, which was amended and restated on October 29, 2013 (as amended and restated, the "**Initial Order**").

2. On November 18, 2013, the Honourable Justice Morawetz granted an order approving a Sale and Investor Solicitation Process (the "**SISP**"). Pursuant to the SISP, the Fund is seeking a sale or investment proposal. The Fund has also been exploring potential merger options and is continuing its serious discussions with a possible merger partner.

3. There is outstanding litigation between the Fund and Allen-Vanguard, which relates to Allen-Vanguard's acquisition of all of the shares of Med-Eng from the Med-Eng shareholders pursuant to the SPA. The Fund was a shareholder of Med-Eng, holding approximately 12.4% of the shares at the time.

4. A portion of the purchase price paid by Allen-Vanguard, totalling $40 million (the "**Escrow**") has been held in escrow pursuant to the SPA and an escrow agreement.

5. The Fund and the other Offeree Shareholders commenced an action in November, 2008 for return of the Escrow.

6. In December, 2008, Allen-Vanguard commenced a separate action against the Offeree Shareholders alleging it had claims totalling $40 million that should be satisfied from the Escrow.

7. In 2013, Allen-Vanguard amended the claim in its Action to, among other things, expand its claim to $650 million of which they note $40 million would be distributed from the Escrow.

The balance of the claim is asserted by Allen-Vanguard as a joint and several claim against all of the Offeree Shareholders, including the Fund.

8. Accordingly, while the claim by Allen-Vanguard against the Fund and the other Offeree Shareholders had been limited to the amount of the Escrow, and the Fund's portion of the Escrow was a contingent asset of the Fund, since the amendment in June, 2013, the claim against the Offeree Shareholders has expanded to claim $650 million of which only approximately $40 million could be funded from the Escrow, leaving a joint and several claim against the Fund of approximately $610 million, and a significant potential liability.

9. The question of whether Allen-Vanguard is entitled to claim against the Offeree Shareholders for amounts beyond the Escrow or whether their recovery is limited to the Escrow by the terms of the SPA and/or other factual or legal issues is a key issue for the Fund (the "**Key Issue**").

10. The Fund believes that the Allen Vanguard claim is limited to the Escrow and the claim for damages exceeding the Escrow (the "**Excess Claim**") is not legitimate, should be and will be dismissed when adjudicated.

11. If the Key Issue is adjudicated, the Fund will know whether the Escrow is a potential asset or whether the Allen-Vanguard claim, including the Excess Claim, is a potential liability. It will also identify the Fund's primary stakeholders.

12. As the Fund proceeds with the SISP and negotiation of a potential merger transaction – the basis of its restructuring in these CCAA proceedings - it is important to know if the Fund's primary stakeholders are its shareholders or its creditors:

(a) If the primary stakeholders are its shareholders, the most beneficial transaction might be a merger to preserve the positive tax treatment of the shareholders' investment in the Fund (which requires that all shares issued to the Fund as consideration in the transaction be distributed to the Fund's shareholders, with creditor claims assumed or paid in cash).

(b) If the primary stakeholders of the Fund are its creditors, a merger transaction will likely not be beneficial and may not be possible at all since the face amount of the claim is so large relative to the value of the assets of the Fund.

13. If the Excess Claim is dismissed, continuation of the Action would not impede the completion of a merger transaction or the completion of any other restructuring transaction that may arise from the implementation of the SISP.

14. Accordingly, it is critical to the completion of the restructuring process that the Key Issue and Excess Claim be litigated in a timely and efficient manner in the CCAA proceedings and subject to the case management of the CCAA court.

15. The Applicant also relies upon the following:

(a) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(b) Rule 37, including in particular Rule 37.13(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. Affidavit of C. Ian Ross sworn November 20, 2013;

2. Affidavit of Paul Echenberg, sworn November 24, 2013;

3. Affidavit of Doreen Navarro, sworn November 26, 2013; and

4. Such further and other materials as counsel may advise and this Court may permit.

November 26, 2013

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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 GROWTHWORKS CANADIAN FUND LTD.

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

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

(RE: ALLEN-VANGUARD MINI TRIAL RETURNABLE FEBRUARY 11, 2014)

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

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.
(the "APPLICANT")

AFFIDAVIT OF C. IAN ROSS,
SWORN November 20, 2013
(Re: Motion re: Allen-Vanguard Action)

I, C. Ian Ross, of the Town of The Blue Mountains, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), the Applicant in these proceedings. I am a director of the Fund and interim chief executive officer of the Fund in which role I am responsible for the daily operations of the Fund, acting under the oversight of a special committee of the Fund's Board of Directors. As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true.

2. I have sworn affidavits on September 30, 2013 (my "**Initial Affidavit**"), October 25, 2013 and November 14, 2013 in these *Companies Creditors' Arrangement Act* ("**CCAA**") proceedings of the Fund (the "**CCAA Proceedings**"). Capitalized terms contained herein, and not otherwise defined, have the meanings provided in my Initial Affidavit.

BACKGROUND OF CCAA PROCEEDINGS

3. The Fund is a labour-sponsored venture capital fund with a diversified portfolio of investments in small and medium-sized Canadian businesses (as defined in my Initial Affidavit, the "**Portfolio Companies**").

4. As set out in my Initial Affidavit, the Fund faces challenges, including the following:

(a) A $20 million payment obligation to Roseway Capital S.a.r.l. ("**Roseway**"), along with certain related obligations (together, the "**Roseway Obligations**"), became due on September 30, 2013, which the Fund was unable to pay; and

(b) The Fund does not have access to short-term financing and its investments in the Portfolio Companies are held in illiquid securities consisting of minority equity interests in private companies and restricted equity securities in a publicly traded company. While the Fund had total assets of $115,879,821 as at September 27, 2013 (and cash and cash equivalents of approximately $6,586,662 as at September 30, 2013), the Fund's ability to divest of its investments in the Portfolio Companies at a profit is largely dependent on favourable market conditions and tends to require waiting for opportunities such as an initial public offering or merger or acquisition involving a Portfolio Company.

5. On October 1, 2013, the Fund sought and received Court protection pursuant to the CCAA in the form of an initial order of the Honourable Mr. Justice Newbould (as amended and restated, the "**Initial Order**").

6. On October 29, 2013, the Honourable Justice Mesbur extended the Stay Period, as defined in the Initial Order, to January 14, 2014, and amended and restated the Initial Order.

7. On November 18, 2013, the Honourable Justice Morawetz granted an order approving a Sale and Investor Solicitation Process (the "**SISP**"). Pursuant to the SISP, the Fund is seeking parties interested in purchasing the assets, undertakings and property of the Fund (a "**Sale Proposal**") and/or parties interested in investing in or refinancing the business of the Fund (an "**Investment Proposal**").

8. The SISP consists of two "Phases". Phase 1 runs for 25 days from November 18, 2013. The parties then have 5 Business Days to assess any letters of intent received and determine whether to proceed to Phase 2, which, if entered, will last an additional 45 days with the option to extend for a further 15 days.

9. Accordingly, the SISP deadlines are as follows:

DATE	STEP
November 18, 2013:	Phase 1 Commences
December 13, 2013	Phase 1 Bid Deadline
December 20, 2013:	Date to assess Qualified LOIs and any Final Bids received
December 23, 2013 (or earlier date if assessment steps proceed more quickly):	Commencement of Phase 2, if required
February 6, 2014 (or February	Phase 2 Bid Deadline

21, 2014 if extended):	
Thereafter	Court Approval of Successful Bid or Court Appearance to Seek Directions if No Successful Bid

10. The Fund has also been exploring potential merger options and is continuing its serious discussions with a possible merger partner (the "**Potential Merger Partner**").

ALLEN-VANGUARD LITIGATION

Brief Overview of the Dispute

11. The litigation between the Fund and Allen-Vanguard Corporation ("**Allen Vanguard**") relates to Allen-Vanguard's acquisition of all of the shares of Med-Eng Systems Inc. ("**Med-Eng**") from the Med-Eng shareholders pursuant to a Share Purchase Agreement dated as of August 3, 2007, which is attached to the Affidavit of David E. Luxton sworn October 28, 2013 (the "**Luxton Affidavit**"), served on behalf of Allen-Vanguard in these proceedings as Exhibit "A" (the "**SPA**"). I am advised by Chris Hutchison, of counsel for the Offeree Shareholders in the Action, that, at the time, the Fund was a shareholder, holding approximately 12.4% of the Med-Eng shares which were transferred to Allen-Vanguard on closing of the transactions contemplated in the SPA.

12. I am advised by Mr. Hutchison that, on closing, the Fund received approximately $72,388,000 in return for its shares representing approximately 12.4% of the total cash proceeds released at that time. The balance of the purchase price, $40 million, has been held in escrow pursuant to the terms of the SPA (the "**Escrow**").

13. The Escrow was to be used to satisfy valid claims made by Allen-Vanguard pursuant to the terms of the SPA and, to the extent any of the Escrow remained after payment of such valid claims, to be distributed to the Fund and the other former shareholders of Med-Eng in proportion to their former holdings as deferred purchase price. The Escrow continues to be held by an escrow agent pursuant to the terms of the Escrow Agreement dated as of September 17, 2007 (the "**Escrow Agreement**").

14. The Fund and certain other Med-Eng shareholders listed on the Statement of Claim attached to the Luxton Affidavit as Exhibit "G" commenced an action on November 12, 2008 in Court File No. 08-CV-43188 (the "**Offeree Shareholder Action**") seeking, among other things, a declaration that they are entitled to payment of the Escrow and ordering distribution of the Escrow in accordance with the Escrow Agreement.

15. In December, 2008, Allen-Vanguard commenced a separate claim against the Fund and the other defendants listed on the Statement of Claim attached to the Luxton Affidavit as Exhibit "I" (the "**Statement of Claim**") in Court File #08-CV-43544 (the "**Allen-Vanguard Action**"). In this affidavit, I use the term "**Offeree Shareholders**" to refer, collectively, to the Fund and the other plaintiffs in the Offeree Shareholder Action, which are the same parties that are defendants in the Allen-Vanguard Action.

16. In the original Statement of Claim issued in 2008 in the Allen-Vanguard Action, Allen-Vanguard alleged that it had valid claims totalling $40 million arising under the SPA which should be satisfied from the Escrow. Accordingly, from the point of view of the Fund, its interest in the Escrow was a contingent asset as a proportion of the balance of the Escrow after payment of Allen-Vanguard's valid claims, if any.

17. In 2013, more than 4 years after the issuance of the original Statement of Claim, Allen-Vanguard amended the Statement of Claim in the Allen-Vanguard Action to, among other things, increase the quantum claimed against the Defendants to $650 million, of which they note $40 million would be distributed from the Escrow, plus interest and costs. The Amended Statement of Claim in the Allen-Vanguard Action, dated June 11, 2013, is attached to the Luxton Affidavit as Exhibit "P". The balance of the claim is asserted by Allen-Vanguard as a joint and several claim against all of the Offeree Shareholders, including the Fund. Among other things, it is the position of the Offeree Shareholders that the SPA limits any claims against them to the amount of the Escrow.

18. Accordingly, between September, 2007 when the Escrow was set aside to satisfy Allen-Vanguard's valid claims under the SPA, if any, and June, 2013, the claim by Allen-Vanguard against the Fund and the other Offeree Shareholders was limited to the amount of the Escrow, and the Fund's portion of the Escrow was a contingent asset of the Fund. Since the amendment of the Statement of Claim in June, 2013, the claim against the Offeree Shareholders has expanded to claim $650 million of which only approximately $40 million could be funded from the Escrow, leaving a joint and several claim against the Fund of approximately $610 million, and a significant potential liability.

19. I am advised by Mr. Hutchison that, prior to the issuance of the Initial Order, the Offeree Shareholders were in the process of bringing a summary judgment motion to seek to determine the question of whether Allen-Vanguard could claim against the Offeree Shareholders for amounts beyond the Escrow or whether their recovery is limited to the Escrow by the terms of the APA and/or other factual or legal issues (the "**Key Issue**").

Impact on CCAA Proceedings

20. The continued existence of the joint and several claim of approximately $610 million against the Fund will have a profound effect on the restructuring of the Fund in these CCAA Proceedings and will particularly impact the completion of any merger transaction.

21. The Fund is aware of only two other potential creditor claims of any significance. The first is the secured claim of Roseway described in my previous affidavits. While one element of Roseway's claim in the amount of approximately $1.9 million is disputed, the balance of Roseway's claim has been quantified. The second claim of which I am aware is that of the former Manager arising from the termination of the Management Agreement. The amount of that claim has not been stated by the former Manager but it is certain to be less than the claim now asserted by Allen-Vanguard.

22. In the course of these CCAA proceedings, the Fund will apply for approval of a claims process to identify any claims against it, and intends to seek approval to distribute funds, as such funds are received, to Roseway totalling the undisputed secured Roseway Obligations.

23. As noted above, the Fund is proceeding with the SISP to identify a potential Sale Proposal or Investment Proposal and continuing its discussions with the Potential Merger Partner. The Fund is soliciting such proposals for the benefit of its stakeholders. If its primary stakeholders are its shareholders, the most beneficial transaction might be a merger to preserve the positive tax treatment of the shareholders' investment in the Fund. If the primary stakeholders of the Fund are its

creditors, a merger transaction will likely not be beneficial and may not be possible at all.

24. I am advised by our counsel, McCarthy Tétrault LLP, and believe that a merger transaction can only preserve the favourable tax treatment the existing shareholders of the Fund receive as holders of shares in a labour sponsored fund if ***all*** of the shares issued to the Fund as consideration in a "merger" transaction are distributed to the Fund's shareholders. Any creditor claims must either be paid in cash or assumed by the merger partner.

25. Because the disputed claim of Allen-Vanguard is so large in face amount relative to the value of the assets of the Fund, it would likely be impossible to complete a merger transaction with the Allen-Vanguard claim outstanding even if the merger transaction was in the best interests of all legitimate stakeholders of the Fund.

26. The Fund believes that the Allen Vanguard claim is limited to the Escrow and the claim for damages exceeding the Escrow (the "**Excess Claim**") is not legitimate, should be and will be dismissed when adjudicated.

27. If the Key Issue is adjudicated and the Excess Claim is dismissed, the continuation of the Action would not impede the completion of a merger transaction or the completion of any other restructuring transaction that may arise from the implementation of the SISP.

28. Accordingly, it is critical to the completion of the restructuring process that the Key Issue and Excess Claim be litigated in a timely and efficient manner in the CCAA proceedings and subject to the case management of the CCAA court.

29. Given the length of time the Allen-Vanguard Action and Offeree Shareholder Action have taken to date and the recent amendment to increase the quantum of damages claimed, among other amendments, I am concerned about the potential to delay these CCAA Proceedings in the event that the Key Issue is not determined and if the Allen-Vanguard Action and the related Offeree Shareholder Action are allowed to proceed in the usual course.

RELIEF REQUESTED

30. Accordingly, this affidavit is sworn in support of a motion by the Fund to have the Key Issue determined in a summary fashion through a mini-trial before a judge of the Commercial List (Toronto).

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 20th day of November, 2013

Commissioner for taking affidavits

C. IAN ROSS

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF C. IAN ROSS
(sworn November 20, 2013)

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ONTARIO
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AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.
(the "**APPLICANT**")

AFFIDAVIT OF PAUL ECHENBERG

I, Paul Echenberg, of the City of Montreal, MAKE OATH AND SAY:

1. I am the President and Chief Executive Officer of SACI Associates Canada Inc. ("SACI"), a corporation acting as advisor to Schroder Venture Managers (Canada) Limited and as a consultant to Schroder Venture Holdings Limited. These entities are the general partners of limited partnerships and attorney for co-investors who were former shareholders of Med-Eng Systems Inc. ("Med-Eng").

2. I have been one of the individuals instructing counsel in a variety of litigation involving Allen-Vanguard Corporation ("Allen-Vanguard"), the Applicant, and certain other former shareholders (the "Offeree Shareholders") of Med-Eng, which litigation has been continuing since 2008.

3. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I make statements that are not within my personal knowledge, I have identified the source of the information and I believe the information to be true.

Overview

4. The Offeree Shareholders support the motion brought by the Applicant to have a trial of certain issues heard before a judge of the Ontario Superior Court of Justice (Commercial List). In this affidavit I provide evidence that relates to the Offeree Shareholders' position that a mini-trial on the Commercial List is appropriate because:

(a) the mini-trial can deal with a discrete issue that may be dispositive of, or at the minimum significantly influential on the outcome of the litigation with Allen-Vanguard;

(b) the mini-trial can be dealt with in a summary fashion with a defined universe of witnesses, and without the need for experts;

(c) the balance of the case – involving evidence of alleged wrongdoing, damages, experts, and the like – is significantly more complex and is nowhere near ready for trial. I am advised by counsel that it will not likely be ready for trial, particularly given Allen-Vanguard's delinquency in its discovery obligations described below, for more than one year. There are motions outstanding, discovery outstanding, and expert reports yet to come; and

(d) matters have been raised in the proceedings that expressly relate to Allen-Vanguard's representations to the Commercial List court in its own CCAA proceedings. The

representation made by Allen-Vanguard in its own CCAA proceeding are consistent with the Offeree Shareholders' position on the indemnification provisions of the Share Purchase Agreement (defined below), and not Allen-Vanguard's current position.

5. Based on the material filed by Allen-Vanguard that I have reviewed, it appears that Allen-Vanguard is concerned about the delay that a mini-trial would cause. The Offeree Shareholders will do everything they can to minimize any delay. I believe that a mini-trial has the potential to save a significant amount of time and money. Additionally, given the procedural history of this case, which I explain in the last section of this affidavit, the concern Allen-Vanguard now expresses with respect to delay is not consistent with their conduct in these proceedings to date.

Subject Matter of the Litigation

6. In 2007, all shareholders of Med-Eng sold their shares to Allen-Vanguard, pursuant to the Share Purchase Agreement, made as of August 3, 2007 (the "Share Purchase Agreement"), between Med-Eng, Allen-Vanguard and the Offeree Shareholders.

7. The Share Purchase Agreement contains a number of representations and warranties, some of which were made by Med-Eng, and others which were made by the Offeree Shareholders. There are also indemnification provisions in the Share Purchase Agreement, which specifically relate to those representations and warranties.

8. Allen Vanguard, Med-Eng, the Offeree Shareholders, as well as Computershare Trust Company of Canada ("Computershare"), are all parties and signatories to an Escrow Agreement, made as of September 17, 2007. The Escrow Agreement provides that $40 million

from the proceeds of the sale (the "Indemnification Escrow Amount") shall be held in escrow as indemnification for proven claims made by Allen-Vanguard against Med-Eng for breaches of specific representations and warranties contained in the Share Purchase Agreement. The funds in question were otherwise payable to all of the former shareholders of Med-Eng as part of the purchase price paid by Allen-Vanguard.

9. Following the close of the share purchase transaction, Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd. and the name of the amalgamated corporation was Allen-Vanguard Technologies Inc. ("AVTI"). AVTI subsequently amalgamated with Allen-Vanguard in 2011.

10. The essence of Allen-Vanguard's claim is that management of Med-Eng failed to disclose material risks in relation to the continuation of a critical U.S. military contract, and that they failed to disclose the extent of contingent liabilities and other risks.

11. If Allen-Vanguard is successful, it will receive some or all of the Indemnification Escrow Amount. If Allen-Vanguard is unsuccessful, the Indemnification Escrow Amount will be paid to the shareholders.

12. The mini-trial would resolve the question as to whether Allen-Vanguard has a claim against the Offeree Shareholders, not just for the Indemnification Escrow Amount, but rather for an amount *in excess* of the consideration received by the shareholders, making this not just a $40 million claim by Allen-Vanguard, but rather, a $650 million claim.

What the Mini-Trial Would Resolve

13. The proposed mini-trial would deal with the same issues that were already being advanced in the litigation by way of an intended motion for summary judgment to be brought by the Offeree Shareholders, namely:

(a) The Share Purchase Agreement does not permit Allen-Vanguard to seek indemnification from the Offeree Shareholders for claims arising from the alleged breaches, misrepresentations and fraud of the former management of Med-Eng; and

(b) Allen-Vanguard's entire claim for damages, including its claim to the Indemnification Escrow Amount, was extinguished at law when Allen-Vanguard amalgamated with AVTI in 2011, thereby eliminating all intercompany debts and liabilities.

14. Counsel for the Offeree Shareholders would represent the Applicant and the other Offeree Shareholders in such a mini-trial, if one is ordered in the CCAA proceedings of the Applicant.

15. The Offeree Shareholders expect to tender affidavits from Robert Chapman, Cécile Ducharme, and me.

Robert Chapman

16. Mr. Chapman was a partner with McCarthy Tétrault LLP at all times relevant to the negotiation and drafting of the Share Purchase Agreement. He advised both the Offeree Shareholders and Med-Eng with respect to Allen-Vanguard's offer to purchase all the shares of Med-Eng and throughout the negotiations that ultimately culminated in the Share Purchase Agreement and the closing of the share purchase transaction on September 17, 2007.

17. It is expected that Mr. Chapman will submit affidavit evidence confirming the following:

- That he was primarily responsible for drafting the Share Purchase Agreement;
- That it was made clear to him by certain representatives of the Offeree Shareholders that they would not agree to indemnify the purchaser of Med-Eng for operational representations and warranties given by Med-Eng;
- That Allen-Vanguard purported to revise the draft Share Purchase Agreement, on multiple occasions, in order to require indemnification by the shareholders of Med-Eng, for the representations and warranties of Med-Eng;
- That he informed Allen-Vanguard that the Offeree Shareholders would not agree to indemnify it for the representations and warranties given by Med-Eng, beyond that which was secured by the Indemnification Escrow Amount;
- That the Offeree Shareholders' refusal to indemnify Allen-Vanguard for the representations and warranties of Med-Eng, beyond that which was secured by the Indemnification Escrow Amount, was the subject of specific discussion and negotiation with Allen-Vanguard's legal counsel; and
- That Allen-Vanguard ultimately agreed to the Share Purchase Agreement, with all language requiring the Offeree Shareholders, or the shareholders of Med-Eng at large, to indemnify Allen-Vanguard for breaches of Med-Eng's representations and warranties, beyond that which was secured by the Indemnification Escrow Amount, being removed from the agreement.

Cécile Ducharme

18. Ms. Ducharme is the Vice-President of SACI Associates Canada Inc., a corporation acting as advisor to Schroder Venture Managers (Canada) Limited and as consultant to Schroder Ventures Holdings Limited, both defendants in the Allen-Vanguard action. I expect that Ms. Ducharme will submit affidavit evidence that confirms the following:

- That Ms. Ducharme provided Mr. Chapman with instruction with respect to the drafting of the Share Purchase Agreement;
- That Ms. Ducharme advised Mr. Chapman that the entities who she was advising would not agree to indemnify Allen-Vanguard for breaches of representations and warranties given by Med-Eng, beyond that which was secured by the Indemnification Escrow Amount;
- That Ms. Ducharme was aware that Allen-Vanguard purported to revise the language of the Share Purchase Agreement in order to require the shareholders of Med-Eng to provide indemnification for breaches of representations and warranties given by Med-Eng, beyond that which was secured by the Indemnification Escrow Amount;
- That such a revision to the Share Purchase Agreement was not acceptable to the entities she was advising; and
- That Allen-Vanguard agreed to revert to language restricting the shareholders' indemnity obligations to the Indemnification Escrow Amount.

Paul Echenberg

19. I expect to submit affidavit evidence that confirms the following:

- The entities which Ms. Ducharme and I advised would not agree to provide an indemnification for the representations and warranties of others, beyond that which was secured by the Indemnification Escrow Amount;
- I was aware that Allen-Vanguard requested an indemnification from the shareholders of Med-Eng for the representations and warranties of Med-Eng, beyond that which was secured by the Indemnification Escrow Amount;
- Allen-Vanguard's request for an indemnification from the shareholders of Med-Eng for the representations and warranties of Med-Eng was denied; and
- Allen-Vanguard agreed to remove language from the Share Purchase Agreement requiring the shareholders of Med-Eng to indemnify Allen-Vanguard for breaches of the representations and warranties given by Med-Eng, beyond that which was secured by the Indemnification Escrow Amount.

Amalgamation and CCAA Motion Materials

20. In addition, the Offeree Shareholders will provide evidence of (a) Allen-Vanguard's amalgamations; and (b) Allen-Vanguard's submissions to the Commercial List court in its own CCAA proceeding. As these are simply corporate filings (amalgamation) and court filings (the CCAA proceeding), I am advised by counsel that they will either be attached to a law clerk's affidavit or admitted by agreement of the parties.

21. The amalgamation evidence will be tendered to demonstrate that Med-Eng has amalgamated with Allen-Vanguard. The Offeree Shareholders will be taking the position that any obligation to indemnify Allen-Vanguard for claims being advanced in this litigation relates to claims against Med-Eng. Therefore, if Allen-Vanguard has no claims against Med-Eng, the

Offerree Shareholders do not have any liability under an indemnity. The Offeree Shareholders will argue that by operation of law, the amalgamation of Med-Eng and Allen-Vanguard extinguished any inter-company claims between them and consequently, extinguished any liability of the Offeree Shareholders under the indemnity. The position will be that Allen-Vanguard no longer has any claims against Med-Eng because it has merged with it.

22. The CCAA evidence will be tendered to show that during Allen-Vanguard's CCAA proceeding, it never once suggested that it had a potential claim worth hundreds of millions of dollars against the Offeree Shareholders. This evidence will be presented by the Offeree Shareholders as an admission by subsequent conduct that Allen-Vanguard concurred with the Offeree Shareholders that their exposure under the Share Purchase Agreement is limited to the Indemnification Escrow Amount and that Allen-Vanguard never had any different understanding.

23. I am advised by counsel and believe that if Allen-Vanguard had a claim against the Offeree Shareholders for any material amount, it had an obligation in its CCAA proceedings to advise its creditors, its shareholders and the court of that claim before entering into a reorganizing transaction. Instead, no mention of this claim now alleged to be worth hundreds of millions of dollars was made and Allen-Vanguard entered into a restructuring transaction which wiped out its shareholders and handed control of its entire business (including the business previously operated as Med-Eng) to a hedge fund for a $20 million capital contribution and the assumption of $54 million in debt.

24. These positions are set out in the Offeree Shareholders' amended statement of defence, which is attached to Allen-Vanguard's motion record.

What Else Needs to Be Done Beyond the Mini-Trial

25. As set out above, the position of the Offeree Shareholders is that the mini-trial would significantly advance the litigation and possibly dispose of a claim in excess of a half billion dollars in a short period of time. Their position is also that if the entire case were to be resolved at a single trial, that trial would be massive and complex, and I am informed by counsel that it is far from ready for trial.

26. To understand that position, and to further understand Allen-Vanguard's complaints about delay, it may be helpful to have additional details on the underlying actions. This section of my affidavit is based on information provided to me by counsel and based on my own experience in this litigation from its outset.

Structure of the Case and the Original Pleadings

27. The action beyond the mini-trial is actually two actions. First, the Applicant is a plaintiff in *Richard L'Abbé et al. v. Allen-Vanguard Corporation et al.*, Ontario Superior Court File No. 08-CV-43188, commenced at Ottawa on November 12, 2008 (the "Offeree Shareholder Action"). Second, the Applicant is also a co-defendant in *Allen-Vanguard Corporation v. Richard L'Abbé et al.*, Ontario Superior Court File No. 08-CV-43544 (the "Allen-Vanguard Action"), also commenced at Ottawa, but on December 18, 2008.

28. The statement of claim in the Offeree Shareholder Action was issued on November 12, 2008. Filed with Allen-Vanguard's record on this motion is a copy of the statement of claim, issued November 12, 2008, in the Offeree Shareholder Action.

29. In the Offeree Shareholder Action, the Offeree Shareholders seek a declaration that they are entitled as of December 21, 2008 to payment of the Indemnification Escrow Amount, as the term is defined in the Escrow Agreement, made as of September 17, 2007. They also seek an order that Computershare distribute to the Offeree Shareholders and the other former shareholders of Med-Eng the Indemnification Escrow Amount in accordance with the Escrow Agreement.

30. On December 18, 2008, Allen-Vanguard and AVTI served a statement of defence in the Offeree Shareholder Action. Filed with Allen-Vanguard's motion record is a copy of the statement of defence, dated December 18, 2008, served in the Offeree Shareholder Action.

31. Allen-Vanguard did not assert a counterclaim in the Offeree Shareholder Action. Instead, Allen-Vanguard issued a separate statement of claim in the Allen-Vanguard Action. A copy of the original statement of claim is filed with Allen-Vanguard's record on this motion.

32. On February 10, 2009, the Offeree Shareholders served a reply to the statement of defence in the Offeree Shareholder Action. The Offeree Shareholders also served a statement of defence in the Allen-Vanguard Action on the same date. Filed with Allen-Vanguard's record on this motion are copies of the reply served in the Offeree Shareholder Action and the original statement of defence served in the Allen-Vanguard Action.

33. No order has been made to consolidate the Offeree Shareholder Action with the Allen-Vanguard Action, although a case management order has been made requiring that the two actions be tried together.

Documentary Discovery

34. A case management conference in respect of the Allen-Vanguard Action and the Offeree Shareholder Action (collectively referred to as "the Actions") was held by Case Management Master Calum MacLeod on September 11, 2009. Master MacLeod's endorsement from this case conference required the parties "to complete production by the end of the year." Attached as Exhibit "A" is the case management endorsement of Master MacLeod, dated September 11, 2009.

35. Draft versions of Schedules "A" and "B" of the Offeree Shareholders' affidavit of documents were delivered to counsel for Allen-Vanguard on December 30, 2009 pursuant to Master MacLeod's order. A CD-ROM containing the Offeree Shareholders' Schedule "A" documents in Summation-ready format was delivered to Allen-Vanguard's counsel on February 1, 2010.

36. Notwithstanding Master MacLeod's case management order, as I explain in greater detail below, Allen-Vanguard did not deliver its affidavit of documents by the end of 2009.

37. On February 17, 2010, Master MacLeod convened another case management conference in respect of the Actions. Following the case management conference on February 17, 2010, Master MacLeod ordered Allen-Vanguard to produce all documents identified as relevant and not privileged by the end of April, 2010. Attached as Exhibit "B" is the case management endorsement of Master MacLeod, dated February 17, 2010.

38. Notwithstanding the case management order, Allen-Vanguard did not produce any documents by April 30, 2010. According to Mr. Eli Lederman's letter dated April 30, 2010, a copy of which is attached as Exhibit "C", Allen-Vanguard would not be producing any

documents pending the hearing of its motion to remove Cavanagh Williams Conway Baxter LLP (now known as Cavanagh LLP) as lawyers of record in the Actions based on an alleged conflict of interest (the "conflicts motion").

39. This alleged conflict of interest was originally raised in a letter dated November 14, 2008, but our counsel advises that it was not raised again until 2010. Attached as Exhibit "D" to this affidavit is a copy of Mr. Lederman's letter of November 14, 2008.

40. Ultimately, Allen-Vanguard and the Offeree Shareholders agreed to settle outstanding motions, including the conflicts motion, by way of consent orders, dated July 12, 2010. As part of that settlement, Allen-Vanguard agreed to deliver its affidavit of documents and Schedule "A" productions to the Offeree Shareholders within 30 days of receiving certain specified documents from the Offeree Shareholders, over which they had previously claimed privilege.

41. On August 12, 2010, after receiving the specified documents from the Offeree Shareholders, Allen-Vanguard produced approximately 5,000 documents. Allen-Vanguard served a draft affidavit of documents with a Schedule "B" that listed 30 documents on September 10, 2010.

42. On October 27, 2010 and November 4, 2010, counsel for the Offeree Shareholders raised concerns with respect to the sufficiency of Allen-Vanguard's productions. Attached as Exhibit "E" to this affidavit is a copy of Mr. Thomas Conway's letter of October 27, 2010. Attached as Exhibit "F" to this affidavit is a copy of Mr. Conway's email of November 4, 2010.

43. On November 19, 2010, counsel for Allen-Vanguard indicated that they were in the course of "continuing" their documentary review and would be producing a "significant

number" of new documents. Attached as Exhibit "G" to this affidavit is a copy of Mr. Lederman's letter, dated November 19, 2010.

44. On November 25, 2010, the Offeree Shareholders received approximately 1,235 additional documents from Allen-Vanguard. Attached as Exhibit "H" to this affidavit is a copy of Mr. Lederman's letter, dated November 23, 2010.

Productions Motion

45. In January of 2011, the Offeree Shareholders served Allen-Vanguard with a motion returnable March 10, 2011. This motion (the "productions motion") sought to have Allen-Vanguard's pleadings in the Actions struck, or, in the alternative, an order requiring Allen-Vanguard to deliver a complete set of productions and to pay costs for the time thrown away in reviewing Allen-Vanguard's incomplete productions and preparing for examinations for discovery.

46. On June 24, 2011, Master MacLeod released reasons in respect of the productions motion and Allen-Vanguard's discovery motion. In reaching his decision, Master MacLeod made the following statements:

- "There is no doubt that Allen Vanguard has had difficulty with its productions obligations and has failed to meet several court imposed deadlines."
- "I can and do conclude that Allen Vanguard has not taken its production obligations as seriously as it should have done."
- "The questions of wasted costs and unnecessary delay should also be an issue preserved for consideration by the trial judge."

47. Master MacLeod ultimately ordered Allen-Vanguard to pay costs to the Offeree Shareholders "as a consequence of breaching production obligations and failing to meet the times set out in court orders."

Summary of Allen-Vanguard's Documentary Productions

48. I am informed by counsel to the Offeree Shareholders that Allen-Vanguard has produced over 15,000 documents in 17 "batches" of productions. The productions occurred on or about the following dates:

- August 12, 2010;
- November 25, 2010;
- February 2, 2011;
- April 11, 2011;
- May 16, 2011;
- August 1, 2012;
- September 5, 2012;
- September 25, 2012;
- October 26, 2012;
- November 28, 2012;
- April 3, 2013;
- April 17, 2013;
- April 30, 2013;
- August 27, 2013;
- September 20; 2013;

- October 3, 2013;
- October 10, 2013.

Examinations for Discovery of Allen-Vanguard

49. I am informed by counsel to the Offeree Shareholders that David Luxton was examined, on behalf of Allen-Vanguard, on the following dates:

- December 2-3, 2010;
- December 13-14, 2010;
- February 15-17, 2011;
- February 28, 2011;
- March 1, 2011;
- April 13-14, 2011;
- May 2, 2011;
- May 27, 2011;
- May 30, 2011;
- June 1, 2011;
- December 3-5, 2012;
- January 30-February 1, 2013.

Trial Date – September 2013

50. The Offeree Shareholders submitted a case conference request form on February 18, 2011. This case conference form sought, among other relief, the scheduling of a motion challenging the scope of Allen-Vanguard's privilege claims and the fixing of a trial date in order

to require more timely completion of pre-trial steps. Attached as Exhibit "I" is the case conference form submitted by the Offeree Shareholders, dated February 18, 2011.

51. On May 2, 2011, the Offeree Shareholders submitted a case conference form to the Case Management Centre in Ottawa. This case management form reiterated the Offeree Shareholders' request that a trial date be fixed and that a pre-trial timetable be established. Attached as Exhibit "J" is a letter from Mr. Conway attaching the case conference form dated May 2, 2011.

52. Master MacLeod convened a case conference on May 4, 2011, and made the following orders:

- The parties were to confer and determine availability for a six-week trial in the fall of 2012. They were then to advise Master MacLeod's office of the agreed dates and, if they could be accommodated, they would be fixed as the dates for the trial.
- The parties were also ordered to confer and seek agreement on a timetable for pre-trial steps.

Ultimately, the parties requested that the trial be set down for September 2013. Attached as Exhibit "K" is a copy Master MacLeod's endorsement, dated May 4, 2011. Attached as Exhibit "L" is a letter from Mr. Conway, dated November 22, 2011.

53. Master MacLeod also indicated in his reasons, dated December 9, 2011, that the trial would begin in September 2013, and that the date was contingent on ultimately setting the action down for trial and complying with all pre-trial requirements. Attached as Exhibit "M" are Master MacLeod's reasons, dated December 9, 2011.

54. In December of 2012, it was agreed that certain aspects of a third related action would be tried together with the Actions. Paul Timmis, formerly a Corporate Vice-President at AVTI, commenced an action under Court File No. 08-CV-41899 (the "Timmis Action"), claiming damages for breach of contract and anticipatory breach of contract as against Allen-Vanguard and AVTI in relation to his departure from employment at AVTI. Attached as Exhibit "N" is the amended statement of claim in the Timmis Action. Attached to Allen-Vanguard's record filed in this motion is Allen-Vanguard's amended amended statement of defence and counterclaim.

55. In its statement of defence and counterclaim, Allen-Vanguard makes claims arising from the alleged breaches, misrepresentations and fraud of Mr. Timmis during the sale of Med-Eng to Allen-Vanguard. Many of these allegations were substantially similar to those made in the Actions. It was agreed by the parties to all three actions that the common issues as between the Actions and the Timmis action would be tried together.

Amendment to Allen-Vanguard's Statement of Claim

56. By way of letter dated January 29, 2013, a copy of which is attached as Exhibit "O", counsel for Allen-Vanguard wrote counsel for the Offeree Shareholders, seeking the Offeree Shareholders' consent to its proposed amended statement of claim. I am advised by counsel to the Offeree Shareholders that this was the first time that Allen-Vanguard indicated its intention to increase its claim for damages from $40 million to $650 million. Whereas the original statement of claim sought damages of $40 million to be distributed from the Indemnification Escrow Amount, the proposed amended statement of claim sought damages of $650 million directly from the Offeree Shareholders, including the Applicant, among other amendments.

57. The Offeree Shareholders did not consent to Allen-Vanguard's proposed amendments and Allen-Vanguard's motion seeking leave to amend its claim was heard before Master MacLeod on February 19, 2013. On February 21, 2013, Master MacLeod granted Allen-Vanguard leave to amend its statement of claim. Attached as Exhibit "P" are the reasons of Master MacLeod, dated February 21, 2013.

58. Master MacLeod's reasons in respect of the motion to amend also addressed Allen-Vanguard's delay in seeking the amendments:

> *The question of delay in seeking the amendments is more troubling. The affidavit evidence is to the effect that the decision to amend the claim was made after the discovery of Mr. Timmis...There is however nothing in the affidavit that asserts that anything has occurred to suggest that the damages incurred by Allen Vanguard have changed or why Allen Vanguard earlier believed it was limited to claiming against the escrow fund and has now apparently changed its view...*

59. The Offeree Shareholders appealed the decision of Master MacLeod, which appeal was heard by Regional Senior Justice Hackland on April 22, 2013. The Offeree Shareholders' appeal was dismissed by Regional Senior Justice Hackland on May 22, 2013 as he agreed with Master MacLeod's conclusion that he "could not definitively say that the proposed amendment was untenable". Attached as Exhibit "Q" are the reasons of Justice Hackland, dated May 22, 2013.

60. The amended statement of claim in the Allen-Vanguard Action was issued on June 11, 2013. The Offeree Shareholders' amended statement of defence in the Allen-Vanguard Action was served on or about June 28, 2013 and Allen-Vanguard's Reply was served on or about August 22, 2013.

Service of Allen-Vanguard's Expert's Report

61. During the examinations for discovery of Mr. Luxton, on behalf of Allen-Vanguard, which occurred in 2011, 2012 and 2013, Mr. Luxton was questioned with respect to the damages claimed by Allen-Vanguard. Mr. Luxton and his counsel consistently declined to answer specific questions, and informed counsel for the Offeree Shareholders that particulars with respect to Allen-Vanguard's claim for damages would be provided prior to trial. Attached as Exhibit "R" to this affidavit are excerpts from the examination for discovery of David Luxton that occurred on February 16, 2011, April 13, 2011, December 3, 2012, December 4, 2012, December 5, 2012 and February 1, 2013.

62. On March 15, 2013, shortly after Master MacLeod's ruling on the draft amended statement of claim and while the trial was still scheduled for September 2013, Allen-Vanguard served its expert's report (the "Low Report"), setting out the basis for its claim for damages. Attached as Exhibit "S" is Allen-Vanguard's expert's report, dated March 15, 2013.

The Adjournment

63. Following the amendments to Allen-Vanguard's statement of claim in the Allen-Vanguard Action and the delivery of the Low Report, the Offeree Shareholders determined that it was necessary to seek an adjournment of the trial. Attached at Exhibit "T" are the submissions made by the Offeree Shareholders in respect of their request to adjourn the trial.

64. Allen-Vanguard opposed the Offeree Shareholders' request for an adjournment and instead sought to proceed to trial in September 2013 notwithstanding the amended claim, recently delivered expert report and the various other outstanding pre-trial steps, which I have outlined below.

65. Master MacLeod's Order and Direction of May 30, 2013 concluded that the trial should be adjourned. He further stated:

- *...the amendment effects a fundamental change to the exposure of the offeree shareholders and it also adds issues that were either not before the court previously or which now attract enhanced significance.*
- *...it is now pleaded that the misrepresentations of Med-Eng and the completion of the purchase based on those misrepresentations caused Allen-Vanguard to spiral into insolvency. This potentially puts in issue the management of Allen-Vanguard, the financial situation of Allen-Vanguard and its other subsidiaries, subsequent events and the CCAA proceedings. Even though fraud and damages were previously pleaded, the offeree shareholders did not have to concern themselves with damages at large beyond the $40 million in the escrow fund.*
- *Given the disagreements that have already taken place over production and discovery and indeed the issues that remain outstanding it is inevitable there will be further time consuming motion activity before this case as now constituted can be tried.*
- *...it will be necessary to deal with the scope of additional productions. The remaining privilege issues regarding the outstanding productions must be resolved and remaining discoveries must be scheduled. The offeree shareholders must determine how to respond to the expert report.*

Attached as Exhibit "U" is the Order and Direction of May 30, 2013.

Remaining Necessary Pre-Trial Steps

66. I am informed by counsel that a number of pre-trial steps must be completed before the Actions are ready to proceed to trial. As set out below, these steps include further documentary production, examinations for discovery as well as several motions.

a) Documentary Production

67. I am informed by counsel that they anticipate that the amendments to the pleadings in the Allen-Vanguard Action will result in additional productions and that Master MacLeod stated in his Order and Direction, dated May 30, 2013:

> *...the offeree shareholders have persuaded me that there will be further production and discovery disputes necessitating motions and it will be impractical to hold the parties to the September dates.*

68. Master MacLeod, in an endorsement dated July 9, 2013, required the parties to serve revised affidavits of documents by August 23, 2013. Attached as Exhibit "V" is Master MacLeod's endorsement, dated July 9, 2013.

69. Counsel for the Offeree Shareholders wrote to counsel for Allen-Vanguard on August 6, 2013 to identify certain categories of documents which the Offeree Shareholders viewed as relevant to the amendments to the Allen-Vanguard Action. Attached at Exhibit "W" is a copy of Ms. Calina Ritchie's letter, dated August 6, 2013.

70. Both the Offeree Shareholders and Allen-Vanguard delivered additional productions by August 23, 2013. Allen-Vanguard produced 167 additional Schedule "A" documents. Attached at Exhibit "X" is a copy of Mr. Ian MacLeod's letter, dated August 23, 2013.

71. In his August 23, 2013 letter, Mr. MacLeod also set out Allen-Vanguard's position with respect to the Offeree Shareholder's request for fulsome production in relation to the amendments, as follows:

> *In addition, we are still reviewing the list of documents described in Ms. Ritchie's letter dated August 6, 2013 and will respond in due course as to whether we believe that the documents listed are relevant, whether they have already been produced, and whether the request is proportionate.*

72. I am informed by counsel that Allen-Vanguard has not since provided a substantive response in relation to the Offeree Shareholders' request for further productions.

b) Privilege Motion

73. A privilege motion was heard on September 21, 2011 before Master MacLeod. In that motion the Offeree Shareholders challenged the breadth of privilege claims being asserted by Allen-Vanguard.

74. In his reasons dated December 23, 2011, Master MacLeod concluded that Allen-Vanguard had "inappropriately asserted privilege over broad categories of documents including due diligence documents and virtually all communication with a host of legal advisors including in house counsel" and had waived any privilege attaching to documents relating to "due diligence." Attached as Exhibit "Y" are Master MacLeod's reasons, dated December 23, 2011.

75. Master MacLeod noted the difficulties in challenging several thousand claims of privilege, and contemplated that further work would be required by the parties to prepare the issue for more efficient adjudication.

76. Allen-Vanguard did produce some documents that had originally been listed in its Schedule "B". However, counsel to the Offeree Shareholders also informs me that Allen-Vanguard continues to claim privilege over approximately 4,649 documents.

77. I have been informed by counsel that a motion to challenge the ongoing claims of privilege of Allen-Vanguard was scheduled for December 10, 2013. I am further advised that, as a result of the CCAA proceedings and the resulting stay of proceedings involving the Applicant, this motion will not be proceeding on December 10, 2013.

c) Further Discovery

78. Notwithstanding Master MacLeod's May 30, 2013 statement that the amendments add issues that were either not before the court previously or now attract enhanced significance and his statement that the remaining discoveries must be scheduled, to date, no examinations for discovery have occurred with respect to either the amendments in the Allen-Vanguard Action, or with respect to the damages claims set out in the Low Report.

79. I am further informed by counsel that further discovery of Mr. Luxton was also contemplated in relation to other issues even prior to the amendments to in the Allen-Vanguard Action. In his endorsement, dated February 22, 2013, Master MacLeod indicated that "it would be helpful for the parties to have a mutual understanding about what discovery is necessary to complete the primary discovery of Mr. Luxton, what discovery is necessary to follow up on undertakings and what discovery is necessary because of the pleading amendments." Attached as Exhibit "Z" is Master MacLeod's endorsement, dated February 22, 2013.

d) Undertakings and Related Motions

80. I am advised by counsel that the Court had originally set aside February 19-20, 2013 for the hearing of motions relating to the outstanding undertakings and refusals relating to the examinations for discovery of Mr. Luxton and the Offeree Shareholders' representative. Counsel further advised me that these motions were adjourned, and that Allen-Vanguard's motion to amend its statement of claim was instead heard on February 19, 2013.

81. I am also informed by counsel that it is currently anticipated that a motion in respect of the outstanding undertakings and refusals relating to the examinations for discovery of Mr.

Luxton and the Offeree Shareholders' representatives will need to be scheduled prior to the trial of the Actions.

e) Re-Examination

82. Counsel has advised me that during the examinations for discovery of Mr. Luxton that occurred on or about January 31, 2013, Mr. Lederman informed counsel to the Offeree Shareholders that he intended to re-examine Mr. Luxton under Rule 34.11 of the *Rules of Civil Procedure*. I am informed that this has not yet taken place, nor has it been scheduled.

f) Mediation

83. Mediation, which is mandatory prior to the trial of an action in Ottawa, has not yet occurred. Mediation was originally scheduled to occur on April 8, 2013; however counsel to Allen-Vanguard indicated on March 11, 2013 that it was of the view that mediation was premature in light of the amendments and the pending appeal of Master MacLeod's reasons granting the amendments. The Offeree Shareholders consented to the proposed adjournment of the mediation on March 25, 2013 and the mediation has not, as of yet, been re-scheduled. Attached as Exhibit "AA" to this affidavit is an email from Mr. Ron Slaght to Mr. Conway dated March 11, 2013 and attached as Exhibit "BB" to this affidavit is an email from Mr. Conway to Mr. Slaght dated March 25, 2013.

g) Pre-Trial Conference

84. I am informed by counsel to the Offeree Shareholders that prior to the trial of an action, a pre-trial conference before a judge must occur. No pre-trial conference has occurred in the Actions, nor has a pre-trial conference been scheduled.

85. I am informed by counsel to the Offeree Shareholders that the trial in this matter was set down for up to 10 weeks, and that a new trial date has not yet been set. The scheduling of the trial will depend on the court's schedule as well as the availability of counsel.

Trial of Certain Issues Raised in Allen-Vanguard Action

86. Following the amendment to Allen-Vanguard's statement of claim, the Offeree Shareholders advised Allen-Vanguard and the Court in Ottawa of their intention of bringing a motion for summary judgment. That summary judgment motion would have been based on the same issues contemplated for the mini-trial.

SWORN before me at the City of Montreal,)
in the Province of Quebec, this 24th day)
of November, 2013.)
)

A Commissioner for taking oaths

This is Exhibit "**A**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

MacLeod, Master Calum (SCJ)

Subject:	08-CV-43188 & 08-cv-43544 L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al c/c
Location:	Case Conference with Master MacLeod
Start:	Fri 11/09/2009 11:00 AM
End:	Fri 11/09/2009 11:30 AM
Recurrence:	(none)

Thomas Conway
(613) 569-8668

SUPERIOR COURT OF JUSTICE

Tom Conway
Eli S. Lederman

ENDORSEMENT:

1] These are paralell actions commenced by the parties against each other and having to do with an escrow fund. There is also a related action against Allen-Vanguard. That is action number 08-CV41899 (Timmis v. Allen-Vanguard et. al.) The plaintiff is represented by Mr. Rubinoff in that action.

2] Computershare is named only as a stakeholder and has not been required to defend either actions.

3] Allen-Vanguard asserts that as a result of certain misrepresentations the former shareholders are not entitled to the escrow funds.

4] At stake is $40 million. The parties have selected a mediator.

5] Counsel have had various discussions to date. Amongst other things, the parties have agreed to make production in electronic form in Summation ready format.

6] It is agreed that a timetable is required and court intervention in the form of active case management will be helpful.

7] **The court therefore orders as follows:**

a) The parties are to complete production by the end of this year. Although there are three plaintiffs, the plaintiffs may serve affidavits of documents referring to a consolidated set of schedules. Counsel may also modify the form of the affidavit of documents by agreement to accommodate the production needs of this action.

b) There will be a further case conference on February 9th, 2010 at 3:00pm. The times under Rule 24.1 and Rule 48 are extended to dates to be set at the case conference. If counsel agree it is useful then a case conference may also be held in the Timmis action at the same time.

c) This order is effective without further formality.

September 11th, 2009

Master Calum MacLeod

Received Time Sep. 11. 2009 12:09PM No. 0628

This is Exhibit "**B**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

COURT FILE NO.: 08-43188
08-43544
DATE: February 17, 2010

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L'ABBE et al v. ALLEN-VANGUARD CORPORATION et al
ALLEN-VANGUARD CORPORATION v. L'ABBE et al

BEFORE: MASTER MACLEOD

COUNSEL: Eli Lederman *for the defendants, "Allen-Vanguard et. al."*
Ph: (416) 865-9500 Fax: (416) 865-9010

Thomas G. Conway *for the plaintiffs, "L'Abbé et. al."*
Ph: (613) 780-2011 Fax: (613) 569-8668

ENDORSEMENT (at Case Conference)

1] This was a continuation of the case conference started on February 9th, 2010.

2] The main issue is the time that will be required for the defendants to complete documentary production. Mr. Lederman has been explaining the process for identifying all relevant documents from e-mails and other electronic sources under the control of roughly 14 custodians. There are upwards of 200,000 documents.

3] It was not possible to reach agreement at the case conference on starting production of documents in series or in batches. The plaintiffs ask that the defendants immediately produce the core documents on which the defendants rely in support of the allegation there were material misrepresentations. For reasons that I am not able to understand without greater precision concerning those documents, Mr. Lederman believes it is unreasonable and unjust to make such an order before he has finished the process of document review.

4] In the circumstances and in the absence of a properly supported motion, I am not prepared to make that order over the objections of the defendants at this time. Nevertheless the request to produce the key documents and the refusal to do so, the question whether or not the methodology and pace of documentary production has been reasonable, and the failure to agree on a production plan are all issues that may be revisited by the court if necessary. In particular this request and this response may be reviewed by the court at a later date when questions arise in connection with costs and if the question of reasonable and appropriate procedural collaboration is in issue on a motion or at trial.

5] I encourage counsel to consider how they might resolve these procedural issues in a less adversarial manner. It would be unfortunate if the process of production and discovery has to be interrupted to deal with motions.

6] **The Court therefore orders as follows:**

a. The defendants are to produce all documents identified as relevant and not privileged by the end of April, 2010.

b. The parties are to agree on dates in June to get started on discoveries and are to agree on who is to be discovered and on what issues.

c. The defendants are to advise the plaintiffs of the availability of counsel and witnesses for the other discovery dates proposed by the plaintiffs between June and October, 2010. This will not be taken as either agreement or leave for 80 days of discovery.

d. There will be a further case conference in May on a date to be set by the registrar.

e. This order is effective without further formality.

Master Calum MacLeod

Date: February 17, 2010

This is Exhibit "**C**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

LENCZNER SLAGHT BARRISTERS

Direct Line: (416) 865-3555
Direct Fax: (416) 865-2872
Email: eledennan@litigate.com

April 30, 2010

VIA FACSIMILE

Mr. Thomas G. Conway
Cavanagh Williams Conway Baxter LLP
1111 Prince of Wales Drive
Suite 401
Ottawa, ON
K2C 3T2

Dear Mr. Conway:

Re: Allen-Vanguard Corporation v. Richard L'Abbe et al.
Court File Nos. 08-CV-43544 and 08-CV-43188
Our Matter No. 39177

We have now completed the vast majority of our documentary review and are in a position to deliver our clients' draft Affidavit of Documents and Schedule "A" productions with respect to the documents which have been identified to date. We confirm that our Schedule "A" productions at present total just over 3,200 documents. In addition, we have an additional 1,700 documents which comprise the data room which had been created by Med-Eng Systems Inc. at the time of the Share Purchase Transaction.

There are still a handful of Custodians whose documents need to be reviewed as well as the documents from sources other than our clients, such as our client's financial and legal advisors. We are continuing the review process and expect to complete this in the near future. We have nevertheless prepared our draft Affidavit of Documents and Schedule "A" productions based on the documents reviewed to date.

In light of our pending motion regarding the conflict associated with your firm's representation of the Offeree Shareholders in this matter, we are of the view that this issue must be determined before taking any further steps in the litigation, including delivering our Affidavit of Documents and Schedule "A" productions. This is also consistent with our position at the Case Conference and Master MacLeod's Endorsement dated April 7, 2010.

Mr. Thomas G. Conway April 30, 2010

Indeed, if we are successful on the motion, then new counsel will need to be retained for the Offeree Shareholders and we will deal with new counsel accordingly.

Yours very truly,

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP

Per:

Eli S. Lederman

ESL/tr

cc: Ronald G. Slaght, Q.C.

This is Exhibit "**D**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3555
Email: elederman@litigate.com

November 14, 2008

VIA FACSIMILE

Mr. Thomas G. Conway
McCarthy Tétrault
The Chambers
Suite 1400, 40 Elgin Street
Ottawa ON K1P 5K6

Dear Mr. Conway:

Re: Indemnification pursuant to the Share Purchase Agreement dated August 3, 2007 and Escrow Agreement dated September 17, 2007
Our File No. 38291

I am writing further to your letter dated October 29, 2008.

As the former solicitors to Med-Eng Systems Inc. ("MES"), McCarthy Tétrault owes a continuing duty of loyalty and good faith to MES. These duties include a duty to avoid conflicting interests, a duty of commitment to MES and its causes and a duty of candour on matters relevant to McCarthy Tétrault's retainers.

McCarthy Tétrault's purported representation of the Offeree Shareholders places the firm in a position of direct conflict with these fiduciary obligations. Given that Allen-Vanguard acquired all of the outstanding shares of MES, it is entitled to have unfettered access to MES's records, including those in the possession of its former legal advisors. Allen-Vanguard is further entitled to obtain any information from MES's legal advisors and is entitled to rely upon McCarthy Tétrault in assisting it in pursuing its claims against the Offeree Shareholders.

In addition, in light of the admissions contained in your letter with respect to your firm's possession of MES's documents, someone from McCarthy Tétrault will likely need to testify in relation to these documents in any event. This represents an additional conflict posed by McCarthy's representation of the Offeree Shareholders.

Mr. Thomas G. Conway November 14, 2008

We would therefore respectfully request that you reconsider your position. Otherwise, we will raise the involvement of your firm in these matters as and when necessary and we reserve all rights to bring a motion to have McCarthy Tétrault disqualified from acting on behalf of the Offeree Shareholders in this matter.

Since dictating this letter, I have become aware of a Statement of Claim on which McCarthy Tétrault is identified as the solicitors of record on behalf of the Offeree Shareholders. As a result, your firm is in a position of direct conflict and we insist that McCarthy Tétrault removes itself immediately. We will otherwise bring a motion to have the firm removed from the record.

Yours very truly,

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP

Per:

Eli S. Lederman

ESL:le/jb

cc: Ronald G. Slaght, Q.C.

This is Exhibit "**E**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

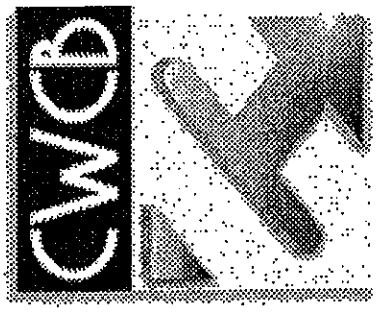
A Commissioner for Taking Affidavits

Doreen Navarro

From: Doreen Navarro
Sent: October-27-10 12:20 PM
To: elederman@litigate.com
Cc: Thomas G. Conway; Chris Hutchison; Calina Ritchie
Subject: 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
Attachments: 2010.10.27. Letter to Lederman.pdf

Good afternoon,

Please see attached.



Doreen Navarro
Legal Assistant to Thomas G. Conway and Christopher J. Hutchison
Cavanagh Williams Conway Baxter LLP
Litigation Counsel/Boutique de litige
401-1111 Prince of Wales Drive, Ottawa ON K2C 3T2
Tel.: 613.780.2015 (direct) | Fax: 613.569.8668
dnavarro@cwcb-law.com | www.cwcb-law.com

Cavanagh · Williams · Conway · Baxter LLP

Litigation Counsel / Boutique de litige

Thomas G. Conway
Direct Line: 613.780.2011
E-mail:tconway@cwcb-law.com

Assistant: Doreen Navarro
Direct Line: 613.780.2015
E-mail:dnavarro@cwcb-law.com

October 27, 2010

Via Email

Mr. Eli Lederman
Lenczner Slaght Royce Smith Griffin LLP
Barristers
130 Adelaide Street West, Suite 2600
Toronto ON M5H 3P5

Dear Mr. Lederman:

RE: RICHARD L'ABBÉ ET AL. V. ALLEN-VANGUARD CORPORATION, ET AL.; CFN. 08-CV-43188
ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

As you are aware, the examinations for discovery in this matter are scheduled to commence in less than two weeks. Unfortunately, a number of issues remain outstanding.

First and foremost, your clients, by order of Master MacLeod, dated July 12th, 2010, were under an obligation to produce their affidavit of documents by August 12, 2010. Regrettably, your clients have not yet produced their affidavit of documents,or their list of schedule "B" documents. On August 11, 2010, you advised us that your clients' list of schedule "B" documents would be forwarded to us in short order, and we provided a further indulgence. We brought this issue to your attention on September 7, 2010. Despite this reminder, your clients have failed to abide by the court order and we have not yet received your clients' list of schedule "B" documents.

Please produceboth your clients' affidavit and list of schedule "B" documents by October 29, 2010, failing which we will be forced to bring your clients' non-compliance with Master MacLeod's July 12, 2010 order to his attention at the case conference scheduled for November 3, 2010.

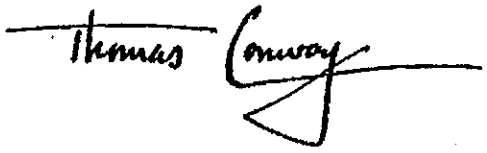
We would also like to raise some concerns regarding the sufficiency of your clients' schedule "A" productions. Pursuant to the *Rules of Civil Procedure*, your clients are under an obligation to produce all non-privileged documents relevant to any matter in issue in this litigation. Based on our review of the documents produced to date, it is apparentthat there are likely numerous relevant documents missing from your clients' productions; namely all relevant documents in the possession and control of Allen-Vanguard Corporation. The documents produced do not include any contemporaneous internal communications from Allen-Vanguard Corporation nor any documents of the sort that would normally be generated internally before, during and after a transaction of this magnitude. As with the issues referenced above, we intend to take this matter up with Master MacLeod at the November 3, 2010 case conference unless you can provide an explanation for the identified deficiencies prior to that date.

We have now completed our review of your schedule "A" productions. We can confirm that most of the documents produced by your clients are not relevant to the matters in issue in this litigation. We have spent considerable time and resources reviewing the 5000+ documents produced by your clients and we would like to take this opportunity to put you and your clients on notice that we intend to raise this issue, and the impact it should have on any future cost awards, with the court at the appropriate time.

Finally, we would like to reiterate that we do not consider any of the documents produced to contain information so sensitive or confidential so as to justify a confidentiality order or a sealing order. As you have not moved to bring the matter of a confidentiality order before the court, we do not consider ourselves bound by any constraints other than the deemed undertaking rule.

We look forward to your prompt response to the issues raised in this letter.

Yours very truly,



Thomas G. Conway

/dn

This is Exhibit "**F**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

Doreen Navarro

From: Thomas G. Conway
Sent: November-04-10 11:48 AM
To: Eli Lederman
Cc: Ronald G. Slaght; Chris Hutchison; Calina Ritchie; Doreen Navarro
Subject: Richard L'Abbé et al. v. Allen-Vanguard Corporation et al., Ontario Superior Court File No. 08-CV-43188;

Eli,

As discussed by telephone earlier this morning, I agree that the dates for the reschedule discovery are not ideal, but unfortunately these are the only dates that I have open in December and most of January.

I confirm that you will be delivering your clients' sworn affidavit of documents before the commencement of David Luxton's examination. We will arrange to have affidavits of documents sworn on our side. As I indicated, the affidavits of documents will be virtually identical. We should be able to separate any individual documents that came only from one of the Offeree Shareholders. For example, the legal opinions prepared for Schroders on which cross-examination already took place on the recusal motions would not have been shared by the other Offeree Shareholders.

I have also brought to your attention, as did Chris yesterday during the Case Conference, the apparent paucity of documents following the closing date of the transaction. It may be that there are no relevant documents following the closing, but this seems curious to us since many of the allegations in the AVC pleadings relate to alleged misrepresentations or breaches discovered after the closing. You are aware of this issue, and you will be reviewing it with your clients' representatives. If other documents are uncovered, it will be important for us to receive those documents as soon as possible and with sufficient time to review them prior to the commencement of David Luxton's examination.

Finally, we hope that Mr. Luxton will have a productive and safe trip to Afghanistan next week.

Regards,

Tom

Thomas G. Conway
Tel.: 613.780.2011 (direct) | Fax: 613.569.8668
tconway@cwcb-law.com | www.cwcb-law.com

From: Eli Lederman [mailto:elederman@litigate.com]
Sent: Thursday, November 04, 2010 10:49 AM
To: Thomas G. Conway
Cc: Ronald G. Slaght
Subject: Re:

Tom - although not ideal given the proximity to the holidays, David Luxton has confirmed that we can proceed on the dates you have proposed (i.e Dec 13, 14, 21, 22 and 23). Please confirm that this is acceptable and that you will now consent to amend the discovery schedule accordingly. Thanks.

---

61 Sent from my BlackBerry Wireless Handheld

From: Thomas G. Conway [mailto:TConway@cwcb-law.com]
Sent: Wednesday, November 03, 2010 05:40 PM
To: Eli Lederman
Cc: Ronald G. Slaght
Subject: RE:

Eli,

Thanks for your letter.

I understand that Chris and you had some discussions about the dates for the rescheduling.

To be clear, we are not in a position to consent to an adjournment unless we get the new dates settled this week.

We have proposed new dates. We need to hear back from you on those dates. I cannot do the discoveries in the first week of January.

Thomas G. Conway
Tel.: 613.780.2011 (direct) | Fax: 613.569.8668
tconway@cwcb-law.com | www.cwcb-law.com

From: Tanya Rumo [mailto:trumo@litigate.com] **On Behalf Of** Eli Lederman
Sent: Wednesday, November 03, 2010 2:24 PM
To: Thomas G. Conway
Cc: Ronald G. Slaght; Eli Lederman
Subject:

Please see the attached correspondence. Thanks.

<<Ltr to Conway re Luxton discovery.pdf>>

Eli Lederman
Lenczner Slaght
2600-130 Adelaide Street West
Toronto, Ontario M5H 3P5
Tel: (416) 865-3555 Fax: (416) 865-9010
elederman@litigate.com www.litigate.com

This is Exhibit "**G**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

LENCZNER SLAGHT BARRISTERS

RECEIVED
NOV 19 2010

Direct Line: (416) 865-3555
Direct Fax: (416) 865-2872
Email: elederman@litigate.com

November 19, 2010

VIA FACSIMILE

Mr. Thomas G. Conway
Cavanagh Williams Conway Baxter LLP
1111 Prince of Wales Dr.
Suite 401
Ottawa, Ontario
K2C 3T2

Dear Mr. Conway:

Re: Allen-Vanguard Corporation et al. ats Richard L'Abbé et al.
Court File Nos. 08-CV-43544 and 08-CV-43188
Our Matter No. 39177

At the Case Conference before Master MacLeod on November 3, 2010, Mr. Hutchison advised that the productions which we had made to date did not seem to include a number of documents which would be relevant to these proceedings. We were in the course of continuing our review and we also adjusted our parameters on our search tools to determine whether there were any relevant documents which were not caught in our first batches of documentary production.

We have identified a significant number of documents which may be potentially relevant during this timeframe and we are reviewing these documents as quickly as possible to determine relevance and/or privilege. Unfortunately, we do not yet know the precise number of documents still to be produced, but we obviously appreciate that you will require time to review these and conduct oral discovery on them.

We are expecting to deliver these additional documents to you as quickly as possible and anticipate that we will be in a position to deliver a substantial portion of them by November 24, 2010. However, we still believe there may be additional documents to come.

Obviously, we are prepared to proceed with the Examinations for Discovery based on the documentary disclosure which has been made to date, while recognizing that you may request additional time to review and examine these additional documents. On the other hand, you may wish to defer the Examinations until you have had an opportunity to review the latest set of productions which includes email traffic of Mr. Luxton and we will accommodate any request to modify the Discovery Timetable accordingly.

Mr. Thomas G. Conway November 19, 2010

Unless we hear from you, we will continue to proceed on the basis that we will commence the Examinations for Discovery during the week of November 29, 2010 and we will also continue in our efforts to get to you these additional productions as quickly as possible.

Yours very truly,

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP

Per:

Eli S. Lederman

ESL/tr

cc: Ronald G. Slaght, Q.C.

This is Exhibit "**H**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

LENCZNER SLAGHT

BARRISTERS

Direct Line: (416) 865-3555
Direct Fax: (416) 865-2872
Email: elederman@litigate.com

November 23, 2010

VIA EMAIL

Mr. Thomas G. Conway
Cavanagh Williams Conway Baxter LLP
1111 Prince of Wales Dr.
Suite 401
Ottawa, ON K2C 3T2

Dear Mr. Conway:

Re: Allen-Vanguard Corporation et al. ats Richard L'Abbé et al.
Court File Nos. 08-CV-43544 and 08-CV-43188
Our Matter No. 39177

Thank you for your letter dated November 23, 2010.

We have always advised that we were continuing our documentary review and that we would continue to make additional disclosure as we discovered additional relevant documents. As you know, we originally commenced this process with 290,000 documents from which we produced 3,382 relevant documents, plus an additional 1,856 documents consisting of the documents contained in the Med-Eng dataroom.

During the course of our preparation for Examinations for Discovery, we noted that the documents which had been produced did not appear to contain many emails from Mr. Luxton and Mr. Ryan, who were directly involved in the negotiation and the execution of the Share Purchase Transaction. In addition, we did not see any of the Board materials which would have reflected our client's consideration of the acquisition of Med-Eng Systems Inc.

This inquiry caused us to return to the 290,000 documents to ascertain whether all of these documents had been captured in the relevancy review. As part of that process, we discovered that these documents were not contained in the server which had been sent to our document management service provider. We immediately made inquiries as to why these documents were not part of that collection of documents and we were advised that the additional emails are PST files which had not been integrated into the server. As a result, they were not captured within the 290,000 documents contained on the server. We have now obtained the additional PST files which needed to be extracted manually from local drives and we are reviewing these. In addition, we have located hard copy files and we have had them electronically coded for production.

We therefore respond to your questions as follows:

Mr. Thomas G. Conway

November 23, 2010

1. We recently received approximately 10,000 additional documents, including attachments, which we have been reviewing in an effort to get as many of the relevant documents to you as quickly as possible.

2. We are expecting to deliver 2,300 additional records tomorrow, which we have identified to date, as being relevant and not privileged.

3. All of these documents are being reviewed by counsel for relevancy and privilege.

4. As described above, these documents are in addition to the 290,000 documents which had been originally captured for review.

5. The explanation for the late production of these documents is described above.

6. You are obviously permitted to cross-examine on the Affidavit of Documents provided that we are also permitted to do the same.

7. As described above, the additional documents consist of many relevant emails pertaining to the negotiation and execution of the Share Purchase Transaction and further relate to communications following the close of the Transaction. As described above, there are approximately 2,300 additional documents which we have identified as being relevant, plus we still need to review the remaining approximately 7,700 documents for the purposes of relevance and privilege. We do not yet know how many of these documents are relevant.

8. We will of course provide a sworn Affidavit of Documents on behalf of AVC and AVTI on the terms set out in our correspondence dated October 29, 2010.

9. We will not object to entering into a revised schedule for the Examinations for Discovery and a revised Discovery Plan and we will further agree that you may complete the Examinations for Discovery of our clients before we conduct our examination of the Offeree Shareholders.

Given the various arrangements which I need to make, I would be grateful if we could have a telephone call this afternoon to determine whether or not you intend to proceed with the Examinations for Discovery next week.

Yours very truly,

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP

Per:

Eli S. Lederman

ESL/tr
cc: Ronald G. Slaght, Q.C.

This is Exhibit "I" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

Court File No. 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD.,
SCHRODER VENTURE MANAGERS (CANADA) LIMITED
In its capacity as general partner of each of
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3,
Schroeder Canadian Buy-Out Fund II Limited Partnership CLP4,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6 and
SCHRODER VENTURES HOLDING LIMITED,
In its capacity as general partner of
Schroeder Canadian Buy-Out Fund II UKLP, and on behalf of
Schroeder Canadian Buy-Out Fund II Coinvestment Scheme and
SVG Capital plc (formally, Schroeder Ventures International Investment Trust plc)

Plaintiffs

- and -

ALLEN-VANGUARD CORPORATION,
ALLEN-VANGUARD TECHNOLOGIES INC. and
COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

CASE CONFENCE FORM

REQUESTED BY: Thomas G. Conway, Calina N. Ritchie and Christopher J. Hutchison,
Cavanagh Williams Conway Baxter LLP
Lawyers for the Plaintiffs, Richard L'Abbé, 1062455 Ontario Inc.,
Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada)
Limited, and Schroder Ventures Holding Limited

Is this request on behalf of all parties? ☐ Yes ■ No

PROPOSED METHOD OF PROCEEDING:
[ ] By telephone (*Arrangements to be made 24 hours prior; to be arranged by*_____)
[x] By attendance on Tuesday, February 22, 2011 at 10:30a.m., as scheduled by the Court
[ ] In writing (For simple consent matters only.)

Status of the Case:

1. At stake in this action is $40,000,000.00 currently being held in escrow by the defendant Computershare Trust Company of Canada (the "escrow fund"), which is owed to the plaintiffs and other former shareholders of Med-Eng Systems Inc. (collectively "former Med-Eng shareholders") as part of the purchase price agreed to by Allen-Vanguard in a Share Purchase Agreement, dated August 3, 2007.
2. Allen-Vanguard claims the entire escrow fund as a result of alleged misrepresentations made by the plaintiffs in this action. Allen-Vanguard's claim against the escrow fund resulted in the commencement of this action and a parallel action, Court File No. 08-CV-43544.
3. Pleadings in both actions have been closed for over two years.
4. At a case conference held on September 11, 2009 Case Management Master MacLeod endorsed a case management timetable and ordered completion of productions by the end of 2009. The plaintiffs have complied by providing counsel for Allen-Vanguard with drafts of Schedule A and B of their affidavit of documents on December 30, 2009 and soon thereafter produced all Schedule A documents electronically. Allen-Vanguard, however, breached this case management order and subsequent orders requiring production of Allen-Vanguard's

affidavit of documents and Schedule A productions by April 30, 2010 and August 12, 2010 respectively.

5. A year after productions were to have been completed pursuant to several case management orders, Allen-Vanguard continues to produce documents. In addition to producing over 1,200 additional documents on November 25, 2010 and over 2,600 additional documents on February 2, 2011, counsel for Allen-Vanguard has indicated that further productions are forthcoming. Allen-Vanguard has not specified a date for the delivery of additional documents.

6. On February 14, 2011, the day before examinations for discovery of Allen-Vanguard's representative were to continue, Allen-Vanguard served a revised Schedule B to its draft affidavit of documents. The schedule is 672 pages in length. Allen-Vanguard does not specify the grounds of privilege for any of the documents. Counsel for Allen-Vanguard advised on February 17, 2011 that the document purporting to be Schedule B to Allen-Vanguard's affidavit of documents contained approximately 9,000 documents.

7. Counsel for the Offeree Shareholders anticipates the need for a motion dealing with the privilege claims made by Allen-Vanguard and requests that the availability of motion dates and counsels' respective availability be addressed at this case conference.

Further Productions to Come

8. By way of letter, dated February 3, 2011 (Attached as Schedule B hereto), counsel for Allen-Vanguard confirmed "we are still to provide a further batch of documents as soon as we can complete the review of Mr. Luxton's old laptop computer." It is unclear exactly when Allen-Vanguard first learned of the existence of potentially relevant documents on Mr. Luxton's

"old laptop computer", but it was at least two months before receipt of counsel's letter, as the Offeree Shareholders learned of the laptop's existence on December 1, 2010 from counsel to Allen-Vanguard, on the first day of the examination for discovery of Allen-Vanguard's representative. Allen-Vanguard has had ample time to recover and review the documents contained on this computer, but have still not produce the documents and have not even estimated when those documents will be delivered.

Examinations for Discovery Completed to Date

9. Despite the ongoing issues with Allen-Vanguard's productions, six and a half days of discovery of David Luxton, Allen-Vanguard's representative, have been completed to date. Mr. Luxton was examined for full days on December 1, 2, and 13, 2010, a half day on December 14, 2010, and three full days from February 15-17, 2011.

Further Discovery of Allen-Vanguard

10. An additional three days of discovery of Mr. Luxton are currently scheduled to occur from February 28 to March 2, 2011. As a result of Allen-Vanguard's repeated late delivery of documents, counsel for the Offeree Shareholders is of the view that it will require additional time to examine Allen-Vanguard's representative beyond the days currently scheduled. Counsel for Allen-Vanguard has refused to agree to further discovery of its clients' representative, despite acknowledging that it still intends to produce more documents.

11. At issue in these actions is $40,000,000.00 and Allen-Vanguard has produced thousands of allegedly relevant documents, with the promise of more to come, bringing the total very close to or more than 10,000 documents. It is to be expected that a significant amount of discovery will be required in order to cover the numerous complex allegations made by

Allen-Vanguard. Regardless of the ongoing production of batches of thousands of documents by Allen-Vanguard, it was always contemplated that further discovery may be necessary.

12. By Order of Master MacLeod, dated July 12, 2010, in the herein action, discovery of the Offeree Shareholders was scheduled to occur during the week of February 28 and March 7, 2011. As a result of various re-scheduling requests by Allen-Vanguard, that schedule has been amended significantly. As it stands, discovery of Allen-Vanguard is scheduled to continue from February 28 until March 2, 2011. In accordance with this Court's Order of July 12, 2010, counsel for both parties is available from March 3 to March 11, 2011. Counsel to the Offeree Shareholders is of the view that discovery of Allen-Vanguard's representative ought to continue on March 3, 4, 7, 8, and 11, 2011, in the interests of the efficient and timely administration of justice. In addition, the Offeree Shareholders request an additional five days of discovery of Mr. Luxton, to occur after the Offeree Shareholders' motion regarding privilege claimed by Allen-Vanguard over the documents currently listed in Schedule B to its affidavit of documents.

Completion of Discovery of Allen-Vanguard

13. Counsel for the Offeree Shareholders is of the view, which was accepted by Allen-Vanguard's counsel in correspondence dated November 23, 2010 (Attached as Schedule C hereto), that it is entitled to complete discovery of Allen-Vanguard prior to the commencement of discovery of the Offeree Shareholders. Counsel for Allen-Vanguard has retroactively attempted to qualify that concession, even in the face of its promise to deliver further documents at an unspecified date.

14. The Offeree Shareholders request that this Court endorse a timetable requiring the completion of discovery of Allen-Vanguard, including its fulfillment of all undertakings, prior to the commencement of examinations for discovery of the Offeree Shareholders.

Trial Date

15. In light of the magnitude and complexity of these proceedings, as well as the ongoing delays and repeated breaches of case management orders and timetables by Allen-Vanguard, the Offeree Shareholders request that this matter be set down for trial now for six weeks at such a time in the future that the parties will have ample opportunity to complete all necessary pre-trial steps in a timely fashion.

16. While such a request is procedurally unique, it is apparent that these actions will proceed to trial and that considerable judicial resources will be necessary in order to accommodate the trial of these actions when they do. As such, rather than allowing pre-trial matters to drag on for years only to then wait additional years until sufficient judicial resources are available, the Offeree Shareholders submit that setting a trial date in the future to which both parties can work towards promotes the timely administration of justice and the efficient use of judicial resources.

Enhanced Case Management

17. In addition, or in the alternative, the Offeree Shareholders request that regular case conferences be scheduled in these actions, such that Master MacLeod can actively assist the parties resolving procedural disputes that arise along the way. Monthly or bi-monthly case conferences will allow for the swift resolution of procedural issues and if the parties agree that no such issues exist at the time, the case conference in question can be cancelled on

consent, by way of notice to the Case Management office two weeks in advance of the scheduled case conference.

Timetable

18. Rule 3.04(4) of the *Rules of Civil Procedure* states that if a party fails to comply with a timetable, a judge or case management master may, on any other party's motion, make an order that is just.

19. Rule 77.10(1) of the *Rules of Civil Procedure* states that where a party fails to comply with a time requirement established by the rules a case management master may establish or amend a timetable and order the party to comply with it and order the party to pay costs.

20. The Offeree Shareholders ask that this Court endorse a timetable as set out at Schedule A to this case conference form.

Purpose of the Case Conference:

☐ Identification of issues
☐ Explore methods to resolve contested issues
■ Create a timetable for the proceeding
☐ Review and amend the timetable of all parties
☐ To obtain an order on consent of all parties
■ Other procedural matter

1. An Order to set the following timetable: See attached Schedule "A"

The parties have consented to the following order subject to court approval (for case conference in writing):

n/a

If you are requesting extension of mediation on consent please indicate how the request meets the criteria in rule 24.1.09(2):

n/a

DISPOSITION (to be completed by the master). [ ] This court orders as follows:

This order is effective without further formality.

_____

Date:
Master Calum MacLeod

SCHEDULE 'A'
to the Case Conference Form dated February 18, 2011

In light of the considerable delays that have occurred thus far in this litigation, the Offeree Shareholders propose the following timetable to ensure an expeditious and just determination of the issues in these proceedings.

Proposed Timetable

Event	Date
Examinations for discovery of David Luxton	*February 28, 2011, March 1-2, 2011 (confirmed)*
Further examinations for discovery of David Luxton	March 3, 4, 7, 8 and 11, 2011
Offeree Shareholders' motion to strike	*March 10, 2011 (confirmed)*
Delivery of AVC's answers to all undertakings*	May 2, 2011
Offeree Shareholders' motion regarding AVC's improper claims of privilege*	May 2011
Further examinations for discovery of David Luxton*	5 days in June 2011
Delivery of AVC's answers to all undertakings*	45 days from completion of examinations for discovery of David Luxton
Examinations for discovery of the Offeree Shareholders' representatives*	August/September 2011
Delivery of the Offeree Shareholders' answers to undertakings*	45 days from completion of examinations for discovery of the Offeree Shareholders
Mediation*	November/December 2011
Pre-Trial Conference*	January 2012
Trial*	March/April 2012

*Only if Allen-Vanguard Corporation's statement of claim in Court File No. 08-CV-43544 and statement of defence in Court File No. 08-CV-43188 are not struck following the hearing of the motion scheduled for March 10, 2011.

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and
on behalf of
SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and
SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

CASE CONFENCE FORM

REQUESTED BY: Thomas G. Conway and Christopher J. Hutchison,
Cavanagh Williams Conway Baxter LLP
Lawyers for the Defendants, Richard L'Abbé, 1062455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited, and Schroder Ventures Holding Limited

Is this request on behalf of all parties? Yes■ No ☐

PROPOSED METHOD OF PROCEEDING:

[] By telephone (*Arrangements to be made 24 hours prior; to be arranged by*_____)
[x] By attendance on Wednesday, May 4, 2011 at 9:30a.m.
[]In writing (For simple consent matters only.)

Status of the Case:

1. This action, commenced over two years ago, has been delayed considerably from the outset.

2. While the defendants ("the Offeree Shareholders") are nearing completion of their examinations for discovery of the plaintiff's representative, this stage in the litigation has only been reached through

Purpose of the Case Conference:

☐ Identification of issues
☐ Explore methods to resolve contested issues
■ Create a timetable for the proceeding
☐ Review and amend the timetable of all parties
☐ To obtain an order on consent of all parties
■ Other procedural matter

1. The Offeree Shareholders ask that this matter be set down for trial and that a timetable be set for the completion of all pre-trial steps.

2. Attached as Schedule A to this case conference form is the Offeree Shareholders' proposed timetable, setting out the number of days before trial by which each pre-trial event must be completed.

3. The schedule attached to this form is drafted based on the assumption that the Court has the necessary judicial resources to accommodate a six-week trial, beginning in the Fall of 2012. The schedule provided lists suggested dates by which each step must be completed, but also lists the number of days prior to trial at each stage, in the event that it is not possible for trial to be set down beginning in September of 2012.

4. If this matter is heard from September 10, 2012 until October 19, 2012, as proposed by the Offeree Shareholders, it will have taken approximately 4 years from the commencement of this action until its adjudication. Without establishing a timetable at this time, to which the parties can and must adhere to, further delay is a certainty.

5. In addition to setting this matter down for trial and establishing a timetable to be adhered to by the parties, the Offeree Shareholders request that the parties address the issue of scheduling the plaintiff's motion to examine non-parties, raised in Mr. Lederman's letter to Master MacLeod dated April 26, 2011. Further to Mr. Conway's letter to Master MacLeod dated April 29, 2011, counsel to the non-parties is available to attend on this case conference for the purpose of scheduling the motion.

The parties have consented to the following order subject to court approval (for case conference in writing):

n/a

If you are requesting extension of mediation on consent please indicate how the request meets the criteria in rule 24.1.09(2):

n/a

DISPOSITION (to be completed by the master).

This court orders as follows:

This order is effective without further formality.

_____

Date:
Case Management Master Calum MacLeod

SCHEDULE 'A'
to the Case Conference Form dated May 2, 2011

In light of the considerable delays that have occurred thus far in this litigation, the Offeree Shareholders propose the following timetable to ensure an expeditious and just determination of the issues in these proceedings. The dates provided are estimates based on the assumption that a trial date would be set down for September 2012.

Proposed Timetable

Event	Timing in Relation to Trial
Completion of examinations for discovery of Allen-Vanguard, including fulfilment of all undertakings	9 months prior to commencement of trial (December 30, 2011)
Completion of examinations for discovery of the Offeree Shareholders' representatives	160 days prior to commencement of trial (March 31, 2012)
Fulfilment of all undertakings arising from examinations for discovery of the Offeree Shareholders	120 days prior to commencement of trial (May 11, 2012)
Mediation	At least 10 days prior to pre-trial conference (May 18, 2012)
Pre-Trial Conference	At least 90 days prior to commencement of trial (May 31, 2012)
Trial (assuming a six-week trial)	September 10, 2012 – October 19, 2012

* * * Communication Result Report (May. 2. 2011 10:45AM) * * *

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Date/Time: May. 2. 2011 10:45AM

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Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

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Cavanagh Williams Conway Baxter LLP

Fax

To: Ms. Kelly Estabrooks — Fax: (613) 239-1310
For Case Management Master MacLeod

Date: May 2, 2011 — Pages: 7 (inc. cover page)

Re: Court File Nos. 08-CV-43109 & 08-CV-43544

From: Thomas G. Conway — Matter: 1257-001

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

This is Exhibit "J" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

Cavanagh · Williams · Conway · Baxter LLP
Litigation Counsel / Boutique de litige

Thomas G. Conway
Direct Line: 613.780.2011
E-mail: tconway@cwcb-law.com

Assistant: Doreen Navarro
Direct Line: 613.780.2015
E-mail: dnavarro@cwcb-law.com

May 2, 2011

VIA FAX: (613) 239-1310

Case Management Centre
Superior Court of Justice
161 Elgin Street, Room 5022
Ottawa ON K2P 2K1

Attention: Case Management Master Calum MacLeod

Dear Master MacLeod:

RE: RICHARD L'ABBÉ, ET AL. V. ALLEN-VANGUARD CORPORATION, ET AL.; CFN. 08-CV-43188
ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

Enclosed please find the defendants' case conference form for the case conference scheduled before you on Wednesday, May 4, 2011 at 9:30a.m.

Yours very truly,

Thomas G. Conway

/dn

Enc.

cc. Eli Lederman (via email)

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and
on behalf of
SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and
SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

CASE CONFENCE FORM

REQUESTED BY: Thomas G. Conway and Christopher J. Hutchison,
Cavanagh Williams Conway Baxter LLP
Lawyers for the Defendants, Richard L'Abbé, 1062455 Ontario Inc.,
Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada)
Limited, and Schroder Ventures Holding Limited

Is this request on behalf of all parties? Yes■ No ❑

PROPOSED METHOD OF PROCEEDING:
[] By telephone (*Arrangements to be made 24 hours prior; to be arranged by*_____)
[x] By attendance on Wednesday, May 4, 2011 at 9:30a.m.
[]In writing (For simple consent matters only.)

Status of the Case:

1. This action, commenced over two years ago, has been delayed considerably from the outset.

2. While the defendants ("the Offeree Shareholders") are nearing completion of their examinations for discovery of the plaintiff's representative, this stage in the litigation has only been reached through

Purpose of the Case Conference:

☐ Identification of issues
☐ Explore methods to resolve contested issues
■ Create a timetable for the proceeding
☐ Review and amend the timetable of all parties
☐ To obtain an order on consent of all parties
■ Other procedural matter

1. The Offeree Shareholders ask that this matter be set down for trial and that a timetable be set for the completion of all pre-trial steps.

2. Attached as Schedule A to this case conference form is the Offeree Shareholders' proposed timetable, setting out the number of days before trial by which each pre-trial event must be completed.

3. The schedule attached to this form is drafted based on the assumption that the Court has the necessary judicial resources to accommodate a six-week trial, beginning in the Fall of 2012. The schedule provided lists suggested dates by which each step must be completed, but also lists the number of days prior to trial at each stage, in the event that it is not possible for trial to be set down beginning in September of 2012.

4. If this matter is heard from September 10, 2012 until October 19, 2012, as proposed by the Offeree Shareholders, it will have taken approximately 4 years from the commencement of this action until its adjudication. Without establishing a timetable at this time, to which the parties can and must adhere to, further delay is a certainty.

5. In addition to setting this matter down for trial and establishing a timetable to be adhered to by the parties, the Offeree Shareholders request that the parties address the issue of scheduling the plaintiff's motion to examine non-parties, raised in Mr. Lederman's letter to Master MacLeod dated April 26, 2011. Further to Mr. Conway's letter to Master MacLeod dated April 29, 2011, counsel to the non-parties is available to attend on this case conference for the purpose of scheduling the motion.

The parties have consented to the following order subject to court approval (for case conference in writing):

n/a

If you are requesting extension of mediation on consent please indicate how the request meets the criteria in rule 24.1.09(2):

n/a

DISPOSITION (to be completed by the master).

This court orders as follows:

This order is effective without further formality.

_____

Date:
Case Management Master Calum MacLeod

SCHEDULE 'A'
to the Case Conference Form dated May 2, 2011

In light of the considerable delays that have occurred thus far in this litigation, the Offeree Shareholders propose the following timetable to ensure an expeditious and just determination of the issues in these proceedings. The dates provided are estimates based on the assumption that a trial date would be set down for September 2012.

Proposed Timetable

Event	Timing in Relation to Trial
Completion of examinations for discovery of Allen-Vanguard, including fulfilment of all undertakings	9 months prior to commencement of trial (December 30, 2011)
Completion of examinations for discovery of the Offeree Shareholders' representatives	160 days prior to commencement of trial (March 31, 2012)
Fulfilment of all undertakings arising from examinations for discovery of the Offeree Shareholders	120 days prior to commencement of trial (May 11, 2012)
Mediation	At least 10 days prior to pre-trial conference (May 18, 2012)
Pre-Trial Conference	At least 90 days prior to commencement of trial (May 31, 2012)
Trial (assuming a six-week trial)	September 10, 2012 – October 19, 2012

* * * Communication Result Report (May. 2. 2011 10:45AM) * * *

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Date/Time: May. 2. 2011 10:45AM

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Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

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613.569.8668 (fax)
[illegible]
[illegible]

Cavanagh Williams Conway Baxter LLP

Fax

To:	Ms. Kathy Estabrooks For Case Management Master MacLeod	Fax:	(613) 239-1310
Date:	May 2, 2011	Pages:	7 (incl. cover page)
Re:	Court File Nos. 08-CV-43186 & 08-CV-43544		
From:	Thomas G. Conway	Matter:	1267-001

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

This is Exhibit "**K**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

COURT FILE NO.: 08-CV-43188
& 08-CV-43544
CONFERENCE HEARD: 2011/05/04

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Richard L'Abbé et. al. v. Allen-Vanguard Corporation et. al.

Allen-Vanguard Corporation v. Richard L'Abbé et. al.

BEFORE: Master MacLeod

COUNSEL: Thomas G. Conway for Richard L'Abbé et. al. ("offeree shareholders")
Phone: (613) 780-2011 **Fax:** (613) 569-8668 **Email:** tconway@cwcb-law.com

Eli S. Lederman for Allen-Vanguard entities
Phone: (416) 865-3555 **Fax:** (416) 865-2872 **Email:** elederman@litigate.com

Andrea Laing for Messrs. Osadca & Geddes
Phone: (416) 862-4870 **Fax:** (416) 862-6666 **Email:** alaing@osler.com

ENDORSEMENT AT CASE CONFERENCE

[1] This case conference was requested to schedule a motion for examination of non parties. The Allen Vanguard entities wish to examine Mr. Geddes, former CFO for Med-Eng, and Mr. Osadca, former CEO of Med-Eng. for discovery.

[2] Mr. Lederman seeks to bring this motion in advance of the discovery of the offeree shareholders because he will argue that in the particular circumstances of this case that is the fair and efficient manner of proceeding. Med-Eng (now AVTI) is of course a defendant in the offeree shareholder action but is not a party in the Allen Vanguard action. Yet it is Med-Eng. (now a subsidiary of Allen Vanguard) or more precisely its former management that is accused by Allen Vanguard of misrepresentation and fraud in connection with the price paid for the shares of Med-Eng.

[3] Though the former managers were appointed by and reported to the board installed by the offeree shareholders at the time, they were of course officers of Med-Eng. Apparently AVTI has cautioned them that they should not currently be speaking to the offeree shareholders and given the nature of the allegations it would hardly be surprising if they are not enthusiastic about the idea of being examined for discovery.

[4] Counsel for Osadca and Geddes advises that her clients will resist the motion for discovery but they are prepared to advise both parties in writing of what their evidence would be at trial if asked specific questions. It seems to me that Mr. Lederman might fruitfully take advantage of that offer without abandoning his right to bring the motion

post discovery. If after examining the offeree shareholders he is still of the view that the tests required by Rule 31.10 (2) can be met then the motion can proceed.

[5] I am not prepared to hear this motion in advance of the discovery of the offeree shareholders. Firstly in my view it will be extremely difficult to meet the test in Rule 31.10 (2) (a) without actually conducting the discovery. Secondly there is no good reason to postpone the discovery in order to bring the motion. Thirdly there are no immediately available dates and from the sound of it even if the motion is granted there may be refusals and other issues that may spawn follow up motions. The motion will also be opposed by the offeree shareholders. It would be inefficient to postpone the discovery while this issue is resolved. Through a combination of taking up the non parties on their offer to provide information in writing and completing the discovery of the offeree shareholders, the motion may ultimately prove to be unnecessary.

[6] There are further dates scheduled for discovery of Mr. Luxton. That is scheduled to be completed by June 1st subject to undertakings and possible motions. There are also motions pending in respect of privileged documents and there may be refusal motions. I also have a motion under reserve. None of these factors should prevent the discovery of the other parties from getting underway.

[7] Counsel for Allen Vanguard had anticipated he might need 10 days for the offeree shareholders. Given the length of the discoveries to date, I am going to suggest that counsel allow for the possibility of another 5 days if necessary and schedule accordingly. I will therefore order a timetable that takes into account the possibility of 15 days of discovery of the offeree shareholders.

[8] Counsel for the shareholders seeks to have the court establish a tentative trial date and to put in place a timetable to achieve that date. Given that the action is now 4 years old and that notwithstanding the difficulties that have arisen with documentary production it is now possible to envision the discovery process coming to an end, this is a reasonable request. Though there are pending and outstanding motions, it should be possible to have the matter ready for adjudication in the latter half of next year. The court could accommodate a 6 week trial in September, October or November of 2012.

[9] **The court therefore orders as follows:**

a. Counsel are to set aside up to 15 days to discover the offerree shareholders. Those discoveries are to be completed no later than September 16th, 2011.

b. Allen Vanguard may bring the motion to examine non parties if necessary. That motion is to be made returnable on October 27th, 2011 and the motion material is to be served no later than October 7th, 2011.

c. A refusals motion by either party may also be made returnable on October 27th, 2011 and will be dealt with after the motion to discover non parties if there is time to do so.

d. Counsel are to confer and determine availability for a 6 week trial in the fall of 2012. They are then to advise my office of the agreed upon dates and if they can be accommodated, I will fix the dates as the dates for the trial.

e. Counsel are to confer and to seek agreement on a timetable leading up to trial. That timetable should include a mediation and pre-trial date as well as dates for delivery of expert reports.

f. This order is effective without further formality.

Master MacLeod

Date: May 4, 2011

This is Exhibit "**L**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

Cavanagh · Williams · Conway · Baxter LLP

Litigation Counsel / Boutique de litige

Thomas G. Conway
Direct Line: 613.780.2011
E-mail: tconway@cwcb-law.com

Assistant: Elle Cote
Direct Line: 613.780.2015
E-mail: ecote@cwcb-law.com

November 22, 2011

VIA FACSIMILE

The Hon. Mr. Justice Charles T. Hackland
Regional Senior Justice
Superior Court of Justice (Ottawa)
161 Elgin Street, 5th Floor
Judge's Chambers
Ottawa ON K2P 2K1

Dear Regional Senior Justice Hackland:

RE: RICHARD L'ABBÉ, ET AL. V. ALLEN-VANGUARD CORPORATION, ET AL.; CFN. 08-CV-43188
ALLEN-VANGUARD CORPORATION V. RICHARD L'ABBÉ, ET AL.; CFN. 08-CV-43544
OUR MATTER ID: 1267-001

Thank you for your letter of October 19, 2011.

Since receiving your letter I have had an opportunity to discuss the matter further with Mr. Slaght.

I have communicated with Associate Chief Justice Cunningham, who has agreed to make some inquiries about the possibility of a Toronto-based judge hearing the trial in the summer of 2013. While we are hopeful that Associate Chief Justice Cunningham may be able to accommodate our request, the matter is further complicated by another case involving very similar allegations against a former executive of the company which Mr. Slaght's client now owns. While there has been no formal order made that these cases be tried together or one after the other, we expect that at least one of the parties will make this request. If the request is granted, moving both cases to Toronto for trial in the summer of 2013 will be problematic.

Given the uncertainty surrounding the possibility of a summer trial in 2013, Mr. Slaght and I have agreed that we should request a fixed trial date starting in September 2013. We estimate

that the trial will take no longer than six weeks. We make this request on the understanding that we have received from Case Management Master MacLeod that the court will have no difficulty scheduling the trial for September 2013.

Yours very truly,

Thomas G. Conway

/ec

cc. Mr. Ronald Slaght (via e-mail)
Mr. Eli Lederman (via e-mail)
Master Calum MacLeod (via facsimile)

* * * Communication Result Report (Nov. 22. 2011 10:37AM) * * *

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Date/Time: Nov. 22. 2011 10:36AM

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Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

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Cavanagh Williams Conway Baxter LLP

Fax

To:	The Hon. Mr. Justice Charles T. Haddard	Fax:	(613) 239-1507
To:	Master Calum MacLeod	Fax:	(613) 239-1310
Date:	November 22, 2011	Pages:	3 (inc. cover page)
Re:	Court File Nos. 08-CV-43188 & 08-CV-43544		
From:	Thomas G. Conway	Matter:	1287-001

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

This is Exhibit "**M**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

CITATION: L'ABBÉ v. ALLEN-VANGUARD, 2011 ONSC 7331
COURT FILE NOS.: 08-CV-43188 & 08-CV-43544
DATE: 2011/12/09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Richard L'Abbé et. al. v. Allen-Vanguard Corporation

Allen-Vanguard Corporation v. Richard L'Abbé et al

BEFORE: Master Macleod

COUNSEL: Eli S. Lederman for Allen Vanguard Corporation

Thomas. G. Conway for the "offeree shareholders"

Andrea Laing & Geoffrey Grove for the responding parties Geddes & Osadca

REASONS

[1] This is a motion by Allen-Vanguard Corporation for an order under Rule 31.10 granting leave to discover two non parties, Danny Oscada and Blair Geddes ("the former senior managers"). For the reasons that follow, I am in agreement with the submission of counsel for the senior managers and the offeree shareholders that the motion is premature. The requirements of the rule have not been met. It would not be appropriate to make the requested order unless Allen-Vanguard can show it is unable to obtain the information it seeks in a less intrusive manner.

Background

[2] Allen-Vanguard Corporation asserts it is entitled to a $40 million escrow fund held back from the offeree shareholders when it purchased the shares of Med-Eng Systems Inc. The claim is based in part on breach of specific contractual warranties set out in the agreement but also on alleged misrepresentation. In simplest terms Allen-Vanguard alleges the former management of Med-Eng made fraudulent or negligent misrepresentations concerning customer relationships, expected bookings, revenue and earnings with the result that the shares were overvalued.

[3] The peculiarity of this litigation which flows from the structure of the share purchase agreement is that the former managers against whom the allegations are made are not parties to the proceeding. All warranties set out in the agreement are said to be warranties of Med-Eng and not the offeree shareholders. Nevertheless all claims for compensation are claims against the escrow fund which is (unless the claims succeed) ultimately the property of the offeree shareholders. Med-Eng itself of course with all of its rights, obligations, property, records and remaining employees became the property of Allen-Vanguard and it was subsequently amalgamated with other Allen-Vanguard entities and ultimately with Allen-Vanguard itself.

[4] Three key officers of Med-Eng at the time of the purchase were Danny Osadca, former President and CEO, Blair Geddes, former CFO and Paul Timmis, former V.P. Mr. Timmis remained as an employee of Med-Eng (subsequently AVTI) for a period of time and he is now involved in separate litigation. In that action the same allegations are made against Mr. Timmis as are asserted in this proceeding. This is of some significance because Mr. Timmis will be subject to full discovery in that proceeding. Pursuant to Rule 30.1.01 (6), at minimum that discovery evidence can be used to challenge the testimony of Mr. Timmis in the trial of this action.

[5] There is no question that Mr. Oscada and Mr. Geddes played key roles at the time of the share purchase. In addition to playing a central role in the management of Med-Eng, the share purchase agreement defines the "knowledge" of the corporation as the "actual knowledge" of any of Danny Osadca, Blair Geddes and Paul Timmis. Consequently what they knew at that point in time will be one of the fundamental questions of fact the court will have to determine. Mr. Osadca and Mr. Geddes will almost certainly be critical witnesses at the trial. Moreover, while they have no financial stake in the outcome of the litigation, in light of the allegations that are levelled against them, they are clearly adverse in interest to Allen Vanguard in this litigation.

[6] It is not in the least surprising that counsel for Allen Vanguard would like to examine and cross examine these witnesses in advance of trial. The question is not, however, whether it would be better for Allen Vanguard to be able to conduct such a procedure. It is not even whether I personally think it would be a good idea. The question is whether or not the criteria for exercising discretion in favour of the request have been met.

Analysis

[7] In *Tulsa v. Walsh* (1994) 23 C.P.C. (3d) 178 (Gen.Div.) Sutherland J. held that the court has a general discretion to make orders expanding discovery rights in addition to the rights specifically provided in the rules. It is hard to quarrel with that. Not only do the majority of the rules permit the court to impose terms when granting orders, discovery generally is a process subject to court supervision. It is one thing however to say that the court may fashion a remedy for situations not covered by the rules, it is quite another to say that the court may make an order that flies in the face of a specific rule.

[8] In *Tulsa*, the impugned order was a term of an order directing that two actions be tried together or one after the other. The order sought by Allen Vanguard is not a term of other relief but is quite clearly a discovery order covered by Rule 31.10. That rule reads as follows:

> **31.10** (1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation. R.R.O. 1990, Reg. 194, r. 31.10 (1).

Test for Granting Leave

(2) An order under subrule (1) shall not be made unless the court is satisfied that,

(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;

(b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and

(c) the examination will not,

(i) unduly delay the commencement of the trial of the action,

(ii) entail unreasonable expense for other parties, or

(iii) result in unfairness to the person the moving party seeks to examine. R.R.O. 1990, Reg. 194, r. 31.10 (2).

[9] There is no difficulty meeting the requirement of subrule (1). The responding non-parties are clearly witnesses with relevant and material information. The impediment is the requirement in subrule (2) (a) that an order is not to be made unless the moving party has been unable to obtain the information. It is also significant that the rule speaks of "information" and not "evidence". Viewed in the context of the other discovery rules, a party is entitled to know in a general way what information potential witnesses have relevant to the issues in dispute but the rules do not in general provide a mechanism to obtain the evidence of non party witnesses in advance and to test it by cross examination.

[10] The former managers have offered to respond to any reasonable requests for information in writing. These answers will be provided to both parties and they will not answer questions to which either of the parties objects but they are prepared to do so voluntarily. Allen-Vanguard views this as quite unsatisfactory. The preference is for oral examination under oath with cross examination if necessary. In other words, a full discovery with the opportunity to assess the credibility of the witnesses.

[11] As counsel pointed out, I granted such an order in *Lana International Ltd. v. Menasco Aerospace Ltd.* (2000) 195 D.L.R. (4th) 497 (Master); aff'd [2000] O.J. No. 4798; (2000) 195 D.L.R. (4th) 497 (Div.Ct.) That case bears a superficial similarity to the current one because the witnesses in that case would not agree to be interviewed by the party seeking the order and there too there were concerns that residual contractual obligations prevented full disclosure. In the case at bar, the offeree shareholders would undertake to request information from the former senior managers. They are restricted somewhat in their ability to do so by the warning letter from Allen Vanguard's counsel that the former managers continue to have fiduciary obligations to Allen Vanguard. But *Lana* also stands for the proposition that all reasonable efforts to obtain the information through other means should have been exhausted. Unlike *Lana,* in the present case the proposed witnesses are

prepared to provide information and to answer reasonable requests for information posed in writing.

[12] This situation is almost identical that found in *Kerr v. McLeod* [2002] O.J. No. 788 (Div. Ct.) In that case, as here, the non party was prepared to answer questions in writing so there had been no refusal to provide the relevant information. In the words of Farley J. who was presiding at the time, "while the plaintiff may wish to grill [the non party] in an oral discovery and consider this the more expeditious and efficient and effective procedure, that is not the criteria for R. 31.10 (2)". To the same effect is the direction given by the Divisional Court in *Famous Players Development Corp.* v. *Central Capital Corp,* (1991) 6 O.R. (3d) 765 (Div. Ct.)

[13] I am therefore in agreement with the submission that Allen Vanguard has not yet satisfied the requirement of trying to obtain the information from the non parties. The assumption that the answers will be evasive or incomplete and the process will be inefficient is to anticipate difficulties that may not materialize. Counsel for the senior managers concedes that if that turns out to be the case there will be nothing to prevent Allen-Vanguard from renewing its motion.

[14] It must be remembered that Allen Vanguard made a strategic decision not to name these people as parties. I recognize the argument made by counsel for Allen Vanguard that the court should not be encouraging addition of parties solely for discovery purposes. On the other hand, as counsel for the senior managers points out, non parties are not able to challenge the scope of the pleadings nor to seek production in advance of discovery. Subjecting non parties to the rigours of discovery when they have no direct involvement in the litigation should be an exceptional order.

[15] There are almost 10,000 Schedule A documents. The parties have each been examined for 10 days. To have the non parties effectively prepared for discovery and for them to be adequately represented by counsel would require them to be brought fully up to date on the litigation and to review at least a substantial subset of the productions. Certainly terms could be imposed and procedures adopted to minimize unfairness and to indemnify them for their time and the cost of retaining counsel. If discovery of the non parties ultimately proves necessary then these issues will have to be addressed in concrete terms as part of the proposal. For the moment the number of productions and the length of the discoveries already conducted are additional reasons that the requested order should not be made lightly.

Conclusion

[16] The motion is dismissed. The motion may be renewed if the senior managers subsequently refuse to provide information or if the process proves unworkable or if for any other reason the moving party is later able to persuade the court that it is "unable" to obtain the information within the meaning of the rule.

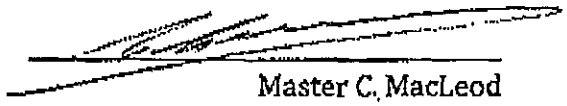
[17] Counsel are invited to agree on costs failing which I may be spoken to for further direction.

Trial Date

[18] For the benefit of counsel, I confirm that consequent to their recent correspondence with the office of the Regional Senior Justice, the court has established a date for the trial of the action. Unless otherwise ordered, the trial will begin on September 16th, 2013.

[19] The length of the trial has been estimated at 30 days. Counsel should confer to ensure the litigation timetable will permit all necessary matters to be concluded in a timely manner. Of course the date is contingent on ultimately setting the action down for trial and otherwise complying with all of the pre-trial requirements.

[20] The actions will remain case managed.



Master C. MacLeod

Date: December 9, 2011

This is Exhibit "**N**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

Court File No. 08-CV-41899

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PAUL TIMMIS

Plaintiff

and

ALLEN-VANGUARD CORPORATION, ALLEN-VANGUARD TECHNOLOGIES INC., ~~MED-ENG SYSTEMS INC.~~ and COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 23, 2008 Issued by: "A Whitby"

161 Elgin Street
Ottawa ON K2P 2K1

TO:
Allen-Vanguard Corporation
2400 St. Laurent Blvd.
Ottawa, ON K1G 8C4

TO:
Allen-Vanguard Technologies Inc.
2400 St. Laurent Blvd.
Ottawa, ON K1G 8C4

~~AND TO:~~
~~Med-Eng Systems Inc.~~
~~C/O 2400 St. Laurent Blvd.~~
~~Ottawa, ON K1G 8C4~~

AND TO:
Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, ON M5J 2Y1

CLAIM

1. The Plaintiff claims as against the Defendants Allen-Vanguard Corporation and Allen-Vanguard Technologies Inc. ("AVTI") ~~Med-Eng Systems Inc.~~:

   a. Damages for breach of contract and anticipatory breach of contract in the amount of $ 4, 481,457.00;

   b. In the alternative, damages for breach of contract in an amount determined by this Honourable Court to be due and owing to the Plaintiff, as of the date of judgment, pursuant to an amended escrow agreement dated January 25, 2008;

   c. Punitive and/or exemplary damages in the amount of $100,000.00;

   d. Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;

   e. Costs of this action on a substantial indemnity basis; and

   f. Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff claims as against Computershare Trust Company of Canada:

   a. An Order requiring it to take all necessary and required steps to effect the transfer to the Plaintiff of all escrow funds determined by this Honourable Court to be due and owing to the Plaintiff, as of the date of judgment, pursuant to an amended escrow agreement dated January 25, 2008;

   b. Such further and other relief as this Honourable Court may deem just.

3. The Plaintiff, Paul Timmis ("Mr. Timmis") resides in Ottawa, Ontario. He was formerly an employee of the Defendants Allen-Vanguard Corporation (the "Defendant Allen-Vanguard") and Med-Eng Systems Inc. ("Med-Eng"). ~~(the "Defendant Med-Eng") (collectively the "Employer Defendants").~~

4. The Defendant Allen-Vanguard is in the business of developing, fielding and supporting solutions for protection against hazardous devices as well as chemical, biological, radiological and nuclear hazards. ~~The Defendant~~ Med-Eng was formerly in the same business.

5. On or about November 17, 2003, Mr. Timmis commenced employment with ~~the Defendant~~ Med-Eng.

6. On or about August 3, 2007, ~~the Defendants~~ Med-Eng and the Defendant Allen-Vanguard along with the majority shareholders of Med-Eng entered into a Share Purchase Agreement (the "Agreement"). By the terms of the Agreement, the Defendant Allen-Vanguard purchased all of the shares of ~~the Defendant~~ Med-Eng (the "Share Purchase"). At the time of the Share Purchase, Mr. Timmis was employed by ~~the Defendant~~ Med-Eng in the position of Vice President, Electronic Systems.

7. After the Share Purchase, the Defendant Allen-Vanguard appointed Mr. Timmis to the position of Corporate Vice –President.

8. On September 17, 2007, the ~~Employer~~ Defendant Allen-Vanguard and Med-Eng and Mr. Timmis, along with the Defendant Computershare Trust Company of Canada as escrow agent (the "Defendant Escrow Agent") entered into an escrow agreement the ("Original Escrow Agreement"). The Original Escrow Agreement provided that a retention bonus in the amount of nineteen million dollars ($19,000 000.00) would be placed into escrow and released to Mr. Timmis by the Defendant Escrow Agent, upon instructions from ~~the Employer~~ the Defendant Allen-Vanguard and Med-Eng, once certain terms and

conditions during the course of Mr. Timmis' employment with the Defendant Allen-Vanguard had been fulfilled (the "Retention Bonus").

9. Following the Defendant Allen-Vanguard's acquisition of Med-Eng, Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation was subsequently changed to AVTI on or about April 1, 2008 ("the Defendant AVTI"). The Plaintiff states that AVTI is liable for all actions and/or inactions of Med-Eng as more particularly described herein, including but not limited to, breach of contract.

10. On or about January 25, 2008, the ~~Employer~~ Defendant Allen-Vanguard, Med-Eng and Mr. Timmis entered into a separation agreement (the "Separation Agreement"). The Separation Agreement stipulated that Mr. Timmis was voluntarily resigning his employment with the Defendant Allen Vanguard in exchange for the ~~Employer Defendants'~~ fulfillment of certain terms and conditions set out in the Separation Agreement by the Defendant Allen-Vanguard and Med-Eng. Pursuant to the Separation Agreement, the parties ~~Employer Defendants and Mr. Timmis~~ agreed to amend the provisions of the Original Escrow Agreement as a result of the resignation of Mr. Timmis' employment.

11. On January 25, 2008, the ~~Employer~~ Defendant Allen-Vanguard, Med-Eng and Mr. Timmis, along with the Defendant Escrow Agent entered into an amended escrow agreement to reflect and accommodate the fact that the Retention Bonus was terminated as a result of the Separation Agreement (the "Amended Escrow Agreement").

12. The Amended Escrow Agreement provides, *inter alia*, as follows:

> **4.2 Distributions out of the Escrow Amount to the Employee**
>
> **(a) On January 25, 2008, the Escrow Agent, upon written direction from the Corporation will pay to the Employee from the Escrow Amount the sum of $4, 750,000.00 net...**

(b) The Escrow Agent will pay a further aggregate amount of $4, 750,000 (reduced as provided below) to the Employee from the Escrow Amount to be paid in the following manner:

i. 3.17% of the Corporation's Chameleon ECM/ESM product or services revenue received in each month after the Resignation Date (as defined in the Separation Agreement) up to a maximum of $4, 750,000.00, paid on a monthly basis over a period of 18 months and subject to and following receipt of such revenue from Chameleon, with the initial payment to be made no later than March 15, 2008....

ii In the event that the aggregate amount paid to the employee pursuant to 4.2(b)(1) is less than $4, 750,000.00 as of August 30, 2009, the shortfall shall be paid to the Employee by way of 18 equal monthly payments on the first day of each month with the first such payment commencing on September 1, 2009.

....

(e) For further clarity, the Corporation will provide a written direction to the Escrow Agent prior to each payment to the Employee contemplated by section 4.2(b) setting out the net amount of payment to be made to the Employee each month...The Corporation will provide each written direction to the Escrow Agent, with a copy to the Employee within 10 business days of the last business day of the preceding month of the amount owed to the Employee in respect of the Chameleon ECM/ESM products or services revenue received in the preceding month. The Escrow Agent will then pay any and all amounts specified in a direction within 5 business days of receipt of such direction.

13. On January 25, 2008, Mr. Timmis was paid the sum of $4, 750,000.00 less statutory deductions in accordance with Section 4.2(a) of the Amended Escrow Agreement.

14. In accordance with the requirements of Section 4.2(b)(i) of the Amended Escrow Agreement, Mr. Timmis was to receive a payment on or before March 15, 2008 reflecting 3.17% of the Corporation's Chameleon ECM/ESM product or services revenue received in the previous month (the "First Payment"). The First Payment was not provided to him. In addition, no notice of the amount due and payable to Mr. Timmis was provided to the Defendant Escrow Agent or copied to Mr. Timmis in accordance with the requirements of Section 4.2(e).

25. In addition, Mr. Timmis claims punitive and exemplary damages for the bad faith and callous conduct of the AV Defendants ~~the Employer Defendants~~, including, but not limited to, the following bad faith conduct:

(a) The unilateral ceasing of contractual payments due and owing to Mr. Timmis without authority or justification;

(b) The failure to acknowledge the demands for payment by Mr. Timmis;

(c) The failure to advise Mr. Timmis of the reasons for ceasing payments to him despite his numerous requests for explanation.

Date: June 23, 2008

Amended: September 16, 2009

PERLEY-ROBERTSON, HILL & McDOUGALL LLP
Barristers & Lawyers
1400 – 340 Albert Street
Ottawa, ON K1R 0A5

Attention: **R. Aaron Rubinoff**
LSUC#: 27721F
(613) 238-2022
(613) 238 8775 - fax

Solicitors for the Plaintiff

PAUL TIMMIS
Plaintiff(s)

ALLEN-VANGUARD CORPORATION ET AL.
Defendant(s)

Court file no. 08 CV 41899

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Ottawa

AMENDED THIS 23 DAY / JOUR
MODIFIÉE DE
OF / DE October 2009
PURSUANT TO RULE 26.02(b)
CONFORMÉMENT À LA RÈGLE
OR ORDER
OU À L'ORDONNANCE
DATED THIS / FAIT CE
DAY / JOUR OF / DE 20
REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE
Douglas

AMENDED STATEMENT OF CLAIM

PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.
Lawyers/Patent & Trade-mark Agents
1400 - 340 rue Albert Street
Ottawa, ON K1R 0A5

Attention: R. Aaron Rubinoff/Laura Scott
LSUC #: 27721F
613.566.2837
613.238.8775 - fax

Lawyers for the Plaintiff
(Box 326)

This is Exhibit "**O**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

Litigate
Slaght

130 Adelaide St W
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Toronto, ON
Canada M5H 3P5

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January 29, 2013

Ian MacLeod
Direct line: (416) 865-2895
Direct fax: (416) 865-3701
Email: imacleod@litigate.com

VIA EMAIL

Mr. Thomas G. Conway
Cavanagh LLP
1111 Prince of Wales Drive
Suite 401
Ottawa, Ontario K2C 3T2

Dear Mr. Conway:

RE: Richard L'Abbé, et al. v. Allen-Vanguard Corporation, et al.;
Court File No. 08-CV-43188

Allen-Vanguard Corporation v. Richard L'Abbé, et al.;
Court File No. 08-CV-43544

Our File No.: 39177

As we advised during the course of the Examination for Discovery of Mr. Luxton in December, 2012, we intended to deliver an Amended Statement of Claim following our Examination for Discovery of Mr. Timmis, which further particularizes the claims for fraudulent misrepresentation and which further increases the quantum of damages.

In that regard, I enclose a copy of our client's proposed Amended Statement of Claim (Schedule "A") as well as a Consent.

We are asking for your consent to make these pleadings amendments. If you will consent, please execute the Consent and return an original signed copy to us at your earliest convenience. Alternatively, please provide us with authority to execute the Consent on your behalf.

If you will not consent, please advise as soon as possible so that we may then proceed to book a motion date.

Yours very truly,

per: A Slark
Ian MacLeod

IM/ls
Encl.

cc: Ronald G. Slaght
Eli S. Lederman
Christopher J. Hutchison *(Cavanagh LLP)*
Calina N. Ritchie *(Cavanagh LLP)*

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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Date _____ Issued by _____
Local Registrar

Address of court office: 161 Elgin Street
Ottawa, ON K2P 2K1

TO RICHARD L'ABBÉ

AND TO 1062455 ONTARIO INC.

AND TO GROWTHWORKS CANADIAN FUND LTD.

AND TO SCHRODER VENTURE MANAGERS (CANADA) LIMITED in its capacity as general partner of each of SCHRODER CANADIAN BUY-OUT FUND II LIMITED, PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6

AND TO SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

CLAIM

1. The Plaintiff, Allen-Vanguard Corporation ("Allen-Vanguard"), claims against the Defendants:

(a) Indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $650,000,000~~40,000,000~~, of which $40,000,000 shall be distributed to Allen-Vanguard ~~Corporation~~ in accordance with the terms of the Escrow Agreement as defined herein;

(b) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) Costs on a substantial indemnity basis; and

(d) Such further and other relief as to this Honourable Court may seem just.

I. OVERVIEW

2. By way of overview:

(a) Allen-Vanguard agreed to pay approximately $650,000,000 to purchase all of the outstanding shares of MES;

(b) the substantial purchase price was predicated on various representations and warranties which the former management of MES made on behalf of MES with respect to MES's financial condition and expected revenue;

(c) within months of the close of the transaction, it became apparent that the former management of MES had made fraudulent and/or negligent misrepresentations

regarding MES's customer relationships, expected bookings, revenue and earnings which Allen-Vanguard had relied upon in negotiating the purchase price and all other terms of the transaction;

(d) the former management of MES knew, prior to the closing of the transaction, that its largest and most important customer was planning to conduct a head-to-head test of MES' product against the product of a competing supplier. However, the former management of MES deliberately withheld this material fact from Allen-Vanguard in order to induce Allen-Vanguard to complete the transaction. The former management of MES either deliberately misled Allen-Vanguard or were reckless as to the truth or accuracy of their statements, despite their knowledge that Allen-Vanguard had sought disclosure on numerous occasions of all factors which could jeopardize the arrangements with this customer;

(e)~~(d)~~ in addition to the breaches of representations and warranties made by MES, Paul Timmis ("Timmis"), on behalf of MES, made a number of false promises to the MES employees about the compensation which the MES employees would receive after Allen-Vanguard acquired MES. Neither Timmis, nor anyone else on behalf of MES, ever disclosed to Allen-Vanguard that Timmis had made such promises to the MES employees and MES knew that, after the transaction closed, Allen-Vanguard would not be able to fulfill these promises or otherwise meet the compensation expectations which had been intentionally and/or recklessly inflated by Timmis;

(f)~~(e)~~ as a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard.

II. THE PARTIES

3. Allen-Vanguard is in the business of developing and marketing technologies, tools and training for defeating and minimizing the effects of hazardous devices and materials, and provides field and support solutions for protection and counter-measures in collaboration with military and security forces and with major research institutes, prime contractors, systems integrators and emerging technology companies. Allen-Vanguard ~~was~~is a public company listed on the Toronto Stock Exchange and is headquartered in Ottawa.

4. Prior to Allen-Vanguard's acquisition, MES was a private company incorporated pursuant to the laws of Ontario and carried on business as a global supplier of force protection products for military, homeland security and law enforcement organizations. In particular, MES had taken a leadership position in offering Electronic Counter-Measure (ECM) solutions to counter the growing and evolving threat represented by radio-controlled improvised explosive devices.

5. Following Allen-Vanguard's acquisition of MES, MES was amalgamated with Allen-Vanguard Holdings Ltd. on October 1, 2007. The name of the amalgamated corporation was subsequently changed to Allen-Vanguard Technologies Inc. ("AVTI") on or about April 1, 2008.

6. Due to MES' misrepresentations and breaches of representations, warranties and covenants as described herein, Allen-Vanguard spiraled into insolvency in the months following the transaction. As a result, on December 16, 2009, the Superior Court of Justice made an Order

pursuant to Section 6 of the *Companies Creditors Arrangement Act* (the "CCAA") sanctioning a Plan of Arrangement and Reorganization dated December 9, 2009 (the "Sanction Order"). The Sanction Order was made on the basis that it was in the best interests of Allen-Vanguard and its economic stakeholders and employees to restructure its debt obligations and allow it to continue to carry on business as a going concern.

7. On January 1, 2011, AVTI amalgamated with and was continued under the name, Allen-Vanguard Corporation.

8.~~5.~~ The Defendants were the principal shareholders of MES whose interests were acquired as a result of Allen-Vanguard's purchase of MES.

III. FACTUAL BACKGROUND

9.~~6.~~ The private equity firms, Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited were the principal owners of MES, and in 2006, they sought to exit their position as long term investors. They engaged in a limited auction process to sell MES.

10.~~7.~~ On August 3, 2007, Allen-Vanguard was the winning bidder in the auction and entered into a Share Purchase Agreement with the shareholders of MES to purchase all of the shares of MES on a debt and cash free basis, for $600,000,000, plus an amount established at approximately $50,000,000 for the purpose of excess working capital (the "Share Purchase Agreement"). That transaction closed on September 17, 2007.

11.~~8.~~ Pursuant to section 2.04(c) and 7.02 of the Share Purchase Agreement, Allen-Vanguard deposited $40,000,000 of the purchase monies (the "Indemnification Escrow Amount") with the Escrow Agent, for the purposes of indemnifying Allen-Vanguard for any claims which Allen-

Vanguard may have resulting from any breaches of representations, warranties and covenants of MES contained in the Share Purchase Agreement, or in respect of the contravention of, non-compliance with or other breach by MES of the Teaming Agreement entered into between MES and General Dynamics Armament and Technical Products ("GDATP") dated May 27, 2005.

12.9. Allen Vanguard is entitled to deliver a Notice of Claim for the Indemnification Escrow Amount at any time, provided that it does so before December 21, 2008. However, in the event that Allen-Vanguard has a claim for fraud, there is no temporal or monetary limitation to making such a claim.

13.10. The distribution of the Indemnification Escrow Amount is governed by the terms of an Escrow Agreement dated September 17, 2007, entered into between Allen-Vanguard, MES, the Defendants and the Escrow Agent (the "Escrow Agreement"). Section 4.1 of the Escrow Agreement provides in part as follows:

> **4.1 Distribution out of the Indemnification Escrow Fund**
>
> (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.
>
> (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a "**Notice of Claim**") to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.

(c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an "**Objection Notice**") setting forth the reasons for the objection.

14.~~11.~~ Section 1.1 of the Escrow Agreement defines "Claims" as follows:

1.1 Definitions

"**Claims**" means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by a Purchaser Indemnitee directly or indirectly resulting from any breach of any covenant of the Corporation or any Shareholder contained in the Share Purchase Agreement or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.

15.~~12.~~ Following the close of transaction, Allen-Vanguard became aware of several breaches of representations, warranties and covenants made by MES, which entitles Allen-Vanguard to claim the Indemnification Escrow Amount.

16.~~13.~~ Therefore, on September 10, 2008, Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement, setting out a detailed description of its claims including the provisions of the Share Purchase Agreement giving rise to the claim and the aggregate amount for the claim.

17.~~14.~~ In particular, Allen-Vanguard discovered that MES made a number of misrepresentations as to its expected bookings, revenue and earnings and as to the status of MES's customer relationships and the compensation expectations of the MES employees.

18.~~15.~~ These representations were made knowing that Allen-Vanguard would rely on such representations and were made to induce Allen-Vanguard to enter into the transaction and to pay an inflated purchase price.

19.~~16.~~ Pursuant to the terms of the Share Purchase Agreement, the Defendants are directly liable to indemnify Allen-Vanguard for the breaches of the representations, warranties and covenants made by MES, up to $40,000,000, and they are further liable for any damages caused to Allen-Vanguard as a result of any fraud committed by or on behalf of MES.

20.~~17.~~ Nevertheless, on October 6, 2008, the Defendants delivered a Notice of Objection dated October 1, 2008, disputing each of the claims set out in the Notice of Claim.

IV. FRAUDULENT MISREPRESENTATION

21. On behalf of MES, the former management of MES made fraudulent misrepresentations to Allen-Vanguard which induced Allen-Vanguard to enter into the transaction.

22. In particular, MES knew, prior to the closing of the transaction, that MES' largest and most important customer intended to conduct a head-to-head test of MES' ECM Chameleon unit against units produced by MES' competitors.

23. MES knew that this intention to test competing units on a head-to-head basis had material implications for the existing arrangements with this customer and the future supply of products to this customer.

24. The fact of this intention and the full particulars of the customer's plans as they developed over time ought to have been fully disclosed to Allen-Vanguard. Instead, MES intentionally or recklessly withheld this disclosure from Allen-Vanguard.

25. Prior to closing, Allen-Vanguard made repeated, specific inquiries of MES' management to identify any factors which might cause MES' largest customer to switch to a competing supplier. In response, the former management of MES said nothing about the upcoming head-to-head test.

26. Instead, MES withheld this disclosure with the intention to induce Allen-Vanguard to complete the transaction.

27. MES intended to deceive Allen-Vanguard by failing to disclose its knowledge of the head-to-head test and its ramifications or it was reckless as to the truth or falsity of its statements when Allen-Vanguard made repeated, specific inquiries as to the potential factors which could cause MES' largest customer to switch suppliers, and MES failed to disclose what it knew.

28. Allen-Vanguard relied on the fraudulent misrepresentations to its detriment.

29. Further, as described in paragraphs 41-57 below, all of the representations made by MES to Allen-Vanguard in its management presentations regarding the orders which were in the pipeline for this customer were knowingly false, given what MES knew about the intention of this customer to subject the Chameleon ECM unit to competitive testing and the ramifications of the testing. MES was, at the very least, reckless as to the truth or accuracy of its statements when it represented the expected orders in the pipeline and the probabilities of securing them.

30. Allen-Vanguard was deprived of the right and opportunity to address for itself the significance of the planned head-to-head test and its implications for the pipeline, the purchase price and the transaction as a whole.

~~IV.~~ REPRESENTATIONS, WARRANTIES AND COVENANTS

31.~~18.~~ In the Share Purchase Agreement, MES gave extensive representations and warranties to Allen-Vanguard.

32.~~19.~~ These representations and warranties are set out in Section 3 of the Share Purchase Agreement.

33.~~20.~~ In Sections 3.01(2)(a) and 3.01(2)(d) of the Share Purchase Agreement, MES represented and warranted that its books and records fairly present the financial position of the corporation and that it has no accrued, contingent or other liabilities except for those specified in the schedules to the Share Purchase Agreement:

> **3.01(2) Financial**
>
> 3.01(2)(a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
>
> (d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).

34.~~21.~~ In addition, MES represented in Section 3.01(2)(f) of the Share Purchase Agreement that there had been no Material Adverse Effect which could reasonably be expected to be materially

adverse to the business, assets, liabilities, financial condition or results of operations of the corporation since June 30, 2007.

35.~~22.~~ "Material Adverse Effect" is defined in the Share Purchase Agreement as follows:

> **"Material Adverse Effect"** means, when used in connection with the Corporation and its Subsidiaries or their business, any change, event, violation, inaccuracy, circumstance or effect that is or could reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Corporation and its Subsidiaries other than as a result of (i) changes to the Canadian, United States or global economy, in each case as a whole; (ii) changes to the financial markets; (iii) changes adversely affecting the industry in which the Corporation and its Subsidiaries operate (so long as the Corporation and its Subsidiaries are not disproportionately affected thereby); (iv) the announcement or pendency of the transactions contemplated by this Agreement; (v) changes in laws; or (vi) changes in generally accepted accounting principles.

36.~~23.~~ In addition, except as disclosed in the schedules to the Share Purchase Agreement, MES represented and warranted that it had not received any orders, notices or similar requirements from any governmental authority:

> **3.01(3) Condition of Assets**
>
> 3.01(3)(d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.

37.~~24.~~ MES further represented in Section 3.01(3)(g) of the Share Purchase Agreement that, except as disclosed in the schedules, no material claims had been made against it with respect to any warranty or with respect to the production or sale of defective or inferior products:

> 3.01(3)(g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

38.~~25.~~ Similarly, MES represented in Section 3.01(4)(b) of the Share Purchase Agreement that it was not in default or in breach of any contract to which MES was a party:

> **3.01(4) Contractual Commitments**
>
> 3.01(4)(b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.
>
> 3.01(12)(k) ....The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are not material unresolved disputes with any such supplier, shipper or customer.

39.~~26.~~ MES further represented and warranted that since June 30, 2007, it had not agreed or otherwise committed to change the compensation of its employees:

3.01(6) Employees

3.01(6)(i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

3.01(8)(d) No fact, condition or circumstances exists that would materially affect the information contained in the documents provided pursuant to Section 3.1(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.

3.01(8)(e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.

40.~~27.~~ MES further represented in section 3.01(12)(a) of the Share Purchase Agreement that there were no suits or proceedings pending or threatened which could materially adversely affect the corporation.

41.~~28.~~ Finally, MES provided the following covenants:

3.01(12)(m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue

statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

4.01(1)Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:

(a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;

(b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships; and

(d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect.

VI. BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Misrepresentation of MES Revenue Profile

42.~~29.~~ Pursuant to and in connection with the Share Purchase Agreement, MES made a number of representations and warranties about the financial condition of the company and delivered various projections as to its expected bookings, revenue and earnings.

43.~~30.~~ In particular, a projection of the customer orders which were in backlog and/or in the pipeline were represented to Allen-Vanguard as being a material part of MES's revenue forecast,

and upon which Allen-Vanguard relied in negotiating the purchase price and all other terms of the transaction.

44.~~31.~~ Although these backlog and pipeline orders were represented as a substantial source of revenue for MES, the former management of MES knew or ought to have known that these orders were unlikely to generate the revenue which had been projected or were unlikely to even materialize at all.

45.~~32.~~ Specifically, MES represented that it had secured an order from a large military customer through GDATP for 1,100 vehicle-mounted ECM Chameleon units, which was expected to generate revenue in the amount of $54,285,000 for the fiscal year 2008.

46.~~33.~~ Despite representing that there was a 100% probability of securing this order, the customer subsequently advised Allen-Vanguard following the close of the transaction that it would not proceed with the purchase of these 1,100 units until the Chameleon product was subjected to ~~further performance~~ head-to-head testing against units produced by MES' competitors.

47.~~34.~~ The former management of MES knew ~~or ought to have known~~ at the time that this order was represented to Allen-Vanguard as being 100% probable, that the customer would require further evaluation of the product before placing the order with MES, if it decided to place the order at all.

48.~~35.~~ In addition to the misrepresentations with respect to the pipeline order for the 1,100 Chameleon units, MES misrepresented the expected revenue associated with an order by a military customer for a repair and overhaul program.

49.~~36.~~ In particular, MES represented that there was a 75% probability that it would secure an order by this customer to perform a program of repair and overhaul for all of its products. This order was projected to generate annual revenue to MES in the amount of $38,000,000, beginning in the fiscal year 2008.

50.~~37.~~ Notwithstanding the representation that there was a 75% probability of securing this order, there was no reasonable basis to make such a representation as Allen-Vanguard subsequently learned following the close of the transaction that the customer had not made any commitment to engage MES to administer the repair and overhaul program.

51.~~38.~~ In addition, MES represented that it had an order in the pipeline for 2007 by a U.S. military customer for 600 portable ECM units, which was projected to generate revenue for MES in the amount of $17,640,000 for the fiscal year 2008. MES had represented that there was a 70% probability of securing this order.

52.~~39.~~ Despite these representations, this order was in fact far from materializing. Allen-Vanguard subsequently discovered after the transaction closed that there was no funded program in place which would enable the customer to place that order. The former management of MES knew or ought to have known that the U.S. government had not allocated any funds which could be drawn upon to place this order and therefore misrepresented the probability of this order ever materializing, let alone projecting that it was expected to generate $17,640,000 in fiscal year 2008.

53.~~40.~~ MES further represented that there was a 75% probability of securing an open "Expanded Role" professional services contract directly with a military customer, which was projected to generate revenue in the amount of $13,500,000 in 2007 and $50,400,000 annually thereafter.

However, this order required MES to be directly engaged by the customer as the prime contractor, which would constitute a clear violation of MES's Teaming Agreement with GDATP.

54.~~41.~~ Indeed, if MES were to contract directly with the customer for this Expanded Role contract, MES would face significant exposure and liability associated with a direct contravention of the Teaming Agreement. Nevertheless, MES represented that there was a 75% probability of MES securing this Expanded Role contract and of generating the significant revenues described above.

55.~~42.~~ However, following the close of the transaction, Allen-Vanguard learned that there would be no practical way of carrying out the Expanded Role contract without being in breach of the Teaming Agreement.

56.~~43.~~ In addition, MES represented to Allen-Vanguard significant revenue associated with an order in the pipeline for 2,511 vehicle-mounted units to be carried out in fiscal year 2007. Although this order was in fact fulfilled, it did not generate the revenue which MES had represented in its projections to Allen-Vanguard.

57.~~44.~~ The projected revenue which MES represented was apparently based upon the application of the foreign exchange rate which applied when the order had been received. However, the foreign exchange rate was significantly different than the applicable rate when the order was delivered. This discrepancy resulted in a shortfall in the post-closing revenue associated with the order in the amount of approximately $13,300,000.

58.45. Allen-Vanguard relied upon the representations made on behalf of MES with respect to the projected pipeline of orders in negotiating the purchase price for MES and all other terms of the transaction. The former management of MES were fully aware that the projections for the company's expected revenue, earnings and bookings, would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

2. ***Misrepresentations with respect to Contingent and Other Liabilities of MES***

(i) Assist Audit

59.46. Approximately three months prior to the close of the transaction, MES had been subjected to an audit by the United States Defence Contract Management Agency ("DCMA") through the Canadian Commercial Corporation and Public Works and Government Services Canada ("PWGSC") (the "Assist Audit"). The purpose of this audit was to confirm that the prices MES quoted to GDATP on specific items sold by MES were fair and reasonable.

60.47. Although MES disclosed the fact that DCMA had made a request in Schedule 3.01(2)(d) of the Share Purchase Agreement, it failed to provide full and complete disclosure as to what this request signified or how this request amounted to a significant contingent liability of MES.

61.48. Despite Allen-Vanguard's attempts to obtain more information prior to the close of the transaction with respect to the Assist Audit and the potential exposure associated therewith, the former management of MES misled Allen-Vanguard as to the status of the Assist Audit, the cost and expense associated with its compliance, and the significant exposure to MES in the event that the U.S. government determined that MES did not qualify for an exemption which would

entitle it to refrain from disclosing its cost margins, and if it determined that MES's prices were not fair and reasonable.

62.~~49.~~ Indeed, if the Assist Audit resulted in a finding that the prices charged to the U.S. government were not fair and reasonable, MES would be liable to pay the amount by which the U.S. government determined it had been over-charged.

63.~~50.~~ This represented a significant contingent liability of MES, which the former management of MES was required to disclose to Allen-Vanguard in connection with the transaction.

64.~~51.~~ When representatives of Allen-Vanguard made inquiries of the former MES management to obtain additional information with respect to the Assist Audit, the MES management characterized the audit as a "routine exercise" and deliberately down-played the ramifications associated with a determination by DCMA that MES's prices were not fair or reasonable.

65.~~52.~~ However, unbeknownst to Allen-Vanguard at the time of the acquisition, the former members of the MES management were concerned about a negative outcome and had engaged U.S. legal counsel and the services of a professional consulting firm to opine on whether MES qualified for an exemption under the Federal Acquisition Regulations ("FAR") which would excuse it from having to submit its cost or pricing data to support the proposed or negotiated prices for the sale of its ECM products to the U.S. government through GDATP.

66.~~53.~~ MES never disclosed the fact that it had retained a professional consulting firm, or that it had received a draft report from its consultants prior to the close of the transaction. MES failed to disclose this information to Allen-Vanguard despite Allen-Vanguard's requests for further information with respect to the Assist Audit and the potential exposure associated therewith.

67.~~54.~~ In fact, the former management of MES deliberately concealed the information it had with respect to the Assist Audit and delayed responding to the audit until days before the transaction was to close.

(ii) Tax Liabilities

68.~~55.~~ As part of the calculation of working capital in connection with the transaction, MES made certain deductions in calculating its tax liability as at the closing date of the transaction.

69.~~56.~~ However, following the close of the transaction, Allen-Vanguard discovered that a significant sum was in fact not deductible for tax purposes by MES.

70.~~57.~~ Unbeknownst to Allen-Vanguard at the time of the transaction, MES had obtained an opinion from a major accounting firm, which specifically cautioned against the deduction of these sums and which specifically advised MES to act on the assumption that CRA will challenge a filing position which claimed these amounts as tax deductible.

71.~~58.~~ Despite having obtained this opinion from the accounting firm, MES never disclosed to Allen-Vanguard the potential tax liability associated with such a challenge by CRA.

72.~~59.~~ The elimination of this deduction will result in a significant increase to the income tax liability of MES, against which Allen-Vanguard has been required to provide a full reserve.

(iii) Warranty Claims Associated with Defective Products

73.~~60.~~ MES further breached the representations and warranties associated with its liabilities by failing to disclose the extent and exposure associated with a quality control issue relating to MES's shipment of 192 defective units to GDATP prior to the close of the transaction.

74.~~61.~~ Indeed, the contractor responsible for the manufacture of MES's Chameleon ECM units experienced a quality control issue which resulted in the shipment of 192 defective ECM units to Iraq.

75.~~62.~~ As a result, GDATP withheld payments to Allen-Vanguard in respect of these defective units and additionally charged Allen-Vanguard for its costs in addressing this issue.

76.~~63.~~ Allen-Vanguard was further required to incur repair costs and sought to recover a portion of these costs from its manufacturer.

77.~~64.~~ Although MES disclosed the fact that it was addressing a manufacturing issue, it failed to disclose the full extent of the exposure and liability associated with the shipment of the 192 defective units.

3. Misrepresentations with respect to Status of MES Contracts and Commitments

78.~~65.~~ Pursuant to Section 3.01(4)(b) of the Share Purchase Agreement, MES represented and warranted that it was not in default or breach, in any material respect, under any contract to which it was a party and that all of its contracts were in good standing.

79.~~66.~~ Despite representing that MES was not in breach of any of its contracts, two days before the close of the transaction, Timmis, on behalf of MES, sent an email to David Luxton, the Chief Executive Officer of Allen-Vanguard, advising that MES had received a notice from GDATP alleging that MES had committed material breaches of the Teaming Agreement.

80.~~67.~~ Even though this notice was received by Timmis on August 30, 2007, he did not advise Allen-Vanguard of it until two days before the transaction closed.

81.~~68.~~ In particular, GDATP alleged that, contrary to the terms of the Teaming Agreement, MES had participated in a Request for Proposals (RFP) initiated by a military customer to contract directly with MES for non-warranty repair work of all of its Chameleon Mobile Counter-Measure units.

82.~~69.~~ As a result of MES's attempts to contract directly with this customer, GDATP alleged that MES was in breach of Articles 1.3, 2.1 and 9.1 of the Teaming Agreement. In addition, GDATP alleged that MES had failed to provide GDATP with written disclosure of the non-warranty repair opportunity, as required by Article 2.2 of the Teaming Agreement.

83.~~70.~~ As a result of these alleged breaches, GDATP requested that MES show cause as to why GDATP did not have a basis to terminate the Teaming Agreement in the event that it wished to do so.

84.~~71.~~ Unbeknownst to Allen-Vanguard, this alleged breach represented only one of many breaches and acts of default which GDATP was then asserting against MES.

85.~~72.~~ Aside from disclosing the alleged breach associated with MES's participation in the RFP set out in Timmis' email, no further details with respect to this allegation or with respect to any of the other alleged breaches of the Teaming Agreement were disclosed to Allen-Vanguard.

86.~~73.~~ Such conduct constitutes a breach of the representations and warranties contained in the Share Purchase Agreement, for which Allen-Vanguard is entitled to indemnification out of the Indemnification Escrow Amount.

4. Misrepresentations with respect to Employees' Compensation Expectations

87.~~74.~~ In the months following the close of the transaction, Allen-Vanguard discovered that a number of MES employees had approached Timmis in 2006 and 2007 seeking significantly increased compensation in connection with their continuing employment with MES.

88.~~75.~~ On behalf of MES, Timmis told these employees that they should wait until MES had been sold and that they would receive increased compensation packages after MES had been acquired by the new owners. He expressly cautioned them against seeking increased compensation prior to the close of the transaction and promised that their compensation expectations would be met after the transaction closed.

89.~~76.~~ The employees approached Timmis again leading up to the close of the transaction and again sought an increase in their compensation as part of the sale and as an incentive to continue to work for MES after it had been acquired.

90.~~77.~~ Timmis again advised the employees that they should wait until after the close of the transaction with Allen-Vanguard and that he would then negotiate increased compensation packages on their behalf with Allen-Vanguard.

91.~~78.~~ However, at no time during the negotiation of the Share Purchase Agreement did Timmis advise Allen-Vanguard that these employees were seeking increased compensation or that he had led them to believe that they would receive it after the acquisition was completed.

92.~~79.~~ In fact, MES had represented and warranted in Section 3.01(6)(i) of the Share Purchase Agreement that there had been no changes in the terms and conditions of the employment of any employees of the corporation and that the corporation had not agreed or otherwise become

committed to change any of the employees' compensation, remuneration or benefits payable to them.

93.~~80.~~ After the transaction closed, Timmis provided David Luxton, the Chief Executive Officer of Allen-Vanguard, with a spreadsheet proposing a modest allocation of options and other compensation for these employees, despite being fully aware that these employees were expecting and demanding much more significant increases in their compensation.

94.~~81.~~ Timmis deceived Allen-Vanguard into believing that the spreadsheet contained figures which were commensurate with the employees' compensation expectations, despite knowing full well that the figures were far lower than their true expectations.

95.~~82.~~ Timmis then reported back to the employees and misled them into believing that he was attempting to negotiate higher compensation packages for them, but that Allen-Vanguard would not agree to any greater compensation than that which had been submitted by Timmis in the spreadsheet.

96.~~83.~~ When the MES employees learned that Allen-Vanguard was not going to be able to meet their compensation expectations, many of the employees felt betrayed by Timmis and refused to continue to work at MES as long as Timmis also continued to be employed by MES.

97.~~84.~~ Indeed, it became apparent to the employees that Timmis had negotiated for himself the entire pool of funds which would otherwise have been earmarked for the retention of all employees following the close of the transaction.

98.~~85.~~ Allen-Vanguard has continued to suffer damages caused by these misrepresentations made on behalf of MES.

99.~~86.~~ Indeed, within months of the close of the transaction, as the new owner of MES, Allen-Vanguard was faced with a near mutiny by the MES employees.

100.~~87.~~ As a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to terminate a critical engineering manager whose compensation expectations could not be met. In addition, as a result of Timmis' wrongful conduct on behalf of MES, Allen-Vanguard had no alternative but to meet some of the employees' compensation expectations or risk losing a substantial portion of its workforce.

101.~~88.~~ Had Allen-Vanguard known that it would become saddled with these personnel issues and been forced to meet demands for increased compensation, it would have altered the terms of the deal it struck with MES.

VII. DAMAGES

102.~~89.~~ Allen-Vanguard relied upon the information provided by the former management of MES in negotiating the purchase price and all other terms of the transaction. The projections with respect to MES's expected revenue, earnings and bookings, were made by the management of MES, knowing that they would impact on Allen-Vanguard's desire to enter into the transaction and the price it would be willing to pay for MES.

103.~~90.~~ Allen-Vanguard reasonably relied upon the above misrepresentations to its detriment in valuing MES and deciding to proceed to close the transaction.

104.~~91.~~ As a result, Allen-Vanguard is entitled to indemnification and/or damages from the Defendants for its reasonable reliance upon MES's misrepresentations and for the significant breaches of the Share Purchase Agreement.

105.~~92.~~ Had the true state of MES's affairs been accurately represented, Allen-Vanguard would not have been prepared to complete the transaction, or alternatively, it would have paid a significantly reduced ~~without a significant discount to the~~ purchase price.

106.~~93.~~ These misrepresentations and breaches of the Share Purchase Agreement further caused Allen-Vanguard to refinance its debt arrangements with its senior debt lenders and has resulted in the payment by Allen-Vanguard of various penalty fees and amendment fees associated with such refinancing efforts.

107. The Plaintiff proposes this action be tried at the City of Ottawa, Province of Ontario.

January 29, 2013 ~~December 18, 2008~~

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBÉ et al
Defendants

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

AMENDED STATEMENT OF CLAIM

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

Court File No.: 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBE, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED IN ITS CAPACITY AS GENERAL PARTNER OF EACH OF SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURE HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

CONSENT

By their respective lawyers, the parties, none of whom is under disability, hereby consent to:

1. Filing of the Plaintiff Allen-Vanguard Corporation's Amended Statement of Claim in the form attached hereto as Schedule "A".

DATED AT TORONTO, ONTARIO this ..... day of ....., 2013

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
Per:

Ronald G. Slaght
Eli S. Lederman
Ian MacLeod
Lawyers for the Plaintiff

DATED AT OTTAWA, ONTARIO this ..... day of ....., 2013

CAVANAGH WILLIAMS CONWAY
BAXTER LLP
Per:

Thomas G. Conway
Christopher J. Hutchison
Calina N. Ritchie
Lawyers for the Defendants

ALLEN-VANGUARD CORPORATION
Plaintiff

-and-

RICHARD L'ABBE et al.
Defendants

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

CONSENT

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Lawyers for the Plaintiff,
Allen-Vanguard Corporation

This is Exhibit "**P**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

CITATION: L'ABBÉ v. ALLEN-VANGUARD, 2013 ONSC 1098
COURT FILE NO.: 08-CV-43544
DATE: 2013/02/21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Allen-Vanguard Corporation v. Richard L'Abbé et al

BEFORE: Master Macleod

COUNSEL: Eli S. Lederman for Allen Vanguard Corporation

Thomas. G. Conway for the "offeree shareholders"

REASONS

[1] This is a motion by Allen-Vanguard Corporation to amend its pleadings. Most of the amendments simply particularize the allegations or update the pleadings. The only controversial amendments are those proposed to paragraphs 1 (a) and 2 (f). The first of these is a proposed amendment to the prayer for relief to increase the claim from $40 million to $650 million. The second is the addition of the phrase "fraudulent misrepresentations and" to the paragraph which currently reads "breaches of representations and warranties" and claims indemnification for damages from the defendants.

[2] Ordinarily amendment to raise the quantum of damages is granted as a matter of course because of the mandatory language of Rule 26.01. In this case however the defendants allege that the amendments fundamentally change the nature of the litigation. They oppose this on the basis that read in context it is untenable at law, is highly prejudicial and is an abuse of process.

[3] I have given these submissions careful consideration but ultimately conclude that pursuant to Rule 26.01 leave must be granted.

Background

[4] The facts and allegations underlying this litigation have been set out in some detail in earlier reasons.[1] For purposes of this motion it is simply necessary to repeat that Allen-Vanguard Corporation purchased all of the outstanding shares of Med Eng Systems Inc. in September, 2007 for roughly $650 million. Subsequently Med Eng was merged with another subsidiary of Allen Vanguard to become AVTI and ultimately was merged with Allen Vanguard itself so that currently Med Eng and Allen Vanguard are one and the same.

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[1] 2011 ONSC 4000; 2011 ONSC 7331; 2011 ONSC 7575 (Master); see also 2011 ONCA 125 (C.A.) in related litigation.

[5] Med Eng was in the business of supplying protective products for military, police and security services. One of its major customers was the U.S. military. Central to this litigation is the allegation that management of Med Eng failed to disclose material risks in relation to the continuation of the key U.S. military contract and also misrepresented the extent of contingent liabilities, tax liabilities, warranty claims and other contractual and litigation risks. The action was based on breach of warranty, misrepresentation, and fraud.

[6] The central document which governs the rights between the parties is the Share Purchase Agreement (SPA) dated August 3rd, 2007. This is an agreement between Allen Vanguard, Med Eng and the Offeree Shareholders. The Offeree Shareholders are the defendants to this action. They are Richard L'Abbé, 1062455 Ontario Inc., Growth Works Canadian Fund Ltd., and the Schroder entities collectively referred to as Schroder Canada and Schroder UK. These were the controlling shareholders of Med Eng. There were also minority shareholders who are not party to the SPA but whose shares were also acquired and who would have received their proportionate share of the purchase price. Other than Richard L'Abbé, none of the offeree shareholders are individuals and none of the members of Med Eng management were offeree shareholders.

[7] The structure of the SPA is very particular in its structure. Ordinarily in an agreement of purchase and sale one would expect the vendors to give or withhold representations and warranties and to be liable for breach of the agreement. In this case however, other than the warranties concerning ownership of the shares, it is Med Eng itself which gives the warranties and representations concerning its books, records, financial statements, assets, contracts, commitments, employees, taxes, regulatory compliance, and other material disclosure under the signature of its then CEO.[2] Pursuant to the agreement part of the purchase price, $40 million, was deposited into an escrow fund and is available as a price adjustment fund to satisfy any claims for breach of warranty. Though this fund is the property of the offeree shareholders in the absence of proven claims, it is available to indemnify Allen Vanguard for any breach of the warranties and representations given by Med Eng.

[8] For purposes of this motion, the critical provision of the SPA is Article 7 dealing with indemnification. The clear intent of Article 7 is to limit any liability of the offeree shareholders and to limit any remedy by Allen Vanguard to a claim against the escrow fund. There are however exceptions for fraud. A critical question for purposes of the motion (and at trial if the amendment is granted) is whether or not a claim for more than $40 million may be maintained against the offeree shareholders if Med Eng management acted fraudulently?

---

[2] This includes the warranty that the corporation is not aware of any intention on the part of any of its 10 largest customers to cease doing business with the corporation or to materially change their existing arrangements with the corporation and that there are no material unresolved disputes with its principal suppliers, shippers or customers. (Article 3.01 (12) (k)).

[9] Subsequent to the closing of the transaction and assuming control of Med Eng, Allen Vanguard was disappointed to find that the new acquisition did not live up to its promise. Difficulties developed in the contract with the U.S. military and with certain other relationships. Allegedly as a result of "MES's misrepresentations and breaches of representations, warranties and covenants" Allen Vanguard itself, in the words of the amended statement of claim, "spiralled into insolvency in the months following the transaction."[3] In 2009 Allen Vanguard sought protection from creditors and a plan of arrangement and reorganization under the CCAA.[4]

[10] When this litigation was commenced, Allen Vanguard pleaded as follows:

> 1. (a) "indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $40,000,000 which shall be distributed to Allen-Vanguard Corporation in accordance with the terms of the Escrow Agreement as defined herein";[5]
>
> 2. (e) "as a result of the breaches of representation and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard";[6]

[11] At no time has it been asserted that any of the offeree shareholders committed fraud nor that the offeree shareholders made any representations or misrepresentations. With the exception of Paul Timmis, who is party to a related proceeding and who figures prominently in the statement of claim, none of the individuals who are said to be responsible for the misrepresentations are the subject of individual claims. For obvious reasons (since it would have made no sense to sue its own subsidiary when the action was commenced and since Allen Vanguard cannot maintain an action against itself now that it is amalgamated) Med Eng is not a defendant to Allen Vanguard's claim. Nevertheless throughout the statement of claim the misrepresentations and breaches of duty are pleaded as acts of "MES". That is Med Eng. Of course the former shareholders generally and the offeree shareholders in particular were the beneficiaries of the fraud, if fraud there was, so as vendors it is from them that Allen Vanguard seeks damages.

[12] The disputed amendments would change the claim to read as follows:

> 1. (a) "indemnification and/or damages for fraudulent and/ or negligent misrepresentation and breach of contract in the amount of $650,000 of which $40,000,000 shall be distributed to Allen-Vanguard in accordance with the terms of the Escrow Agreement as defined herein."

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[3] Paragraph 6, amended statement of claim.
[4] The CCAA proceeding has been the subject of much activity on the Commercial List in Toronto. See for example 2010 ONSC 2676; 2011 ONSC 733; 2011 ONSC 5017
[5] Paragraph 1 (a), original statement of claim.
[6] Paragraph 2 (e), original statement of claim.

2. (f) "as a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard."

[13] The change to paragraph 2 (e) (now paragraph 2 (f) as a consequence of other amendments which are not opposed) is by itself of little moment. Firstly it is in a paragraph headed "overview" and secondly it is already pleaded that the "misrepresentations" were "fraudulent and\or negligent misrepresentations". But there can be no doubt that the change to the prayer for relief from $40,000,000 to $650,000,00 read in combination with this change is a fundamental change to the litigation in substance if not in form. What is happening is that instead of simply laying claim to the entire escrow fund, Allen Vanguard is now seeking a full refund of the purchase price. The original claim was almost a claim *in rem* since, apart from the claim for pre-judgment interest and costs, it sought damages to be distributed to the plaintiff from the escrow fund. Now the damages in excess of the escrow fund will be sought at large against the "defendants" jointly and severally.

[14] At all previous stages in the litigation it has been conducted on the basis that the entitlement to the escrow fund was the ultimate question in issue. This is apparent not only from the pleading but from the previous endorsements and case conference orders. The allegation of fraudulent misrepresentation in that context appeared almost gratuitous because it has never been necessary to prove that the misrepresentations were fraudulent to lay claim to the fund. Conversely this change to the pleading will be totally dependent on proving fraud. The limiting words of Article 7 clearly apply except in case of fraud. The plaintiff does not seek rescission of the SPA nor of the sale itself.

[15] Because this amendment is thus potentially "game changing" and is made only 8 months before the scheduled trial date, the defendants view it as an improper tactic designed to strengthen the hand of the plaintiff in upcoming mediation. Their position is that it should be refused by the court on the basis that the claim is untenable at law, is highly prejudicial and is an abuse of process.

The test for amending pleadings and refusing an amendment

[16] I need not repeat at length the test for amending a pleading. "On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment."[7] Of course the proposed pleading must be a proper pleading. It must therefore meet the requirements of Rule 25 and must be tenable at law. It may

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[7] Rule 26.01

be refused if it creates unreasonable prejudice for the defendants or if it is a mere tactical amendment sought for an improper purpose.[8]

[17] It follows that if the amendment is indeed untenable at law, highly prejudicial or an abuse of process it may be refused. A plea is untenable if it is impossible of success at trial otherwise it should not be refused at the pleadings stage.[9] Though prejudice may be inferred in certain circumstances, the prejudice must be such that it cannot be remedied by a costs award or by other terms such as adjournments, setting peremptory dates for the party seeking the amendment, additional discovery rights or security for costs. Moreover the prejudice must be prejudice that flows from the fact of the amendment and not from the claim itself. Simply facing the prejudice that would be inevitable as the result of any successful plea is insufficient.[10] As for abuse of process, it is for the party asserting abuse to demonstrate that there is an illicit purpose for the amendment constituting grounds for refusal. If I am not persuaded that one or more of these barriers exists then the amendment must be granted on appropriate terms.

Analysis

[18] The court is constrained to decide a motion such as this on the basis of the evidence actually before it and not on the basis of speculation and supposition or of positions put forth in argument that are not supported by the record. The only affidavit evidence before the court is an affidavit of an associate lawyer tendered on behalf of the moving party. That affidavit addresses the reasons for seeking the amendment but little else. The defendants have not tendered any affidavit. Accordingly the motion must be decided on the basis of the one affidavit, certain discovery and cross examination transcripts, the pleadings, the proposed amended pleading and the documents incorporated into the pleadings by reference. In particular I have before me the SPA and the Escrow Agreement. As this matter is case managed and I have heard all of the motions and case conferences I am also familiar with previous findings, the timetable for the proceeding and the litigation history which I would be entitled to take into consideration as well.

[19] Dealing firstly with the question of whether or not the increased claim is tenable at law, it may not be. This is because the rights of the parties are governed by the SPA and as described above the intent of that document is in part to protect the offeree shareholders from liability by limiting any claims to claims against the escrow fund. All of the critical representations and warranties were given in fact and in law by

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[8] The parties both refer to *Plante v. Industrial Alliance Life Insurance Company* (2003) 66 O.R. (3d) 74 (S.C.J. – Master) as setting out the test. With respect to abuse of process see also *National Trust Co. v. Furbacher* [1994] O.J. No. 2385 (S.C.J.) citing with approval *C.Evans & Sons Ltd. v. Spritebrand Ltd. and another* [1985] 2 All E.R. 415 (C.A.)

[9] *Plante, supra.* See also *Chinook Group Ltd. v. Foamex International Inc.* (2004) 72 O.R. (3d) 381 (S.C.J. – Master)

[10] *Hanlan v. Sernesky* (1996) 3 C.P.C. (4th) 20 (Ont. C.A.)

Med Eng management on behalf of the corporation being acquired and not by the vendors, the offeree shareholders.

[20] In article 7.06 which expressly survives termination or rescission of the contract, all parties agree that the sole remedies of any party against the others for any inaccuracy or misrepresentation are the remedies under Article 7 itself. The same article contains a provision that all parties waive any remedies against the other parties except for those set out in Article 7 "other than those arising with respect to any fraud". Read in the most favourable light to the plaintiff this means that in the case of fraud the plaintiff is not limited to the remedies set out in Article 7. But of course that does not create a right of action against the offeree shareholders.

[21] Similarly Article 7.02 which provides that the corporation will indemnify the purchaser for any breaches of representation and warranty and that such claims are limited to the amount in the escrow fund contains the words "except in cases of fraud". This clearly anticipates that if the plaintiff can show fraud, it will not be limited to the amount in the escrow fund. Once again however, notwithstanding that it would in most cases be impractical for a purchaser to assert a claim against the corporation it is purchasing, the liability is expressed to be liability of Med Eng and this paragraph does not create a specific right of action against the offeree shareholders. 7.02 (5) on the other hand specifically provides that the sole recourse of the purchaser against the corporation or the offeree shareholders shall be the "Indemnification Escrow fund" except in the case of deficiency of title to the shares or "in respect of liability of any Shareholder ... under any claim attributable to fraud of that shareholder".

[22] Since there is no fraud asserted against any defendant offeree shareholder, the defendants contend that this provision in article 7.02 (5) is a complete defence to a claim beyond the $40 million in the escrow fund. They may be right. Mr. Conway puts this argument persuasively and it is consistent with the intent of the agreement to limit the exposure of the vendors. Nevertheless I am not able to say with certainty that this is the only possible interpretation of the agreement. Mr. Lederman argues that no court can condone an interpretation which would unjustly enrich the former shareholders at the expense of the plaintiff if it was a victim of fraudulent misrepresentation. There is sufficient ambiguity in these interrelated provisions that I am unable to find only one possible interpretation of the contract. I cannot say that on the face of the agreement the plaintiff could never succeed.

[23] Accordingly the claim must be regarded as tenable. I could not strike it under Rule 25.11 nor, were I a judge, under Rule 21.01.

[24] The question of delay in seeking the amendment is more troubling. The affidavit evidence is to the effect that the decision to amend the claim was made after the discovery of Mr. Timmis. The plaintiff believes that evidence given by Mr. Timmis is an admission of material misrepresentation and non disclosure concerning amongst other things knowledge that the U.S. military was proposing "head to head tests" between the Med Eng product and the products of competitors. In other words the

affidavit explains why Allen Vanguard now believes it has stronger evidence of fraudulent misrepresentation. There is however nothing in the affidavit that asserts that anything has occurred to suggest that the damages incurred by Allen Vanguard have changed or why Allen Vanguard earlier believed it was limited to claiming against the escrow fund and has now apparently changed its view. It appears the explanation is simply that encouraged by the discovery evidence and believing it has a better chance of success, the plaintiff has reconsidered its upside on damages and now wants to "go for broke".

[25] There is authority from the Court of Appeal that "while delay is not in and of itself a basis for refusing an amendment, there must come a point where the delay is so long and the justification so inadequate that some prejudice to the defendant will be presumed absent a demonstration by the party seeking the amendment that there is in fact no prejudice".[11] There would certainly have been nothing preventing the plaintiff from seeking to increase its claim earlier. On the other hand there are eight months until the trial, the discovery of the plaintiff has not concluded and expert reports have not yet been delivered. The litigation risk to both parties is increased if the amendment is granted but I am unable to infer irreparable prejudice.

[26] It was suggested that the offeree shareholders would be prejudiced by this massively inflated claim in various ways. Common sense would suggest this will be so. Instead of merely facing the loss of the $40 million escrow fund that was always at risk of adjustment under the terms of the contract, the offeree shareholders will now have to make provision for a potential contingent liability of $610 million. This however is precisely the prejudice they would have faced had the claim been for $650 million in the first place. Since I have no affidavit evidence, there is nothing before me by which I can conclude that they have taken steps in reliance upon the size of this claim that cannot now be undone. While it is possible that a different litigation strategy might have been adopted or will now have to be adopted, that is nothing more than speculation. In the absence of specific evidence, I am not able to find actual prejudice which cannot be addressed in costs or other reasonable terms. Even unfairness is not enough to create prejudice according to the Court of Appeal.[12]

[27] A finding of abuse of process is ordinarily though not invariably related to a finding of prejudice. Pursuing an aggressive litigation strategy does not rise to the level of abuse of process unless it can clearly be shown to be directed at an improper purpose. Specifically the evidence I would find compelling would be evidence that the amendment would give an unfair advantage to one party over another or was designed to undermine a ruling of the court or the provisions of the rules. I do not have such evidence here.

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[11] *Family Delicatessen Ltd. et. al. v. The Corporation of the City of London et. al.* [2006] O.J. No. 669 (C.A.)
[12] See *Kings Gate Developments Inc. v. Colangelo* (1994) 17 O.R. (3d) 841 (C.A.)

[28] In summary I am not able to find that the claim is rendered untenable by these amendments nor that the amendments are for an improper purpose nor that the defendants will suffer a high degree of prejudice.

Conclusion and terms

[29] In conclusion the plaintiff has brought itself within the mandatory wording of Rule 26.01 and accordingly leave will be granted to amend the statement of claim in the form proposed.

[30] The court is obliged to address any prejudice to the defendant by an award of costs or by other relief which may be granted consequent to amendments. No such terms of relief were proposed as the defendants were requesting the motion be dismissed but notwithstanding the lack of a fall-back position, it seems reasonable to allow for the possibility that terms should be imposed.

[31] At a minimum the defendants may amend their statement of defence and may discover on the amendments but they may also have to respond to the amendments in other ways. For example I can envision (though it was not in evidence) that due to the vastly increased exposure the offeree shareholders may now have to re-consider cross claims or claims against the former managers. Conceivably some of these decisions could impact on the trial date, could require other adjustments to the timetable or require more substantial relief. The plaintiff will also have to review its productions to ensure it has produced any damage documentation relevant to the increased claim.

[32] The costs of the motion will also have to be decided. As always I invite counsel to agree on costs but otherwise I will hear submissions.

[33] An order will therefore go as follows:

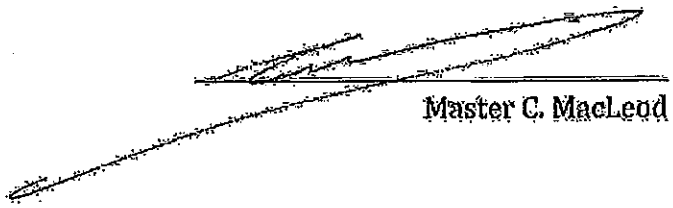
a. The plaintiff's motion to amend the claim is granted and the amended statement of claim in the form set out at Tab 1 A of the motion record may issue. The amended claim is to be issued within the next 10 days.

b. The defendants may amend the statement of defence and may discover on the amendments. The plaintiff is to advise whether these amendments will require additional production and when a supplementary affidavit of documents can be available.

c. The amended claim is to be issued within the next 10 days. Further direction regarding the timing of the amended statement of defence and any other steps consequent on the amendment will be given at one of the upcoming case conferences.

d. I will hear further submissions if the defendants seek additional terms.

e. I will hear submissions on costs should that be necessary. If either party seeks to make submissions they are to advise my office within 30 days failing which there will be no order as to costs.



Master C. MacLeod

Date: February 21st, 2013

This is Exhibit "**Q**" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

CITATION: Allen-Vanguard v. L'Abbé et al, 2013 ONSC 2950
COURT FILE NO.: 08-CV-43544
DATE: 20130522

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Allen-Vanguard Corporation, Respondent (Plaintiff)

AND:

Richard L'Abbé et al, Appellants (Defendants)

BEFORE: Hackland R.S.J.

COUNSEL: Ronald G. Slaght, Q.C. for the Respondent (Plaintiff)

Thomas G. Conway and Calina N. Ritchie for the Appellants (Defendants)

ENDORSEMENT

This is an appeal from the Order of Master MacLeod pursuant to which he granted leave to the respondent to amend its statement of claim to increase its claim for damages from $40 million to $610 million against the former shareholders of Med-Eng Systems Inc. (Med-Eng shareholders) for alleged misrepresentations and breaches of contract of Med-Eng in the course of the sale of the business of Med-Eng to the respondent. The Master's order also permitted the respondent to add the phrase "Fraudulent misrepresentations and ..." such that the relevant paragraph now reads:

> As a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard [the respondent] for the damages which have been caused to Allen-Vanguard.

[1] The Master held that the proposed amendment fell within the mandatory wording of Rule 26.01 of the *Rules of Civil Procedure* which provides:

> On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.
>
> (underlining added)

[2] The Master was well aware of the fact that the amendment if granted would expose the Med-Eng shareholders to potential liability for the full purchase price of the business and not simply for their respective interests in the $40 million holdback fund created on closing in order to secure any possible claims for misrepresentation and breach of warranty, as provided for in an escrow agreement. The amendment in issue is indeed potentially "game changing", as the Master observed.

[3] The appellants challenge the Master's order on the basis that the proposed amendment was not tenable. The law is clear that an amendment to a pleading should not be granted if it is clearly untenable in law or on the facts as pleaded. Whether or not the amendment is tenable depends significantly on the interpretation of the Share Purchase Agreement which governed the sale of the business.

[4] On the facts of this case, it is common ground that all of the critical representations and warranties were given by Med-Eng management on behalf of the corporation being acquired and not by the vendors, the offeree shareholders. Furthermore, it is well settled that shareholders are not vicariously liable for the acts of corporations in which they hold shares. This common law principle is enshrined in section 92 of the *Ontario Business Corporations Act*. The Master's reasons reflect that he was well aware of these considerations.

[5] It would appear to be common ground in this case that any liability on the part of the vendor shareholders could only be based on an obligation arising from the Share Purchase Agreement in the context of fraud. As the Master accurately observed, the effect of this amendment to the pleading will be totally dependent on proving fraud. Obviously in the context of this pleadings motion the court is not in a position to assess whether fraud can be proven on the evidence.

[6] Mr. Conway for the appellants argued persuasively that Article 7.02 of the Share Purchase Agreement was designed to limit any claims for damages for misrepresentation to the $40 million escrow fund. However the waiver or limitation of claims in Article 7.02 itself contains the limitation "other than those [remedies] arising with respect to any fraud". As the Master observed, this limitation does not itself create a right of action against the offeree shareholders. It is less than clear what the exclusion of fraud from Article 7.02 actually means.

This may be a matter for parol evidence at trial. The Master held that he was unable to find only one possible interpretation of the contract and accordingly could not definitively say that the proposed amendment was untenable.

[7] I respectfully agree with the Master's analysis, which is captured in paragraph 22 of his careful reasons:

> Since there is no fraud asserted against any defendant offeree shareholder, the defendants contend that this provision in article 7.02 (5) is a complete defence to a claim beyond the $40 million in the escrow fund. They may be right. Mr. Conway puts this argument persuasively and it is consistent with the intent of the agreement to limit the exposure of the vendors. Nevertheless I am not able to say with certainty that this is the only possible interpretation of the agreement. Mr. Lederman argues that no court can condone an interpretation which would unjustly enrich the former shareholders at the expense of the plaintiff if it was a victim of fraudulent misrepresentation. There is sufficient ambiguity in these interrelated provisions that I am unable to find only one possible interpretation of the contract. I cannot say that on the face of the agreement the plaintiff could never succeed.

[8] The respondent submits that on this pleadings motion, the court lacks the necessary evidence of the factual matrix within which the Share Purchase Agreement was negotiated. It is suggested that such evidence will help to explain how it was intended that the parties deal with claims for fraud in excess of the $40 million escrow fund. It is submitted by the respondent that Article 7.07 of the Share Purchase Agreement is not simply a tax adjustment clause, rather it was intended as a post closing remedial provision which, in the case of fraud, would result in an actual reduction or partial refund of the purchase price.

[9] Like the Master, I cannot say that the proposed amendment was untenable in the sense that it could never succeed. And I specifically do not accept the appellants' submission that it was an error of law for the Master to fail to articulate the specific ambiguity in the Share Purchase Agreement on which the respondent's amendment could succeed. Such a requirement could not be met on the evidentiary record available on a pleadings motion and would be contrary to the mandatory requirement in Rule 26.01 that leave to amendment pleadings shall be granted in the absence of prejudice that cannot be compensated in costs or by an adjournment.

[10] On the question of delay and abuse of process, I decline to interfere with the Master's exercise of discretion on this largely factual consideration. I understand and expect that the Master will hear submissions on whether an adjournment of the current trial dates is required in view of the amendments herein or whether any other terms are necessary to avoid prejudice to the appellants.

[11] In summary, I can find no error of law in the Master's reasons nor any error in the manner in which he has exercised his discretion in allowing the respondent to amend its pleadings. The appeal is therefore dismissed.

[12] The respondent may make a written submission on costs within 14 days of the release of this endorsement and the appellants may respond within 14 days of receiving the respondent's submission.

Hackland RSJ

Mr. Justice Charles T. Hackland

Released: May 22, 2013

CITATION: Allen-Vanguard v. L'Abbé et al, 2013 ONSC 2950
COURT FILE NO.: 08-CV-43544
DATE: 20130522

BETWEEN:

Allen-Vanguard Corporation

and

Richard L'Abbé et al

ENDORSEMENT

HACKLAND R.S.J.

Released: May 22, 2013

This is Exhibit "**R**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits

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A. Right.

2468. Q. And then is it Jeff Lariviere that leaves?

A. I believe so.

2469. Q. Or Mike Brown?

A. No, Mike Brown is still there.

2470. Q. So it's Jeff Lariviere or Theo Pantazopoulos?

A. No, Theo is still there.

2471. Q. He's still there, so it's Jeff Lariviere then is the third individual that departs, I think?

A. I think so.

2472. Q. Okay. So what does Allen-Vanguard say it has suffered by way of damages as a result of the alleged misrepresentations concerning employee compensation? How have you computed your damages or have you suffered damages?

A. Well, there have been damages. I can't speak to the computation of that here today.

2473. Q. Well, what are the damages in general? If you can provide for me generally a description of the damages that Allen-Vanguard says it has suffered as a result of the alleged misrepresentations made by Mr. Timmis about employee compensation?

A. Well, it largely arises out of -- apart from these direct costs of replacing people and severances and recruiting new people, then it arises out of disruption

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to and discontinuity to the whole Engineering Systems Group as a result of Mr. Timmis' action.

2474. Q. Okay. So what recruiting costs?

MR. LEDERMAN: He's already told you that he can't quantify that.

MR. CONWAY: Okay, that's fine, I hear that. So I'm asking him as a representative to undertake to provide us with the computation of the additional recruiting costs that were incurred?

MR. LEDERMAN: We will provide you with particulars as to the damages relating to the actions of Mr. Timmis with respect to employee compensation prior to Trial. *U*

BY MR. CONWAY:

2475. Q. I gather there has been no analysis done of damages, either direct or indirect, flowing from Mr. Timmis' misrepresentations on employee compensation?

MR. LEDERMAN: What do you mean by analysis?

MR. CONWAY: There's been no analysis performed by anyone within AVC or an expert or experts retained by AVC to calculate the direct or indirect damages caused by this particular set of misrepresentations dealing with employee compensation?

MR. LEDERMAN: There are two parts to that question. One is about external experts ---

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MR. LEDERMAN: Do you have knowledge of their findings, opinions or conclusions at this point in time?

THE WITNESS: We don't have any final opinions or conclusions; work is ongoing.

BY MR. CONWAY:

2488. Q. Well, now that I've asked the question you have the obligation to tell us when you do get that information.

MR. LEDERMAN: Which I've already told you, Mr. Conway, we will particularize our claim for damages prior to Trial.

BY MR. CONWAY:

2489. Q. So you can't assist me at all at the moment, Mr. Luxton, in articulating what damages AVC has suffered and what damages it continues to suffer as a result of the misrepresentations that you say Mr. Timmis made about employee compensation?

MR. LEDERMAN: I think he's answered that. O*

THE WITNESS: Well, as I say, there is extensive work that's still in progress. We have no final opinions or conclusions on that at this stage.

BY MR. CONWAY:

2490. Q. Had Allen-Vanguard known that it would have to deal with these issues before the closing and meet demands for increased compensation, how would it have

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entered into between MES and GDATP on May 27, 2005.

And in subparagraph 2, contrary to the representations and warranties contained in the share purchase agreement MES failed to disclose that there were numerous breaches and acts of default which GDATP was alleging against MES.

With respect to the first subparagraph are there any other material breaches with respect to the GDATP teaming agreement that we have not discussed? I think we've been pretty thorough in our examination of those misrepresentations but I'm just asking you if there's anything that we've missed?

A. I don't think so.

4306. Q. And what about with respect to the allegation in subparagraph 2, are there any other breaches or acts of default that we have not discussed with respect to the General Dynamics teaming agreement?

A. No, I don't think so.

4307. Q. And if we go to paragraph 6, the claim under the notice of claim is that with respect to all of the allegations that are made in this notice of claim Allen-Vanguard says that the aggregate amount of its claim is $40 million plus interest, right?

A. Correct.

4308. Q. So what amount of that claim is associated

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with the allegations that are made in paragraphs 4i and ii, that is the allegations respecting the nondisclosure of the dispute over the General Dynamics teaming agreement?

A. I couldn't give you an allocation for that sitting here today.

4309. Q. Why not?

MR. LEDERMAN: As I've indicated to you in prior days of these Discoveries Mr. Conway the question as to the quantification of damages will be particularized prior to trial and we're not in a position sitting here today to particularize this particular aspect of the claim until that has been fully analyzed.

MR. CONWAY: Do you know what the claim consists of at all, can you describe -- I'm not asking -- let's approach it from a different way. You can't tell me what the quantum of the claim is?

MR. LEDERMAN: On this specific item of the claim?

BY MR. CONWAY:

4310. Q. What generally are the damages that you claim. I mean I don't understand this. You've completely released all claims and you never paid any money to GDATP with respect to the alleged breaches so what are we talking about here?

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A. Well with counsel advising me are the real impact of it taking almost a year to resolve these things with GDATP was that there was a very unconstructive relationship much of which arose from Timmis undermining the relationship with the US Marines according to GDATP and we agree with that assessment.

And this was a big contributing factor, this dysfunctionalism, in the collapse of the relationship with the Marines. The Marines were very unhappy with the fact that there was a dysfunctional relationship between GDATP and the old Med-Eng.

4311. Q. As I recall Mr. Timmis was gone by the beginning of 2008?

A. Mr. Timmis was gone but this had been ongoing for some time unknown to us prior to the transaction. All of these claims predate our transaction to acquire Med-Eng. And so an enormous amount of damage had been done in the relationship between -- the three way relationship between the Marine Corps, GDATP and Med-Eng.

4312. Q. The enormous amount of damage that had been done was that you had a poor relationship?

A. The Marines stated plainly that they were unhappy that that was a dysfunctional relationship, that that was not the kind of relationship that they were used to having when they have a prime contractor and

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subcontractors underneath. And we know this was a contributing factor to the cancellation of the program.

4313. Q. So at some point you have to translate that into money?

A. And we will.

MR. LEDERMAN: And we will.

BY MR. CONWAY:

4314. Q. But you can't say how you're going to do that now.

A. That needs some further analysis and that's ongoing.

4315. Q. This notice was given nearly three years ago now?

MR. LEDERMAN: Yes.

MR. CONWAY: Two and a half years ago and you still haven't put your mind to what the damages might be with respect to those allegations.

MR. LEDERMAN: As I advised that's information we will particularize prior to trial.

BY MR. CONWAY:

4316. Q. So presently there's no amount associated with that claim?

MR. LEDERMAN: No, but there certainly is an amount that will be associated with that claim, it's just that we'll need to analyze it.

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And I understand 73, subject to you correcting me Counsellor, to refer to all of that conduct.

4371. Q. And can you break down for me -- your claim is that you're entitled to $40 million, the entire escrow fund, can you break down -- are you in a position to break down for me what amounts can be attributed to which breaches?

MR. LEDERMAN: No, as I said Mr. Conway, that's not something we can particularize at the moment but it is something that will be particularized prior to trial.

MR. CONWAY: When prior to trial?

MR. LEDERMAN: Once we've had an opportunity to have the assistance of expert input into doing a full damages analysis on each one of the claims that we're making here which we say results in Allen-Vanguard Corporations entitlement to the indemnification escrow fund.

MR. CONWAY: When do you anticipate having your experts reports?

MR. LEDERMAN: Well certainly not prior to the completion of the Examinations for Discovery. We'd like for that to be completed.

MR. CONWAY: Why would you need to do that? I don't think the offering shareholders are going to help you on your claim for damages.

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BY MR. CONWAY:

6743. Q. So is this assistance ongoing or has it come to an end?

A. Sorry, are you asking me? I don't know.

6744. Q. Will you find out?

MR. LEDERMAN: Yes. *U*

MR. CONWAY: Undertaking no. 51, question 1418, we asked you to particularize in full, the damages that Allen-Vanguard has suffered as a result of the assist audit. And the response essentially has been we'll give you the details before trial.

I don't think that's a sufficient answer. So what damages has Allen-Vanguard suffered as a result of this?

MR. LEDERMAN: We'll get those numbers to you. The undertaking was to particularize in full, prior to trial, the amounts that AVC has sustained as a result of the assist audit.

MR. CONWAY: So what are they?

MR. LEDERMAN: At present, it's been responded on to on the basis that it's an ongoing undertaking so we'll provide that information to you.

MR. CONWAY: Will the damages claim include legal and other fees that Allen-Vanguard has incurred as a result of addressing the issue?

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MR. LEDERMAN: Yes.

MR. CONWAY: Well, what are they?

MR. LEDERMAN: I don't have that at my fingertips, Mr. Conway.

MR. CONWAY: Could you provide that information?

MR. LEDERMAN: Yes, we will subject to privilege. I think I have a memory of having this exchange with you in the last round of Discoveries.

MR. CONWAY: Well, you took the question under advisement. Now you're saying you will provide us with the information, subject to privilege?

MR. LEDERMAN: Correct, which is -- the way in which I left it the last time which was we'll have to ascertain whether there are privilege issues associated with the amounts charged by these law firms in providing assistance to Allen-Vanguard in dealing with the assist audit. And that's information we'll provide, subject to any issues of privilege. *U*

BY MR. CONWAY:

6745. Q. Did Med-Eng represent to Allen-Vanguard that it would not need to retain the expertise of outside lawyers and accountants to address the assist audit issue?

A. Not to my knowledge.

BY MR. CONWAY:

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MS RITCHIE: As a result of the foreign exchange.

BY MR. CONWAY:

6844. Q. As a result of the foreign exchange issue?

A. I believe there are.

6845. Q. What are they?

A. We'd have to go back to the statement of the backlog that we looked at yesterday and identify which ones are in US dollars.

6846. Q. No one from Allen-Vanguard has done that yet?

A. I don't know.

6847. Q. So this is the first time you've turned your mind to that question about what other orders may have been overstated because of the foreign exchange rate issue?

A. No, that's not the case. I said we know that all of the orders in backlog denominated in US dollars were overstated.

6848. Q. But you don't know which ones? Sitting here in 2012, you don't know which ones?

A. They're all sitting there on that backlog list that we saw yesterday.

6849. Q. So are you going to quantify how much that is for us at some point?

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MR. LEDERMAN: If there is an amendment in the pleading to increase the damages beyond that which is stated in paragraph 44, we will do that. *U*

MR. CONWAY: When are you planning to amend the Claim?

MR. LEDERMAN: You've just asked us to determine whether the other orders in backlog in US dollars resulted in a foreign exchange shortfall and we'll do that.

And if we determine there are other orders in backlog that had been misstated as to their value that then also triggered a shortfall in revenue when the orders were shipped, we'll do those calculations and we'll amend the pleading on that basis; if it's above the $13.3 million that's already been claimed in paragraph 44 of the Statement of Claim.

MR. CONWAY: Just on that point. The $13.3 million is that the damages claim?

MR. LEDERMAN: That's the discrepancy ---

THE WITNESS: The damages arise out of the consequences of this which involve tripping bank covenants that were keyed off of the values provided by Med-Eng at closing.

MR. CONWAY: Where is that pleaded; do we know?

MR. LEDERMAN: Yes. It's in paragraph 93.

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BY MR. CONWAY:

6850. Q. So the claim is not for $13,300,000 then; it's for something else?

MR. LEDERMAN: The claim as it presently stands, the damages that are being sought are $40 million.

MR. CONWAY: Yes, that's the value of the escrow fund.

MR. LEDERMAN: Yes, and as I indicated yesterday that is subject to being increased in the event that ---

MR. CONWAY: Who are you going to claim that against?

MR. LEDERMAN: Against the offeree shareholders.

MS RITCHIE: I think the question that Mr. Conway was asking was more specific to what are the damages claimed in respect of that allegation.

MR. CONWAY: This particular allegation in 43 through 45, what's the damages claim?

MR. LEDERMAN: That's going to be the subject of expert opinions and reports when those get ---

MR. CONWAY: You can't tell us what the damages claim is today?

MR. LEDERMAN: No, I can't. That's the subject of expert comment. I don't have any findings, opinions or conclusions at this time from an expert dealing with the damages issues as a result of this specific claim.

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MR. CONWAY: When are you planning to have your damages expert opinion?

MR. LEDERMAN: The timetable requires the expert report of Allen-Vanguard to be served by March 1.

BY MR. CONWAY:

6851. Q. Would you agree with me that this particular figure of $13,300,000 is with respect to revenue and does not include the cost of sales?

A. Yes, it represents the value of the shortfall in revenue but necessarily all of the damages incurred.

6852. Q. I'm not talking about that; I'm talking about this number here. You might have had a shortfall in revenue but you also had a cost of producing those goods; right? Has that been factored into this number?

A. No, the calculus on the damages has only partly to do with the net loss on the difference between revenue and cost. But it also has to do with other penalties and fees that resulted from this.

6853. Q. What other penalties and fees resulted from this particular incident?

A. That is what is being worked on by outside advisors.

6854. Q. Oh yeah, who is that?

MR. LEDERMAN: The experts will be looking at

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MR. CONWAY: Okay, so we'll deal with that on a motion.

MR. LEDERMAN: That's fine.

BY MR. CONWAY:

6955. Q. Undertaking no. 113, question 3129. The undertaking was to confirm whether the tax reserve proposed by KPMG was booked ---

MR. LEDERMAN: Just a minute.

BY MR. CONWAY:

6956. Q. So this relates to the deductibility of the CIBC transaction fees; do you recall that, Mr. Luxton?

A. I do.

6957. Q. And AVC is alleging in the Statement of Claim that this is a liability for which you wish to hold the escrow fund responsible or wish to claim against the escrow fund.

Your answer was: The tax reserve proposed by KPMG was booked and maintained for several years but was reversed in 2012?

A. That's right.

6958. Q. So AVC is no longer reserving for that possible liability?

A. That's correct.

6959. Q. So is AVC still asserting a claim for damages with respect to the deduction of the CIBC

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transaction fees?

MR. LEDERMAN: I believe so at this point but that's going to be the subject of ---

MR. CONWAY: I didn't ask you; I asked Mr. Luxton.

MR. LEDERMAN: And I'm answering because it relates to a review by experts and will be captured in an expert report. If there are no damages that flow from ---

MR. CONWAY: So you're still maintaining that as a claim for damages?

MR. LEDERMAN: At the moment, we are because I think there are some damages associated with that but I'm waiting for ---

MR. CONWAY: So what is the basis for that claim if it's no longer being reserved on the books?

MR. LEDERMAN: That's what I'm telling you, Mr. Conway, is that I need to gain an expert opinion on the question as to whether there are nevertheless damages associated with this as a result of Allen-Vanguard taking a $3.5 million reserve from 2007 until 2012, at which point it was reversed.

MR. CONWAY: So you don't know? You can't answer that question?

MR. LEDERMAN: I don't know the particulars of

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components that need to be replaced in the course of the maintenance of these units.

7103. Q. And so when did AVTI commence this contribution to the warranty float?

A. I couldn't say sitting here today.

7104. Q. Do you know if it was a contribution that was started before close or after close?

A. I don't know.

7105. Q. Okay. Counsel, could we get an undertaking to find out?

MR. LEDERMAN: Yes, we'll make enquiries and advise. *U*

BY MS.RITCHIE:

7106. Q. And so this $2 million and change, it would appear, makes reference to the cost of the actual parts. Is that correct?

A. That's right. The cost of the components that are in the systems.

7107. Q. Okay. Is that an amount that you are claiming as against the operating shareholders in this litigation. I mean, is that part of your claim as it relates to the warranty issue in the pleadings?

A. Well, as I stated before, we have outside experts assisting with formulation and the quantification of damages at the moment and that

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exercise is ongoing.

7108. Q. Do you know the reference to "assuming carrying costs throughout". Do you know what sort of costs that makes reference to?

A. The carrying costs is really just as it is stated here, that the company procured and these components to a value of over $2 million and therefore was carrying the costs of those components.

7109. Q. Okay, and I don't want to guess at the answer, but are those carrying costs something that you are claiming as damages in this litigation?

A. Again, we are obtaining outside expert advice on quantification of damages.

7110. Q. Perhaps we can....

MR. CONWAY: So just so we know, every time he says this, you still have an obligation to tell us. Right? He's saying he doesn't know, but we have asked the question, so when you do know you have to tell us. You understand that, right?

MR. LEDERMAN: I understand what my obligations are, Mr. Conway. The calculation of the damages will all be set out in an expert report dealing with this issue as I have advised.

BY MS.RITCHIE:

7111. Q. Well frankly, what I'm trying to get more at

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your key people, right?

A. You may.

8133. Q. Yes, you may, okay. But having told me that, having admitted that that's something that just made sense from your perspective; you would also admit that you would be responsible for funding those long-term incentives or bearing the costs associated with the creation of those incentives, right?

A. To the extent that the cost involves the issue of stock options or other forms of equity, yes.

8134. Q. Or even cash bonuses if that's what you chose to do. I know you didn't but if you chose to do that as part of an incentive program, you would have funded that?

A. Well, we never said we would provide cash bonuses ---

8135. Q. I know.

A. --- and we never discussed cash bonuses. We were very clear that the long-term incentive plan would be in the form of stock options.

8136. Q. Okay. In paragraph 84, you say,

"It became apparent to the employees that Timmis had negotiated for himself the entire pool of funds that would otherwise have been earmarked",

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and then in paragraph 85, Allen-Vanguard says it has "continued to suffer damages caused by these misrepresentations made on behalf of MES". So with respect to paragraph 85, what is the quantum of damages that Allen-Vanguard says it has suffered to date?

MR. LEDERMAN: Well, as I've told you and as you have asked that question before, Mr. Conway, the quantum will be particularized in an expert report which will set out the damages analysis. But I'm not in a position to advise you as to any quantum sitting here today or the particulars, as we've said repeatedly.

MR. CONWAY: What is the nature of the damages then? If you can't particularize the damages, what is the nature of the damages that will be claimed?

MR. LEDERMAN: We've already answered that as well both yesterday and on a previous day of Discovery. We have provided you with the general forums of the damages that relate to this issue.

MR. CONWAY: And what are they?

MR. LEDERMAN: Pull up the Transcript, please.

(OFF RECORD DISCUSSION)

MR. LEDERMAN: On February 16, 2011, Question 2472,

Question: "Okay. So what does Allen-Vanguard say it has suffered by way of damages as

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a result of the alleged misrepresentations concerning employee compensation? How have you computed your damages or have you suffered damages?"

Answer: "Well, there have been damages. I can't speak to the computation of that here today."

Question: "Well, what are the damages in general? If you can provide for me generally a description of the damages that Allen-Vanguard says it has suffered as a result of the alleged misrepresentations made by Mr. Timmis about employee compensation?"

Answer: "Well, it largely arises out of, apart from these direct costs of replacing people and severances and recruiting new people, then it arises out of disruption to and discontinuity to the whole Engineering Systems Group as a result of Mr. Timmis' action."

Question: "Okay, so what recruiting costs?"

"MR. LEDERMAN: He's already told you that he can't quantify that".

"MR. CONWAY: Okay, that's fine so I'm asking him as a representative to undertake to advise

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of the computation of the additional recruiting costs that were incurred."

"MR. LEDERMAN: We will provide you with particulars as to the damages relating to the actions of Mr. Timmis with respect to employee compensation prior to Trial".

MR. CONWAY: Okay. What are the continuing costs then or the continuing damages that Allen-Vanguard says it's suffering today? In that paragraph, you say that Allen-Vanguard continues to suffer damages. Does it continue to suffer damages today and if so, what are those damages? Presumably the replacement costs because the cost associated with hiring new employees is no longer an issue. So what are the ongoing damages?

MR. LEDERMAN: Well, that's the subject of the damages analysis which will be provided in the form of an expert report.

MR. CONWAY: So you're going to specifically advise us presumably when you get an expert's report and an expert tells you what the damages are, you're going to let us know what the ongoing damage are that Allen-Vanguard continues to suffer?

MR. LEDERMAN: Well, the calculation will set out the manner in which the damages have been calculated

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for the period of time that Allen-Vanguard suffered the damages as a result of Mr. Timmis' misrepresentations.

MR. CONWAY: Thank you. What are the nature of the damages that Allen-Vanguard continues to suffer? What is the nature of the damages?

MR. LEDERMAN: Well, we've already described for you the nature of the damages that Allen-Vanguard suffered as a result of those misrepresentations.

MR. CONWAY: Got it.

MR. LEDERMAN: As to when those damages came to an end or if they are continuing up to Trial, that will be set out in the form of a damages analysis. But you've said that they're continuing, that's what the allegation is?

MR. LEDERMAN: Right.

MR. CONWAY: Can you tell me what the nature of the damages are that Allen-Vanguard continues to suffer?

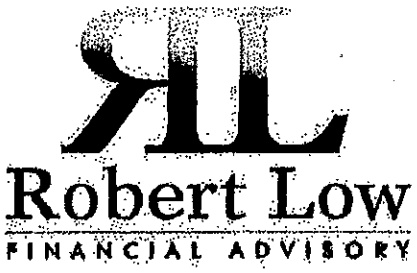
MR. LEDERMAN: At the time that the Statement of Claim was drafted in 2008, they had been continuing at that point in time. Whether they have continued to the present date is the matter that will have to be reviewed and determined by an expert analysis.

BY MR. CONWAY:

8137. Q. In paragraph 87, Allen-Vanguard alleges that,

This is Exhibit "**S**" referred to in the affidavit of **Paul Echenberg** sworn before me, this 24th day of November 2013.

A Commissioner for Taking Affidavits



Allen-Vanguard Corporation

Economic Loss Report

March 15, 2013

Contents

Robert Low
FINANCIAL ADVISORY

March 15, 2013

Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West, Suite 2600
Toronto, Ontario
M5H 3P5

Attention: Messrs. Ronald Slaght and Eli Lederman

Dear Sirs:

Re : Allen-Vanguard Corporation ("Plaintiff") and Richard L'Abbé, 1062455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited, and Schroder Ventures Holdings Limited (the "Defendants") – Court File No. 08-CV-43544

1 INTRODUCTION

1.1 You have requested our opinion as to the quantum of the economic losses (the **"Economic Losses"**), incurred by Allen-Vanguard Corporation (**"Allen-Vanguard"** or the **"Company"**), if any, as a result of the alleged acts (the **"Alleged Actions"**) of fraudulent and/or negligent misrepresentation and breach of contract of Med-Eng as set forth in the Amended Statement of Claim dated January 29, 2013.

1.2 We understand that Allen-Vanguard is claiming, among other things, that the Alleged Actions resulted in Allen-Vanguard consummating a transaction (the **"Transaction"**) on September 17, 2007 (the **"Transaction Date"**)[1] to acquire all of the issued and outstanding shares of Med-Eng Systems Inc. (**"Med-Eng"**) to the detriment of the Company. We understand that absent the Alleged Actions, Allen-Vanguard claims that it

[1] Pursuant to a Share Purchase Agreement between Allen-Vanguard Corporation and Offeree Shareholders and Med-Eng Systems Inc. made as of August 3, 2007.

would not have been prepared to complete the Transaction or would have completed the transaction at a renegotiated and reduced purchase price.[2]

1.3 We understand that Allen-Vanguard claims that in the period leading up to the Transaction Date, Med-Eng misrepresented, among other things, the status of certain business relationships, the likelihood of the projected revenue pipeline and future earnings as well as certain costs and liabilities of Med-Eng. Allen-Vanguard claims that these misrepresentations had a material impact on the future prospects of Med-Eng as at the Transaction Date and on the purchase price agreed to. Whether Med-Eng fraudulently or negligently misrepresented the business prospects of Med-Eng and/or was in breach of contract are matters for the Court and we provide no comment on these legal issues.

1.4 In this report, we have calculated the Economic Losses incurred by Allen-Vanguard under two principal scenarios. We have assumed that had the Alleged Actions not occurred and had Allen-Vanguard been aware of certain information:

a. the Company would not have proceeded with the Transaction and would not have acquired Med-Eng. The Economic Losses incurred by Allen-Vanguard under this scenario (**"Scenario #1"**) are measured by the loss of the equity invested in the purchase of Med-Eng including the fees incurred to raise this equity plus the loss in the net asset value of Allen-Vanguard. Our calculation of the Economic Loss pursuant to Scenario #1 includes the following components:

Summary of Calculation Methodology - Scenario #1	
A	Equity invested by Allen-Vanguard to complete the Transaction
B	Estimated Allen-Vanguard net asset value at December 18, 2009 absent the acquisition of Med-Eng
A + B	Total Economic Losses incurred by Allen-Vanguard

b. or in the alternative, the Company would have attempted to negotiate a purchase of the outstanding shares of Med-Eng based on a reduced initial payment (the **"Adjusted Purchase Price"**) plus an additional contingent payment related to the actual outcomes of certain of the representations, with no change in the total consideration if the contingent payment were made. The difference between the

[2] Amended Statement of Claim paragraph 105.

actual purchase price paid (the **"Actual Purchase Price"**[3]) and the Adjusted Purchase Price plus certain costs and expenses incurred by the Company attributable to or as a consequence of the Alleged Actions comprises our calculation of the Economic Losses incurred by Allen-Vanguard (**"Scenario #2"**). Our calculation of the Economic Losses pursuant to Scenario #2 includes the following components:

Summary of Calculation Methodology - Scenario #2	
A	**Actual Purchase Price paid for the Issued and outstanding shares of Med-Eng**
Less:	Contingent reduction in the purchase price on account of revised revenue projections and forecast earnings
B	**Adjusted Purchase Price for the Issued and outstanding shares of Med-Eng**
A - B	Difference between the Actual Purchase Price and the Adjusted Purchase Price
Add:	Financing and penalty costs associated with the purchase of Med-Eng
C	**Economic Loss before consideration of Other Losses**
Add: Other Losses	
Add:	Costs of the Assist Audit
Add:	Costs of the undisclosed Warranty Repairs and quality control issues
Add:	Working Capital Adjustment on account of tax liabilities
Add:	Increased costs associated with Employee Compensation Adjustments following the Transaction
Equals	**Total Economic Losses Incurred by Allen-Vanguard**

Having consideration for the foregoing, we have calculated the difference between the Actual Purchase Price paid by Allen-Vanguard and the Adjusted Purchase Price and before the contingent payment, which having regard to actual events would not have been paid. To this amount we added the financing and penalty costs incurred by Allen-Vanguard attributable to or as a consequence of the Alleged Actions and the other losses. Each of the adjustments noted above are explained in detail at Section 8 through Section 11 of this report.

1.5 We understand that you have requested this report pursuant to ongoing litigation involving the above noted parties.

[3] Equal to $633.529 million as defined in paragraph 4.12.

1.6 This report has been prepared in accordance with the standards for Expert Reports issued by the Canadian Institute of Chartered Business Valuators ("**CICBV**"). In our view, we have acted independently and objectively in the conduct of our analysis and the preparation of this report. No part of our compensation is contingent on our analysis or the conclusions presented herein, or on the outcome of the litigation.

1.7 The curriculum vitae of the author of this report, together with the acknowledgement of the expert's duties, are provided in **Appendix C**.

1.8 All currency amounts in this report are Canadian dollars unless otherwise indicated.

2 SUMMARY OF PRINCIPAL FINDINGS

2.1 Based on the scope of our review (Appendix A), and subject to the assumptions (Section 12) and restrictions (Section 14) noted herein, in our opinion the Economic Losses incurred by Allen-Vanguard were as follows:[4]

a. Scenario #1, wherein Allen-Vanguard would not have acquired Med-Eng, the Economic Losses are in the range of approximately $465.0 million to $480.0 million (see Section 7 and Schedule 1); and

b. Scenario #2, wherein Allen-Vanguard would have attempted to negotiate a purchase of Med-Eng, with a reduced initial payment plus contingent consideration, the Economic Losses are approximately $365.0 million (see Section 11 and Schedule 1).

The Economic Losses presented herein exclude any consideration of prejudgment interest.

[4] We understand that at the date of this report, counsel to the parties were still in the process of continuing examinations for discovery. We reserve the right, but shall not be obliged, to review and revise our conclusions in light of any facts that may become known through this process.

3 SCOPE OF REVIEW

3.1 The information we relied upon in our analysis is outlined in **Appendix A**. We have not audited or otherwise attempted to assess the accuracy or completeness of this information, other than as may be noted herein.

4 BACKGROUND

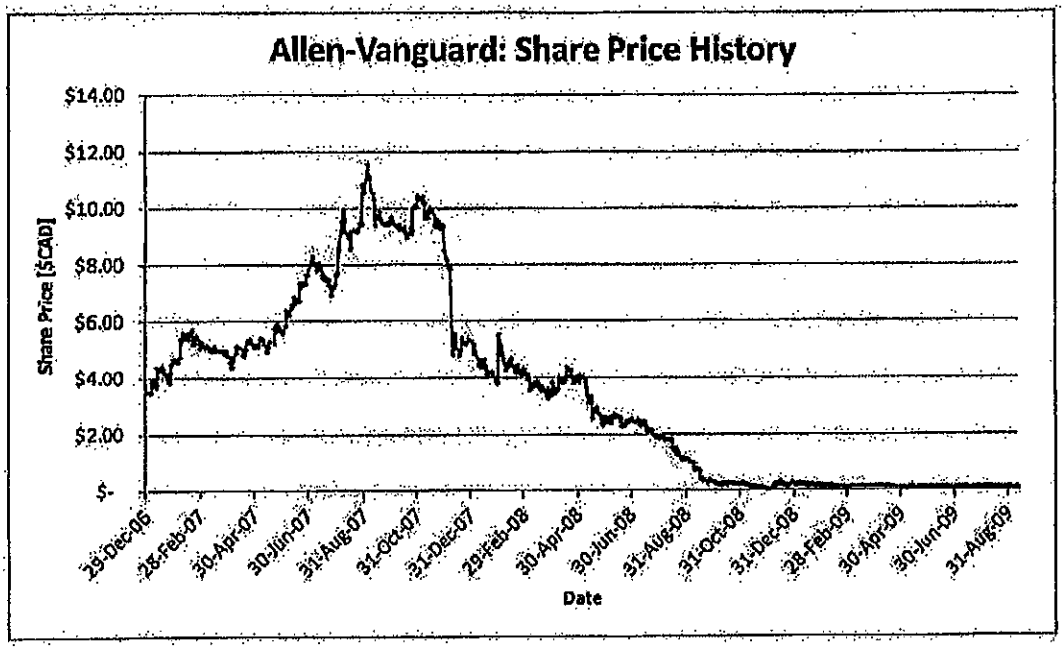
THE PARTIES

4.1 Allen-Vanguard manufactures and distributes customized solutions and technologies used to defend military and security forces from terrorist and other military threats. The Company is a global leader in defence mechanisms related to improvised explosive devices (**"IED"**), radio controlled IEDs (**"RCIED"**), bomb and other protective suits and cooling products. The Company also provides military and security force consulting and intelligence services. The Company provides its products and services to military and security organizations across the globe, principally servicing the United States military and the Canadian Department of National Defence.

4.2 Allen-Vanguard is headquartered in Ottawa, Ontario and has operating facilities in the United States and United Kingdom. At the Transaction Date, Allen-Vanguard was a publicly traded company listed on the Toronto Stock Exchange under the ticker symbol "VRS".

4.3 The following chart summarizes the publicly traded share price for Allen-Vanguard for the January 1, 2007 through September 14, 2009 period. We observe that the TSX suspended trading of Allen-Vanguard's shares on September 14, 2009 and the Company was delisted from the TSX on October 21, 2009.[5]

[5] Allen-Vanguard Press Release dated September 22, 2009.



4.4 Prior to the Transaction, Med-Eng was a privately held business headquartered in Ottawa, Ontario. Founded in 1981, Med-Eng was a global manufacturer and supplier of military and security protection products with a focus on explosive ordinance disposal ("**EOD**"), bomb suits, de-mining, body temperature control and cooling systems and electronic countermeasures products. At the Transaction Date, Med-Eng employed approximately 400 personnel.

4.5 Med-Eng operated in three primary market segments being:

a. Personal Protection Systems ("**PPS**") – Med-Eng was a lead manufacturer of EOD, chemical and protective suits including protective helmets, visors and footwear;

b. Micro-climate Systems ("**MCS**") – the company manufactured personal cooling garments and electronics chilling systems used for military engagements in high temperature environments; and

c. Electronic Countermeasures ("**ECM**") – comprised the research and development of both vehicle mounted and man portable ECM units. ECM units detect and defend military personnel from explosive devices such as IEDs, RCIEDs and land mines by utilizing radio jamming technologies.

4.6 We understand that the ECM division experienced significant growth in the period immediately preceding the Transaction Date following the development of Med-Eng's Chameleon ECM System (the **"Chameleon"**) in December 2005. In the full fiscal year preceding the Transaction Date, the ECM business represented approximately 70% of total Med-Eng revenues.

4.7 Med-Eng entered a teaming agreement (the **"Teaming Agreement"**) dated May 27, 2005 to partner with US based General Dynamics Armament and Technical Products, Inc. (**"GDATP"**) pursuant to which the parties agreed to cooperatively develop, market, produce and support the ECM products (particularly the Chameleon) developed by Med-Eng. The Teaming Agreement provided Med-Eng important access to relationships with key customers being the governments of the United States, Canada, the United Kingdom and New Zealand. Under the terms and conditions of the Teaming Agreement, GDATP acted as the primary client contact and sales force while Med-Eng was responsible for product development and manufacturing.

4.8 Med-Eng manufactured products for and serviced several large military organizations including the US Marine Corps (**"USMC"**), the US Department of Homeland Security, and the Department of National Defence in Canada.

THE TRANSACTION

4.9 We understand that beginning in calendar 2006, Med-Eng's ownership team[6] began a limited auction process to sell the shares of Med-Eng.

4.10 On August 3, 2007, Allen-Vanguard and Med-Eng executed a written Share Purchase Agreement (the **"SPA"**) pursuant to which Allen-Vanguard would acquire all of the issued and outstanding common shares of Med-Eng on a debt and cash free basis.

4.11 Among other things, the SPA provided that:

a. the Offeree Shareholders,[7] who held in excess of 70% of the shares of Med-Eng, would deliver a drag-along notice to the minority shareholders indicating their

[6] Comprised principally of the Defendants.
[7] We understand that the Offeree Shareholders, comprised of Richard L'Abbé, 1062455 Ontario Inc., GrowthWorks Canadian Fund Ltd., Schroder Canada and Schroder UK, owned in excess of 70% of the common shares on a fully diluted basis.

intention to accept the Allen-Vanguard offer, thereby binding all of the shareholders to the Transaction;

b. the purchase price was to be set at $581.0 million subject to working capital adjustments;[8]

c. the purchase price was determined based on a normalized working capital level for Med-Eng of $10.0 million on the closing date of the Transaction.[9] The final purchase price was to be adjusted on a dollar-for-dollar basis to the extent that the actual working capital was greater than or less than $10.0 million; and

d. on the closing date, the purchaser would pay $431.0 million in cash and deliver $150.0 million in take back notes adjusted as necessary for working capital payments outlined in (c.) above. Of the $150.0 million in take back notes, $43.0 million would be deposited with an escrow agent, of which $3.0 million related to a working capital escrow amount and $40.0 million related to an indemnification escrow amount.[10] The parties to the Transaction subsequently executed an escrow agreement (the **"Escrow Agreement"**) dated September 17, 2007 which governed the manner in which the indemnity escrow amount was to be distributed.

4.12 Pursuant to the SPA, the Transaction closed on September 17, 2007 for a total consideration of $622.630 million plus Allen-Vanguard's acquisition costs of $10.899 million for a total Actual Purchase Price of $633.529 million.[11] The total purchase consideration included $41.630 million in respect of Med-Eng's working capital position at the Transaction Date in excess of $10.0 million pursuant to Section 2.03 of the SPA.[12]

4.13 To finance the Transaction, Allen-Vanguard obtained funds from the following sources:

a. a private placement on August 15, 2007 of 14,650,000 subscription receipts at a subscription price of $6.85 per subscription for total gross proceeds of $100.352 million and net proceeds of $94.206 million after commissions. Each subscription receipt was automatically exercised on the Transaction Date into one special

[8] Share Purchase Agreement dated August 3, 2007 – Section 2.02. AVC00019339.
[9] Share Purchase Agreement dated August 3, 2007 – Section 2.03. AVC00019339.
[10] Share Purchase Agreement dated August 3, 2007 – Section 2.04. AVC00019339.
[11] Source: Note 4 to the Allen-Vanguard audited financial statements for the year ending September 30, 2008.
[12] Source: Management Discussion and Analysis: September 30, 2007 Annual Report of Allen-Vanguard – page 13.

warrant which was subsequently exercised for one common share of the Company following the issuance of a prospectus offering on September 21, 2007;

b. senior term debt of US $341.5 million repayable on a quarterly basis over a five year term (the **"Senior Debt Facility"**). The term debt incurred interest at a rate equal to the US bank prime rate plus 6.0% or at the election of the Company, LIBOR plus 7.0%;

c. a draw-down of $10.0 million on a $20.0 million revolving line of credit bearing interest at a rate of US prime rate plus 6.0% or LIBOR plus 7.0%;

d. the Company issued 3,575,100 warrants on the Transaction Date and an additional 464,726 warrants on October 12, 2007 to the arrangers of the term debt and revolving line of credit. Each warrant had a 7 year term and was exercisable into one common share of the Company at an exercise price of $9.50;

e. subordinated debt in the amount of $190.6 million issued by the vendors to the Transaction. Allen-Vanguard arranged for a consortium of lenders to commit to purchase $150.0 million of this subordinated debt effective October 1, 2007 pending the completion of an equity offering. The subordinated debt consortium was paid a commitment fee of $9.0 million on account of this arrangement;

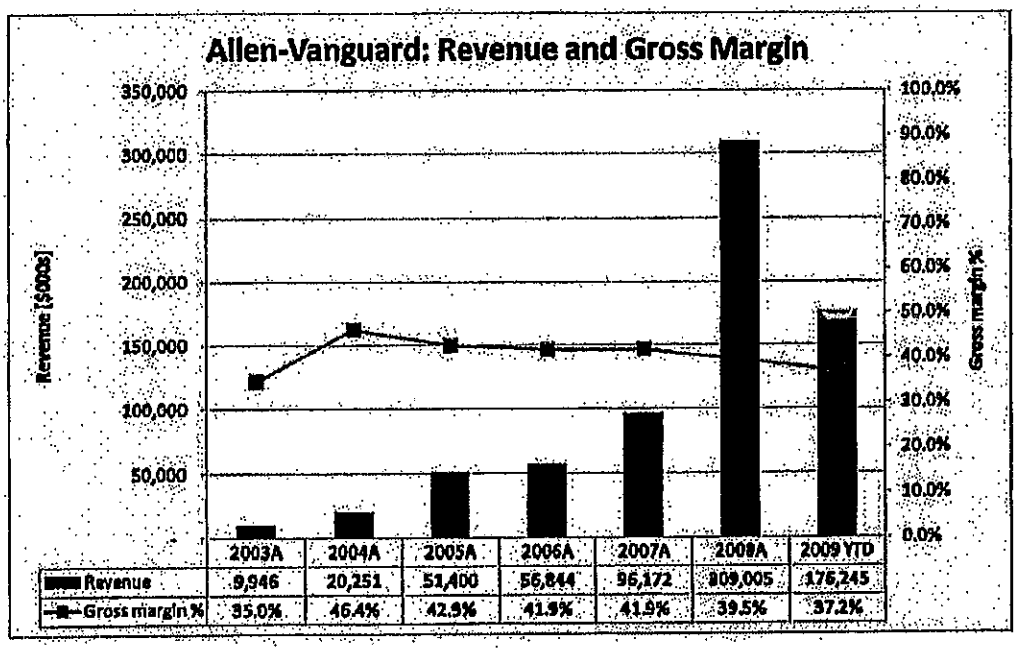
f. the Company issued 1,550,000 common share purchase warrants to its financial advisor exercisable over a 3 year term for one common share at an exercise price of $10.06 per share; and

g. on September 21, 2007, Allen-Vanguard issued 31,580,000 common shares by way of a short form prospectus at a price of $9.50 per share for total gross proceeds of approximately $300.0 million and qualified the distribution of the 3,575,100 senior debt facility warrants. Allen-Vanguard received net proceeds after commissions of approximately $283.5 million from this offering and used the cash to repay the subordinated debt of $190.6 million, the revolver facility of $10.0 million and a portion of the term debt facility.

ALLEN-VANGUARD – REVIEW OF OPERATING PERFORMANCE

4.14 We have summarized Allen-Vanguard's historic operating results for the years ending September 30, 2003 through 2008 at Schedule 11. Our detailed observations of the operating performance of Allen-Vanguard are summarized below.

4.15 The following table summarizes the total revenue and gross margin percentage realized by Allen-Vanguard for the fiscal years ending September 30, 2003 through 2008 and for the 9 months ended June 30, 2009.



	2003A	2004A	2005A	2006A	2007A	2008A	2009 YTD
Revenue	9,946	20,251	51,400	56,844	96,172	309,005	176,245
Gross margin %	35.0%	46.4%	42.9%	41.9%	41.9%	39.5%	37.2%

4.16 We observe that Allen-Vanguard experienced annual year over year revenue growth throughout the 2003 through 2008 period increasing from a low of approximately $9.9 million in 2003 to a high of approximately $309.0 million in 2008. We understand that revenue growth:

a. during the 2003 through 2006 period was on account of:

i. organic growth of Allen-Vanguard's product line and customer relationships. We understand that the Company executed a number of significant contracts with the Canadian Department of National Defence, the US military, the Iraqi police force ($2.4 million and $7.9 million in revenue in 2004 and 2005) and Lockheed Martin ($8.0 million in 2006) among others during this period. The Company continued to develop a reputation and relationship with large governmental organizations and security forces;

ii. the further development of the ECM business. The Company agreed to a 7 year contract with Lockheed Martin on December 23, 2005 whereby Lockheed Martin was granted the exclusive rights to sell Allen-Vanguard's ECM products in the

United States. This partnering relationship generated initial revenue of $8.0 million with potential follow on revenue in the near term of $22.0 million; and

iii. a number of significant business acquisitions during the period which expanded the Company's geographic coverage and product offerings. These acquisitions included:

- the acquisition of EOD Performance Inc. in March 2004. EOD Performance Inc. was an Ottawa based mobile robotics manufacturer which was acquired for approximately $18.0 million;[13]
- the acquisition of Bosik Technologies Ltd in March 2004. Bosik Technologies Ltd was a bomb containment technologies company headquartered in Ottawa, Ontario focused on the development of vehicle barrier and land mine protective seats. Bosik Technologies Ltd. was acquired for approximately $10.0 million;[14] and
- the acquisition of PW Allen Holdings Ltd., a UK based manufacturer of explosive ordinance disposal and detection equipment in the fourth quarter of 2004. PW Allen Holdings Ltd. was acquired for purchase consideration of approximately $30.6 million.[15] This acquisition significantly increased the Company's global market access resulting in revenue growth from $5.7 million in 2004 to $28.8 million in 2005 from non-North American sources.[16]

iv. the Company's share of the growing counterterrorism and security marketplace. We understand that global military expenditures reached approximately $1.2 trillion in 2006, an increase of 3.5% from 2005 and 37% over ten year period beginning in 1997.[17] Allen-Vanguard benefited from this total market growth and increased demand for defensive and detection products.

b. revenue growth during 2007 and 2008 was on account of:

i. continued integration of the acquisitions completed in 2004 and 2005;

[13] Source: Allen-Vanguard press release dated January 24, 2004.
[14] Source: Allen-Vanguard press release dated February 2, 2004.
[15] Source: Allen-Vanguard press release dated January 27, 2006.
[16] Source: Allen-Vanguard press release dated January 27, 2006.
[17] Source: Stockholm International Peace Research Institute Yearbook.

ii. continued ECM product revenue growth and revenues generated from the Company's existing relationship with Lockheed Martin and success with its Symphony ECM product line;

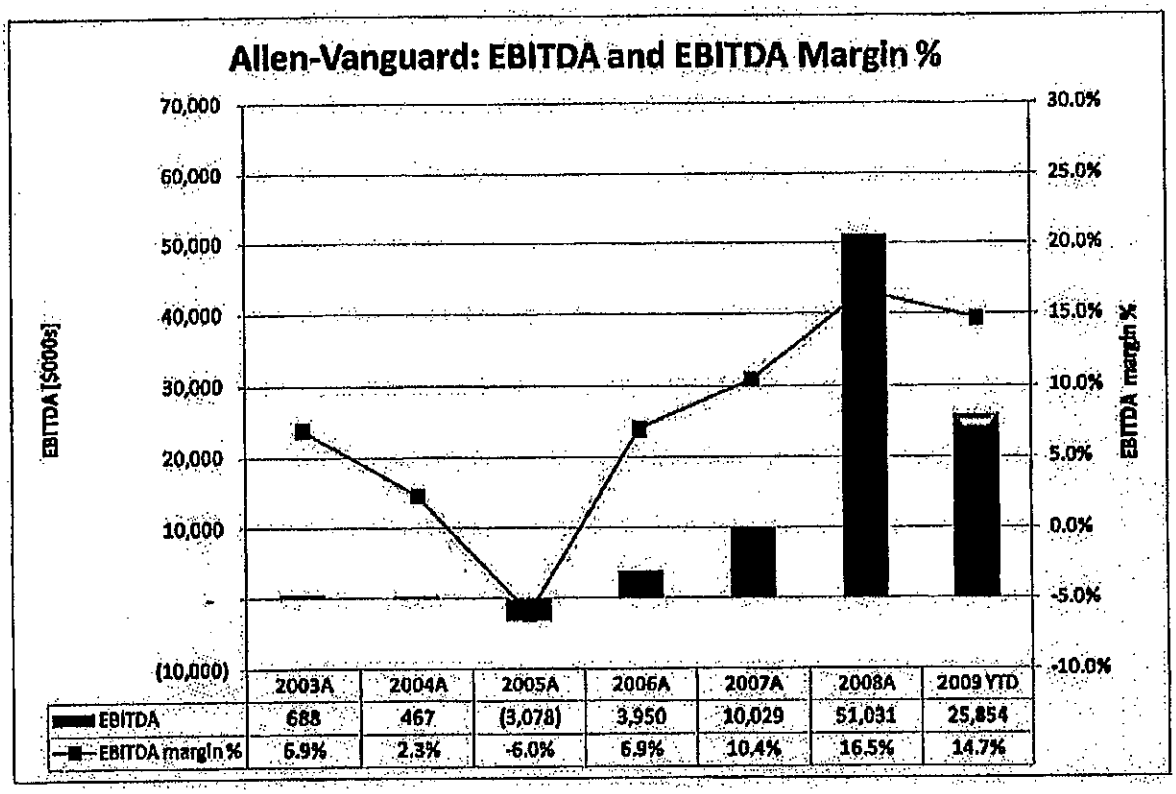
iii. the acquisition of Hazard Management Solutions Ltd. a United Kingdom based consulting services provider for counterterrorism and counter IED defense. The acquisition closed on June 13, 2007; and

iv. the business transformational acquisition of Med-Eng on the Transaction Date which significantly increased revenues in the final month of fiscal 2007 and in fiscal 2008 and 2009.

4.17 Allen-Vanguard's gross margin fluctuated between a low of 35.0% in 2003 and a high of 46.4% in 2004 and averaged 40.7% between 2003 and June 30, 2009. Gross margin is a function of the product mix, with ECM sales realizing a higher margin than personal protective products.

4.18 The following chart summarizes the earnings before interest, taxes, depreciation and amortization ("EBITDA") and the EBITDA margin percentage of revenue of Allen-Vanguard for the 2003 through 2009 year to date period.[18]

[18] EBITDA excludes the gain/loss on foreign exchange, non-recurring restructuring charges, acquisition related costs and impairment losses and non-cash stock based compensation expenses.



4.19 We observe that Allen-Vanguard's realized EBITDA generally increased during the 2003 through 2008 period excluding a decline in 2004 and 2005. Allen-Vanguard realized large EBITDA growth in each of 2006, 2007 and 2008. We understand that EBITDA increased on account of:

a. the agreement signed in December 2005 with Lockheed Martin, which enhanced the Company's access to the United States market, being the largest market for military and security products. This agreement helped secure revenue in fiscal 2006 through 2009;

b. the positive impact of the growing security and counterterrorism marketplace as a whole during this period, and increasing military budgets on IED products;

c. the acquisitions of EOD Performance Inc., Bosik Technologies Ltd., and PW Allen Holdings Ltd. in fiscal 2004. We understand that these acquisitions required integration into the operations of the Company and did not materially contribute to an improved EBITDA until fiscal 2006;

d. the acquisition of Hazard Management Solutions Ltd. in June 2007 increased the Company's product offerings and in turn the EBITDA in 2007 and 2008; and

e. the acquisition of Med-Eng which significantly increased the Company's revenue base for half a month in 2007 and for the full 2008 fiscal year. In this regard, we understand that upon acquisition, Allen-Vanguard acquired total backlog revenues of approximately $166.0 million projected to be earned between September 2007 and March 2008.[19] We understand that the Company realized only nominal new orders of Med-Eng ECM products following the closing of the Transaction.

4.20 We understand that the decline in EBITDA through June 30, 2009 is principally on account of the Company failing to secure a number of major contracts and orders which had been projected to occur in the year and arising out of the acquisition of Med-Eng. These orders which primarily related to the ECM product line failed to materialize in the year as Allen-Vanguard experienced a loss of Med-Eng's major customer, the USMC.

4.21 We understand that in the period following the Transaction Date, Allen-Vanguard experienced delays in significant projects, poor operating results below projected levels and high debt financing fees on account of financing the Transaction. These developments, among others, resulted in Allen-Vanguard recording a net operating loss before taxes of approximately $516.7 million for the year ending September 30, 2008.

4.22 Of the $516.7 million operating loss realized for the year ending September 30, 2008, approximately $380.0 million of this loss related to the impairment of goodwill and identifiable intangible assets acquired in the Transaction. In this regard, Allen-Vanguard recognized an impairment loss on goodwill of $253.7 million, Electronic Systems technology of $47.8 million, Electronic Systems customer relationships of $35.9 million, Electronic Systems trademarks of $20.3 million and PPS trademarks of $22.2 million.[20] Allen-Vanguard also incurred approximately $146.8 million related to acquisition and financing related charges and amortization attributable to the Transaction.[21]

[19] Source: Deloitte PPA Report dated September 12, 2008 – Schedule 6a.1 and 6b.1. AVC0021170.
[20] Source: Allen-Vanguard Annual Report – Note 7 and Note 8 to the audited financial statements.
[21] Source: Allen-Vanguard Annual Report – Note 16 to the audited financial statements.

Significant Events Surrounding the Transaction Date

4.23 We understand that a number of significant developments related to the acquisition of Med-Eng occurred in the period in and around and immediately following the Transaction Date. These developments included:

a. in or around June 2007, Med-Eng was notified by the USMC that the Chameleon ECM product would be subject to head to head testing against a competitor product produced by EDO Corporation called the CVRJ. We understand that the CVRJ represented an advancement in jammer technology and was a hybrid jammer that had both active and reactive jamming capabilities as opposed to the Chameleon having only active capabilities. We understand that the head to head competition was originally scheduled for July 2007, but was subsequently delayed and remained outstanding at the Transaction Date. It is our understanding that management of Med-Eng was aware of this impending head to head competition prior to the Transaction Date but Allen-Vanguard claims that neither the fact of this head to head competition nor its implications were disclosed to Allen-Vanguard until September 19, 2007, two days following the Transaction Date. Med-Eng management represented in email and in the July and August 2007 management presentations and revenue pipelines a 100% probability of obtaining certain USMC orders and a strong likelihood of obtaining other USMC orders post closing. We understand that the Chameleon product was not shown to be superior to the CVRJ in the baseline testing component of this head to head competition completed in or around December 2007. In or around January 2009, Allen-Vanguard was informed by the USMC that the Company would be receiving no further orders of Chameleon products. As a result, the projected revenues to be derived from the sale of Chameleon units to the USMC were never realized in the period following the Transaction Date. We have accounted for the loss in Chameleon revenue and value, as part of the contingent price, in our analysis at Section 8 below;

b. the loss of the USMC as a customer had a significant negative impact on the potential future revenues to be derived from Med-Eng developed ECM products. We understand that in the period immediately preceding the Transaction Date, management of Med-Eng made representations in their July and August 2007 management presentations and revenue pipelines, including representations with respect to relative probabilities of success for a number of projected contracts to be executed with the USMC and US Army. These projects were never realized. We have accounted for the loss of these projected revenues and corresponding

reduction in value of Med-Eng by way of the contingent price factor in our analysis at Section 8 below;

c. in the period preceding the Transaction Date, management of Med-Eng represented in their July and August 2007 management presentations a 75% probability of obtaining a projected revenue stream of $38.0 million per annum and $120.0 million over the term related to a repair and overhaul service contract to be provided directly to the USMC. However, we understand that GDATP took the position that the terms of this engagement were in violation of the Teaming Agreement with GDATP, under which GDATP was to act as the primary contractor. We understand that in and around August 30, 2007, GDATP filed a notice with Med-Eng of significant alleged breaches by Med-Eng of the Teaming Agreement. We understand that such breaches were not disclosed to Allen-Vanguard until September 15, 2007. Having consideration for the foregoing, the revenue pipeline projections, upon which we understand Allen-Vanguard based its purchase price, did not accurately represent the potential future revenues and cash flows of Med-Eng. We have accounted for the loss of these projected revenues and the corresponding reduction in the value of Med-Eng in our analysis at Section 8 below;

d. in the period preceding the Transaction Date, management of Med-Eng represented in their July and August 2007 management presentations a projected revenue stream of approximately $127.5[22] million to be derived from the sale of 2,511 vehicle mounted units to the USMC. We understand that the revenue from this sale was projected to be earned predominantly in late calendar 2007.[23] We understand that only approximately $111.9 million[24] was collected on this sale, representing a revenue shortfall of approximately $15.6 million. We understand that this revenue shortfall arose on account of fluctuations in the CAD and USD foreign exchange rate during the interim period between the placement of and fulfillment of the order. The sale was initially recorded into the revenue backlog at an exchange rate of $1.1529 CAD per USD on April 2, 2007 and presented at this rate in the Med-Eng backlog continuity schedule provided prior to the Transaction Date by Med-Eng management. The foreign exchange rate was $1.028 as at the Transaction Date.

[22] Refer to Schedule 6.
[23] Source: Med-Eng management presentation dated July 2007 and August 2007 (Slide 166 – AVC00017314). Summarized at Schedule 6 in Appendix B.
[24] Source: AVC00044022/1.

We account for this revenue shortfall and the impact on the value of Med-Eng in our analysis at Section 8 below;

e. in the period prior to the Transaction Date, we understand that Med-Eng was the subject of an audit conducted by the Canadian Commercial Corporation and Public Works and Government Services Canada (**"PWGSC"**) on behalf of the United States Defence Contract Management Agency (**"DCMA"**) (the **"Assist Audit"**). We understand that it is Allen-Vanguard's position that the extent, complexity and potential exposure of the Assist Audit was not adequately disclosed and represented as a contingent liability at the Transaction Date. We have considered the Assist Audit and its related costs in detail at Section 10 below;

f. in the period following the Transaction Date, we understand that GDATP withheld payments to Allen-Vanguard for 192 defective Chameleon units sold by Med-Eng prior to the Transaction. With respect to these defective units, Allen-Vanguard incurred warranty and repair costs and was charged GDATP's costs related to addressing these repairs. We understand that Allen-Vanguard was only able to obtain partial compensation from the parts supplier, Plexus, for the costs incurred by GDATP. Allen-Vanguard was required to make a contribution of spare parts to GDATP with a value of approximately $1 million. It is our understanding that Allen-Vanguard reached a settlement agreement with GDATP whereby Allen-Vanguard agreed to pay costs of approximately $1.5 million and accept 25 returned units. Further, we understand that the Company has been unable to sell the 25 returned units and they remain in Allen-Vanguard's inventory and a few have been used for sourcing spare parts. We understand that it is Allen-Vanguard's position that Med-Eng did not disclose the full extent of the liability associated with these defective units as was required pursuant to the SPA. We have considered the costs of warranty and repairs arising as a result of these defective units as at Section 10 below;

g. subsequent to the Transaction Date, we understand that Allen-Vanguard became aware that Med-Eng had considered certain financial advisory fees incurred as deductible for the purposes of income tax filings. We understand that Med-Eng consulted Deloitte LLP for tax advice regarding the treatment of such fees and was informed that *"several authors on the subject of transactions costs believe that CRA*

would likely challenge the deductibility of these costs in the event of an audit[25]". Med-Eng's treatment of these fees resulted in a decrease in the current income tax liability of Med-Eng at the Transaction Date and correspondingly increased the working capital of Med-Eng. We understand that pursuant to Section 2.03 of the SPA, Allen-Vanguard paid Med-Eng for any working capital in excess of $10.0 million. The understatement of income taxes payable and therefore overstatement of working capital resulted in Allen-Vanguard paying excess consideration to Med-Eng on account of the Transaction. We discuss this tax deduction and its impact on the value of Med-Eng as at the Transaction Date in Section 10 below; and

h. In the period prior to and in and around the Transaction Date, we understand that Allen-Vanguard is claiming that Paul Timmis, Vice President – Electronic Systems, a key member of Med-Eng management, informed several Med-Eng employees that they would receive increased compensation following the Transaction, contrary to specific representations in the SPA. We understand that following the Transaction Date, these employees demanded increased compensation from Allen-Vanguard. In response and in order to maintain its relationship with these employees, Allen-Vanguard was required to incur additional compensation costs which had not been considered in the negotiation of the purchase price. It is our understanding that had Allen-Vanguard been aware of these increased costs and of Med-Eng management's representations to its employees with regard to compensation, the Company would have altered the terms of the purchase. We consider the costs of employee compensation and the impact on the value of Med-Eng as at Section 10 below.

4.24 We understand that it is Allen-Vanguard's position in this litigation that Med-Eng deliberately or recklessly withheld information and/or misrepresented information that was known by Med-Eng prior to the Transaction Date, which if communicated to Allen-Vanguard, would have negated the Transaction or, in the alternative, materially impacted the payment structure and ultimate total purchase price paid for the outstanding common shares of Med-Eng (with the contingent payment never being paid). It is Allen-Vanguard's position that the Transaction was completed to the detriment of the Company and that the Company failed to realize forecast revenue and income that was premised on the representations of management of Med-Eng. We understand that Allen-Vanguard is claiming that in addition there were other specific misrepresentations

[25] Deloitte Tax memorandum dated August 27, 2007 – Page 7 (AVC00039567).

that resulted in significant costs, all of which led to the eventual insolvency and sale of Allen-Vanguard.

REFINANCING OF ALLEN-VANGUARD

4.25 At December 31, 2007, Allen-Vanguard was offside on certain financial covenants of the term debt facility issued for the acquisition of Med-Eng. On February 14, 2008 the lenders provided a waiver of these covenants and amended the covenants to be more favourable to Allen-Vanguard.[26] Allen-Vanguard paid the lenders a fee of $5.04 million cash and issued 1,167,143 commons shares with a fair value of approximately $5.544 million to the lenders in consideration of the waiver and amendments. The total fee of approximately $10.584 million represented 4% of the committed outstanding senior debt facility.

4.26 In or around March 27, 2008, Allen-Vanguard announced the refinancing of its credit facilities to attempt to reduce debt service requirements.[27] The Company entered into secured credit facilities underwritten by RBC Capital Markets effective May 6, 2008.[28] RBC acted as the administrative agent for the lending syndicate.

4.27 The new credit facilities comprised a three year $200.0 million term loan facility repayable in quarterly payments and a $50.0 million revolving credit line. The Company utilized $195.5 million of the term loan to repay the outstanding balance plus interest accrued and penalties incurred on its existing senior debt facilities.[29] The new term loan facility matured on May 6, 2011.

4.28 We understand that Allen-Vanguard's financial position deteriorated following the refinancing and the Company failed to make its term loan payments in September 2008. In response, the RBC lending syndicate made a number of accommodations and extended the required September 30, 2008 quarterly payment to December 31, 2008.

4.29 On December 29, 2008 the Company entered an amended credit agreement (the **"Amended Credit Agreement"**) with the RBC lending syndicate which once again extended the required quarterly payments of Allen-Vanguard. The amended credit

[26] Source: Affidavit of David E. Luxton as sworn December 8, 2009.
[27] Source: Allen-Vanguard press release dated March 27, 2008.
[28] Source: Allen-Vanguard press release dated May 7, 2008.
[29] Source: Allen-Vanguard press release dated May 7, 2008.

agreement extended the September 30, 2008, December 31, 2008 and March 31, 2009 payments to May 6, 2011 and reduced the required payments due on June 30, September 30 and December 31, 2009 to approximately USD $4.85 million. Under the Amended Credit Agreement, Allen-Vanguard was provided financing in the form of:

a. a revolving credit commitment up to USD $7.6 million due on May 6, 2011;

b. a term loan commitment of USD $185.0 million due on May 6, 2011;

c. a documentary credit commitment up to $4.0 million due on May 6, 2011;

d. a revolving credit commitment of up to $16.0 million due on December 31, 2009;

e. a documentary credit commitment of up to $4.5 million due on December 31, 2010; and

f. an interim funding revolving credit commitment of $16.0 million.

4.30 Allen-Vanguard secured the foregoing amended credit facilities with a first ranking on all assets and:

a. issued 27,092,367 common share warrants to the lending syndicate;

b. agreed that if the Company could not complete a capital raise to reduce the debt requirements by a minimum of USD $50.0 million by April 30, 2009, the lenders would have the right to receive an additional cash payment or at Allen-Vanguard's option additional warrants to acquire up to 10% of the fully diluted common shares as of December 29, 2008; and

c. agreed that if Allen-Vanguard did not complete the capital raise and pay down $50.0 million in debt by September 20, 2009 the lenders had the right to convert all or part of the outstanding debt into common shares.

PRIVATIZATION OF ALLEN-VANGUARD

4.31 In fiscal 2009 we understand the Company was unable to meet escalating debt facility costs and on September 12, 2009 in an attempt to recapitalize the Company, Allen-Vanguard announced its intention to be acquired by Versa Capital Management Inc. (**"Versa"**), a Philadelphia based private equity firm. Effective September 14, 2009,

trading was suspended on Allen-Vanguard's common shares and the shares were delisted from the TSX effective October 21, 2009.

4.32 On December 9, 2009 the Company announced that it had commenced a Court supervised process under the Companies' Creditors Arrangement Act (the **"CCAA"**) to acquire approval to move forward with the privatization transaction with Versa. We understand that as at June 30, 2009 the Company had total liabilities owed to secured lenders and trade creditors of approximately $315.0 million and assets (excluding goodwill and intangibles) of only $122.9 million.[30]

4.33 The privatization transaction provided that the Company's secured creditor obligations would be marginally compromised, the unsecured creditors would be unaffected and continue to be satisfied in the normal course, but that all shares, options and other securities in Allen-Vanguard would be cancelled upon close of the privatization transaction with no consideration paid to holders. In particular, we understand that the Versa transaction proposed that:

a. the RBC lending syndicate would permanently forego approximately USD $7.15 million of existing term loan and waive approximately $6.8 million of fees;[31]

b. the RBC lending syndicate would restructure the term loan pursuant to the Amended Credit Agreement into a 3.5 year term loan with more favourable terms to Allen-Vanguard;[32]

c. the RBC lending syndicate would provide a USD $30.0 million revolving facility and a USD $10.0 million letter of credit to finance the Company going forward;[33]

d. the warrants issued to the RBC lending syndicate would be cancelled for no compensation;[34]

e. Versa would pay US $20.0 million as an equity contribution;[35]

[30] Source: Proposed Monitor's First Report to Court dated December 8, 2009. Paragraph 48-50.
[31] Source: Proposed Monitor's First Report to Court dated December 8, 2009. Paragraph 38.
[32] Source: Proposed Monitor's First Report to Court dated December 8, 2009. Paragraph 38.
[33] Source: Proposed Monitor's First Report to Court dated December 8, 2009. Paragraph 38.
[34] Source: Proposed Monitor's First Report to Court dated December 8, 2009. Paragraph 38.
[35] Source: Affidavit of David E. Luxton sworn December 8, 2009. Paragraph 118.

f. Versa would assume US $54.3 million of the existing term loan owed to the RBC lending syndicate and convert this amount to subordinated debt;[36] and

g. the general and unsecured creditors and employees of Allen-Vanguard would be unaffected allowing business operations to continue.[37]

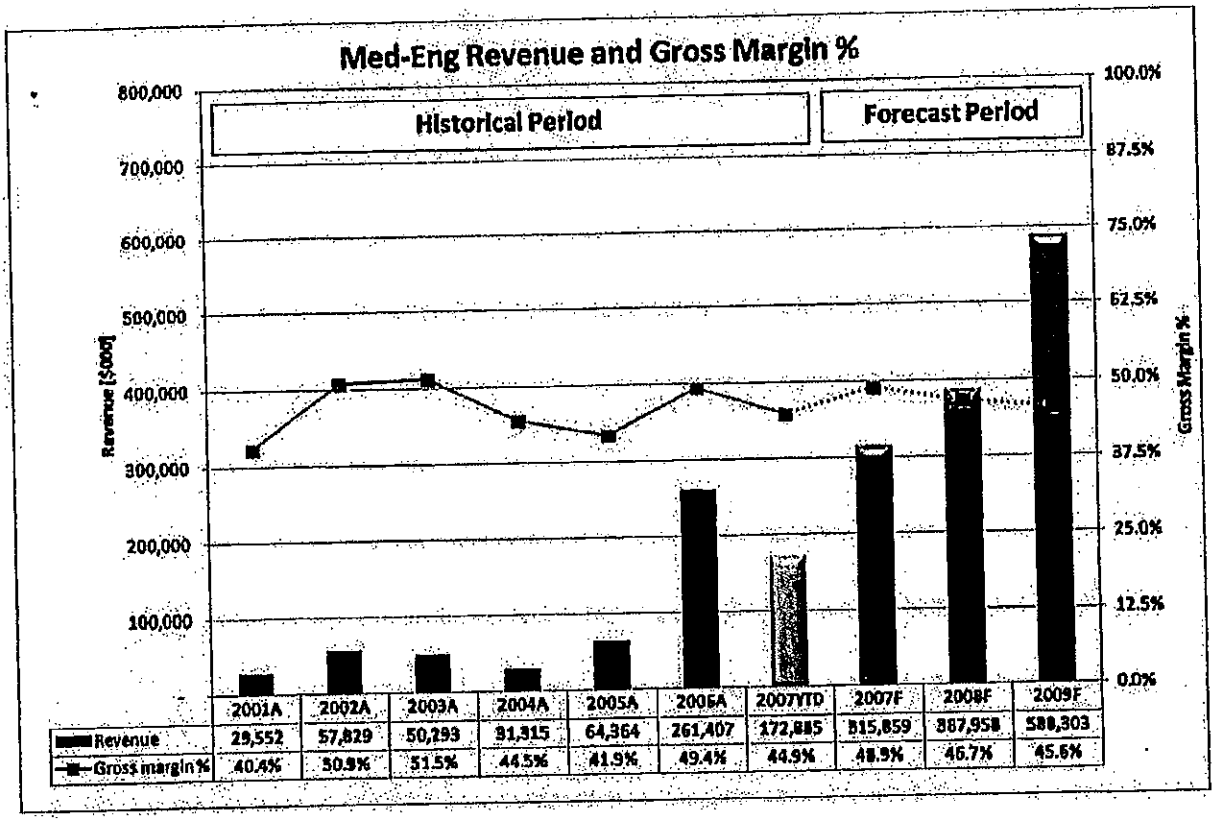
4.34 On December 16, 2009 the Ontario Superior Court of Justice approved the Company's reorganization and on December 18, 2009 the privatization transaction was completed.

5 OPERATING PERFORMANCE REVIEW – MED-ENG

5.1 We have summarized Med-Eng's historic operating results for the years ending December 31, 2001 through 2006, and for the year to date period ending September 17, 2007 at Schedule 9. We have also summarized the Med-Eng forecast (the "**Med-Eng Forecast**") as prepared by Med-Eng management and presented in the July and August 2007 management presentations for the years ending September 30, 2008 through 2012 at Schedule 8.

5.2 The following chart summarizes the historical revenue and gross margin percentage realized by Med-Eng for the fiscal years ending December 31, 2001 through 2006 and for the interim periods ending June 30, 2007 and September 17, 2007 and the Med-Eng Forecast revenue and gross margin for the years ending December 31, 2007 through 2009.[38]

[36] Source: Affidavit of David E. Luxton sworn December 8, 2009. Paragraph 118.
[37] Source: Affidavit of David E. Luxton sworn December 8, 2009. Paragraph 115.
[38] Forecast revenue and gross margin based on the consolidated Med-Eng budget for the 2007 through 2009 period as reported in the July and August 2007 management presentations.



	2001A	2002A	2003A	2004A	2005A	2006A	2007YTD	2007F	2008F	2009F
Revenue	29,552	57,829	50,293	91,315	64,364	261,407	172,885	315,859	387,958	588,303
Gross margin%	40.4%	50.8%	51.5%	44.5%	41.9%	49.4%	44.9%	48.9%	46.7%	45.6%

5.3 Based on the foregoing and our review and analysis we understand that:

a. prior to fiscal 2006, Med-Eng's revenue was derived primarily from the sale of PPS and MCS products. During this period, revenue fluctuated between a low of $29.5 million in 2001 and a high of $64.4 million in 2005. In fiscal 2004 and 2005, PPS accounted for approximately $26.9 million (86%) and $52.3 million (81%) of annual revenue respectively. Revenue during the 2001 to 2005 period was driven by Med-Eng's position as a market leader in the manufacturing and development of protective suits, helmets and footwear;

b. In 2006, Med-Eng experienced a significant shift in business aligned with the release of its ECM product line. During 2006, revenue increased by approximately $197.0 million or 306% as ECM sales increased from $1.0 million in 2005 to $189.9 million in 2006. We understand that Med-Eng identified a market opportunity for the development of IED protective products beginning in 2003 and released its first ECM products at the end of fiscal 2005. We understand that the success of the

ECM product was largely a result of securing key relationships with GDATP and the USMC;

c. through September 17, 2007, Med-Eng generated $172.9 million of revenue, representing approximately $243.0 million of revenue on an annualized basis.[39] We understand that 2007 revenue continued to be driven largely by ECM product sales;

d. in the Med-Eng Forecast prepared in or around July and August 2007, management of Med-Eng projected revenue growth to $316.9 million in 2007 and further growth to $388.0 million and $588.3 million in 2008 and 2009 respectively. Revenue growth was projected to be achieved in each of the PPS, MCS and ECM divisions. ECM revenue was projected to account for the majority of total revenue going forward, comprising $237.2 million (75%), $272.0 million (70%) and $424.6 million (72%) of total budgeted revenues in 2007 through 2009 respectively. We understand that ECM revenue growth was projected based on strong revenues from the USMC and US military including revenues generated from CREW 3.1 through 3.3 initiatives. We understand that in preparing the Med-Eng Forecast:

i. management projected revenue and gross margins by division as summarized in the following table;

Med-Eng Forecast Summarized by Operating Division

	For the year ending December 31,		
	2007F	2008F	2009F
Revenue [$000s]			
ECM Division	237,246	272,030	424,565
PPS Division	62,993	88,084	122,938
MCS Division	15,680	27,844	40,800
	315,919	387,958	588,303
Gross Margin %			
ECM Division	49%	47%	45%
PPS Division	49%	45%	46%
MCS Division	45%	47%	49%
Weighted average	49%	47%	46%

(1) Source: Med-Eng management presentations dated July 2007 (Slides 166-169) and August 2007 (Slides 168-171).

[39] Assuming revenue is earned evenly across the year and is not seasonal.

ii. in projecting the ECM revenues and margins, management of Med-Eng prepared and relied on a projected revenue pipeline for the ECM Division highlighting the projected revenue and orders to be derived by customer (the "**Med-Eng Pipeline**"). The Med-Eng Pipeline is summarized in the following table and at Schedule 6;

Med-Eng Pipeline as at July and August 2007

Customer	Description	Quantity of Units[1]	Deal Size[1],[2] ($000s)	Probability[3]	Total Projected Revenues[3] ($000s)	Projected revenue for the year ending December 31,[1] ($000s) 2007F	2008F	2009F
USMC	DBPA	4,244	21,000	100%	21,000	21,000	-	-
USMC	EPACC	1,079	9,500	100%	9,500	9,500	-	-
USMC	MCM	415	22,821	100%	22,821	22,821	-	-
USMC	MCM	2,511	127,458	100%	127,458	127,458	-	-
USMC	MCM	1,136	56,062	100%	56,062	39,480	16,582	-
USMC	MCM	1,447	71,409	100%	71,409	-	71,409	-
USMC	MCM	1,100	54,285	100%	54,285	-	54,285	-
USMC	PCM	600	17,640	70%	12,348	-	12,348	20,580
USMC	MCM	7,000	345,450	50%	172,725	-	24,675	98,700
Prof Services	FSR, Trng[2]	1	165,000	75%	123,750	13,500	37,800	37,800
USMC	R&O[2]	1	120,000	75%	90,000	-	28,500	28,500
US Army MRAP	MCM	15,000	740,250	20%	148,050	-	19,740	128,310
Crew 3.1	PCM	1	4,000	50%	2,000	-	750	1,250
Crew 3.2	MCM	1	7,000	50%	3,500	-	1,750	1,750
CDN DND	MCM	250	13,513	75%	10,135	4,054	6,081	-
Australian DoD	MCM	600	29,610	75%	22,208	-	22,208	-
UK MoD	PCM	2,000	66,000	50%	33,000	-	-	16,500
UK MoD	MCM	5,000	275,000	50%	137,500	-	-	110,000
TSWG	PCM/MCM	300	42,000	40%	16,800	1,120	4,480	5,600
Total revenue pipeline projected by management						**238,933**	**300,608**	**448,990**

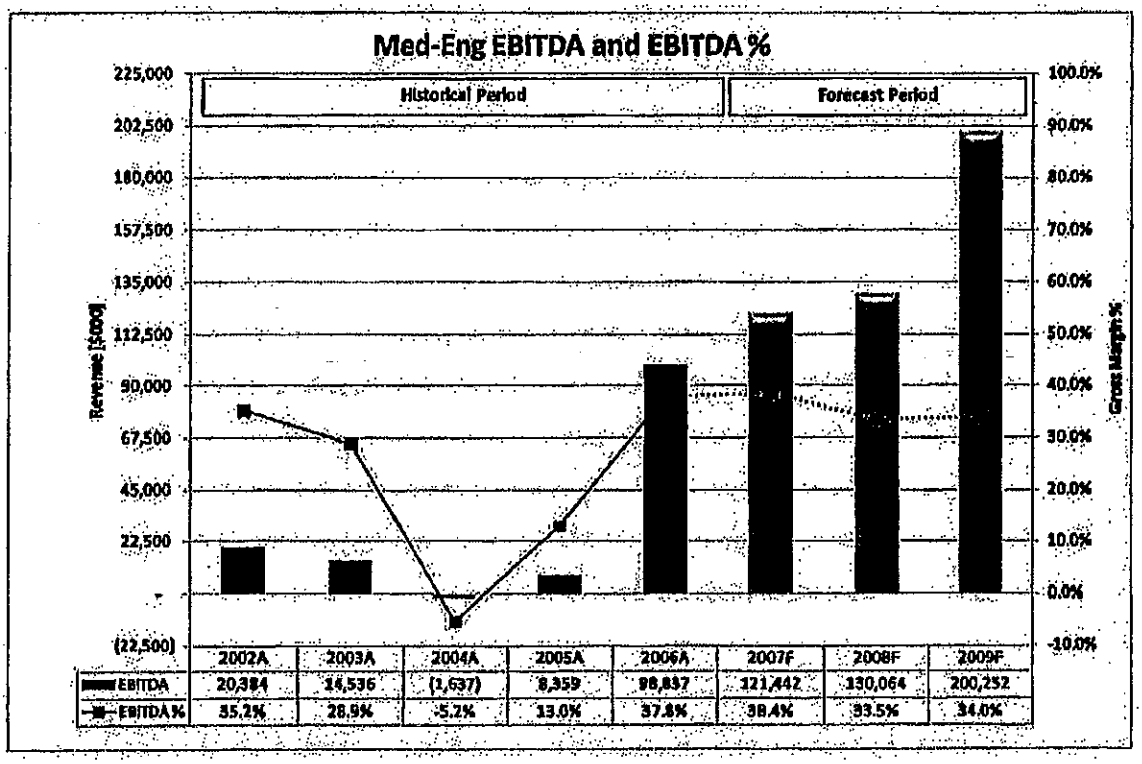
(1) Source: Med-Eng Management Presentation dated July 20, 2007 (Slide 164) and August 22, 2007 (Slide 166).
(2) Total deal size adjusted to reflect the projected ongoing work forecast in the Med-Eng Management Presentation dated July 20, 2007 (Slide 40) and August 22, 2007 (Slide 41). For these annual projects the deal size recorded in the Med-Eng Pipeline represented the annual deal size. We have adjusted to illustrate the total size of the contract consistent with the forecast annual revenues then projected.
(3) Calculated as total deal size multiplied by the probability.

iii. we observe that the Med-Eng Forecast revenues for the ECM Division were compared to the Med-Eng Pipeline by management of Med-Eng indicating the interrelationship between these documents.

e. the gross margin percentage fluctuated between a low of 40.4% (2001) and a high of 51.6% (2003) and averaged 46.4% during the 2001 through 2006 period. We observe that the gross margin is a function of the product mix between the PPS, MCS and ECM divisions, with the ECM division earning a 51.8% margin in 2006; and

f. the gross margin percentage budgeted for 2007 through 2009 was projected to decline from a high of 49.1% in 2007 to a low of 45.3% in 2009 on account of increased competition in the ECM marketplace.

5.4 The following chart summarizes Med-Eng's historical EBITDA and EBITDA as a percentage of revenue for the years ending December 31, 2002 through 2006 and per the Med-Eng Forecast for the years ending December 31, 2007 through 2009.



	2002A	2003A	2004A	2005A	2006A	2007F	2008F	2009F
EBITDA	20,384	14,536	(1,637)	8,359	98,897	121,442	130,064	200,252
EBITDA%	55.2%	28.9%	-5.2%	13.0%	37.8%	38.4%	33.5%	34.0%

5.5 Having consideration for the foregoing and based on our review and analysis we understand that:

a. Med-Eng realized positive EBITDA in each of fiscal 2002 and 2003 before realizing an EBITDA of negative $1.6 million in 2004. The decline in EBITDA in 2004 is attributable to reduced total sales, which fell from $50.3 million in 2003 to $31.3 million in 2004 and increased research and development costs which grew from $2.5 million in 2003 to $6.4 million in 2004 as Med-Eng increased spending on ECM product development. Med-Eng did not record any material revenue associated with the ECM division until 2006. During the 2004 and 2005 period, the costs of

development and marketing of the ECM division were incurred, but no corresponding revenue was earned until fiscal 2006;

b. EBITDA growth in fiscal 2006 was on account of the initial success of the ECM division which launched in the year and accounted for approximately $85.3 million (89%) of the approximately $98.8 million total EBITDA. The remaining EBITDA was largely driven by the PPS business which generated $12.3 million of EBITDA in the year. We observe that fiscal 2006 represented a fundamental shift in Med-Eng's business with the introduction of the ECM product line;

c. EBITDA was projected to continue to grow in 2007 and throughout the 2007 through 2009 forecast period on account of continued ECM market penetration and success. The Med-Eng Forecast projected approximately 80% of EBITDA in the 2007 to 2009 forecast period to be generated from the ECM division. The Med-Eng Forecast by operating division is summarized in the following table.

Med-Eng Forecast Summarized EBITDA by Operating Division

	For the year ending December 31,		
	2007F	2008F	2009F
EBITDA [$000s]			
ECM Division	101,008	104,197	160,619
PPS Division	18,064	19,926	29,469
MCS Division	4,676	8,616	13,195
	123,748	132,739	203,283

(1) Source: Med-Eng management presentations dated July 2007 (Slides 166-169) and August 2007 (Slides 168-171).

d. having consideration for the foregoing and based on the Med-Eng Pipeline, we understand that Med-Eng's projected EBITDA growth was largely based on expected orders from the USMC and participation in CREW 3.1, 3.2 and 3.3 orders as well as penetration of the US Army and United Kingdom market;[40] and

e. the EBITDA margin realized by Med-Eng reached 37.8% in fiscal 2006 and was projected to remain relatively stable in fiscal 2007 at 38.4% before declining marginally to 33.5% and 34.0% in 2008 and 2009 respectively. The decline in margins forecast for 2008 and 2009 was on account of increased competition.

[40] Source: Management Presentations dated July (Slide 166) and August 2007 (Slide 168).

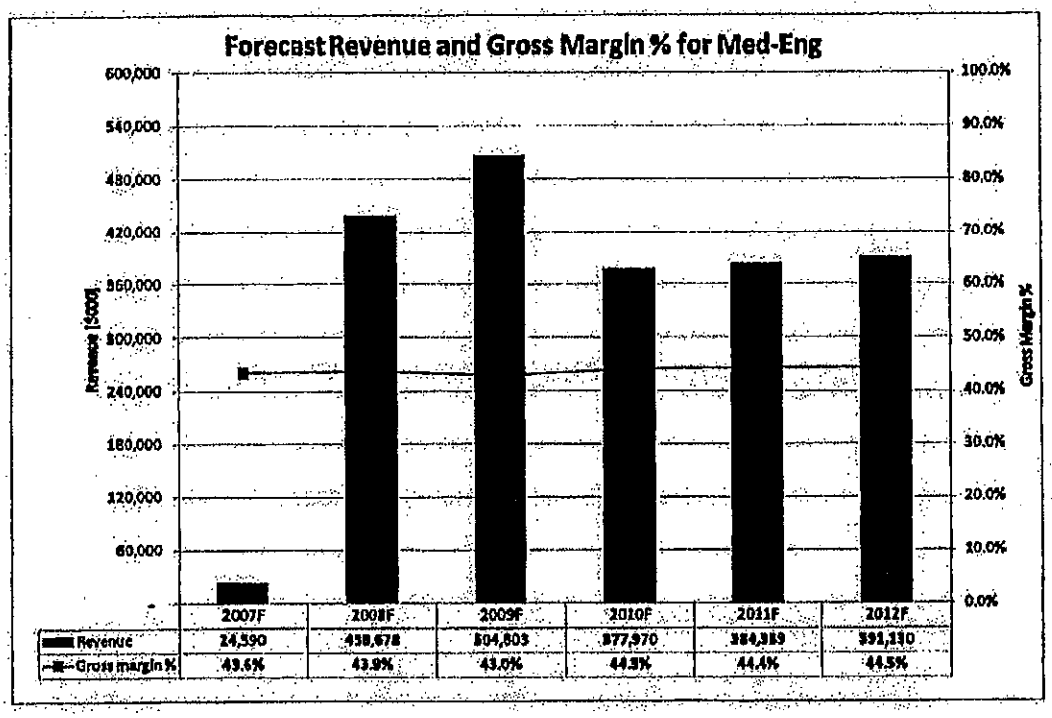
5.6 We understand that Allen-Vanguard accepted the financial forecast and revenue pipeline prepared by Med-Eng as being accurate in all material respects and relied on the representations provided in the forecast and revenue pipeline in arriving at the Actual Purchase Price.[41]

ALLEN-VANGUARD'S FINANCIAL FORECAST

5.7 We have summarized the Med-Eng Forecast prepared by management of Med-Eng at Schedule 8 and the Med-Eng Pipeline at Schedule 6. We observe that the Med-Eng Forecast and Med-Eng Pipeline were prepared based on the assumption of a December 31 year end. This contrasts with the fiscal year end of Allen-Vanguard being September 30.

5.8 Having consideration for the Med-Eng Forecast and Med-Eng Pipeline, we understand that management of Allen-Vanguard prepared a financial forecast for the Med-Eng operations on a standalone basis for the fiscal years ending September 30, 2007 through 2012 (the "**AV ME Forecast**").[42] We have summarized the AV ME Forecast at Schedule 7. The following chart summarizes the forecast revenue and gross margin for the fiscal years ending September 30, 2007 through 2012 per the AV ME Forecast.[43]

[41] In this regard, we observe that the Med-Eng Forecast was included in Allen-Vanguard's due diligence report prepared by KPMG dated September 7, 2007 (the "**Due Diligence Report**").
[42] The AV ME Forecast is based on the management forecast contained in the Deloitte PPA Report dated September 12, 2008. This forecast represents management's best estimate of the prospective operating results of Med-Eng based on management's knowledge and analysis of the prospects of Med-Eng at the Transaction Date. This forecast was used by management in their preparation of the audited financial statements for Allen-Vanguard for the fiscal year ending September 30, 2008.
[43] 2007 forecast results are for the 0.5 month ended September 30, 2007 following the Transaction Date.



5.9 We observe that the AV ME Forecast is not materially different from the Med-Eng Forecast and principally differs as a result of differing year end dates. We observe that:

a. both the Med-Eng Forecast and the AV ME Forecast project revenue growth through 2009, with the AV ME Forecast projecting revenue of $504.8 million for the 12 months ending September 30, 2009 and the Med-Eng Forecast projecting total revenue of $588.3 million for the 12 months ending December 31, 2009;

b. the Med-Eng Forecast only projected results up to and including December 31, 2009 as compared to the AV ME Forecast's longer time horizon to September 30, 2012. However, we observe that the Med-Eng Pipeline implicitly assumes operations beyond 2009 as certain orders such as those with the UK MoD are only partially realized in 2009. Further we observe that the ECM pipeline by customer as summarized in the July and August 2007 management presentations projected

ongoing revenues from the USMC, US Army and UK MoD through to December 31, 2010;[44] and

c. the AV ME Forecast gross margin percentage is projected to be in the range of 43.6% to 44.5% and is marginally lower than the Med-Eng Forecast gross margin percentage in the range of 46% to 49%.

5.10 Having consideration for the foregoing, in our view, the AV ME Forecast is generally consistent with Med-Eng management's expectations of the Med-Eng business.

5.11 In addition, we understand that the forecast summarized in the above chart and at Schedule 7 represents Allen-Vanguard management's *"best estimate of the most likely future operating results for the Company [Med-Eng]*[45]*"* on a stand-alone basis at the Transaction Date and was used by Allen-Vanguard management in its purchase price allocation for financial reporting purposes. We understand that in assessing the value of the issued and outstanding shares of Med-Eng and *"in negotiating the [Actual] Purchase Price*[46]*"*, management of Allen-Vanguard considered the AV ME Forecast.

5.12 Having consideration for the foregoing, we have adopted the AV ME Forecast in our analysis.

6 CALCULATION OF THE ECONOMIC LOSSES

METHODOLOGY

6.1 We have calculated the Economic Losses to Allen-Vanguard under two scenarios as outlined below.

a. **Scenario #1** – assumes that, had the Alleged Actions not occurred and had Allen-Vanguard been made aware of certain information, the Company would not have proceeded with the Transaction and would not have acquired Med-Eng. The Economic Losses incurred by Allen-Vanguard under this scenario are the loss of the

[44] Source: July 2007 (Slide 40) and August 2007 (Slide 41) Med-Eng management presentations. AVC00017314/37.
[45] Allen-Vanguard Corporation: Estimate of the fair value of the identifiable intangible assets of Med-Eng Systems Inc. Report prepared by Deloitte dated September 12, 2008 (the "**PPA Report**") (AVC00021170). Page 17.
[46] Allen-Vanguard Corporation: Estimate of the fair value of the identifiable intangible assets of Med-Eng Systems Inc. Report prepared by Deloitte dated September 12, 2008. Page 17.

equity invested in the purchase of Med-Eng, including the cost of raising the equity financing, plus the loss in the net asset value of Allen-Vanguard at December 18, 2009 absent the Transaction; and

b. **Scenario #2** – assumes that, had the Alleged Actions not occurred and had Allen-Vanguard been made aware of certain information, the Company would have attempted to negotiate a purchase of the outstanding shares of Med-Eng based on a reduced initial payment plus a contingent payment related to the outcomes of certain of the representations. The difference between the Actual Purchase Price and the Adjusted Purchase Price (represented by a reduced initial payment only, since the contingent consideration would not have been paid) plus certain costs and expenses incurred by the Company attributable to or as a consequence of the Alleged Actions comprises our calculation of the Economic Losses incurred by Allen-Vanguard in this scenario.

6.2 We describe the detailed methodology adopted for calculating the Economic Losses incurred by Allen-Vanguard for each of the two scenarios below.

Scenario #1: Methodology

6.3 In Scenario #1, the Economic Losses to Allen-Vanguard are calculated as the loss in the value of the equity invested to consummate the Transaction plus the loss in the net asset value of Allen-Vanguard which would have persisted but for the Transaction.

6.4 The following table summarizes the key components of our calculation of the Economic Losses pursuant to Scenario #1:

Summary of Calculation Methodology - Scenario #1	
A	Investment in Med-Eng - Lost
B	Estimated Allen-Vanguard net asset value at December 18, 2009 absent the acquisition of Med-Eng - Lost
A + B	Total Economic Losses Incurred by Allen-Vanguard

6.5 Having consideration for the foregoing, the Economic Losses incurred by Allen-Vanguard pursuant to Scenario #1 are represented by the following components:

a. the loss in the value of the investment in Med-Eng of approximately $400.4 million and net proceeds of $377.7 million. In this regard we observe that to fund the Transaction, Allen-Vanguard raised capital through two equity raises outlined below:

   i. a private placement on August 15, 2007 of 14,650,000 subscription receipts at a subscription price of $6.85 per subscription for total gross proceeds of $100.352 million and net proceeds of $94.206 million after costs. These subscriptions were each automatically exercised on the Transaction Date into one special warrant which was subsequently exercised for one common share of the Company on September 21, 2007; and,

   ii. a public issuance on September 21, 2007 of 31,580,000 common shares at a price of $9.50 per share for total gross proceeds of $300.0 million and net proceeds of $283.5 million.

b. the loss in the net asset value of Allen-Vanguard as a standalone entity that would have existed absent the Transaction. In this regard, we observe that in consummating the Transaction, Allen-Vanguard placed its core business at risk. By completing the Transaction, the Company incurred significant debt and aligned its future success with that of Med-Eng, and specifically in the near-term Med-Eng's ECM business and the relationship with the USMC. We observe that in the quarter ending immediately prior to the Transaction, Allen-Vanguard enjoyed a relatively strong balance sheet with cash of $3.4 million, total debt of $6.8 million, a positive book value of shareholders equity of $113.1 million and a market capitalization or $451.0 million. Thereby, the Company had significant value in the period immediately preceding the Transaction Date with limited debt exposure. Absent the Med-Eng acquisition and even with the deferred military expenditures that affected Allen-Vanguard's Symphony business in 2008 and 2009, there were sufficient resources within the Company to maintain its viability as a standalone entity through this time period. Following the acquisition of Med-Eng, the significant debt level resulting therefrom and the decline in profitability attributable to the Alleged Actions led to the subsequent decline in the value of the net assets of Allen-Vanguard and eventual insolvency and sale in December of 2009. This resulted in the complete erosion of the net asset value of Allen-Vanguard; and,

c. in performing our calculations we also considered the debt holders of Allen-Vanguard who provided funding for the Transaction. In this regard, we observe that upon the privatization of Allen-Vanguard in December 2009, the secured debt

holders were only marginally compromised and the unsecured creditors were unaffected, but all shares, options and other securities in Allen-Vanguard were cancelled. We have not included in our analysis any of the loss incurred by the debt holders of Allen-Vanguard.

6.6 Our calculation of the Economic Losses incurred by Allen-Vanguard pursuant to Scenario #1 is outlined in Section 7 of this report.

SCENARIO #2: METHODOLOGY

6.7 In Scenario #2, the Economic Losses to Allen-Vanguard are calculated as the difference between the Actual Purchase Price paid by Allen-Vanguard to acquire the outstanding shares of Med-Eng and the Adjusted Purchase Price that could have been reasonably expected to have been paid to acquire these shares absent the Alleged Actions (a reduced initial payment, and a contingent payment that ultimately would not have been paid). To this amount we add the excess costs of financing and penalties associated with the Transaction to arrive at the total Economic Losses before the consideration of Other Losses.

6.8 The following table summarizes the key components of our calculation of the Economic Losses pursuant to Scenario #2:

Summary of Calculation Methodology - Scenario #2	
A	**Actual Purchase Price paid for the Issued and outstanding shares of Med-Eng**
Less:	Contingent reduction in the purchase price on account of revised revenue projections and forecast earnings
B	**Adjusted Purchase Price for the issued and outstanding shares of Med-Eng**
A - B	Difference between the Actual Purchase Price and the Adjusted Purchase Price
Add:	Financing and penalty costs associated with the purchase of Med-Eng
C	**Economic Loss before consideration of Other Losses**
Add: Other Losses	
Add:	Costs of the Assist Audit
Add:	Costs of the undisclosed Warranty Repairs and quality control issues
Add:	Working Capital Adjustment on account of tax liabilities
Add:	Increased costs associated with Employee Compensation Adjustments following the Transaction
Equals	**Total Economic Losses Incurred by Allen-Vanguard**

6.9 In preparing our calculations of the Economic Losses we have considered the following:

a. Difference between the Actual Purchase Price and the Adjusted Purchase Price – we understand that prior to the Transaction Date, Med-Eng management prepared a revenue pipeline and forecast for the ECM division on a project by project basis indicating the customer and product to be sold as well as estimating the timing, quantity of units, total revenue to be earned and the probability of obtaining the order. This revenue pipeline was presented by the management of Med-Eng in the July and August 2007 management presentations. We have summarized this projected revenue pipeline at Schedule 6. We understand that Allen-Vanguard relied on the representations provided in this revenue pipeline in assessing the value of the shares of Med-Eng and in completing the Transaction.

b. It is our understanding that Allen-Vanguard is claiming that Med-Eng knew about and failed to disclose material facts and information, and deliberately or recklessly withheld same, prior to the Transaction Date. In the absence of this information, Allen-Vanguard claims that it completed the Transaction at an inflated purchase price to the detriment of the Company. Had Allen-Vanguard been aware of certain

Information and had the alleged misrepresentations not been made, we have assumed:

i. the Company would not have proceeded with the Transaction and would not have acquired Med-Eng, or

ii. in the alternative, and assuming that Allen-Vanguard would have proceeded with the Transaction in any event, then the Transaction would have proceeded with an attempt to negotiate a reduced initial purchase price with a contingent payment related to the outcomes of certain of the representations (which contingent payment would not have been paid). In this regard, the majority of the Electronic Systems component of the purchase price would have been contingent on the demonstrated continuing relationship with the USMC. We have assessed the revenue projections and pipeline and the impact on the Adjusted Purchase Price for the shares of Med-Eng at Section 8 outlined below;

c. Excess Financing Costs – we understand that Allen-Vanguard incurred certain financing fees, interest and penalties on account of the Transaction and the subsequent failure to meet certain financial covenants. We understand that it is Allen-Vanguard's position in this litigation that such fees, interest and penalties would not have been incurred had the Company been made aware of certain information and had the alleged misrepresentations not been made. We have assessed the Excess Financing Costs as at Section 9 outlined below;

d. Other Losses – we understand that Allen-Vanguard incurred a number of costs related to other alleged misrepresentations and undisclosed liabilities that were present as at the Transaction Date (refer to the summary of the Other Losses at paragraph 10.35).

i. Assist Audit Costs – we understand that it is Allen-Vanguard's position that the extent, complexity and potential exposure of the Assist Audit were not adequately disclosed and represented a contingent liability at the Transaction Date. We understand that following the Transaction, Allen-Vanguard incurred a number of costs associated with the Assist Audit. We have assessed these costs incurred at paragraphs 10.4 to 10.9 below;

ii. Warranty Repairs and Quality Control Costs – in the period following the Transaction Date, we understand that GDATP withheld payments to Allen-

Vanguard for 192 defective Chameleon units sold by Med-Eng prior to the Transaction. Allen-Vanguard incurred warranty and repair costs, needed to make a contribution of spare parts to GDATP worth approximately $1 million, and was charged GDATP's costs related to addressing these repairs. We have assessed the incremental cost of these warranty and repair costs at paragraphs 10.10 to 10.21 below;

iii. Working Capital Adjustment for Tax Liabilities – pursuant to Section 2.03 of the SPA (refer to paragraph 4.11(c.) above), the purchase price paid for the shares of Med-Eng included a working capital adjustment to a normalized working capital level of $10.0 million. The purchase price is increased on a dollar for dollar basis for any working capital in excess of $10.0 million and similarly decreased for any shortfall. It is our understanding that Allen-Vanguard claims that in calculating the working capital adjustment certain tax liabilities were erroneously reduced thereby overstating the total working capital of Med-Eng and therefore in turn the purchase price. We have assessed the financial impact of these tax liabilities on the purchase price at paragraphs 10.22 to 10.30 below; and

iv. Employee Compensation Adjustments – following the Transaction, we understand that Allen-Vanguard incurred costs associated with terminating certain employees and increasing the compensation paid to a number of key Med-Eng employees to guarantee their retention. We understand that such increased compensation was required to meet expectations of these employees set by Med-Eng management prior to the Transaction, but not communicated to Allen-Vanguard. It is our understanding that had Allen-Vanguard been aware of these increased costs and of Med-Eng management's representations to its employees with regard to compensation, the Company would have altered the terms of the purchase. We have accounted for the incremental costs of this increased compensation at paragraphs 10.31 to 10.34 below.

6.10 Having consideration for the foregoing, the total Economic Losses are calculated as the difference between the Actual Purchase Price and the Adjusted Purchase Price, plus the Excess Financing Costs incurred by the Company, plus the aggregate of the Other Losses. We calculate each area of the total Financial Damages separately beginning in Sections 8 through 11 below.

7 SCENARIO #1: CALCULATION OF THE ECONOMIC LOSSES

7.1 We understand that Allen-Vanguard is claiming that had the Company been aware at the Transaction Date of the head to head competition and the associated implications, including the risk of losing the USMC as a customer, the Company would not have completed the Transaction.

7.2 It is our understanding that Allen-Vanguard's primary focus in completing the Transaction was obtaining access to the ECM business and the Chameleon product and maintaining the USMC as a major customer. We understand that Allen-Vanguard placed significant value on the potential upside associated with this area of the Med-Eng business. We understand that the PPS business represented a secondary focus and was considered a tag along business that was acquired part and parcel of the acquisition of Med-Eng as a whole. We understand that Allen-Vanguard would not have completed the Transaction without the expectation of an ongoing customer relationship with the USMC and predicted success of the Chameleon and follow-on products.

7.3 Based on our discussions with management,[47] we understand that the military and defence industry in which Med-Eng and Allen-Vanguard operate presents some unique risks to business acquirers. We understand that government defence agencies, representing Med-Eng's largest customers, are not willing to publicly disclose potential product orders, existing contracts or detailed analysis with regard to supplier relationships. We understand that such disclosure is denied in part for security reasons. We understand that the classified nature of the revenue pipeline requires that business acquirers must rely heavily on the representations of the vendor. Based on our discussions with management and the nature of the defence industry, Allen-Vanguard had limited access to the USMC. We understand that given the security sensitive nature of the relationship with the USMC, only high level questioning was permitted and completed prior to the Transaction Date. Only following the Transaction did Allen-Vanguard become aware of the head to head product competition required by the USMC and its associated implications.

7.4 We observe that in pursuing the acquisition of Med-Eng, Allen-Vanguard aligned its future success with that of Med-Eng and put at risk the value of Allen-Vanguard's net assets. The Transaction required Allen-Vanguard to take on significant levels of debt

[47] We discussed the Transaction and business operations of Med-Eng and Allen-Vanguard with Rob Ryan former CFO of Allen-Vanguard and David Luxton, former CEO and current Chairman of Allen-Vanguard.

and required the Company to meet strict debt covenants. We understand that the debt arrangements were executed based on the representations made to the Company with regard to the strength of the Med-Eng pipeline and Chameleon product (and with the assistance and understanding of Med-Eng senior executives) and that servicing the debt requirements would require the Company to achieve the pipeline and revenue targets. In particular we observe that the Senior Debt Facility imposed a number of covenants on Allen-Vanguard including minimum revenue backlog, trailing twelve month EBITDA and fixed asset coverage ratios. We observe that as early as the quarter ending December 31, 2007, Allen-Vanguard was unable to meet the debt covenants on the Senior Debt Facility.

7.5 We observe that despite lender accommodations and refinancing efforts (refer to paragraphs 4.25 to 4.31), Allen-Vanguard was unable to satisfy its debt obligations and meet its financial covenants and filed for CCAA proceedings in December 2009.

7.6 Allen-Vanguard was acquired by Versa Capital Management Inc. on December 18, 2009 pursuant to a Court approved process. Under the terms and conditions of the Versa acquisition, all of the shares, warrants and other securities of Allen-Vanguard were cancelled. This indicates that the value of the net assets of Allen-Vanguard was nil at that date.

7.7 It is Allen-Vanguard's position in this litigation that absent the Alleged Actions, the Company would not have consummated the Transaction to acquire Med-Eng and thus would not have secured the Senior Debt Facility that eventually led to the Versa transaction and the dissipation of all net asset value that had been originally attributable to Allen-Vanguard's standalone business interest, which net asset value would have continued to exist, absent the Transaction.

7.8 In calculating the Economic Losses incurred by Allen-Vanguard under Scenario #1 we:

a. assume that Allen-Vanguard would not have completed the Transaction had the Company been aware of the alleged misrepresentations of Med-Eng including, among other things, the head to head product competition and its associated implications;

b. observe that following the Transaction the Company's financial position deteriorated and the Company filed under CCAA proceedings in December of 2009. Pursuant to Court approval, while the Company was acquired by Versa with approximately

$20.0 million in equity investment and the assumption of $50.0 million in debt, the shares, options and other equity securities of Allen-Vanguard were all cancelled and the shareholders received no compensation. As such, the entire net asset value of Allen-Vanguard that existed prior to the Transaction, and that would have existed absent the Transaction, was lost; and

c. consider that given the Company's financial strength and balance sheet in the period immediately prior to the Transaction, the Company would not have deteriorated into insolvency had it not consummated the Transaction. Absent the Med-Eng acquisition and even with the deferred expenditures that affected Allen-Vanguard's Symphony business in 2008 and 2009, there were sufficient resources within the Company to maintain its viability as a standalone entity through this time period.

7.9 Pursuant to this scenario, the Economic Losses incurred by Allen-Vanguard arise from both the loss of the investment in Med-Eng by the Company and the loss in the value of Allen-Vanguard's net assets at December 18, 2009, absent the Transaction. We discuss each of these two components of the Economic Losses in detail below.

LOSS OF EQUITY INVESTED IN MED-ENG

7.10 To fund the Transaction Allen-Vanguard raised total gross proceeds of $400.4 million and net proceeds of $377.7 million through additional equity financing comprised of:

a. a private placement on August 15, 2007 of 14,650,000 subscription receipts at a subscription price of $6.85 per subscription accounting to total gross proceeds of $100.352 million and net proceeds of $94.206 million after commissions; and

b. a public issuance on September 21, 2007, of 31,580,000 common shares by way of a short form prospectus at a price of $9.50 per share for total gross proceeds of approximately $300.0 million and net proceeds after commissions of approximately $283.5 million.

7.11 Having consideration for our analysis in paragraph 7.8(b) above, we observe that pursuant to the Versa transaction, this equity was cancelled as of December 18, 2009 and all value attributable to this equity investment was lost.

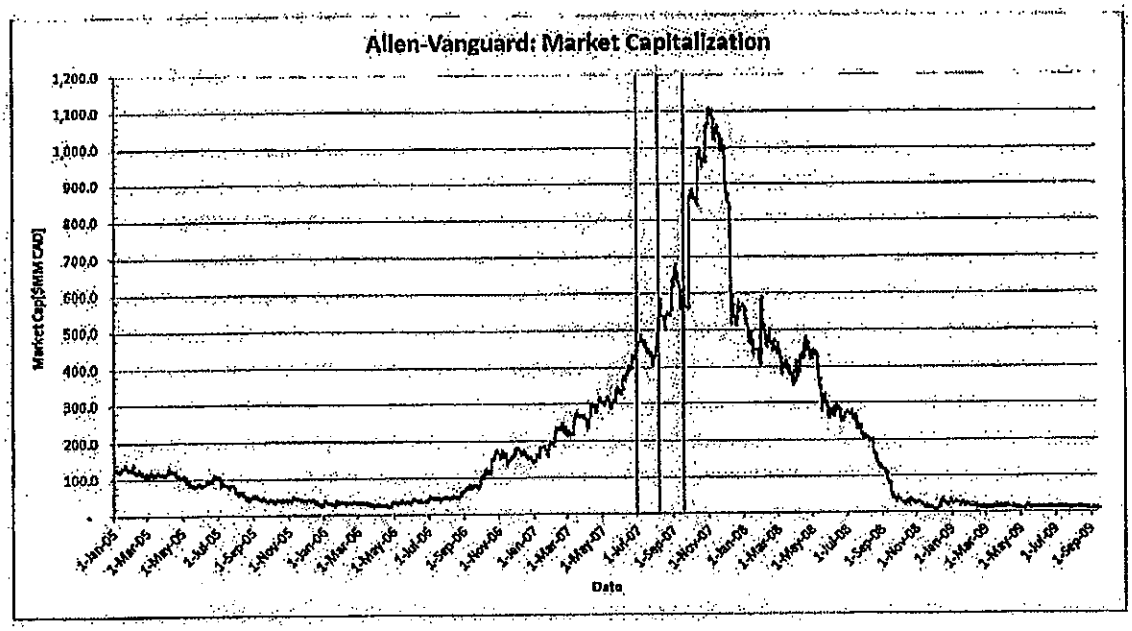
7.12 Based on the foregoing, Allen-Vanguard incurred Economic Losses of approximately $377.7 million on account of the loss in the value of the equity invested in Med-Eng and

$22.7 million on account of fees incurred to raise these invested funds. It is Allen-Vanguard's position in this litigation, that absent the Alleged Actions, the Company would not have consummated the Transaction and would therefore not have invested $377.7 million of equity into funding the purchase of Med-Eng and would not have incurred $22.7 million of related fees to raise these invested funds. The Economic Loss to Allen-Vanguard is therefore approximately $400.4 million for the loss of the equity invested in Med-Eng.

Loss of the Market Value of Allen-Vanguard's Net Assets

7.13 Prior to the Transaction and the Versa transaction, Allen-Vanguard had a public market share price that represented the public's perceived value of the shareholders' equity of the Company based on the available information known at that time. The equity value translates to the market value of Allen-Vanguard's net assets.

7.14 The following chart summarizes the total market capitalization of Allen-Vanguard during the January 1, 2005 through September 14, 2009 time period. We observe that the TSX suspended trading of Allen-Vanguard's shares on September 14, 2009 and the Company was delisted from the TSX on October 21, 2009.[48]



[48] Source: S&P Capital IQ.

7.15 Having consideration for the foregoing analysis we observe that:

a. at June 30, 2007, the quarter ending immediately prior to the Transaction Date, Allen-Vanguard had a market capitalization of approximately $451.0 million (represented by the red line in the chart above). We observe that Allen-Vanguard's stock price averaged approximately $6.79 during the month of June 2007 and the market capitalization averaged approximately $400 million;

b. the Transaction was publicly announced on August 3, 2007. At August 3, 2007, the Company had a market capitalization of approximately $502.3 million (represented by the green line in the chart above); and

c. at September 17, 2007, the date of the closing of the Transaction, Allen-Vanguard had a market capitalization of approximately $576.7 million (represented by the purple line in the chart above).

7.16 We observe that the market value of Allen-Vanguard as a standalone entity prior to the Transaction was significant and that the Company was publicly held and actively traded on the TSX. The public market share price and market capitalization provide a strong indication of the value of the equity of the Company (and its net assets) as the public market price represents the price upon which an informed and willing seller and an informed and willing buyer agree to transact.

7.17 We have summarized the historic balance sheets of Allen-Vanguard for the 2003 through 2009 period at Schedule 12. Based on our review and analysis of the balance sheet and the financial position of Allen-Vanguard in the period preceding the Transaction Date we observe that as at June 30, 2007, the most recent quarter ending immediately prior to the Transaction Date, that:

a. the Company had a positive net book value of shareholders' equity of $113.1 million and total assets of $136.5 million representative of a strong equity position in the Company and low financial leverage;

b. the Company had cash and equivalents on hand of $3.4 million and an additional $15.4 million in restricted cash. The restricted cash related primarily to the acquisition of HMS and was comprised of $9.5 million owed to the previous shareholders of HMS to be paid out over 3 years under an ongoing management agreement and $5.2 million set aside related to contingency payments to HMS based on EBITDA related targets;

c. the Company had approximately $28.5 million in excess cash invested in short-term GICs with maturity dates ranging from November 2, 2007 to April 2, 2008;

d. Allen-Vanguard had a net trade working capital[49] balance of $25.0 million indicative of the Company's strong ability to meet all short term operating and financial obligations;

e. the Company had total debt of approximately $6.8 million of which $2.7 million was due within one year. We observe that $6.0 million of this debt comprised a term loan that accrued interest at the chartered bank base rate plus 2.25% and was repayable in quarterly installments until July 2010; and

f. the Company had recently completed the acquisition of HMS on June 13, 2007 which provided complementary services to Allen-Vanguard's core business and represented a potential growth opportunity. The HMS acquisition was financed from Allen-Vanguard cash reserves and no debt was raised to complete this transaction.

7.18 Having consideration for the foregoing, Allen-Vanguard had a strong balance sheet immediately prior to the Transaction as was exhibited by the strong cash and working capital positions and low levels of financial leverage as at June 30, 2007.

7.19 In addition we observe that the Company realized $46.1 million in revenues through the nine months ending June 30, 2007, representing an increase of approximately $9.3 million on the $36.8 million realized in the same period in 2006.

7.20 In our view, in the period immediately prior to the Transaction, Allen-Vanguard was financially sound with a strong balance sheet and was tracking continued revenue growth consistent with year over year sales growth achieved in each year between 2003 and 2006. The Company was capable of satisfying its debt and creditor obligations and in our view, could withstand a short term decline in revenues.

7.21 Market analysts of Allen-Vanguard provided "Buy" and "Strong Buy" recommendations for Allen-Vanguard common shares in and around the May to July 2007 period

[49] Net trade working capital is comprised of accounts receivable, inventory and prepaid assets net of accounts payable and income taxes payable.

preceding the announcement of the Transaction.[50] Analysts projected strong stock appreciation and continued revenue growth.

7.22 However, Allen-Vanguard exposed the value of its net assets pursuant to the Transaction by providing security over these assets to the secured lenders. Absent the Transaction, Allen-Vanguard would have had net asset value at December 18, 2009. This net asset value was lost pursuant to the Transaction, and would not have been lost had Allen-Vanguard not completed the Transaction.

7.23 We understand that the financial records of Allen-Vanguard and Med-Eng were consolidated and comingled following the Transaction, however we have been provided with the estimated revenues of Allen-Vanguard and its subsidiaries on a standalone basis consistent with the operations as they existed before the Transaction Date (that is excluding the Med-Eng operations). We observe that Allen-Vanguard's standalone revenues were approximately USD $68.8 million for the year ended September 30, 2008 USD $100.9 million for the year ended September 30, 2009, and USD $22.9 million for the period ended December 18, 2009 (i.e. October 1, 2009 to December 18, 2009). We summarize these revenues in the following table.

Post-Transaction Allen-Vanguard Revenue, excluding Med Eng [$USD]

	For the quarter ending,								
	31-Dec-07	31-Mar-08	30-Jun-08	30-Sep-08	31-Dec-08	31-Mar-09	30-Jun-09	30-Sep-09	Oct 1 - Dec 18, 2009
Allen-Vanguard revenues [$USD]	15,046,127	12,868,667	16,165,466	24,724,516	22,610,061	19,598,814	27,289,046	31,418,847	22,863,737
TTM Allen-Vanguard revenue				68,804,776	76,968,710	83,098,857	94,222,437	100,916,208	101,169,944

7.24 Having consideration for the foregoing, we calculate the Economic Losses incurred by Allen-Vanguard on account of the loss in the value of the net assets of the Company at December 18, 2009, which it should have had absent the Transaction, giving consideration to:

a. an estimate of the market capitalization of Allen-Vanguard (and hence the market value of the net assets of Allen-Vanguard) at December 18, 2009 based on the market capitalization to revenue and market capitalization to EBITDA ratios of somewhat comparable public companies in the defence and military supplier industry at December 18, 2009. We observe that the trailing twelve month revenue

[50] Source: Versant Partners May 30, 2007 and July 5, 2007 Analyst Reports, Paradigm Capital Inc.'s July 6, 2007 Analyst Report.

of Allen-Vanguard on a standalone basis at December 18, 2009 was approximately USD $101.2 million. We have estimated the trailing twelve month EBITDA of Allen-Vanguard on a standalone basis to be USD $9.1 million at December 18, 2009 having regard to the historic gross margin percentage and operating expense ratios of Allen-Vanguard existing prior to the Transaction.[51] Applying the comparable public company capitalization ratios and having consideration to the average US foreign exchange rate of $1.1466 prevailing in the twelve months ended December 18, 2009, the market capitalization (and net asset value) of Allen-Vanguard absent the acquisition of Med-Eng was in the range of $65.0 million to $80.0 million. In our view, this estimated net asset value of Allen-Vanguard takes into account the estimated results of Allen-Vanguard in the period preceding December 18, 2009 (assuming that the acquisition of Med-Eng never occurred), general market conditions, the financial credit crisis and the market conditions in the defence supplier industry prevailing at this time.

b. our analysis in paragraph 7.8(b) whereby upon the Versa acquisition of Med-Eng, the equity value (and net asset value) of Allen-Vanguard was cancelled (lost) and all value attributable to the net assets of Allen-Vanguard was lost.

7.25 Based on the foregoing, our calculation of the Economic Losses on account of the loss of the net asset value of Allen-Vanguard, absent the acquisition of Med-Eng is summarized in the following table.

[51] We have adopted a gross margin percentage of 42% and an operating expense ratio as a percentage of revenues of 33% based on the historic 2006 and 2007 operating results of Allen-Vanguard.

Calculation of Estimated Allen-Vanguard Net Asset Value at December 18, 2009 [$MMs]			
Net Asset Value based on Market Capitalization/TTM Revenue			
Allen-Vanguard standalone TTM revenue [$USD]	(1)	$	101.17
Average foreign exchange rate in the TTM ending December 18, 2009	(2)		1.1466
Allen-Vanguard standalone TTM revenue [$CAD]			116.0
Market capitalization/TTM revenue ratio of somewhat comparable public companies in the defence supplier industry	(3)		0.7x
Estimated net asset value of Allen-Vanguard at December 18, 2009 (rounded)		**$**	**80.0**
Net Asset Value based on Market Capitalization/TTM EBITDA			
Allen-Vanguard standalone TTM EBITDA [$USD]	(1)	$	9.11
Average foreign exchange rate in the TTM ending December 18, 2009	(2)		1.1466
Allen-Vanguard standalone TTM EBITDA [$CAD]			10.4
Market capitalization/TTM EBITDA ratio of somewhat comparable public companies in the defence supplier industry	(3)		6.1x
Estimated net asset value of Allen-Vanguard at December 18, 2009 (rounded)		**$**	**65.0**

(1) Source: based on Allen-Vanguard standalone revenue provided by management. Refer to paragraph 7.23.
(2) Source: Bank of Canada.
(3) Based on somewhat comparable public companies in the defence supplier industry. Refer to Schedule 3.

SUMMARY OF ECONOMIC LOSSES: SCENARIO #1

7.26 We observe that at the Transaction Date, Allen-Vanguard's enterprise value was comprised of three principal components:

a. the net asset value of Allen-Vanguard's standalone operations prior to the Transaction which is represented by the publicly traded market capitalization of Allen-Vanguard's shares at this time;

b. the equity raised and invested in the purchase of Med-Eng; and

c. the debt secured and used to fund the purchase of Med-Eng.

7.27 Having consideration for the foregoing, we observe that pursuant to the Court approved CCAA filings and acquisition by Versa only the debt holders' portion of the above noted value remained relatively intact, and any loss realized by the debt holders was to their account. We observe that all shares, options and other securities in Allen-Vanguard were cancelled upon close of the privatization transaction with no consideration paid to equity holders. Accordingly, the net asset value of Allen-Vanguard was nil. Therefore, the Economic Losses incurred by Allen-Vanguard equate to the loss of the equity raised to fund the purchase as discussed in paragraphs 7.10 to 7.12 plus the loss in the net asset value of the Allen-Vanguard standalone operations as it would have existed at December 18, 2009, absent the Transaction as discussed in paragraphs 7.13 to 7.25 above.

7.28 The following table summarizes the total Economic Losses incurred by Allen-Vanguard under Scenario #1.

Scenario #1: Calculation of Economic Losses ($MMs)

		Investmet in Med-Eng and Estimated Allen-Vanguard Net Asset Value at December 18, 2009	Value Received from Versa Transaction	Economic Loss Incurred
Investment in Med-Eng - Lost				
Private placement on August 15, 2007	(1)	$ 100.4	$ -	$ 100.4
Public share issuance on September 21, 2007	(1)	300.0	-	300.0
Allen-Vanguard net asset value - Lost				
Estimated Allen-Vanguard net asset value at December 18, 2009 absent the acquisition of Med-Eng		65.0 to 80.0	-	65.0 to 80.0
Total Economic Losses to Allen-Vanguard		$465.4 to $480.4	-	$465.4 to $480.4

(1) Includes the fees incurred to raise the investment equity.

7.29 Based on the foregoing and subject to our scope of review and the assumptions, qualifications, and restrictions noted in this report, in our opinion the Economic Losses incurred by Allen-Vanguard were in the range of approximately $465 million to $480 million.

8 SCENARIO #2: CALCULATION OF THE ADJUSTED PURCHASE PRICE

8.1 In the alternative, in Scenario #2 the Economic Losses to Allen-Vanguard are calculated as the difference between the Actual Purchase Price paid by Allen-Vanguard and the Adjusted Purchase price that could have been reasonably expected to have been paid absent the Alleged Actions (with a contingent payment that ultimately would not have been paid).

8.2 Allen-Vanguard completed the acquisition of all of the issued and outstanding shares of Med-Eng on September 17, 2007 for total purchase consideration of $622.630 million plus $10.898 million in transaction costs for a total purchase price of $633.528 million.

8.3 In our analysis, we have adopted the AV ME Forecast as presented in the PPA Report and as summarized at Schedule 7 as the financial expectations of management in negotiating the Actual Purchase Price. We understand that this financial forecast represents management's *"best estimate of the most likely future operating results for the Company [Med-Eng]*[52]*"* on a stand-alone basis and was used by Allen-Vanguard management in *"in negotiating the [Actual] Purchase Price*[53]*"* and for filing their annual audited financial statements.[54] In addition we observe that:

a. the AV ME Forecast is generally consistent with the Med-Eng forecast presented in the Med-Eng management presentations in July and August 2007. Refer to the analysis above in paragraphs 5.7 to 5.12. We observe that the Med-Eng forecast is driven in part by the Med-Eng Pipeline;

b. the AV ME Forecast is generally consistent with the forecast prepared by Genuity Capital (the "**Genuity Forecast**") immediately preceding the Transaction Date, which we understand was prepared for financing purposes.[55] We observe that the total revenue, gross margin and contribution projections are generally consistent with the AV ME Forecast as summarized in the following table and that the Genuity

[52] Allen-Vanguard Corporation: Estimate of the fair value of the identifiable intangible assets of Med-Eng Systems Inc. Report prepared by Deloitte dated September 12, 2008. Page 17.
[53] Allen-Vanguard Corporation: Estimate of the fair value of the identifiable intangible assets of Med-Eng Systems Inc. Report prepared by Deloitte dated September 12, 2008. Page 17.
[54] We note that the AV ME Forecast represents Allen-Vanguard management's expectations for the Med-Eng business operations as was projected at the Transaction Date based on information known at the Transaction Date.
[55] The Genuity Forecast is document AVC00040083.

Forecast projected marginally higher gross margins and EBITDA in the 2008 and 2009 forecast periods.

Comparison of the AV ME Forecast and Genulty Forecast

		For the year ending September 30,				
		2008F	2009F	2010F	2011F	2012F
Revenue						
AV ME Forecast	(1)	438,678	504,803	377,970	384,389	391,130
Genulty Forecast	(2)	438,700	501,500	376,000	382,400	389,100
Difference		(22)	3,303	1,970	1,989	2,030
Gross margin						
AV ME Forecast	(1)	192,506	217,198	167,375	170,523	173,973
Genulty Forecast	(2)	204,000	228,800	171,800	174,400	177,100
Difference		(11,494)	(11,602)	(4,425)	(3,877)	(3,127)
EBITDA						
AV ME Forecast	(1)	144,406	151,543	118,216	120,530	123,102
Genulty Forecast	(2)	157,800	165,000	NA	NA	NA
Difference		(13,394)	(13,457)	NA	NA	NA

(1) Source: AV ME Forecast as per the Deloitte PPA Report dated September 12, 2008.
(2) Source: Genulty Forecast as per AVC00040083.

c. In preparing the Genulty Forecast, we observe that specific orders as captured in the Med-Eng Pipeline were used to build up the Genulty Forecast revenue projections for the first half of fiscal 2008.

8.4 Having consideration for the foregoing, we have accepted the AV ME Forecast as being a reasonable projection of the business operations of Med-Eng absent the Alleged Actions.

8.5 We have summarized the AV ME Forecast for the fiscal years ending September 30, 2007 through 2012 at Schedule 7. Our detailed comments in regard to this forecast are summarized below.

REVENUE PROJECTIONS

8.6 The following table summarizes the projected revenue of Med-Eng by product category for the fiscal years ending September 30, 2007 through 2012 as per the AV ME Forecast.

Summary of Projected Med Eng Revenues

	For the year ending September 30,[1]					
	2007F [0.5 months]	2008F	2009F	2010F	2011F	2012F
Electronic Systems						
ECM - product	19,149	318,556	320,780	196,547	196,547	196,547
ECM - services	1,020	22,572	22,498	13,785	13,785	13,785
Electronics cooling	953	22,550	39,250	39,250	39,250	39,250
Subtotal - Electronic systems	21,122	363,678	382,528	249,582	249,582	249,582
Personal Protection Services						
EOD	2,435	48,099	68,474	70,528	72,644	74,823
Force protection	228	9,763	26,411	28,474	30,661	32,981
Unexploded ordinances	474	6,626	2,935	3,023	3,113	3,207
Personal cooling systems	331	10,512	24,455	26,364	28,389	30,537
Subtotal - PPS	3,468	75,000	122,275	128,388	134,807	141,548
Total projected revenues	24,590	438,678	504,803	377,970	384,389	391,130

(1) Source: Deloitte PPA Report dated September 12, 2008. Schedule 5a

8.7 We observe that Electronic Systems revenues are projected to comprise the majority of the total projected revenues, averaging 70.7% of the annual revenue earned during the 2008 to 2012 forecast period. Electronic Systems revenues are projected to peak in 2009 at a high of approximately $382.5 million before declining to $249.6 million in 2010 and remaining flat at this level through 2012. We understand that the increase in projected Electronic Systems revenue in 2008 and 2009 is largely driven by projected contracts with the USMC for the delivery of Chameleon ECM systems.

8.8 PPS revenues were projected to increase year over year throughout the forecast period, increasing by 88.7% and $66.5 million between 2008 and 2012. Management projected that most of this growth would occur in 2009, when revenues were projected to increase by $47.3 million and 63.0%. We understand that PPS revenue was projected to be driven by the introduction of lower margin products such as US Army search kits and increased sales efforts toward the force protection business as well as leveraging relationships with non-five eyes countries.[56] Sales of cooling systems were projected to increase on account of leveraging ECM sales pull-through.

8.9 It is our understanding that in preparing the AV ME Forecast revenues as summarized above, that Allen-Vanguard management relied on the revenue pipeline and projections prepared by Med-Eng management (the **"Med-Eng Pipeline"**) immediately preceding

[56] Source: July 2007 (Slide 167 and 168) and August 2007 (Slide 169 and 170) management presentations.

the Transaction Date. We have summarized the Med-Eng Pipeline for the Electronic Systems division as represented by Med-Eng in its management presentations dated July and August 2007 at Schedule 6. The projected revenue pipeline for the Electronic Systems business is summarized in the following table.

Med-Eng Pipeline as at July and August 2007

Customer	Description	Quantity of Units[1]	Deal Size[1],[2] ($000s)	Probability[3]	Total Projected Revenues[3] ($000s)	Projected revenue for the year ending December 31,[1] ($000s) 2007F	2008F	2009F
USMC	DBPA	4,244	21,000	100%	21,000	21,000	-	-
USMC	EPACC	1,079	9,500	100%	9,500	9,500	-	-
USMC	MCM	415	22,821	100%	22,821	22,821	-	-
USMC	MCM	2,511	127,458	100%	127,458	127,458	-	-
USMC	MCM	1,136	56,062	100%	56,062	39,480	16,582	-
USMC	MCM	1,447	71,409	100%	71,409	-	71,409	-
USMC	MCM	1,100	54,285	100%	54,285	-	54,285	-
USMC	PCM	600	17,640	70%	12,348	-	12,348	20,580
USMC	MCM	7,000	345,450	50%	172,725	-	24,675	98,700
Prof Services	FSR, Tmg[2]	1	165,000	75%	123,750	13,500	37,800	37,800
USMC	R&O[2]	1	120,000	75%	90,000	-	28,500	28,500
US Army MRAP	MCM	15,000	740,250	20%	148,050	-	19,740	128,310
Crew 3.1	PCM	1	4,000	50%	2,000	-	750	1,250
Crew 3.2	MCM	1	7,000	50%	3,500	-	1,750	1,750
CDN DND	MCM	250	13,513	75%	10,135	4,054	6,081	-
Australian DoD	MCM	600	29,610	75%	22,208	-	22,208	-
UK MoD	PCM	2,000	66,000	50%	33,000	-	-	16,500
UK MoD	MCM	5,000	275,000	50%	137,500	-	-	110,000
TSWG	PCM/MCM	300	42,000	40%	16,800	1,120	6,480	5,600
Total revenue pipeline projected by management						238,933	300,608	448,990

(1) Source: Med-Eng Management Presentation dated July 20, 2007 (Slide 164) and August 22, 2007 (Slide 166).
(2) Total deal size adjusted to reflect the projected ongoing work forecast in the Med-Eng Management Presentation dated July 20, 2007 (Slide 40) and August 22, 2007 (Slide 41). For these annual projects the deal size recorded in the Med-Eng Pipeline represented the annual deal size. We have adjusted to illustrate the total size of the contract consistent with the forecast annual revenues then projected.
(3) Calculated as total deal size multiplied by the probability.

8.10 Based on the foregoing, we observe that Med-Eng management projected significant revenues to be generated from sales to the USMC in each of the years ending December 31, 2007 through 2009. Med-Eng management also projected successful sales to the United Kingdom Ministry of Defence and US Army. We further observe that many of these revenues were assigned a high probability of success in the range of 75% to 100%. We understand that these projected revenues were included in the AV ME Forecast revenues.

8.11 Following the Transaction we understand that many of these projected revenue streams never materialized (refer to the analysis of Allen-Vanguard's operating results – Section

4). We understand that it is Allen-Vanguard's position in this litigation that management of Med-Eng failed to disclose facts that would have materially impacted the revenue projections made by Allen-Vanguard and relied on by Allen-Vanguard in consummating the Transaction.

8.12 In performing our calculation of the Economic Loss incurred by Allen-Vanguard we have:

a. adjusted the AV ME Forecast to exclude those revenues that are subject to the Alleged Actions (the **"Subject Revenues"**). These revenues are identified individually below and relate to revenue projections which it is alleged management of Med-Eng knew were at risk and not as presented in the Med-Eng Pipeline; and

b. calculated the financial impact on the initial purchase price and the contingent consideration (that ultimately would not have been paid) for Med-Eng based on the adjusted financial forecast excluding the Subject Revenues.

8.13 Had Allen-Vanguard been aware of the required head to head competition and the associated implications, and assuming that Allen-Vanguard proceeded with the Transaction in any event, in our view, based on our experience in business valuations and open market transactions, it is likely that the Transaction would have attempted to be restructured based on a reduced initial purchase price plus a contingent price. Under such a structure, the purchase price paid would have been set at a base amount with a contingent payment based on the demonstrated continuation of the USMC as a major customer with a related expectation that the Med-Eng Pipeline would have been achieved.

8.14 The following table summarizes the projected revenues of Med-Eng for the fiscal years ending September 30, 2007 through 2012 adjusted to exclude the Subject Revenues. We observe that the Med-Eng Pipeline is prepared based on a December 31 year end as compared to the AV ME Forecast which is prepared based on a September 30 year end. As such, in adjusting the AV ME Forecast to exclude the Subject Revenues, we have assumed that the revenues projected in the Med-Eng Pipeline would be earned evenly over each of the quarters. For example, revenues of $110.0 million projected to be earned in fiscal 2009 in the Med-Eng Pipeline from the UK MoD would be recorded

as $82.5 million of revenue in the year ending September 30, 2009.[57] Our analysis is summarized in the following table and we provide detail on the Subject Revenues below.

Summary of Adjusted Projected Med-Eng Revenues	For the year ending September 30,					
	2007F	2008F	2009F	2010F	2011F	2012F
	(0.5 months)					
Electronic Systems						
Total projected revenue	21,122	363,678	382,528	249,582	249,582	249,582
Less: Revenue Adjustments						
Foreign Exchange Adjustment - 2,511 Units USMC	(223)	(13,590)	-	-	-	-
Chameleon Order - 1,100 units USMC	-	(40,714)	(13,571)	-	-	-
Repair & Overhaul Contract - USMC	-	(21,375)	(28,500)	(28,500)	(11,625)	-
Portable ECM Unit Order - 600 units USMC	-	(9,261)	(3,087)	-	-	-
Professional Services Contract	-	(38,475)	(37,800)	(37,800)	(9,675)	-
MCM Order - 7,000 units USMC	-	(57,575)	(57,575)	(57,575)	-	-
US Army MRAP Order - 15,000 units US Army	-	(14,805)	(101,168)	(32,078)	-	-
CREW 3.1	-	(563)	(1,125)	(313)	-	-
CREW 3.2	-	(1,313)	(1,750)	(438)		
UK MoD Order - PCM Order	-	-	(12,375)	(20,625)	-	-
UK MoD Order - MCM Order	-	-	(82,500)	(55,000)	-	-
Future Projected Revenue Adjustment	-	-	-	-	(205,602)	(226,902)
Adjusted Total Projected Revenue - Electronic Systems	20,899	166,008	43,078	17,254	22,680	22,680
Personal Protection Services						
Total projected revenue	3,468	75,000	122,275	128,388	134,807	141,548
Total Adjusted Projected Revenue	24,367	241,008	165,353	145,642	157,487	164,228

8.15 Based on the foregoing and our review and analysis we identified the following Subject Revenues:

a. Foreign Exchange Adjustment – an order for 2,511 vehicle-mounted ECM units with the USMC, with a Med-Eng estimated probability of 100%, which was fulfilled in fiscal 2007 and 2008. Recorded as order #C0070275, Med-Eng booked this order to its backlog in or around April 2, 2007 based on a USD to CAD foreign exchange rate of $1.1529.[58] At the April 2, 2007 exchange rate the project had estimated revenue of approximately $128 million. We understand that the revenue actually earned on this order was as summarized in the following table.

[57] Calculated as $110.0 million / 4 quarters = $27.5 million per quarter x 3 quarters (Jan 1 to Sept 30) = $82.5 million.
[58] Source: AVC0044022/1.

Revenue Earned on Order #C0070275					
		July 07 - Sept 07	Oct 07 - Dec 07	Jan 08 - Mar 08	Total Revenue
ECM revenue [$000s CAD]	(1)	1,555	73,827	31,461	106,843
MCS revenue [$000s CAD]	(2)	252	4,570	196	5,018
Total revenue		1,807	78,397	31,657	111,861
Percentage of total revenue	D	*1.6%*	*70.1%*	*28.3%*	*100.0%*
Projected revenue of Med-Eng [$000s CAD]				A (2)	127,500
Foreign exchange rate at April 2, 2007				(3)	1.1529
USD sales as at April 2, 2007 [$000s USD]					110,591
Foreign exchange rate at September 17, 2007				(3)	1.0280
Projected revenue based on September 17, 2007 exchange rate [$000s CAD]				B	113,687
Difference - revenue discrepancy				C=A-B	13,813

Revenue Adjustment to the AV Forecast				
		2007F	2008F	Total
Revenue adjustment	C x D	223	13,590	13,813

(1) Source: AVC0004022/1.
(2) Source: Med-Eng Pipeline - refer to Schedule 6.
(3) Source: Bank of Canada - USD close rate.
(4) Calculated as the total revenue discrepancy multiplied by the actual revenue earned in the quarter as a percentage of the total actual revenue earned.

We understand that the total revenue actually earned of approximately $111.9 million was $15.6 million short of $127.5 million in the backlog and as projected in the Med-Eng Pipeline on account of a reduction in the exchange rate. We have adjusted the forecast revenue to reflect the appropriate foreign exchange rate at September 17, 2007, the Transaction Date, based on the above table. We understand that if Allen-Vanguard had been aware of the foreign exchange adjustment required to the Med-Eng Pipeline, a corresponding adjustment would have been required at the Transaction Date to reflect this fluctuation and change in value. We observe that the residual loss of $1.8 million incurred in excess of the $13.8 million calculated occurred following the Transaction Date as the Canadian dollar continued to appreciate against the US dollar;

b. Chameleon Order – an order by the USMC for 1,100 Chameleon units with a total projected revenue of $54.285 million. Med-Eng represented the probability of securing this order to be 100%. We understand that the Chameleon product was subject to a head to head competition against a competitor product. It is our understanding that management of Med-Eng was aware of this impending head to

head competition prior to the Transaction Date but Allen-Vanguard claims neither the fact of this head to head competition nor its implications were disclosed to Allen-Vanguard until September 19, 2007, two days following the Transaction Date. Med-Eng management represented in email and in the July and August 2007 management presentations and revenue pipelines a 100% probability of obtaining this order. We understand that the Chameleon product was not shown to be superior to the CVRJ in the baseline testing component of this head to head competition completed in December 2007. It is our understanding that Allen-Vanguard was formally informed that no further USMC orders would be received in or around January 2009. As a result this order never materialized;

c. a repair and overhaul contract with the USMC worth an estimated $38.0 million per annum and total revenue of $120.0 million[59] over the term of the projected contract. Med-Eng would provide repair and overhaul services on existing ECM products deployed by the USMC. We understand that it is Allen-Vanguard's claim that it became aware that the terms of this contract might violate the GDATP Teaming Agreement which required GDATP to act as the primary contractor and that to perform on this contract might result in a breach of contract and significant penalties to Allen-Vanguard. In their July and August 2007 management presentations Med-Eng management estimated the probability of securing this contract at 75%. Following the Transaction, this order failed to materialize;

d. an order by the USMC for 600 portable ECM units equating to total revenue of $17.640 million. The probability of successfully obtaining this order was represented by management of Med-Eng to be 70%. Allen-Vanguard claims that funds for this order were never allocated by the US government and as such the success factor of 70% was materially overstated. We understand that following the Transaction Date this order never materialized;

e. an expanded role professional services contract with the USMC in the amount of approximately $13.5 million in 2007 and $50.4 million per annum thereafter to a total of $165.0 million[60] over the life of the contract. Med-Eng management represented the likelihood of securing this contract at 75%. We understand that it is

[59] Total contract revenue of $120.0 million based on Slide 40 of the July 2007 and Slide 41 of the August 2007 Med-Eng management presentation.
[60] Total contract revenue of $165.0 million based on Slide 40 of the July 2007 and Slide 41 of the August 2007 Med-Eng management presentation.

Allen-Vanguard's claim that this contract required direct engagement with the end customer which would be in violation of Med-Eng's Teaming Agreement with GDATP and result in potentially severe penalties and exposure to liability under the Teaming Agreement. In this regard we understand that *"GDATP shall be the single point of contact with the Customer*[61]*"* and that *"each party shall disclose in writing to the other any and all sales opportunities to Customers for Products within the Territory.*[62]*"* We understand the Teaming Agreement explicitly limits any direct Med-Eng and customer contact. As such, Allen-Vanguard is claiming that it would not be possible for Allen-Vanguard to pursue this contract. It is our understanding this contract was not executed;

f. an order for 7,000 vehicle mounted units from the USMC with a total projected revenue of $345.450 million and a probability of success of 50%. We understand that it is Allen-Vanguard's position that this probability of success was overstated having consideration for our comments at (b) above. We understand that this order was never obtained;

g. given the contingent consideration approach to the Subject Revenues above, we included the following as appropriate to include in the contingency component related to the ES business of Med-Eng,:

   i. an order by the US Army for 15,000 MRAP MCM units with total projected revenues of $740.250 million. Med-Eng management projected the likelihood of securing this order as 20%. We understand this order never materialized;

   ii. CREW 3.1 and CREW 3.2 orders projected in the Med-Eng Pipeline in 2008 and 2009. Med-Eng management projected the likelihood of securing these orders as 50%. We understand that these orders never materialized;

   iii. UK MoD orders projected to occur in calendar 2009. Med-Eng management projected the likelihood of securing these orders as 50%. We understand that these orders never materialized; and

h. we have applied a future projected revenue adjustment in 2011 and 2012 of the forecast period. We observe that the Med-Eng Pipeline forecasts until the end of

[61] Paragraph 4.1 of the Teaming Agreement.
[62] Paragraph 2.2 of the Teaming Agreement.

December 31, 2009 only. We understand based on the documentation supporting the Med-Eng Pipeline and Med-Eng management forecast that projected revenue beyond this period was expected to be driven by further USMC orders, CREW 3.1 through 3.3 initiatives and continued success of the Chameleon and next generation products. The risk of the loss of the USMC as a customer therefore posed a significant threat to the future revenue generating abilities of Med-Eng. We have adjusted the 2011 and 2012 forecast revenues to be consistent with the adjustments applied to the 2009 and 2010 forecast revenues. In this regard we observe that our adjustment of the Subject Revenues resulted in a decline in the 2009 and 2010 revenues by 89% and 93% respectively. We have assumed that the 2011 and 2012 AV ME Forecast revenues would be similarly impacted and have reduced the AV ME Forecast by the average decline in 2009 and 2010 being 91% of the original revenue amount. Our adjustment is further supported by the subsequent sales of Med-Eng products. We observe that Allen-Vanguard's sales of Chameleon product totaled approximately $118.8 million USD in calendar 2007, $82.2 million in calendar 2008 and $30.5 million in calendar 2009 far below the forecast levels during this period.

8.16 The following table summarizes the AV ME Forecast revenues and the Adjusted AV ME Forecast revenues as adjusted by us to account for the Subject Revenues.

Summary of Projected Med-Eng Revenues ($000s)

	For the year ending September 30,					
	2007F [0.5 months]	2008F	2009F	2010E	2011F	2012F
AV ME Forecast						
Electronic Systems projected revenue	21,122	363,678	382,528	249,582	249,582	249,582
PPS projected revenue	3,468	75,000	122,275	128,388	134,807	141,548
Total projected revenue	24,590	438,678	504,803	377,970	384,389	391,130
Reduction in Projected Revenues						
Electronic Systems	223	197,670	339,450	232,328	226,902	226,902
PPS	-	-	-	-	-	-
Total reduction in revenues	223	197,670	339,450	232,328	226,902	226,902
Adjusted ME Forecast						
Adjusted Electronic Systems projected revenue	20,899	166,008	43,078	17,254	22,680	22,680
Adjusted PPS projected revenue	3,468	75,000	122,275	128,388	134,807	141,548
Adjusted total project revenue	24,367	241,008	165,353	145,642	157,487	164,228

GROSS MARGIN PROJECTIONS

8.17 The following table summarizes the projected gross margin of Med-Eng by product category for the fiscal years ending September 30, 2007 through 2012 as per the AV ME Forecast.

Summary of AV ME Forecast Projected Med-Eng Gross Margin[$000s]

		For the year ending September 30,[1]					
		2007F (0.5 months)	2008F	2009F	2010F	2011F	2012F
Electronic Systems							
ECM - product		8,460	137,758	131,302	80,451	80,451	80,451
ECM - services		350	7,808	7,170	4,393	4,393	4,393
Electronics cooling		410	10,463	19,060	18,840	18,448	18,055
Add: depreciation	(2)	34	2,696	2,776	3,228	3,615	3,995
Subtotal - Electronic systems		9,254	158,725	160,308	106,912	106,907	106,894
Electronic Systems - gross margin %		*43.8%*	*43.6%*	*41.9%*	*42.8%*	*42.8%*	*42.8%*
Personal Protection Services							
EOD		1,056	22,177	32,932	33,920	34,937	35,985
Force protection		83	4,009	11,679	12,633	13,604	14,713
Unexploded ordinances		205	3,055	1,411	1,454	1,497	1,542
Personal cooling systems		112	3,984	9,980	10,795	11,625	12,573
Add: depreciation	(2)	6	556	888	1,661	1,953	2,266
Subtotal - PPS		1,462	33,781	56,890	60,463	63,616	67,079
PPS - gross margin %		*42.1%*	*45.0%*	*46.5%*	*47.1%*	*47.2%*	*47.4%*
Total AV ME Forecast gross margin	Schedule 7	10,716	192,506	217,198	167,375	170,523	173,973
		43.6%	*43.9%*	*43.0%*	*44.3%*	*44.4%*	*44.5%*

(1) Source: Deloitte PPA Report dated September 12, 2008, Schedule 9a.
(2) Assumes that depreciation is allocated to the Electronic Systems and PPS businesses based on pro-rata portion of total revenues.

8.18 We observe that the total gross margin is projected to remain relatively stable during the forecast period. The Electronic Systems gross margin percentage is projected to decline marginally from 43.8% to 41.9% in 2009 and remain stable at 42.8% in 2010 through 2012 while the PPS gross margin percentage is projected to increase from 42.1% to 47.4%.

8.19 Having consideration for the Subject Revenue adjustments noted above, we have adjusted the gross margin projected in the AV ME Forecast to account for lower levels of projected revenue. We have assumed that the gross margin percentage earned on the Subject Revenues are equal to the gross margin percentage of the total forecast revenue by operating division as summarized above (i.e. Electronic Systems gross margin will be 43.6% in 2008).

8.20 The following table summarizes the Adjusted AV ME Forecast gross margin for the September 30, 2007 through 2012 forecast period.

Summary of Adjusted ME Forecast Gross Margin

	For the year ending September 30,					
	2007F [0.5 months]	2008F	2009F	2010F	2011F	2012F
Electronic Systems						
Total projected gross margin	9,254	158,725	160,308	106,912	106,907	106,894
Less: Revenue Adjustments						
Foreign Exchange Adjustment - 2,511 Units USMC	(98)	(5,931)	-	-	-	-
Chameleon Order - 1,100 units USMC	-	(17,769)	(5,687)	-	-	-
Repair & Overhaul Contract - USMC	-	(9,329)	(11,944)	(12,208)	(4,980)	-
Portable ECM Unit Order - 600 units USMC	-	(4,042)	(1,294)	-	-	-
Professional Services Contract	-	(16,792)	(15,841)	(16,192)	(4,144)	-
MCM Order - 7,000 units USMC	-	(25,128)	(24,128)	(24,663)	-	-
US Army MRAP Order - 15,000 units US Army	-	(6,462)	(42,397)	(13,741)	-	-
CREW 3.1	-	(245)	(471)	(134)	-	-
CREW 3.2	-	(573)	(733)	(187)	-	-
UK MoD Order - PCM Order	-	-	(5,186)	(8,835)	-	-
UK MoD Order - MCM Order	-	-	(34,574)	(23,560)	-	-
Future Projected Revenue Adjustment	-	-	-	-	(88,069)	(97,180)
Adjusted Total Projected Revenue - Electronic Systems	9,157	72,453	18,053	7,391	9,715	9,714
Personal Protection Services						
Total projected gross margin	1,462	33,781	56,890	60,463	63,616	67,079
Total Adjusted ME Forecast Gross Margin	10,618	106,234	74,943	67,854	73,331	76,793
as a percentage of Adjusted ME Forecast Revenue	*43.6%*	*44.1%*	*45.3%*	*46.6%*	*46.6%*	*46.8%*

OPERATING COST PROJECTIONS

8.21 The following table summarizes the projected operating costs of Med-Eng for the fiscal years ending September 30, 2007 through 2012 as per the AV ME Forecast.

Summary of AV ME Forecast Projected Med-Eng Operating Expenses [$000s]

	For the year ending September 30,[1]					
	2007F [0.5 months]	2008F	2009F	2010F	2011F	2012F
Selling & administration	592	25,300	35,000	26,206	26,651	27,119
Research & development	614	22,800	30,655	22,953	23,342	23,752
Other expenses	-	-	-	-	-	
Total AV ME Forecast operating expenses	1,206	48,100	65,655	49,159	49,993	50,871
as a percentage of revenues	*4.9%*	*11.0%*	*13.0%*	*13.0%*	*13.0%*	*13.0%*

(1) Source: Deloitte PPA Report dated September 12, 2008. Schedule 3a

8.22 We observe that the operating expenses are projected to comprise 4.9% of revenue in the half month ending September 30, 2007 and to remain relatively stable thereafter increasing from 11.0% for the year ending September 30, 2008 to approximately 13.0% of revenues thereafter during the forecast period.

8.23 We have assumed that the operating expenses incurred by Med-Eng are principally variable operating costs meaning that the expenses fluctuate in proportion to revenues generated. This assumption is based on our review of the historic financial operating results of Med-Eng and on the AV ME Forecast. We observe that the AV ME Forecast projects stable operating expenses as a percentage of revenues, implying that management expects operating expenses to fluctuate in line with revenues. A 13.0% operating expense as a percentage of revenue is also consistent with the 12.8% achieved by Med-Eng in the year ending December 31, 2006. Comparison to years prior to 2006 is difficult given that the Med-Eng business significantly shifted in 2006 with the introduction of the ECM product line.

8.24 Based on the foregoing, we have estimated that the operating expenses as a percentage of revenues will be consistent with the AV ME Forecast and equal 4.9% in 2007, 11.0% in 2008 and 13.0% thereafter.

8.25 The following table summarizes the Adjusted AV Forecast operating expenses for the September 30, 2007 through 2012 forecast period.

Summary of Adjusted ME Forecast Operating Expenses

	For the year ending September 30,					
	2007F (0.5 months)	2008F	2009F	2010F	2011F	2012F
Total projected operating expenses	1,206	48,100	65,655	49,159	49,993	50,871
Reduction in projected revenues	(223)	(197,670)	(339,450)	(232,328)	(226,902)	(226,902)
Operating expense as a percentage of revenues	4.9%	11.0%	13.0%	13.0%	13.0%	13.0%
Reduction in projected operating expenses	(11)	(21,674)	(44,149)	(30,217)	(29,510)	(29,511)
Total Adjusted ME Forecast Operating Expenses	1,195	26,426	21,506	18,942	20,483	21,360
as a percentage of Adjusted ME Forecast Revenues	*4.9%*	*11.0%*	*13.0%*	*13.0%*	*13.0%*	*13.0%*

Adjusted EBITDA Projections

8.26 Having consideration for the foregoing adjustments to revenue, gross margin and operating expenses, we calculate the adjusted EBITDA for the 2007 through 2012 forecast period to be as summarized in the following table.[63]

Summary of Adjusted ML Forecast EBITDA [$000s]	For the year ending September 30,					
	2007F [0.5 months]	2008F	2009F	2010F	2011F	2012F
Adjusted ME Forecast revenue	24,367	241,008	165,353	145,642	157,487	164,228
Adjusted ME Forecast cost of sales	13,749	134,774	90,411	77,788	84,157	87,436
Adjusted ME Forecast gross margin	10,618	106,234	74,943	67,854	73,331	76,793
Gross margin percentage	*43.6%*	*44.1%*	*45.3%*	*46.6%*	*46.6%*	*46.8%*
Less: Adjusted ME Forecast operating expenses	1,195	26,426	21,506	18,942	20,483	21,360
Total Adjusted ME Forecast EBITDA	9,423	79,808	53,437	48,911	52,848	55,433
as a percentage of Adjusted ME Forecast revenue	*38.7%*	*33.1%*	*32.3%*	*33.6%*	*33.6%*	*33.8%*

Adjusted ME Forecast vs. Subsequent Performance

8.27 As a test of the reasonableness of the foregoing Adjusted ME Forecast revenue, gross margin and EBITDA, we compared the Adjusted ME Forecast to the actual results realized by Allen-Vanguard following the Transaction. This analysis is summarized in the following table:.

[63] We observe that depreciation and amortization has been added back to the gross margin. Refer to the gross margin analysis above.

Comparison of the Adjusted ME Forecast and Actual Results				
		For the year ending September 30,		
		2007	2008	2009
Revenue				
Adjusted ME Forecast		24,367	241,008	165,353
Actual revenue	(1)	14,602	234,490	164,395
Difference		9,765	6,518	958
Gross margin				
Adjusted ME Forecast		10,618	106,234	74,943
Actual margin	(1)	6,549	62,672	60,287
Difference		4,069	43,562	14,656
EBITDA				
Adjusted ME Forecast		9,423	79,808	53,437
Actual EBITDA	(1)	4,579	35,275	37,409
Difference		4,844	44,533	16,028

(1) Source: Med-Eng/AVTI internal financial statements.

We observe that the Adjusted ME Forecast presents higher revenue, gross margin and EBITDA than the actual operating results of the Med-Eng operations following the Transaction. This indicates that the reductions in the AV ME Forecast revenues, gross margin and EBITDA, attributable to the Alleged Actions are not unreasonable.

After-Tax Discretionary Cash Flows

8.28 The after-tax discretionary cash flows of Med-Eng are calculated by adjusting the Adjusted AV ME Forecast EBITDA determined above by:

a. deducting income taxes at the blended Ontario and federal corporate tax rate of 36.1% in 2007 and declining to 29.0% in 2012;

b. deducting sustaining capital expenditures as forecast by management. We have assumed that the amount of sustaining capital expenditures required by the Med-Eng business operations is independent of the Subject Revenues; and

c. adjusting for the working capital requirements of the Med-Eng business operations. We have assumed that the Med-Eng operations will require working capital in the amount of 11.3% of revenues based on the historic operating results of 2006 and

2007.[64] The following chart summarizes our calculation of the historic working capital requirements.

Working Capital Summary	31-Dec-06 (1)	31-Mar-07 (2)	30-Jun-07 (3)	17-Sep-07 (4)
Working capital	26,777	24,617	28,469	39,486
Trailing twelve month revenue	261,407	272,873	301,094	237,071
Working capital as a percentage of TTM revenue	10.2%	9.0%	9.5%	16.7%
Average working capital as a percentage of TTM revenue				11.3%

(1) Source: Med-Eng audited financial statements for the year ended December 31, 2006.
(2) Source: KPMG Due Diligence Report page 51.
(3) Source: Unaudited interim financial statements as at June 30, 2007 and 2006.
(4) Source: Unaudited financial statements as at September 17, 2007 and as at September 30, 2006. The trailing twelve month revenue is calculated assuming the 0.5 month revenue projected for the September 17, 2007 to September 30, 2007 period will be earned.

Based on the foregoing, the annual adjustment to working capital required is summarized in the following table.

Working Capital Analysis		17-Sep-07	30-Sep-08	30-Sep-09	30-Sep-10	30-Sep-11	30-Sep-12
Adjusted Projected Revenue		NA	241,008	165,353	145,642	157,487	164,228
Required working capital - percentage of revenue		NA	11.3%	11.3%	11.3%	11.3%	11.3%
Working capital required		39,486	27,341	18,759	16,523	17,866	18,631
Working capital adjustment in the year	(1)		12,145	8,583	2,236	(1,344)	(765)

(1) Calculated as the change in the required working capital.

8.29 The foregoing adjustments to the AV ME Forecast result in the after-tax discretionary cash flows of Med-Eng excluding the Subject Revenues. Our calculations are summarized at Schedule 4. The following table summarizes the after-tax discretionary cash flows calculated by us.

[64] We observe that there was a fundamental shift in the business operations of Med-Eng in 2006 with the introduction of the ECM product division. We therefore put no weight on the working capital prior to 2006.

Summary of Adjusted AV Forecast After tax Discretionary Cash Flows ($000s)						
	For the year ending September 30,					
	2007F (0.5 months)	2008F	2009F	2010F	2011F	2012F
Adjusted ME Forecast After-tax Discretionary Cash Flows	5,863	60,277	38,600	30,684	30,976	34,037

8.30 We have discounted the after-tax discretionary cash flows using a nominal weighted average cost of capital ("**WACC**")[65] of 14.0% and capitalized the post-forecast period cash flows using a real WACC of 12.0% as per our discussion at paragraphs 8.33 through 8.35 below.

8.31 Based on the foregoing we estimate the Adjusted Purchase Price after accounting for the revised probabilities of obtaining the Subject Revenues as part of the contingent price transaction as $326.6 million. Therefore, based on our calculations and as summarized in the following table, Allen-Vanguard incurred a financial loss of $307.0 million on account of the Alleged Actions including the alleged misrepresentations with regard to the likelihood of securing future revenues.

Summary of Adjusted Purchase Price vs. Actual Purchase Price	
Actual Purchase Price	
Consideration	622,630
Deal costs	10,898
Actual Purchase Price paid by Allen-Vanguard	633,528
Adjusted Purchase Price	
Estimated required initial consideration	315,711
Deal costs	10,898
Adjusted Purchase Price	326,609
Difference - Economic Loss	306,920

8.32 We observe that in pricing the purchase of Med-Eng, Allen-Vanguard and its financial advisor, principally Genuity Capital Markets, considered the value of Med-Eng as the aggregate of (a) the value of the sustainable EBITDA and (b) the value of the "excess" free cash flow representing the additional free cash flow generated in the short term from

[65] The WACC represents the required rate of return of the company as a whole considering both debt and equity financing and an appropriate capital structure of the company.

the ECM program. We understand that Allen-Vanguard and its financial advisor recognized that the Chameleon sales represented excess cash flows in the near term above the long term projected sustainable level. We observe that in the May 2007 Genuity Capital Markets presentation to Allen-Vanguard, the value of the excess cash flow portion of the business was approximately $297.0 million and the remaining business had a value of $349.8 million.[66] We observe that these assumed values are not materially different from those calculated by us in this report.

RATE OF RETURN

8.33 Based on the Actual Purchase Price of $633.528 million and the financial forecast as summarized at Schedule 7, we can estimate the implied rate of return expected by management for the acquisition. In calculating this implied rate of return we have assumed:

a. a long term growth rate beyond the fiscal year ending September 30, 2012 of approximately 2.0% per annum;[67]

b. an income tax rate of 36.1% in 2007 and declining over the forecast period to 29.0% in 2012 based on corporate statutory income tax rates in Ontario;

c. sustaining capital expenditures as provided by management; and

d. working capital requirements as provided by management.

8.34 Having consideration for the foregoing, the rate of return expected by management of Allen-Vanguard and implied by the Actual Purchase Price was approximately 16.1%. This rate of return is consistent with the WACC adopted in the Deloitte PPA Report of 16.2% and used by the Company for financial reporting purposes. In arriving at the WACC of 16.2%, the Deloitte PPA Report assigns an asset specific required after-tax rate of return to each of the identifiable assets acquired in the Transaction.[68] We observe that the after-tax rate of return ascribed to the PPS business assets is lower, being 14.0%, as compared to the 18.0% ascribed to the Electronic Systems business assets which was indicative of the relative risk of these two businesses.

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[66] Source: May 15, 2007 Discussion Notes PowerPoint presentation prepared by Genuity Capital Markets, Slides 14-16. AVC00025360.
[67] Based on the Bank of Canada long term inflation target.
[68] Refer to page 20 of the Deloitte PPA Report. AVC00021170/26.

8.35 We have adopted a nominal WACC of 14.0% as the WACC in our analysis and a real WACC of 12.0% having consideration of long term growth beyond September 30, 2012 of 2.0%.[69] We consider a WACC of 14.0% to be reasonable having consideration of:

a. the underlying assets and earnings that comprise the Adjusted ME Forecast. In this regard, we observe that the Adjusted ME Forecast principally represents the projected earnings and cash flows of the more stable and less at risk PPS business to which a lower after-tax rate of return is applicable;

b. the PPA Report and those factors identified on pages 17 and 18 of that report. We observe that the PPA report adopts a WACC of 16.2% in allocating the purchase price to the identifiable assets of Med-Eng. In determining the values attributable to certain assets, the PPA Report ascribes an after-tax rate of return to certain PPS assets of 14.0% and the Electronic Systems business of 18.0%;

c. the Transaction was negotiated between arms-length parties. In this regard, we observe that a market transaction is indicative of the appropriateness of the WACC adopted in our analysis; and

d. our experience in valuations and open market transactions.

9 EXCESS FINANCING COSTS

9.1 Allen-Vanguard financed the Transaction and Actual Purchase Price of Med-Eng through the issuance of equity and by securing both short and long-term debt. We summarize the details of the financing arrangements used by Allen-Vanguard at paragraph 4.13 above.

9.2 We observe that following the Transaction Date, Allen-Vanguard's financial position deteriorated and the Company was unable to comply with certain financial covenants and unable to satisfy certain debt repayments. We understand that:

a. at December 31, 2007, Allen-Vanguard was offside on certain financial covenants of the term debt facility issued for the acquisition of Med-Eng. On February 14, 2008 the lenders provided a waiver of these covenants and

[69] Based on the Bank of Canada long term inflation target.

amended the covenants to be more favourable to Allen-Vanguard.[70] Allen-Vanguard paid the lenders a fee of $5.04 million cash and issued 1,167,143 commons shares with a fair value of approximately $5.544 million to the lenders in consideration of the waiver and amendments. The total fee of approximately $10.584 million represented 4% of the committed outstanding senior debt facility;

b. in or around March 27, 2008, Allen-Vanguard announced the refinancing of its credit facilities to attempt to reduce debt service requirements.[71] The Company entered into secured credit facilities underwritten by RBC Capital Markets effective May 6, 2008;[72]

c. Allen-Vanguard's financial position deteriorated following the refinancing and the Company failed to make its term loan payments in September 2008. In response, the RBC lead lending syndicate made a number of accommodations and extended the required September 30, 2008 quarterly payment to December 31, 2008; and

d. Allen-Vanguard was unable to raise capital and in the face of escalating debt servicing fees, commenced the CCAA filing process in fiscal 2009. Allen-Vanguard was acquired by Versa effective December 18, 2009.

9.3 Having consideration for the foregoing, we understand that the deferral and eventual cancellation of projected revenues as outlined in Section 8 (i.e. the Subject Revenues) above was the primary contributing factor to Allen-Vanguard's inability to meet its covenants and satisfy its debt repayments. We understand that it is Allen-Vanguard's position in this litigation, that absent the Alleged Actions, the Company would not have incurred the significant financing costs and associated penalties related to the acquisition.

9.4 We have calculated the excess financing fees including interest, penalties and extinguishment costs (the **"Excess Financing Fees"**) associated with the Transaction. The Excess Financing Fees represent the incremental financing costs incurred by Allen-Vanguard on account of the Alleged Actions as they relate to Allen-Vanguard failing to

[70] Source: Affidavit of David E. Luxton as sworn December 8, 2009.
[71] Source: Allen-Vanguard press release dated March 27, 2008.
[72] Source: Allen-Vanguard press release dated May 7, 2008.

meet revenue and earnings projections following the Transaction Date and on account of paying an Actual Purchase Price greater than the Adjusted Purchase Price.

9.5 Our calculation of the Excess Financing Fees is based on the following methodology and assumptions:

a. we assume that absent the Alleged Actions, Allen-Vanguard would have paid an initial purchase price equal to the Adjusted Purchase Price calculated above;

b. we have assumed that the reduction in the required financing to fund the Adjusted Purchase Price versus the Actual Purchase Price would be applied against the Senior Debt Facility and the equity raised on a pro-rata basis. We have assumed that Allen-Vanguard would fund the Adjusted Purchase Price using the same proportionate allocation of debt and equity. The following table summarizes the Adjusted Purchase Price and the revised financing requirements:

Summary of required financing

	Actual Purchase Price			Adjusted Purchase Price	
Purchase Price	633.5		(1)	326.6	
Equity financing					
Net proceeds from private placement	94.2	14.7%	(2)	48.6	14.7%
Net proceeds from prospectus offering	283.5	44.3%	(2)	146.2	44.3%
Total equity raised	377.7	59.1%	(2)	194.7	59.1%
Debt financing					
Senior Debt Facility					
Principal amount [$USD MM]	341.5	53.4%	(2)	176.1	53.4%
Less: paydown of debt on September 28, 2007	(78.6)	-12.3%		(40.5)	-12.3%
Net debt financing at September 30, 2007 [$USD MM]	262.9	41.1%		135.5	41.1%
Foreign exchange rate at September 30, 2007	$ 0.9948			$ 0.9948	
Principal amount [$CAD MM] - September 30, 2007	261.6	40.9%		134.8	40.9%
Revolving line of credit					
Drawdown on September 17, 2007	10.0	1.6%	(2)	5.2	1.6%
Paydown on September 21, 2007 upon equity issuance	(10.0)	-1.6%	(2)	(5.2)	-1.6%
Net revolving line of credit at September 30, 2007	-	0.0%		-	0.0%
Total debt financing	261.6	40.9%	(2)	134.8	40.9%
Total financing	639.3	100.0%	(3)	329.6	100.0%

(1) Based on our calculation of the Adjusted Purchase Price at Section 8 of our report.
(2) Based on the pro-rata proportion of the Actual Purchase Price. We have assumed that the Adjusted Purchase Price would be funded in the same proportions of debt and equity as the Adjusted Purchase Price.
(3) We observe that the actual financing exceeded the Actual Purchase Price by approximately 1.0%. We have assumed the same excess financing in the Adjusted Purchase Price.

Having consideration for the foregoing, Allen-Vanguard would have required total debt financing of approximately $134.8 million to fund the Adjusted Purchase Price, as compared to the approximately $261.6 million secured to fund the Actual Purchase Price, a reduction of approximately 48.5%;

c. we have assumed that the interest rates applied to the debt principal and the other terms and conditions of the Senior Debt Facility would have remained unchanged, but that the required covenants would be adjusted on a pro-rata basis; and

d. we have assumed that the principal repayments of the Senior Debt Facility would remain on the same quarterly schedule as realized by Allen-Vanguard, but would be reduced on a pro-rata basis.

9.6 Having consideration for the foregoing, we observe that Allen-Vanguard incurred the following financing fees which are subject to our analysis:

a. equity issuance fees of approximately $6.1 million on the private placement of 14,650,000 subscription receipts on August 15, 2007. We assume that absent the Alleged Actions, Allen-Vanguard would have incurred a pro-rata amount of equity issuance fees based on the required total equity raised representing a fee reduction of approximately $3.0 million;

b. debt issuance fees incurred on the execution of the Senior Debt Facility in the amount of approximately $27.246 million. We observe that $14.089 million of these costs were satisfied through the issuance of 4,040 warrants and the remaining $13.157 million through cash payments. We assume that absent the Alleged Actions, Allen-Vanguard would have incurred a pro-rata amount of debt issuance fees based on the total debt principal required. Based on the Adjusted Purchase Price and required debt financing of $134.8 million the total debt issuance fees would be reduced to approximately $14.0 million, a reduction of $13.2 million;

c. commitment fees of $9.0 million incurred on September 17, 2007 on the execution of bridge subordinated debt financing. We have assumed a pro-rata reduction of these fees resulting in a reduction in total fees incurred by Allen-Vanguard of approximately $4.4 million;

d. equity issuance fees of approximately $16.5 million incurred on September 21, 2007. We have assumed a pro-rata reduction in these fees having consideration for

the reduced total equity requirements to fund the Adjusted Purchase Price. This results in a reduction in the fees incurred of approximately $8.0 million;

e. debt prepayment penalties of $3.149 million incurred on September 28, 2007 arising from the early principal payment of $78.573 million USD. This represents a fee of approximately 4.0% of the total payment. Having consideration for the reduced debt levels and equity raise, we assume that Allen-Vanguard would have prepaid a pro-rata portion of the adjusted debt facility amounting to $40.8 million USD and incurred fees of $1.6 million representing a fee reduction of $1.5 million;

f. debt accommodation fees of $10.597 million incurred February 14, 2008 and calculated as 4% of the outstanding debt facility. These fees were paid to the lender in consideration for the lender waiving the debt covenant violations at December 31, 2007. Allen-Vanguard paid these fees by providing the lender 1,167 common shares at a market value of $5.544 million and paying cash of $5.053 million. We have assumed that given the reduction in the principal value of the Senior Debt Facility pursuant to the Adjusted Purchase Price, that such fees would be reduced on a pro-rata basis. This results in a reduction in the waiver fees of approximately $5.1 million;

g. debt prepayment penalties of $413,000 incurred by Allen-Vanguard during the December 2007 through April 2008 period. We have assumed a pro-rata reduction in these penalties based on a reduced debt principal which results in a deduction of fees of approximately $200,000;

h. debt prepayment penalties of $1.1 million incurred on May 6, 2008 on account of the repayment of the Senior Debt Facility and the refinancing with the RBC syndicate. We have assumed a pro-rata reduction in these penalties based on the reduced debt principal which results in a deduction of financing fees of approximately $530,000;

i. debt issuance fees of approximately $6.2 million incurred on May 6, 2008 on account of the execution of the credit agreement with the RBC lending syndicate. We assume that absent the Alleged Actions, Allen-Vanguard would have incurred a pro-rata amount of debt issuance fees based on the total debt principal required. Based on the Adjusted Purchase Price and required debt financing of $134.8 million the total debt issuance fees would be reduced to approximately $3.2 million, a reduction of $3.0 million; and

j. RBC syndicate accommodation fees of approximately $1.0 million incurred on December 24, 2008. We have assumed a pro-rata reduction in these fees based on a reduced debt principal which results in a deduction of fees of approximately $480,000.

9.7 Based on the foregoing analysis, we summarize the total reduction in debt servicing and financing fees as summarized in the following table,

Summary of Economic Losses on Account of Excess Financing Fees

	Actual Debt Financing	Reduction Factor	Adjusted Debt Financing
Required debt financing	$ 261.6	51.6%	$ 134.8

Reduction in Financing Fees Incurred [$MM]

		Actual Fees Incurred	Reduction Factor	Adjusted Fees Incurred	Excess Financing Fees
A. Private placement fees incurred August 15, 2007	(2)	6.1	51.6%	3.2	3.0
B. Debt issuance fees incurred on September 17, 2007					
Issuance of warrants	(1)	14.1	51.6%	7.3	6.8
Cash payment	(1)	13.2	51.6%	6.8	6.4
C. Subordinated debt commitment fees Sept 17, 2007	(1)	9.0	51.6%	4.6	4.4
D. Equity issuance fees incurred September 21, 2007	(2)	16.5	51.6%	8.5	8.0
E. Debt prepayment on September 28, 2007	(1)	3.1	51.6%	1.6	1.5
F. Covenant waiver fee incurred February 14, 2008					
Cash payment	(1)	5.1	51.6%	2.6	2.4
Payment of 1,167 common shares	(1)	5.5	51.6%	2.9	2.7
G. Debt prepayment penalties - Dec 07 through Apr 08	(1)	0.4	51.6%	0.2	0.2
H. Debt prepayment penalties - May 6, 2008	(1)	1.1	51.6%	0.6	0.5
I. RBC syndicate refinancing fees incurred May 6, 2008	(1)	6.2	51.6%	3.2	3.0
J. RBC syndicate accomodation fee - Dec 24, 2008	(1)	1.0	51.6%	0.5	0.5
Total excess fees and penalties					39.4

(1) Source: Note 10 to the September 30, 2008 audited financial statements of Allen-Vanguard.
(2) Refer to paragraph 4.13.

9.8 In addition to the above noted excess financing fees and penalties incurred by Allen-Vanguard, we also observe that on account of the Actual Purchase Price exceeding the Adjusted Purchase Price that Allen-Vanguard incurred additional interest costs of servicing the Senior Debt Facility. In our calculation of the excess interest cost, we have assumed that;

a. Allen-Vanguard would have incurred interest expenses on the reduced debt facility at a rate of 13.75% per annum consistent with the rate of interest on the Senior Debt Facility. The difference between the interest on the actual Senior Debt Facility and the reduced debt facility represents our calculated cost savings to Allen-Vanguard; and

b. there would be no reduction in the interest expense incurred by Allen-Vanguard on the RBC lending syndicate given that we understand that pursuant to the CCAA filing this interest expense was largely waived and never incurred.

9.9 The following table summarizes the difference in the total interest expense during the September 17, 2007 to May 6, 2008 period based on the reduction in the principal of the Senior Debt Facility.

Summary of Excess Interest Expense [$CAD MMs]		
Actual Purchase Price	(1)	633.5
Adjusted Purchase Price	(1)	326.5
Difference		307.0
Total Senior Debt Facility issued to fund the Transaction	(2)	261.6
Reduction in total Senior Debt Facility required to fund the Transaction	(2)	126.8
Adjusted Senior Debt Facility required to fund the Transaction		134.8
Total interest paid on Senior Debt	(3)	21.4
Interest paid on Adjusted Senior Debt Facility	(3)	11.0
Excess interest costs on Senior Debt Facility		10.4

(1) Refer to Section 8 of the report.
(2) Refer to paragraph 9.5(b).
(3) Assumes a 13.75% interest rate from September 17, 2007 to May 6, 2008 on the outstanding Senior Debt Facility. Interest is accrued based on the outstanding debt balance after accounting for quarterly principal payments. Interest is paid monthly at the foreign exchange rate at each month end.

9.10 Based on the foregoing analysis, the Excess Financing Costs incurred by Allen-Vanguard totaled $49.8 million.

10 OTHER LOSSES

10.1 We understand that Allen-Vanguard relied on the representations of Med-Eng management when negotiating the terms and conditions of the Transaction and in finalizing the Transaction. We understand that Allen-Vanguard incurred a number of costs subsequent to the Transaction Date that related to allegedly undisclosed liabilities that were present as at the Transaction Date. It is Allen-Vanguard's position in this litigation that absent the Alleged Actions, such costs would not have been incurred by Allen-Vanguard or would have been subject to adjustment in the SPA and the Actual Purchase Price paid.

10.2 We have calculated the Economic Loss incurred by Allen-Vanguard having consideration for the following four additional areas of loss:

a. Assist Audit Costs – represents incremental costs incurred by Allen-Vanguard associated with a PWGSC compliance audit of Med-Eng's pricing;

b. Warranty Repair Costs – represents the costs incurred by Allen-Vanguard in respect of resolving the dispute with GDATP regarding the servicing and repair of 192 defective Chameleon units;

c. Working Capital Adjustment for Tax Liabilities – represents the incremental tax liability that should have been recorded by the Company associated with Med-Eng's treatment of certain financial advisory fees as deductible expenses; and

d. Excess Employee Compensation Costs – represents the incremental employee compensation costs incurred by Allen-Vanguard to meet the expectations of and retain key members of Med-Eng personnel following the Transaction. In this regard, we understand that Med-Eng management communicated certain compensation expectations to Med-Eng personnel prior to the Transaction that Allen-Vanguard subsequently had to satisfy.

10.3 Our calculation of the Economic Loss related to each of these areas is outlined below.

ASSIST AUDIT COSTS

10.4 It is our understanding that on June 18, 2007, Med-Eng was informed that they would be the subject of an audit to be conducted on behalf of the DCMA by the Canadian Commercial Corporation and Public Works and Government Services Canada. The

Assist Audit intended to investigate the prices Med-Eng quoted to GDATP and to confirm that such prices were fair and reasonable. We understand that the DCMA had the authority to demand reimbursement if the Assist Audit determined the prices charged by Med-Eng were excessive. This potential reimbursement[73] and the costs to be incurred in defending the audit represented a contingent liability as at the Transaction Date.

10.5 Med-Eng disclosed the Assist Audit in Schedule 3.01(2)(d) of the SPA indicating that "*at the request of DCMA, PWGSC has requested information in an email dated June 18, 2007 to the Company [Med-Eng] in order to determine whether the Company's [Med-Eng's] prices quoted to General Dynamics Armament and Technical Products on April 4, 2007 are fair and reasonable.*"[74] We understand that it is Allen-Vanguard's position that the status of the Assist Audit, the risks related thereto and the extent of the cost and work required for compliance with the Assist Audit were not fully disclosed.

10.6 We understand that following the Transaction Date, Allen-Vanguard incurred costs in relation to compliance with the Assist Audit. It is Allen-Vanguard's position that these costs should have been a contingent liability disclosed to them prior to the Transaction and as disclosed in the SPA.

10.7 We have calculated the total cost incurred by Allen-Vanguard in relation to the Assist Audit based on the following methodology and assumptions:

a. we have adopted the aggregated invoiced fees incurred by Allen-Vanguard for professional services and consultations provided by Kaye Scholer LLP and Deloitte LLP in Washington, DC in regard to the Assist Audit;[75] and

b. we have translated the invoiced fees from US dollars to Canadian dollars based on the Bank of Canada daily close exchange rate on the date of payment of the invoices.

10.8 Our calculation of the cost of the Assist Audit is summarized in the table below.

[73] We understand that following the Transaction Date, Allen-Vanguard did not incur any reimbursement charges.
[74] Source: SPA Schedule 3.01(2)(d). AVC00019394.
[75] In this regard, we reviewed the supporting documentation and invoices.

Summary of Assist Audit Costs		
	Total invoiced amount [$USD][1]	Total invoiced amount [$CAD][2]
A. Kaye Scholer LLP - Legal fees incurred	$ 290,159.62	$ 340,592.47
B. Deloitte LLP Washington - Consulting fees incurred	36,424.91	37,138.33
Total Assist Audit Costs		**$ 377,730.80**

(1) Source: Schedule of invoices paid to Kaye Scholer LLP and Deloitte LLP.
(2) Translated into Canadian dollars at the Bank of Canada daily close rate in effect as at the date of payment of the respective invoice.

10.9 Based on the foregoing, Allen-Vanguard incurred incremental costs related to the Assist Audit in the amount of $0.4 million.

Warranty Repairs and Quality Control Costs

10.10 We understand that in August of 2007, Med-Eng and GDATP identified quality control issues related to certain ECM units shipped to the USMC.[76] In response to these issues, GDATP and Med-Eng placed stop shipment orders and made efforts to repair these units; however, at the Transaction Date, 192 of these units were already deployed and remained in need of repair. While the fact that Med-Eng was addressing a manufacturing issue was disclosed to Allen-Vanguard, we understand that it is Allen-Vanguard's claim that Med-Eng failed to disclose the full extent of the exposure and liability associated with the shipment of the 192 defective units.

10.11 It is our understanding that GDATP reached an agreement to *"not delivery bill the USMC for these 192 Kits until such time as new or re-worked EPACC Primary Unit and Case Assemblies are provided to 'un-frustrate' these Broadband Liquid Cooled Electronics Kits and the Kits are returned to the USMC".*[77] We understand that the USMC *"imposed a withhold on GDATP as well as required 192 systems ship [sic] to them at no charge".*[78]

[76] Source: Email from Claudio DeAngelis dated Wednesday January 30, 2008. AVC00027038/1.
[77] Source: Instruction sheet dated September 24, 2007. AVC00026507/1.
[78] Source: email dated December 6, 2007. AVC00025113/1.

10.12 In turn, GDATP withheld payment from Med-Eng in the amount of approximately $7.8 million USD representing the total Med-Eng revenue on these 192 units.[79] We understand that GDATP's position with regard to the withholding was that *"these invoices will remain on hold until the contract allows GDATP to invoice and has received payment from the customer."*[80]

10.13 We understand that Allen-Vanguard provided GDATP with an inventory of shop repairable spare units which were utilized as a contribution toward a warranty float. It is our understanding that Allen-Vanguard provided approximately $1.0 million worth of spares inventory which was incorporated into repaired units and for which Allen-Vanguard did not charge GDATP.

10.14 We observe that on March 19, 2008, GDATP agreed to *"remove from withhold the equivalent of 120 of the 192 units".*[81] We understand that GDATP subsequently reduced this withholding to approximately $1.820 million USD based on negotiations with Med-Eng and as the necessary repairs were completed.

10.15 In this regard, on June 1, 2009, GDATP requested payment from Allen-Vanguard in the amount of $1,819,775.17 USD on account of:[82]

a. recoupment of contract overpayments of $810,112.67 USD related to the repair of 167 systems that should have been covered under warranty; and

b. Allen-Vanguard's alleged failure to contribute to shared costs of supporting a warranty float of 50 excess units with a cost of $1,009,662.50 USD.

10.16 In respect of the defective units, we understand that Med-Eng sought compensation for the costs incurred to correct and service these defective units from Plexus; Med-Eng's supplier and manufacturer of the defective components. We understand that Plexus and Allen-Vanguard entered a Mutual Resolution and Release Agreement on August 29, 2008 whereby Plexus agreed to reimburse Med-Eng in the amount of $800,000 USD for costs incurred with regard to the defective units.[83]

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[79] Based on 192 units at $40,628.50 per unit. AVC0025113/1.
[80] Source: email dated December 6, 2007. AVC00025113/1.
[81] Source: email dated March 19, 2008. AVC00026514/1.
[82] Source: Letter from GDATP to Allen-Vanguard dated June 1, 2009. AVC00055020/1.
[83] Source: Mutual Resolution and Release Agreement between Allen-Vanguard Technologies Inc. and Plexus Services Corp. AVC00080166.

10.17 We understand that in or around January 6, 2009, Allen-Vanguard agreed to make a payment of $85,000 USD in compensation for 28 units that remained in dispute.[84]

10.18 We understand Allen-Vanguard and GDATP executed a warranty settlement agreement dated March 3, 2011, (the **"Warranty Settlement"**) whereby Allen-Vanguard agreed to pay $1,519,070.07 USD to GDATP and GDATP would transfer ownership of 25 "Primary Unit, 5-Channel Electronic Countermeasures" to Allen-Vanguard and release the remaining approximately $300,000 USD being withheld.[85]

10.19 We have been asked to calculate the cost to Allen-Vanguard of the warranty claim and settlement. In calculating the cost of the warranty claim we have:

a. assumed that Allen-Vanguard provided approximately $1.0 million of spare shop repairable units to GDATP at no cost to support the warranty repair program and provide a contribution toward a warranty float;

b. assumed that Allen-Vanguard incurred approximately $200,000 of employee costs and expenses following the Transaction Date related to time spent on quality control, rework and repairs;[86]

c. assumed Plexus provided payment to Allen-Vanguard of $800,000 USD on August 29, 2008. Based on the foreign exchange rate in effect at August 29, 2008 of $1.062 this corresponds to $849,600 CAD;

d. assumed the payment in full by Allen-Vanguard of $85,000 USD on January 6, 2009 to settle the dispute related to 28 defective units. Based on the foreign exchange rate in effect at January 6, 2009 of $1.1828 this corresponds to $100,538 CAD;

e. assumed the payment in full by Allen-Vanguard of the Warranty Settlement amount of $1,519,070.07 USD to GDATP as at March 3, 2011. Based on the foreign exchange rate in effect at March 3, 2011 of $0.9772[87] this corresponds to $1,484,435.27 CAD; and

[84] Source: email dated January 6, 2009. AVC00055104.
[85] Warranty Settlement. Page 1. AVC00062490/1.
[86] Source: email dated January 23, 2008. AVC00027074.
[87] Bank of Canada US dollar close rate at March 3, 2011.

f. offset the Warranty Settlement payment by the value of the 25 units returned to Allen-Vanguard.[88] In this regard, we understand that these units remain in inventory at the current date and have not been resold and have nominal value. We understand that Allen-Vanguard has used some parts from a few of these units as spares and replacements. Having consideration for the foregoing, we have assumed that each of these units has a nominal market value.

10.20 Our calculation of the cost of the Warranty Repairs based on the foregoing methodology is summarized in the following table.

[88] We observe that these units had an initial selling price in 2007 of approximately $40,680 USD per unit. Source: AVC0025113/1.

Summary of the Calculation of the Warranty Settlement Cost			
Warrany Float: Cost of Spares			
Shop repairable units incorporated into uncontested units		$	787,000
Shop repairable units incorporated into contested warranty units			213,000
Total warranty float costs to Allen-Vanguard	**A**	**$**	**1,000,000**
Quality control costs			
Employee compensation and expenses [$CAD]	(1)	$	249,626
Less: amount incurred prior to Transaction Date	(1)		(50,000)
Total employee costs and expenses [$CAD]	**B**	**$**	**199,626**
Less: Settlement Payment from Plexus			
Settlement amount [$USD]	(2)		800,000
Foreign exchange rate	(3)		1.0620
Settlement Amount [$CAD] - at August 29, 2008	**C**	**$**	**849,600**
Settlement Payment #1 to GDATP - January 6, 2009			
Settlement payment for 28 units in dispute [$USD]	(4)	$	85,000
Foreign exchange rate			1.1828
Settlement payment [$CAD]	**D**	**$**	**100,538**
Settlement Payment #2 to GDATP			
Warranty Settlement with GDATP			
Warranty Settlement Amount [$USD]	(5)	$	1,519,070
Foreign exchange rate	(3)		0.9772
Warranty Settlement Amount [$CAD]	E	$	1,484,435
Net of Returned Units			
Estimated value per unit	(6)	$	-
Number of units returned	(6)		25
Total value of returned units [$CAD]	F	$	-
Net value of the Warranty Settlement at March 3, 2011	**G = E - F**		**1,484,435**
Net Warranty Cost			
Net value of the Warranty Repair Costs as at September 17, 2007	**A+B-C+D+G**	**$**	**1,934,999**

(1) We understand Allen-Vanguard incurred employee costs for required rework of which approximately $50,000 was incurred prior to the Transaction Date. Source: AVC00027074.
(2) Source: Mutual Resolution and Release Agreement dated August 29, 2008. AVC00080166.
(3) Source: Bank of Canada daily close rate.
(4) Source: Email dated January 6, 2009. AVC00055104.
(5) Source: Warranty Settlement Agreement dated March 3, 2011.
(6) We understand these units remain in inventory and have not been resold, having marginal value.

10.21 Having consideration for the foregoing, the total Economic Loss incurred by Allen-Vanguard related to the warranty repairs is approximately $1.93 million.

Working Capital Adjustment for Tax Liabilities

10.22 We understand that Med-Eng incurred financial advisory fees payable to CIBC World Markets in the amount of $9.7 million upon the closing of the Transaction. These fees were paid to CIBC World Markets in connection with services provided in finding a buyer and negotiating the sale of Med-Eng.

10.23 It is our understanding that Med-Eng considered these financial advisory fees to be tax deductible in their entirety thereby reducing their total income taxes payable by approximately $3.5 million.[89]

10.24 In assessing the tax treatment of the financial advisory fees, we understand that Med-Eng management requested the input of the accounting and consulting firm Deloitte LLP and received a memorandum from Deloitte dated August 27, 2007. Deloitte's memorandum outlined the purpose of the memorandum as *"to determine whether the fees paid to CIBC in connection with the sale of Med-Eng are deductible for tax purposes by Med-Eng."*[90]

10.25 Based on our review of the Deloitte memorandum we understand that:

a. *"there have been two recent cases in which the taxpayer has been successful in obtaining a deduction of transaction costs"* but that *"it is the feeling of several authors on the subject that CRA does not yet fully accept the implications and general principles that follow from these cases."*[91];

b. in an internal CRA document #2003-0053217 dated May 10, 2004 the *"CRA commented that the International Colin Energy and BJ Services cases were in the context of 'take-over bids' and would not apply to the 'merger costs of two corporations committed to combine their business to another'"*[92];

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[89] Based on the prevailing federal and provincial corporate income tax rate in the province of Ontario in 2007 of 36.1%
[90] Deloitte tax memorandum dated August 27, 2007. Page 3. (AVC00039567)
[91] Deloitte tax memorandum dated August 27, 2007. Page 3.
[92] Deloitte tax memorandum dated August 27, 2007 – Page 7.

c. *"several authors on the subject of transactions costs believe that CRA would likely challenge the deductibility of these costs in the event of an audit*[93]*"*; and

d. *"Ebel*[94] *cautions that taxpayers taking the position that the costs are deductible should "act on the assumption that they may ultimately need to litigate such filing positions."*[95]*"*

10.26 We understand that Allen-Vanguard claims that this potential tax liability was never disclosed to the Company and ought to have represented a liability as at the Transaction Date. An increase in the income tax liability at the Transaction Date would directly affect the calculation of the Working Capital Adjustment pursuant to Section 2.03 of the SPA and result in an equivalent reduction to the purchase price.

10.27 Pursuant to Section 2.03 of the SPA, this tax liability would represent a current liability and be classified as an adjustment to the working capital component of the purchase price of Med-Eng. The SPA defines working capital as *"the consolidated current assets, excluding cash, cash equivalents . . . less the consolidated current liabilities, excluding all bank and other indebtedness (including capital lease obligations) and future Tax liabilities . . . all calculated in accordance with generally accepted accounting principles."*[96]*"* [97] Under generally accepted accounting principles, income taxes payable represent a current liability, being the taxes that must be paid within one year.

10.28 We understand that KPMG, the auditor of Allen-Vanguard, took the position subsequent to the Transaction that while the Deloitte Tax Memorandum was sufficient to support a tax filing, it was insufficient to support a reduction in the tax liability pursuant to generally accepted accounting principles ("GAAP"). KPMG determined that the Company should record a provision for taxes of $3.5 million.

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[93] Deloitte tax memorandum dated August 27, 2007 – Page 7.
[94] Stanley J. Ebel. Canadian Tax Foundation.
[95] Deloitte tax memorandum dated August 27, 2007 – Page 7.
[96] Source: Share Purchase Agreement dated August 3, 2007 – Section 1.01.
[97] We note that future Tax liabilities are specifically excluded from the calculation of working capital pursuant to the SPA. Under generally accepted accounting principles, future tax liabilities represent deferred income taxes that arise on account of temporary differences between a company's financial statement reporting and income tax returns. Such future tax liabilities may be realized in any future period. For example, the amortization of capital assets for financial reporting may be different than the rate of capital cost allowance claimed and allowed pursuant to the Income Tax Act ("ITA") therefore creating a difference between reported income and taxable income per the corporate tax return. These future tax liabilities differ from income taxes payable which represent actual taxes payable within the year and are classified as a current liability under generally accepted accounting principles.

10.29 Our calculation of the increased income tax liability on account of the non-deductibility of the financial advisory fees, and commensurate reduction in the purchase price by virtue of the working capital adjustment is summarized below:

a. we have assumed that absent the Alleged Actions, the potential income tax liability would have been known by Allen-Vanguard and would have been considered by Allen-Vanguard in its determination of the Working Capital Statement pursuant to Section 2.03 of the SPA. Had a dispute over this tax liability been submitted to arbitration pursuant to Section 2.03(4), it is our view that the arbitrator would have agreed with recording the tax liability pursuant to GAAP. For the deduction to be recognized under GAAP it must be more likely than not (greater than 50%), based on the technical merits of the deduction, that the position will be sustained upon examination. It is apparent that KPMG considered this GAAP issue and determined that the provision would be required (i.e. reversal of the fee deduction);

b. we have assumed that the total financial advisory fees paid by Med-Eng totaled approximately $9.7 million and were deducted by Med-Eng in their entirety;[98] and

c. we have adopted a corporate income tax rate of 36.1%, representing the combined federal and Ontario provincial rate for general business income.

Calculation of the Income Tax Liability Adjustment

Calculation of the Income Tax Liability [$000s]		
Financial advisory fees paid by Med-Eng to CIBC World Markets	(1)	9,711
Corporate income tax rate	(2)	36.1%
Reduction in Med-Eng's income taxes payable		3,508
Total loss incurred by Allen-Vanguard		**3,508**

(1) Med-Eng deducted approximately $9.7 million of financial advisory fees paid to CIBC World Markets related to services provided with respect to the sale of Med-Eng to Allen-Vanguard. Source: Memo to the tax files prepared by Deloitte on August 27, 2007 (AVC00039567) and Med-Eng Proceeds, Source and Use of Funds worksheet (AVC00008661).
(2) Represents the combined blended Ontario and federal corporate income tax rate for general business income in 2007.

10.30 Having consideration for the foregoing, we have calculated the total income tax liability as to be in the amount of approximately $3.5 million. In turn, absent the Alleged Actions,

[98] Consistent with our understanding of the Deloitte tax memorandum dated August 27, 2007.

the purchase price paid by Allen-Vanguard would have been reduced by $3.5 million through an adjustment to the working capital payment pursuant to Section 2.03 of the SPA.[99]

EMPLOYEE COMPENSATION COSTS

10.31 We understand that following the Transaction Date, Allen-Vanguard incurred a number of costs associated with the Med-Eng workforce including increased compensation arrangements for key personnel as well as termination costs. We understand that following the Transaction, key members of the Med-Eng workforce (the **"Subject Employees"**), including several members of the ECM engineering team expressed concern over employee compensation. It is Allen-Vanguard's position that these employees had been led to expect increased compensation following the Transaction based on representations of Med-Eng management.

10.32 We have been asked to calculate the cost to Allen-Vanguard arising from the increased compensation and the termination of key employees. In calculating the increased compensation costs and termination costs we understand that:

a. the Board of Directors of Allen-Vanguard approved a stock option plan and a restricted share unit (**"RSU"**) plan in or around November 2007 which was designed to compensate the Subject Employees. Pursuant to this plan the Subject Employees would receive 400,000 options and 200,000 RSUs over a three year term. We understand that management of Allen-Vanguard estimated the total cost of the plan at $1.2 million per annum and $3.5 million in aggregate. It is our understanding that this plan was never executed and the options and RSUs were never properly granted;

b. in or around early January 2008 several Subject Employees expressed their dissatisfaction with their existing remuneration and threatened to resign. We understand that it is Allen-Vanguard's position that in response to the threat of these Subject Employees departing, a second stock option plan and RSU plan was

[99] We understand that to date the Canada Revenue Agency has not disputed or reassessed Allen-Vanguard with respect to the deductibility of the financial advisory fees and that the period of time when such a reassessment could be made has passed. Accordingly, Allen-Vanguard will not have to pay the income tax liability related to non-deductibility of the fees. However, our opinion with respect to the appropriate recording of the income tax liability at the Transaction Date in the Working Capital Statement, and the effect on the purchase price is not altered by this fact.

developed and approved by the Board in or around January 14, 2008. This second option and RSU plan provided for an increased number of total options granted as summarized below:

Summary of Compensation Expenses to Med-Eng Employees			
		Stock Options	RSUs
Number of units approved - November 2007	(1)	400,000	200,000
Number of units approved - January 14, 2008	(2)	733,500	200,000
Increase in the number of options granted		333,500	-

(1) Source: AVC00070597.
(2) Source: AVC00024022.

We understand that it is Allen-Vanguard's position that the surplus number of units above the original stock option plan represents excess employee compensation costs incurred to retain the Subject Employees. We observe that these options had a strike price of $4.40 and were granted over a period of three years. We calculate the value of these options using a Black Scholes calculator and assuming:

i. a stock market price of $4.40 representing the Allen-Vanguard stock price as at January 11, 2008 the day preceding the grant;

ii. a dividend yield of 0% consistent with the historical experience of Allen-Vanguard and management's assumption when valuing stock compensation for financial reporting purposes at December 31, 2007;[100]

iii. an expected volatility of 75% consistent with Allen-Vanguard's adopted volatility for financial reporting purposes;[101]

iv. a risk free rate of 3.37% representing the Government of Canada 3 year bond yield as at the January 14, 2008 grant date;[102] and

v. an average life of the option of approximately 3 years consistent with Allen-Vanguard's adopted life for stock option compensation as disclosed in Note 7 to the December 31, 2007 and March 31, 2008 interim financial statements.

[100] Refer to Note 7 to the December 31, 2007 interim financial statements.
[101] Refer to Note 7 to the December 31, 2007 interim financial statements.
[102] Source: Bank of Canada.

Based on the foregoing, the value of an option with a strike price of $4.40 as at January 14, 2008 is $2.242 per option, implying a total value of the 333,500 options of $747,700.

c. In or around January 14, 2008, one Subject Employee received an additional 4,000 stock options with a strike price of $6.25 that had originally been earmarked as part of David Luxton's (then CEO) annual bonus. We calculate the value of these options using a Black Scholes option pricing model and assuming and the same value inputs as in (b) above. Based on the foregoing, the value of an option with a strike price of $6.25 as at January 14, 2008 is $1,844 per option, implying a total value of the 4,000 options of $7,376.

d. In or around February 19, 2008 the Board of Directors of Allen-Vanguard passed a resolution granting 5 Subject Employees an aggregate of 175,000 additional stock options with a strike price of $4.47.[103] We observe that 50,000 of these options vested immediately and the remainder vested on September 30, 2008. We calculate the value of these options using a Black Scholes option pricing model and assuming:

   i. a stock market price of $4.47 representing the Allen-Vanguard stock price as at February 15, 2008 being the day before the grant;

   ii. a dividend yield of 0% consistent with the historical experience of Allen-Vanguard and management's assumption when valuing stock compensation for financial reporting purposes at December 31, 2007;[104]

   iii. an expected volatility of 75% consistent with Allen-Vanguard's adopted volatility for financial reporting purposes;[105]

   vi. a risk free rate of 3.24% representing the Government of Canada 3 year bond yield as at the February 19, 2008 grant date;[106] and

[103] Source: Board of Directors Meeting Minutes dated February 19, 2008. AVC00024155.
[104] Refer to Note 7 to the December 31, 2007 interim financial statements.
[105] Refer to Note 7 to the December 31, 2007 interim financial statements.
[106] Source: Bank of Canada.

vii.an average life of the option of approximately 3 years consistent with Allen-Vanguard's adopted life for stock option compensation as disclosed in Note 7 to the December 31, 2007 and March 31, 2008 interim financial statements.

Based on the foregoing, the value of an option with a strike price of $4.47 as at February 19, 2008 is $2.274 per option, implying a total value of the 175,000 options of $397,950; and

e. Allen-Vanguard incurred costs to terminate one Subject Employee who Allen-Vanguard claims had expectations in excess of what the Company was willing to compensate. We understand that the cost of terminating this Subject Employee equated to 12 weeks of salary in lieu of notice and 4 weeks of severance based on an annual salary of $160,000.[107] This Subject Employee was terminated effective April 28, 2008. The total excess compensation costs to Allen-Vanguard on account of this termination were therefore approximately $49,200.

10.33 Having consideration for the foregoing, the excess employee compensation costs incurred by Allen-Vanguard are summarized in the following table.

Summary of Compensation Expenses to Med-Eng Employees [$CAD]		
A. Excess 333,500 stock options granted January 14, 2008	$	747,707
B. Additional 4,000 options granted to Andrew Munro		7,376
C. Options granted to Subject Employees on February 19, 2008		397,950
D. Termination costs of Subject Employee		49,200
Total Excess Compensation Costs	**$**	**1,202,233**

10.34 Having consideration for the foregoing, the total cost of increased compensation and termination of the Subject Employees is approximately $1.2 million.

[107] Source: Niclas Lewis termination letter dated April 28, 2008.

Summary of Total Other Losses

10.35 Having consideration for the foregoing analyses, the following table summarizes our calculation of the Other Losses incurred by Allen-Vanguard on account of the Alleged Actions.

Summary of Other Losses [$000s]		
A.	Assist Audit costs	$ 377.7
B.	Warranty repairs and quality control costs	1,935.0
C.	Working capital adjustment: tax liabilities	3,507.7
D.	Employee compensation costs	1,202.2
	Total Other Losses	**$ 7,022.6**

11 Scenario #2: Summary of Economic Losses

11.1 The following table summarizes our calculation of the Economic Losses incurred by Allen-Vanguard on account of the items noted above.

Scenario #2: Calculation of Total Economic Losses [$000s]		
Actual Purchase Price	Schedule 7	$ 633,528
Less: Adjusted Purchase Price	Schedule 4	326,599
Difference between the Actual Purchase Price and the Adjusted Purchase Price		306,929
Excess Financing Costs	Section 9	49,828
Economic Loss before consideration of Other Losses		356,757
Add: Other Losses	Section 10	7,023
Total Economic Losses - Scenario #2		363,780

12 Assumptions

12.1 In arriving at our opinion of the Economic Losses and in addition to those assumptions that have been outlined throughout this report, we have assumed that:

a. the financial forecast presented in the PPA Report is accurate and complete and reflected Allen-Vanguard management's best estimate of the future projected revenue and cash flows of the Med-Eng business operations following the Transaction and was premised on Med-Eng management's representations on the future prospects of Med-Eng;

b. Allen-Vanguard would not have completed the Transaction or, in the alternative, would have renegotiated the terms of the Transaction to include contingent consideration had the Company been aware of certain facts and information prior to the Transaction Date; and,

c. the accounting and financial records provided are accurate and complete in all material respects. We have not audited or otherwise attempted to verify the accuracy or completeness of this information unless otherwise noted in this report.

13 STATEMENT OF COMPLIANCE WITH STANDARDS

13.1 Pursuant to the reporting requirements of the Canadian Institute of Chartered Business Valuators (**"CICBV"**), we confirm that this report has been prepared in conformity with CICBV Practice Standards for expert reports.

13.2 We confirm that we acted independently and objectively in undertaking the analyses set out herein and arriving at the conclusions noted herein.

13.3 We confirm that the compensation paid to Robert Low Financial Advisory Inc. for preparing this report is not in any way contingent upon the conclusions reached herein or on the outcome of this matter.

14 RESTRICTIONS

14.1 Our analysis is not intended for general circulation or publication, nor is it to be reproduced, referred to, or used for any purpose other than as stated herein, without our prior written permission in each specific instance. We will not assume any responsibility or liability for losses occasioned to any parties as a result of the circulation, reproduction, use or reference to our findings or report in a manner contrary to the provisions of this paragraph.

14.2 We believe that our analyses must be considered as a whole and that selecting portions of our analysis, without considering all factors and analyses together, could create a misleading view of the process underlying our report. The preparation of a damages analysis is a complex process and it is not appropriate to extract partial analyses. Any attempt to do so could lead to undue emphasis on any particular factor or analysis.

14.3 We reserve the right, but shall not be obliged, to review all calculations and assumptions included or referred to in our analysis, and if we consider necessary, to revise our analysis and conclusions in light of any fact, trends or changed conditions that become known to us subsequent to the date of our report. We understand that at the date of this report counsel to the parties were still in the process of continuing examinations for discovery. We reserve the right, but shall not be obliged, to review and revise our conclusions in light of any facts that may become known through this process.

Yours truly,

Robert Low Financial Advisory Inc.
Per:

Robert Low, CA, CBV

APPENDIX A – SCOPE OF REVIEW

In preparing this report, we have reviewed and relied upon the following information, in addition to information specifically noted elsewhere in this report.

a) the pleadings in the action bearing Court File No. 08-CV-43544, including the Amended Statement of Claim dated January 29, 2013;

b) the pleadings in the action bearing Court File No. 08-CV-43188;

c) the pleadings in the action bearing Court File No. 08-CV-41699;

d) the Allen-Vanguard Annual Report for the years ending September 30, 2004 through 2008;

e) the Allen-Vanguard quarterly interim financial statements for the quarters ending December 31, 2006 through June 30, 2009;

f) a schedule of the Allen-Vanguard standalone quarterly revenues for the October 1, 2007 through December 18, 2009 period;

g) the Med-Eng Systems Inc. annual financial statements for the years ending December 31, 2003 through 2006 (AVC00018377 through AVC00018380);

h) the Med-Eng Systems Inc. interim financial statements as at June 30, 2007 (AVC00025424);

i) the Share Purchase Agreement between Allen-Vanguard Corporation and Offeree Shareholders and Med-Eng Systems Inc. made as of August 3, 2007 (AVC00019339);

j) the draft due diligence report prepared by KPMG entitled *"Project Superman: Due diligence assistance"* dated September 7, 2007 (AVC00041536);

k) the Deloitte PPA Report dated September 12, 2008 entitled *"Estimate of the fair value of the identifiable intangible assets Med-Eng Systems Inc. Acquisition at September 17, 2007"* (AVC00021170);

l) the Confidential Information Memorandum for Med-Eng Systems Inc. prepared by CIBC World Markets (AVC00060107);

m) Med-Eng Management Presentations at March 14, 2007 (AVC00060706), March 26, 2007 (OS0000363), April 2007 (AVC00062045), May 2007 (AVC00025371), June 2007 (OS0000160) July 2007 and August 2007 (AVC00017314);

n) the Genuity Capital Markets financial model dated September 15, 2007 (AVC00040083);

o) the Genuity Capital Markets presentation dated May 15, 2007 (AVC00025360);

p) the Teaming Agreement between Med-Eng Systems Inc. and General Dynamics Armament and Technical Products, Inc. dated May 27, 2005 (AVC00035843);

q) the First Amendment to the Teaming Agreement between Med-Eng Systems Inc. and General Dynamics Armament and Technical Products, Inc. dated December 22, 2006 (AVC00035844);

r) the Affidavit of David E. Luxton as sworn on December 8, 2009;

s) the Allen-Vanguard Proposed Monitor's First Report to Court dated December 8, 2009 and submitted by Deloitte & Touche Inc.;

t) the Allen-Vanguard Second Report of the Monitor dated December 10, 2009;

u) the Financing Agreement dated September 17, 2007 between Allen-Vanguard Corporation and Ableco Finance LLC, Wells Fargo Foothill Canada ULC and Goldman Sachs Canada Credit Partners Co. (AVC00025289);

v) the Credit Agreement between Allen-Vanguard Corporation and the Royal Bank of Canada as administrative agent dated May 6, 2008;

w) the Amended and Restated Credit Agreement between Allen-Vanguard Corporation and the Royal Bank of Canada as administrative agent dated December 29, 2008;

x) the Escrow Agreement dated September 17, 2007 between Allen-Vanguard Corporation, the Offeree Shareholders, Med-Eng Systems Inc. and Computershare Trust Company of Canada (AVC00020990);

y) the Paul Timmis Escrow Agreement dated September 17, 2007 (AVC00021035);

z) the Paul Timmis Separation Agreement dated January 25, 2008 (AVC00024382);

aa) various publicly issued press releases issued by Allen-Vanguard during the August 2007 through December 2009 time period;

bb) the Transcripts for the Examination for Discovery of David Luxton dated December 2-3, 2010, December 13-14, 2010, February 15-17, 2011, February 28 to March 1, 2011, April 13-14, 2011, May 2, 2011, May 27, 2011, May 30, 2011, June 1, 2011, December 3-5, 2012, and January 30 to February 1, 2013;

cc) the Transcripts for the Examination for Discovery of Paul Echenberg dated July 6-8, 2011 and July 18-20, 2011;

dd) the Transcripts for the Examination for Discovery of Richard L'Abbé dated July 25-27, 2011;

ee) the Transcripts for the Examination for Discovery of Richard Charlebois dated August 15, 2011;

ff) the Transcripts for the Examination for Discovery of Paul Timmis dated August 27-30, 2012 and January 15-18, 2013;

gg) the charts containing answers to Undertakings given at the Examinations for Discovery of David Luxton in these proceedings;

hh) analyst reports on Allen-Vanguard Corporation prepared by Versant Partners on March 16, 2007 (AVC00040025), April 19, 2007 (AVC00040024), May 8, 2007 (AVC00040026), May 14, 2007 (AVC00040021), May 30, 2007, and July 5, 2007 and Paradigm Capital Inc. prepared on April 20, 2007 (AVC00040022), May 14, 2007 and July 6, 2007;

ii) the Warranty Dispute Settlement Agreement between Allen-Vanguard and GDATP dated March 3, 2011 (AVC00062490);

jj) the Mutual Resolution and Release Agreement between Allen-Vanguard Technologies Inc. and Plexus Services Corp. dated August 29, 2008 (AVC00080166);

kk) a copy of invoice records from Kaye Scholer LLP for services performed relating to the Assist Audit;

ll) a copy of several invoices from Deloitte LLP Washington for services performed;

mm) a copy of the Deloitte LLP Tax Memorandum dated August 27, 2007 (AVC00039567);

nn) the Med-Eng Systems Inc. Forecasted Backlog Continuity / ECM Deal Timing Summary dated August 14, 2007 (AVC00041665);

oo) a schedule of stock options and restricted share units granted to Electronic Systems division employees (AVC00070597);

pp) the Board of Directors Resolution dated January 14, 2008 (AVC00024022);

qq) the Proposal to Mitigate Risk dated January 9, 2008 (AVC00038829);

rr) the Minutes of the Meeting of the Board on February 19, 2008 (AVC00024155);

ss) the termination letter of Niclas Lewis; and

tt) various emails and related attachments as specifically referenced in the body of this report.

In addition to the foregoing, we have discussed the business operations of Med-Eng and Allen-Vanguard with the following individuals:

a) David E. Luxton – former CEO and current Chairman of Allen-Vanguard;

b) Rob Ryan – previous CFO of Allen-Vanguard;

c) Kent Rosenthal – current CFO of Allen-Vanguard;

d) Mike Dithurbide – VP Electronic Systems Division of Allen-Vanguard; and

e) Ken Shulha – Corporate Controller of Allen-Vanguard.

APPENDIX B – SCHEDULES

Schedule 1

Allen-Vanguard Corporation
Summary of Economic Losses
[$MMs]

		Low	High
Scenario #1			
A. Economic Loss of Investment in Med-Eng	Schedule 2	400.4	400.4
B. Economic Loss of Allen-Vanguard net asset value	Schedule 2	65.0	80.0
Total Economic Losses - Scenario #1 (rounded)		465.0	480.0
Scenario #2			
A. Actual Purchase Price	Schedule 7		633.5
B. Adjusted Purchase Price	Schedule 4		326.6
Economic Losses from difference in purchase price			306.9
C. Excess Financing Costs	Section 9		49.8
D. Other Losses	Section 10		7.0
Total Economic Losses - Scenario #2 (rounded)			365.0

Schedule 2

Allen-Vanguard Corporation
Scenario #1: Summary of Economic Losses
[$MMs]

		Low	High
A. Economic Loss of Investment in Med-Eng			
Private placement on August 15, 2007	(1)	100.4	100.4
Public share issuance on September 21, 2007	(2)	300.0	300.0
Total equity raised to fund the Transaction		400.4	400.4
Less: Value to Allen-Vanguard shareholders upon the Versa Transaction	(3)	-	-
Economic Loss attributable to investment in Med-Eng	B	400.4	400.4
B. Economic Loss of Allen-Vanguard net asset value			
Estimated net asset value of Allen-Vanguard at December 18, 2009	Section 7	65.0	80.0
Less: Value attributable to Allen-Vanguard net assets upon the Versa Transaction	(3)	-	-
Economic Loss attributable to lost net asset value of Allen-Vanguard	A	65.0	80.0
Total Economic Losses to Allen-Vanguard	A + B	465.4	480.4

(1) Refer to paragraph 4.13(a).
(2) Refer to paragraph 4.13(g).
(3) Refer to paragraph 4.33.

Schedule 3

Allen-Vanguard Corporation
Comparable Companies

	Market Capitalization[1] 18-Dec-2009	TTM Revenue 31-Dec-2009	TTM EBITDA 31-Dec-2009	Market Capitalization / TTM Revenue	Market Capitalization / TTM EBITDA
BAE Systems plc	12,133	20,374	2,339	0.6x	5.2x
Chemring Group plc [2]	967	504	125	1.9x	7.7x
General Dynamics Corp.	26,327	31,981	4,237	0.8x	6.2x
Lockheed Martin Corporation	29,069	43,867	5,103	0.7x	5.7x
Northrop Grumman Corporation	17,482	27,650	2,861	0.6x	6.1x
Median				**0.7x**	**6.1x**

(1) Source: S&P Capital IQ. Shares are based on the most recently filed financial statements.
(2) Trailing twelve month revenue and EBITDA based on the October 31, 2009 year end financials.

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Schedule 4

Allen-Vanguard Corporation
Calculation of the Adjusted Purchase Price

		For the fiscal years ending September 30,						Terminal Period
		2007F	2008F	2009F	2010F	2011F	2012F	
Forecast period (months)		0.5	12.0	12.0	12.0	12.0	12.0	
Revenue	Schedule 5	24,367	241,008	165,353	145,642	157,487	164,228	
Cost of goods sold		13,749	134,774	90,411	77,788	84,157	87,436	
Gross margin	Schedule 5	10,618	106,234	74,943	67,854	73,331	76,793	
Gross margin %		*43.6%*	*44.1%*	*45.3%*	*46.6%*	*46.6%*	*46.8%*	
Operating expenses	Schedule 5	1,195	26,426	21,506	18,942	20,483	21,360	
		4.9%	11.0%	13.0%	13.0%	13.0%	13.0%	
EBITDA	Schedule 5	9,423	79,808	53,437	48,911	52,848	55,433	56,541
EBITDA margin %		*38.7%*	*33.1%*	*32.3%*	*33.6%*	*33.6%*	*33.8%*	
Income taxes	(1)	3,404	27,259	17,835	15,652	16,118	16,076	16,397
After-tax cash flow		6,020	52,550	35,602	33,260	36,730	39,357	40,144
Sustaining capital expenditures	Schedule 7	(217)	(6,000)	(6,000)	(6,000)	(6,000)	(6,000)	(6,120)
net of the tax shield thereon		61	1,583	1,546	1,483	1,413	1,344	1,371
		(156)	(4,417)	(4,454)	(4,517)	(4,587)	(4,656)	(4,749)
Working capital adjustment	(2)	-	12,145	7,452	1,942	(1,167)	(664)	(677)
After-tax discretionary cash flows		5,863	60,277	38,600	30,684	30,976	34,037	34,718
Post-forecast period:								
Capitalization rate								12.0%
Post-forecast period capitalized amount								289,313
Nominal WACC	(3)	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%
Discount period		0.02	0.54	1.54	2.54	3.54	4.54	4.54
Discount factor		0.9974	0.9317	0.8173	0.7169	0.6289	0.5516	0.5516
Present value of cash flows		5,848	56,159	31,547	21,998	19,480	18,776	159,595

Business Enterprise Value:		
Net present value of forecast period cash flows		153,807
Net present value of post-forecast period cash flows		159,595
Business enterprise value		313,403
Add: Present value of undepreciated capital cost tax shield	(4)	2,218
Add: Cash and equivalents	(4)	90
Fair value		315,711
Add: Deal costs	(4)	10,898
Adjusted Purchase Price		326,609

(1) Based on the blended Ontario and federal corporate income tax rate substantively enacted at the Transaction Date.
(2) Refer to paragraph 8.29 to 8.29 of the report.
(3) Refer to paragraph 8.33 through 8.35 of the report.
(4) Source: Deloitte PPA Report dated September 12, 2008.

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Schedule 5

Allen Vanguard Corporation
Adjusted ME Forecast Revenue and Expenses

		For the fiscal years ending September 30,						Terminal Period
		2007F	2008F	2009F	2010F	2011F	2012F	
Revenues								
Total projected revenue - AV ME Forecast	Schedule 7	24,590	438,678	504,803	377,970	384,389	391,130	
Less Adjustments								
Foreign Exchange Adjustment - 2,511 Units USMC	(1)	(223)	(13,590)	-	-	-	-	
Chameleon Order - 1,100 units USMC	(2)	-	(40,714)	(13,571)	-	-	-	
Repair & Overhaul Contract - USMC	(2)	-	(21,975)	(26,500)	(26,500)	(11,625)	-	
Portable ECM Unit Order - 600 units USMC	(2)	-	(9,261)	(3,087)	-	-	-	
Professional Services Contract	(2)	-	(38,475)	(37,800)	(37,800)	(9,675)	-	
MCM Order - 7,000 units USMC	(1)	-	(57,575)	(57,575)	(57,575)	-	-	
US Army MRAP Order - 15,000 units US Army	(2)	-	(14,805)	(101,168)	(32,078)	-	-	
CREW 3.1	(2)	-	(563)	(1,125)	(313)	-	-	
CREW 3.2	(2)	-	(1,313)	(1,750)	(438)	-	-	
UK MoD Order - FCM Order	(2)	-	-	(12,375)	(20,625)	-	-	
UK MoD Order - MCM Order	(2)	-	-	(82,500)	(55,000)	-	-	
Future Projected Revenue Adjustment	(2)	-	-	-	-	(205,602)	(226,902)	
Total Adjusted ME Forecast revenues		24,367	241,008	165,353	145,642	157,487	164,228	
Gross Margin								
Total gross margin - AV ME Forecast	Schedule 7	10,716	192,506	217,198	167,375	170,523	173,973	
Total revenue adjustments above	(3)	(223)	(197,670)	(339,450)	(232,328)	(226,902)	(226,902)	
AV ME Forecast ECM gross margin percentage	(4)	43.6%	43.6%	41.9%	42.8%	42.8%	42.8%	
		(98)	(86,272)	(142,255)	(99,521)	(97,192)	(97,180)	
Gross margin		10,618	106,234	74,943	67,854	73,331	76,793	
as a percentage of revenues		43.6%	44.1%	45.3%	46.6%	46.6%	46.8%	
Operating expenses								
Total operating expenses - AV ME Forecast	Schedule 7	1,206	48,100	65,655	49,159	49,993	50,871	
Total revenue adjustments above	(3)	(223)	(197,670)	(339,450)	(232,328)	(226,902)	(226,902)	
AV ME Forecast operating expense as a percentage of revenue	Schedule 7	4.9%	11.0%	13.0%	13.0%	13.0%	13.0%	
		(11)	(21,674)	(44,149)	(30,217)	(29,510)	(29,511)	
Total adjusted operating expenses		1,195	26,426	21,506	18,942	20,483	21,360	
EBITDA		9,423	79,808	53,437	48,911	52,848	55,433	56,541
as a percentage of revenues		38.7%	33.1%	32.3%	33.6%	33.6%	33.8%	

(1) Refer to paragraph 8.19(a) of the report.
(2) Refer to paragraph 8.14 through 8.15 of the report and Schedule 6. We have adjusted the forecast revenues to exclude the Subject Revenues.
(3) Represents the total of the adjustments captured in notes (1) and (2).
(4) We have assumed that the gross margin percentage on the Subject Revenues approximates the total gross margin percentage of the Electronic Systems division. Refer to Section B of the report.

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Schedule 6

Allen Vanguard Corporation
Med Eng Pipeline

Customer	Description	Quantity of Units[1]	Deal Size[1],[2] [$000s]	Probability[1]	Total Projected Revenues[3] [$000s]	Projected revenue for the year ending December 31,[1] [$000s] 2007F	2008F	2009F
USMC	DBPA	4,244	21,000	100%	21,000	21,000	-	-
USMC	EPACC	1,079	9,500	100%	9,500	9,500	-	-
USMC	MCM	415	22,821	100%	22,821	22,821	-	-
USMC	MCM	2,511	127,458	100%	127,458	127,458	-	-
USMC	MCM	1,136	56,062	100%	56,062	39,480	16,582	-
USMC	MCM	1,447	71,409	100%	71,409	-	71,409	-
USMC	MCM	1,100	54,285	100%	54,285	-	54,285	-
USMC	PCM	600	17,640	70%	12,348	-	12,348	20,580
USMC	MCM	7,000	345,450	50%	172,725	-	24,675	98,700
Prof Services	FSR, Tmg[2]	1	165,000	75%	123,750	13,500	37,800	37,800
USMC	R&D[2]	1	120,000	75%	90,000	-	28,500	28,500
US Army MRAP	MCM	15,000	740,250	20%	148,050	-	19,740	128,310
Crew 3.1	PCM	1	4,000	50%	2,000	-	750	1,250
Crew 3.2	MCM	1	7,000	50%	3,500	-	1,750	1,750
CDN DND	MCM	250	13,513	75%	10,135	4,054	6,081	-
Australian DoD	MCM	600	29,610	75%	22,208	-	22,208	-
UK MoD	PCM	2,000	66,000	50%	33,000	-	-	16,500
UK MoD	MCM	5,000	275,000	50%	137,500	-	-	110,000
TSWG	PCM/MCM	300	42,000	40%	16,800	1,120	4,480	5,600
Total revenue pipeline projected by management						238,933	300,608	448,990

(1) Source: Med-Eng Management Presentation dated July 20, 2007 (Slide 164) and August 22, 2007 (Slide 166).
(2) Total deal size adjusted to reflect the projected ongoing work forecast in the Med-Eng Management Presentation dated July 20, 2007 (Slide 40) and August 22, 2007 (Slide 41). For these annual projects the deal size recorded in the Med-Eng Pipeline represented the annual deal size. We have adjusted to illustrate the total size of the contract consistent with the forecast annual revenues then projected.
(3) Calculated as total deal size multiplied by the probability.

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Schedule 7

Allen-Vanguard Corporation
Actual Purchase Price

	For the year ending Dec 31, 2006A	YTD 17-Sept-07 2007 YTD	For the fiscal years ending September 30,[1] 2007F	2008F	2009F	2010F	2011F	2012F	Terminal Period
Forecast period (months)			0.5	12.0	12.0	12.0	12.0	12.0	
Revenue	261,407	172,885	24,590	438,678	504,803	377,970	384,589	391,130	
Cost of goods sold	132,379	95,827	13,874	246,172	287,605	210,595	213,866	217,157	
Gross margin	129,028	77,558	10,716	192,506	217,198	167,375	170,723	173,973	
Gross margin %	*49.4%*	*44.9%*	*43.6%*	*43.9%*	*43.0%*	*44.3%*	*44.4%*	*44.5%*	
Operating expenses									
Selling and administration	21,850	32,560	592	25,900	35,000	26,206	26,651	27,119	
Research and development	10,505	11,215	614	22,800	30,655	22,953	23,342	23,752	
Other expenses	999	1	-	-	-	-	-	-	
Subtotal	33,354	43,776	1,206	48,100	65,655	49,159	49,993	50,871	
			4.9%	11.0%	13.0%	13.0%	13.0%	13.0%	
EBITDA	95,674	33,782	9,510	144,406	151,543	118,216	120,530	123,102	125,564
EBITDA margin %	*36.6%*	*19.5%*	*38.7%*	*32.9%*	*30.0%*	*31.3%*	*31.4%*	*31.5%*	
Income taxes	33,842	10,895	3,435	49,322	50,578	37,829	38,761	39,700	36,414
After-tax cash flow	61,832	23,387	6,075	95,084	100,965	80,387	81,769	83,402	89,150
Sustaining capital expenditures			(217)	(6,000)	(6,000)	(6,000)	(6,000)	(6,000)	(6,120)
net of the tax shield thereon			61	1,583	1,546	1,483	1,413	1,344	1,371
			(156)	(4,417)	(4,454)	(4,517)	(4,587)	(4,656)	(4,749)
Working capital adjustment			(45,582)	43,034	(10,081)	25,177	1,014	1,028	1,049
After-tax discretionary cash flows			(39,663)	133,701	86,430	101,047	80,196	83,774	85,450
Post-forecast period:									14.1%
Capitalization rate									607,265
Post-forecast period capitalized amount									
Nominal WACC			16.1%	16.1%	16.1%	16.1%	16.1%	16.1%	16.1%
Discount period			0.02	0.54	1.54	2.54	3.54	4.54	4.54
Discount factor			0.9970	0.9227	0.7949	0.6849	0.5900	0.5083	0.5083
Present value of cash flows			(39,545)	123,362	68,705	69,202	47,318	42,585	308,694

Business Enterprise Value:		311,628
Net present value of forecast period cash flows		308,694
Net present value of post-forecast period cash flows		620,322
Business enterprise value		
Add: Present value of undepreciated capital cost tax shield	(1)	2,218
Add: Cash and equivalents	(1)	90
Fair value		622,630
Deal costs	(1)	10,898
Actual Purchase Price		633,528

(1) Source: Deloitte PPA Report dated September 12, 2008.

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Schedule 8

Allen-Vanguard Corporation
Med-Eng Forecast

	For the year ending December 31,[1]			
	2006A	2007F	2008F	2009F
Revenue				
Product revenue	253,034	303,081	369,443	563,507
Professional services revenue	8,373	12,778	18,515	24,796
	261,407	315,859	387,958	588,303
Cost of sales				
Product cost of sales	130,674	157,444	200,504	311,753
Professional services cost of sales	1,705	3,906	6,155	8,239
	132,379	161,350	206,659	319,992
Gross margin	129,028	154,509	181,299	268,311
Gross margin %	*49.4%*	*48.9%*	*46.7%*	*45.6%*
Operating expenses				
Sales	3,953	4,079	6,576	9,145
Marketing	10,569	8,414	13,442	17,143
General and administrative	7,328	7,301	9,181	11,699
Research and development	10,505	16,273	25,036	33,073
Other operating	999	-	-	-
	33,354	36,067	54,235	71,060
	12.8%	*11.4%*	*14.0%*	*12.1%*
Contribution	95,674	118,442	127,064	197,251
EBITDA	98,482	121,442	130,064	200,252
	37.7%	*38.4%*	*33.5%*	*34.0%*

(1) Source: July 20, 2007 (Slide 169) and August 22, 2007 (Slide 171) management presentations.

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Schedule 9

Med-Eng Systems Inc.
Summary Consolidated Income Statement

	For the year ending December 31,[1]						June 30,	Sept 17,[2]
	2001	2002	2003	2004	2005	2006	2007	2007
Sales	29,552	57,829	50,293	31,315	64,364	261,407	84,580	172,885
Cost of sales	17,615	28,402	24,390	17,388	37,416	132,379	47,921	95,327
Gross profit	11,937	29,427	25,903	13,927	26,948	129,028	36,659	77,558
Gross margin %	*40.4%*	*50.9%*	*51.5%*	*44.5%*	*41.9%*	*49.4%*	*43.3%*	*44.9%*
Operating expenses								
Sales and marketing	4,286	5,176	6,733	7,527	7,756	14,521	4,197	11,943
General and administration	2,261	2,906	3,406	3,222	4,122	7,329	3,108	20,617
Research and development	1,578	2,069	2,517	6,390	8,518	10,505	6,938	11,215
Goodwill impairment charge	-	-	-	222	-	-	-	-
Restructuring charges	-	-	-	-	184	999	1	1
	8,126	10,151	12,656	17,361	20,580	33,354	14,244	43,776
	27.5%	17.6%	25.2%	55.4%	32.0%	12.8%	16.8%	25.3%
Net operating income	3,811	19,276	13,247	(3,434)	6,368	95,674	22,415	33,782
Interest expense (income)	761	481	477	624	964	(930)	(873)	(236)
Amortization of goodwill	355	355	-	-	-	-	-	-
Other income	(74)	(0)	(66)	(95)	(26)	62	21	(1,127)
Foreign exchange loss (gain)	-	-	-	(6,881)	(773)	(1,184)	2,098	3,972
Legal settlement	-	-	-	(644)	-	-	-	-
Earnings before income taxes	2,769	18,441	12,836	3,562	6,203	97,726	21,169	31,173
Current income taxes	941	6,609	4,410	776	2,083	34,065	6,442	10,395
Future income taxes	159	67	70	327	55	(223)	614	-
Net income from continuing operations	1,669	11,765	8,356	2,459	4,065	63,884	14,113	20,778

(1) Source: annual audited financial statements.
(2) Source: Deloitte PPA Report dated September 12, 2008. Schedule 9.

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Schedule 10

Med-Eng Systems Inc.
Summary Consolidated Balance Sheet

	As at December 31,[1]					June 30,	Sept 17,[2]
	2002	2003	2004	2005	2006	2007	2007
ASSETS							
Current assets							
Cash	4,750	6,880	211	8,173	18,632	30,021	90
Short-term investments	-	-	-	-	25,000	-	-
Accounts receivable	17,694	15,109	7,109	10,989	24,927	35,446	53,660
Other receivables	-	719	1,402	771	592	390	-
Income taxes receivable	-	367	3,723	-	-	172	15,099
Inventory	9,522	12,429	15,148	16,408	15,345	13,792	19,568
Prepaid expense	328	306	399	428	633	971	1,601
Future income taxes	-	-	-	-	42	-	-
Assets held for sale	-	-	-	1,196	-	-	-
	32,293	35,850	27,992	37,964	85,171	80,792	90,018
Property and equipment	3,556	4,625	4,956	5,900	10,101	12,501	12,040
Other assets	-	-	-	738	879	966	-
Deferred charges (net of accumulated amortization)	408	450	522	-	-	-	-
Assets held for sale	-	-	-	120	-	-	-
Goodwill (net of accumulated amortization)	569	569	346	-	-	-	-
TOTAL ASSETS	36,825	41,493	33,816	44,722	96,151	94,259	102,058
LIABILITIES AND SHAREHOLDERS' EQUITY							
Current liabilities							
Bank indebtedness	-	-	6,152	12,132	-	-	-
Accounts payable and accrued liabilities	6,857	4,383	3,563	6,560	13,648	21,000	35,245
Deferred revenue	-	-	2,284	3,923	1,072	1,130	98
Deferred foreign exchange	-	4,381	-	-	-	-	-
Income taxes payable	5,452	-	-	172	31,602	8,197	1,642
Future income taxes	85	100	297	252	-	17	-
Current portion of long-term debt	187	74	1,950	-	-	-	-
Liabilities held for sale	-	-	-	154	-	-	-
Non-revolving demand loan	-	-	5,400	4,200	-	-	-
	12,581	8,938	19,646	27,393	46,322	30,344	36,985
Long-term debt	4,250	4,250	-	-	-	-	-
Future income taxes	154	209	339	439	752	1,307	-
Total liabilities	16,985	13,397	19,985	27,832	47,074	31,651	36,985
Shareholders' Equity							
Common stock	-	-	-	-	-	-	7,124
Contributed surplus	-	-	-	722	1,191	1,266	1,266
Share capital	11,927	12,069	1,683	1,723	3,043	3,103	-
Retained earnings (deficit)	7,913	16,027	12,148	14,445	44,843	58,239	56,683
Total shareholders' equity	19,840	28,096	13,831	16,890	49,077	62,608	65,073
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	36,825	41,493	33,816	44,722	96,151	94,259	102,058

(1) Source: annual audited financial statements.
(2) Source: Deloitte PPA Report Schedule 10.

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Schedule 11

Allen-Vanguard Corporation
Summarized Income Statement - 2003 to 2009

	Fiscal year ending September 30,						June 30,
	2003	2004	2005	2006	2007	2008	2009 YTD
Revenue	9,946	20,251	51,400	56,844	96,172	309,005	176,245
Cost of sales	6,469	10,859	29,357	33,054	55,887	186,895	110,759
Gross profit	3,476	9,391	22,043	23,790	40,285	122,110	65,486
Gross profit %	35.0%	46.4%	42.9%	41.9%	41.9%	39.5%	37.2%
Operating expenses							
Selling and administration	2,509	8,144	21,213	16,415	24,628	53,603	28,995
Research and development	280	780	3,908	3,425	5,628	17,476	10,637
Restructuring	-	260	1,025	-	-	1,542	2,492
Interest on long-term debt	-	68	158	614	2,460	22,103	14,309
Foreign exchange loss (gain)	176	(246)	495	(17)	(7,549)	10,013	21,161
Stock-based compensation	-	-	-	-	4,130	3,821	1,793
Other interest (income)	29	(179)	63	102	(1,084)	(1,135)	33
Amortization	56	478	3,822	1,751	1,737	4,546	4,555
Acquisition and financing related charges and amortization	-	-	-	-	30,296	146,842	21,114
Impairment losses	-	-	20,500	-	-	379,996	136,334
	3,049	9,305	51,185	22,290	60,246	638,807	241,423
Earnings (loss) before income taxes	428	86	(29,142)	1,500	(19,961)	(516,697)	(175,937)
Current	134	712	(10)	2,362	2,023	(1,454)	(23,133)
Future	-	(680)	(500)	(900)	(7,968)	(78,914)	-
Net income (loss)	294	54	(28,631)	38	(14,016)	(436,329)	(152,804)

Appendix B
Allen-Vanguard Corporation
Economic Loss Report
Private and Confidential
March 15, 2013

Schedule 12

Allen-Vanguard Corporation
Summarized Balance Sheet

	As at September 30,				June 30,	As at September 30,	
	2003	2004	2005	2006	2007	2007	2008
Assets							
Cash and cash equivalents	454	937	5,744	5,695	3,364	20,440	8,522
Restricted cash	-	-	-	152	15,377	7,246	4,065
Subscriptions received, held in trust	1,082	-	-	-	-	-	-
Short term investments	-	-	-	-	28,533	-	-
Accounts receivable	1,766	9,872	12,364	15,345	18,740	81,233	29,547
Inventories	2,402	10,795	9,717	10,677	17,078	33,138	36,157
Prepaid expenses and other	301	2,139	2,049	1,985	3,781	3,285	2,618
Income taxes recoverable	-	-	-	-	-	11,347	9,755
Future income taxes	-	-	-	-	-	15,515	13,506
	6,006	23,743	29,874	33,854	86,875	172,204	104,170
Non-current restricted cash	-	-	-	-	-	30,435	1,976
Property and equipment	231	2,350	2,805	4,011	6,194	18,925	16,693
Goodwill	-	36,379	21,585	21,906	31,066	375,437	82,333
Intangible assets	-	5,717	2,919	2,668	9,595	340,464	206,942
Future income taxes	-	680	1,180	2,080	2,080	2,196	12,699
Other long-term assets	-	-	-	-	723	1,307	2,321
Total Assets	6,236	68,869	58,363	64,519	136,533	940,968	427,134
Liabilities							
Bank indebtedness	455	4,903	554	1,859	-	-	8,088
Accounts payable and accrued charges	2,222	5,933	7,252	9,790	12,747	72,858	36,516
Income taxes payable	175	482	729	3,237	1,903	-	16,098
Deferred revenue	-	3,756	-	365	-	-	13,098
Current portion of long-term debt	480	4,509	2,972	2,486	2,726	74,947	10,327
	3,332	19,584	11,508	17,737	17,376	147,805	84,127
Debentures	668	-	-	-	-	-	-
Deferred revenue	-	-	-	1,592	-	-	-
Future income taxes	-	-	-	-	1,965	113,397	62,021
Long-term debt	-	3,896	8,276	5,813	4,054	171,006	184,495
Total Liabilities	4,000	23,479	19,784	25,142	23,394	432,208	330,643
Shareholders' Equity							
Capital stock	1,315	42,232	64,027	64,908	141,911	531,083	543,982
Stock options	-	-	-	220	365	225	4,298
Warrants	-	-	-	1,938	1,938	19,125	26,213
Equity portion of convertible debentures	-	10	-	-	-	-	-
Contributed surplus	-	1,938	2,984	705	705	737	737
Other comprehensive income		234	12	12	12	12	12
Retained earnings (deficit)	922	976	(28,444)	(28,406)	(31,792)	(42,422)	(478,751)
	2,237	45,389	38,579	39,377	113,138	508,760	96,491
Total Liabilities and Shareholders' Equity	6,236	68,869	58,363	64,519	136,533	940,968	427,134

(1) Source: annual audited financial statements.
(2) Source: interim unaudited financial statements.

Robert B. Low

Profile

Involved exclusively in business valuations, financial litigation and related matters since 1978, acting on behalf of shareholders and other parties (including Federal, Provincial and Municipal Governments) in connection with companies engaged in diverse industries.

Experience

2012 - Robert Low Financial Advisory Inc.

2007 - 2012 Partner, Deloitte & Touche LLP

2004 – 2007 Director, LECG Canada, Ltd.

1998 – 2004 Principal, Low Rosen Taylor Soriano

1995 – 1998 Partner, Arthur Andersen & Co.

1978 – 1995 Partner, Campbell Valuation Partners Limited

Business valuations for:
- Corporate reorganizations
- Estate planning/settlement
- Expropriations
- International arbitration
- Matrimonial disputes
- Merger, acquisition and divestiture
- Public offerings/OSC rule 61-501
- Shareholder agreements
- Shareholder disputes/oppression remedies
- Tax purposes

Quantification of economic damages for cases involving:
- Business loss
- Contract disputes
- Commercial disputes
- Expropriation
- Intellectual property
- International arbitration
- Professional liability
- Class actions

Education/professional designations

- Chartered Accountant, 1974
- Chartered Business Valuator, 1980
- Bachelor of Commerce (Honours), 1972
- Certified Director, 2008

Acted As
- Arbitrator – Commercial disputes
- Mediator – Commercial disputes
- Director of Malbex Resources Inc.
- Director of two publicly traded nickel mining companies from 2005 to 2007

Qualified as an Expert Witness in:
- Ontario Superior Court of Justice
- Supreme Court of British Columbia
- Supreme Court of Prince Edward Island
- Supreme Court of Nova Scotia
- Court of Queen's Bench – Manitoba
- Court of Queen's Bench – Alberta
- Court of Queen's Bench – New Brunswick
- Federal Court of Canada
- Ontario Municipal Board
- Land Value Appraisal Commission – Manitoba
- Expropriation Compensation Board – British Columbia
- Alberta Energy and Utilities Board
- American Arbitration Association international arbitration
- NAFTA Arbitration under UNCITRAL Arbitration Rules
- Various private arbitrations

Professional and community affairs

- Institute of Chartered Accountants of Manitoba
- Institute of Chartered Accountants of Ontario
- Canadian Institute of Chartered Business Valuators
- Institute of Corporate Directors
- Ontario Expropriation Association (Director and past President)

Publications

Books/articles
- "*The Valuation & Pricing of Privately-Held Business Interests*" (Toronto: Canadian Institute of Chartered Accountants. Published 1990, co-author.)
- Contributor: "*Valuing a Business in Volatile Markets*" (Toronto: Carswell. Published 2010)
- Various articles in trade magazines respecting valuation topics

Educational materials
- The Valuation of Business Interests; The World Bank (1995)

Lecturing

- York University - Combined MBA/LLB Programs - Seminars 1996 – 2013
- Schulich School of Business – MBA Program – 2008 and 2012
- Speaker at ADR Institute of Canada annual Conference 2007 - 2012
- Ontario Expropriation Association - Fall Conference, 1990 and 1996
- Canadian Institute of Chartered Accountants - Professional Development Programs, Lecturer
- and Seminar Leader in all provinces, 1979 - 1996
- The Valuation of Business Interests - The World Bank/Central Auditing Organization - Egypt (1995)
- University of Toronto Law School - Seminar - 1992 - 1995
- Law Society of Upper Canada - Professional Development Course - 1995
- Alberta Expropriation Association - Fall Conference - 1990
- Canadian Institute of Chartered Business Valuators - 1988 Biennial Conference
- Member of the Final Examinations' Committee for the Canadian Institute of Chartered
- Business Valuators, 1981
- University of Manitoba - School of Administrative Studies, 1975 - 1976
- Society of Management Accountants (CMA) - Seminar Program, 1975
- Canadian Bar Association (Ontario) - Professional Development Courses
- Various Seminars for Insight, the Canadian Institute and Federated Press respecting valuation and damages topics.

Appendix C
Allen-Vanguard Corporation
Economic Loss Report
Private and Confidential
March 15, 2013

FORM 53

Courts of Justice Act

ACKNOWLEDGMENT OF EXPERT'S DUTY

Allen Vanguard Corporation (Plaintiff)

And

Richard L'Abbe, 1082455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited, and Schroder Ventures Holdings Limited (the "Defendants")

Court File No. 08-CV-43644

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Robert Low. I live at the City of Oakville, in the Province of Ontario.

2. I have been engaged by or on behalf of Allen-Vanguard Corporation to provide evidence in relation to the above-noted court proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;

   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

   (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

March 15, 2013

Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

RCP-E 53 (November 1, 2008)

This is Exhibit "T" referred to in the

affidavit of **Paul Echenberg**

sworn before me, this 24th day

of November 2013.

A Commissioner for Taking Affidavits

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ALLEN-VANGUARD CORPORATION

Plaintiff

- and -

RICHARD L'ABBÉ, 1062455 ONTARIO INC.,
GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS
(CANADA) LIMITED in its capacity as general partner of each of
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1,
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2,
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3,
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4,
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5,
SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6,
SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN
BUY-OUT FUND II UKLP, and on behalf of
SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and
SVG CAPITAL INC. (formerly, SCHRODER VENTURES INTERNATIONAL
INVESTMENT TRUST plc)

Defendants

WRITTEN SUBMISSIONS ON TERMS OF ORDER GRANTING LEAVE TO AMEND

Terms Sought

1. In his reasons dated February 21, 2013, Master MacLeod concluded that leave should be granted to Allen-Vanguard Corporation ("Allen-Vanguard") to amend its statement of claim in court file number 08-CV-43544 ("the Amended Statement of Claim").

2. Master MacLeod also directed the defendants, the Offeree Shareholders, to make submissions in respect of the terms on which leave to amend the statement of claim should be granted.

3. The Offeree Shareholders seek the following terms:

   a. Adjournment of the trial currently scheduled for September 3, 2013 to the second quarter of 2014,

   b. The scheduling of a three-day motion for summary judgment in September 2013, in lieu of the Rule 21 motion presently scheduled for May 10, 2013,

   c. That Allen-Vanguard be ordered to produce all documents relating to the drafting and negotiation of the Share Purchase Agreement and Escrow Agreement (including solicitor-client privileged documents) by May 15, 2013,

   d. Extension of the delivery of the Offeree Shareholders' expert reports to a date to be fixed by the court following the release of the reasons in respect of the motion for summary judgment,

   e. That Allen-Vanguard be required to respond to the Offeree Shareholders' demand for particulars within 14 days of service and that the Offeree Shareholders have 45 days from receipt of such particulars to serve and file an amended statement of defence,

   f. That the time for a motion for joinder or the issuance of third party claims by the Offeree Shareholders be extended to 60 days following the release of reasons in respect of its motion for summary judgement,

   g. A deferral of the determination of costs to be awarded with respect to Allen-Vanguard's motion to amend its statement of claim until following a ruling on the Offeree Shareholders' appeal of Master MacLeod's order granting Allen-Vanguard leave to amend its statement of claim.

Background and Overview

The Action

4. In 2007, all shareholders of Med-Eng Systems Inc. ("Med-Eng") sold their shares to Allen-Vanguard Corporation ("Allen-Vanguard"), pursuant to the Share Purchase Agreement, made as of August 3, 2007 (the "Share Purchase Agreement"), between Med-Eng, Allen-Vanguard and the defendants in this action (the "Offeree Shareholders").

5. A further agreement, the Escrow Agreement, made as of September 17, 2007, was entered into by Allen Vanguard, Med-Eng, the Offeree Shareholders, as well as Computershare Trust Company of Canada ("Computershare"). The Escrow Agreement provided that $40,000,000 would be held in escrow as security for any claims for indemnification made by Allen-Vanguard. The funds in question were receivable by all shareholders as part of the purchase price paid by Allen-Vanguard.

6. On September 10, 2008, Allen-Vanguard asserted that it was entitled to indemnification under the Share Purchase Agreement and the Escrow Agreement in respect of the claims set out in its undated Notice of Claim. Allen-Vanguard asserted claims for breaches of representations and warranties associated with the financial condition of Med-Eng, contingent on other liabilities of Med-Eng, warranty claims asserted against Med-Eng by its customers, the status of Med-Eng contracts and commitments associated with Med-Eng's employees.

7. On October 6, 2008, Mr. Robert Chapman, who was then a partner of McCarthy Tétrault LLP ("McCarthy Tétrault"), counsel for the Offeree Shareholders, delivered, on behalf of the Offeree Shareholders, a Notice of Objection, dated October 1, 2008, to Allen-Vanguard.

8. On December 18, 2008, Allen-Vanguard commenced an action against the Offeree Shareholders seeking "indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $40,000,000, which shall be distributed to Allen-Vanguard in accordance with the terms of the Escrow Agreement" (emphasis added).[1]

9. Accordingly, for nearly 4 1/2 years, this litigation has been conducted on the basis that Allen-Vanguard was seeking indemnification and/or damages in the amount of $40,000,000 for misrepresentation and breach of contract. If Allen-Vanguard was successful, this $40,000,000 was to be distributed from the Escrow Fund established for exactly this purpose at the time of the sale of Med-Eng.

The Amendments

10. On January 29, 2013, only 7 months before trial and more than 4 years after the action was commenced, Mr. Ian MacLeod, counsel for Allen-Vanguard, wrote to Mr. Thomas Conway, counsel for the Offeree Shareholders, seeking the Offeree Shareholders' consent to the enclosed proposed Amended Statement of Claim (the "Amended Statement of Claim").[2] This was the first indication since the commencement of these proceedings that the Offeree Shareholders received that Allen-Vanguard intended to assert a claim for damages in excess of the funds in the Escrow Fund.

11. The Amended Statement of Claim contains the following amendments as it relates to the types of damages sought by Allen-Vanguard:

[1] Statement of Claim, paragraph 1(a).
[2] Exhibit C to affidavit of Ian MacLeod, sworn February 6, 2013.

- At paragraph 1(a): Indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $650,000,000~~40,000,000~~ , of which $40,000,000 shall be distributed to Allen-Vanguard Corporation in accordance with the terms of the Escrow Agreement as defined herein;

- At paragraph 2(f): (f)~~(e)~~ as a result of the fraudulent misrepresentations and breaches of representations and warranties by MES, the Defendants are directly liable to indemnify Allen-Vanguard for the damages which have been caused to Allen-Vanguard.

- At paragraph 6: Due to MES' misrepresentations and breaches of representations, warranties and covenants as described herein, Allen-Vanguard spiraled into insolvency in the months following the transaction. As a result, on December 16, 2009, the Superior Court of Justice made an Order pursuant to Section 6 of the Companies Creditors Arrangement Act (the "CCAA") sanctioning a Plan of Arrangement and Reorganization dated December 9, 2009 (the "Sanction Order"). The Sanction Order was made on the basis that it was in the best interests of Allen-Vanguard and its economic stakeholders and employees to restructure its debt obligations and allow it to continue to carry on business as a going concern.

- At paragraph 28: Allen-Vanguard relied on the fraudulent misrepresentations to its detriment.

- At paragraph 105: Had the true state of MES' affairs been accurately represented, Allen-Vanguard would not have been prepared to complete the transaction, or alternatively, it would have paid a significantly reduced ~~without a significant discount to the~~ purchase price.

12. The afore-referenced amendments have not just changed the quantum of the claim being advanced by Allen-Vanguard, but the very nature of the litigation. Allen-Vanguard is now seeking $610,000,000 directly from the Offeree Shareholders.

13. The allegations underpinning Allen-Vanguard's claim for monetary compensation have also shifted. In particular, Allen-Vanguard is now asserting that it would not have completed the transaction if the true state of MES' affairs had been accurately represented and that the alleged misrepresentations caused it to spiral into insolvency.

14. This fundamental shift in the nature of this litigation as a result of Allen-Vanguard's last-minute amendments to its statement of claim has significant implications for the defence of the action.

15. For instance, both extensive further discovery of the corporate representative of Allen-Vanguard and further documentary production will be necessary. The Offeree Shareholders will also require sufficient time to consider the interests of the minority shareholders, who are currently unrepresented. These additional steps and considerations are such that the only way

to proceed with this litigation is an adjournment of the trial scheduled for September 2013 and the scheduling of a summary judgment motion under Rule 20 of the *Rules of Civil Procedure*.

Adjournment of the Trial

16. Allen-Vanguard's decision to wait until 7 months before trial to change fundamentally the nature of this litigation has resulted in the need to adjourn the September 3, 2013 trial date. There are simply too many pre-trial steps that must be completed in order for a claim of this magnitude to proceed to trial in the fall of 2013.

17. In particular, the Offeree Shareholders need adequate time to consider the possibility of adding new parties, either by way of joinder or third party claims. Further documentary and oral discovery will be necessary, which will take time to complete if the procedural history of this litigation is predictable indicator. All of this is in addition to the other pre-trial steps that have not yet been completed.

Joinder or Third Party Claims

18. First, it should be again noted that Allen-Vanguard makes no allegation that the Offeree Shareholders have breached any duty owed in contract or by operation of law.

19. Second, Allen-Vanguard now seeks damages in the amount of $610,000,000 directly from the Offeree Shareholders on account of alleged misrepresentations and alleged breaches of contract by the former management of Med-Eng. There are no allegations that the Offeree Shareholders made any misrepresentations or breached the Share Purchase Agreement. Allen-

Vanguard is seeking to hold the Offeree Shareholders liable for its claims against Med-Eng by virtue of their status as former shareholders.

20. Accordingly, there are a number of third-party interests and possible third-party claims that must be considered. For instance, while the Offeree Shareholders were the majority shareholders of Med-Eng, there were over 180 minority shareholders. These shareholders include individuals, corporations and even the University of Ottawa Heart Institute. The Offeree Shareholders are assessing and re-assessing their role vis-à-vis the minority shareholders. This process requires appropriate deliberation necessitated by the sheer magnitude of the claim now asserted by Allen-Vanguard, well over four years after Allen-Vanguard made its initial claim of $40,000,000. This is a considerable undertaking with obvious logistical challenges, and will require many months to complete.

21. In asserting its claim for $650,000,000 in damages Allen-Vanguard relies in part on section 7.07 of the Share Purchase Agreement, suggesting that its claims amount to a reduction of the Purchase Price. The Purchase Price was paid to all shareholders and not just the Offeree Shareholders. As such, it may be necessary to join the minority shareholders as necessary parties to this action pursuant to Rule 5.03 of the *Rules of Civil Procedure*.

22. Additionally, or in the alternative, there exists the possibility that the Offeree Shareholders may be required to issue third party claims. The minority shareholders, for example, are in exactly the same position vis-à-vis Allen-Vanguard as the Offeree Shareholders, with respect to the allegations made against former management of Med-Eng. Both groups are former shareholders of Med-Eng and both shared in the proceeds of sale of Med-Eng. As such,

the Offeree Shareholders have to consider issuing third party claims against each of the minority shareholders.

23. As indicated above, the Offeree Shareholders also intend to serve Allen-Vanguard with a demand for particulars before amending their statement of defence. Based on the particulars provided by Allen-Vanguard, the Offeree Shareholders will have to consider whether there are other potential third-party claims which must be issued.

24. None of these steps will be necessary, however, if the Offeree Shareholders motion for summary judgment, referenced further below, is granted.

Documentary Production

25. Prior to January 29, 2013, Allen-Vanguard's claim was limited to the funds in the Escrow Fund, and there was no claim for damages directly against the Offeree Shareholders over and above that amount. Additionally, Allen-Vanguard had not made any allegations relating to the interpretation of the Share Purchase Agreement or the Escrow Agreement or any alleged ambiguity relating thereto.

26. Accordingly, the Offeree Shareholders' productions did not include documents relating to the negotiation of the Share Purchase Agreement and the specific terms drafted to preclude a claim directly against the Offeree Shareholders. As a result, the Offeree Shareholders will need to conduct another review of the documents in their control and possession and produce additional relevant documents. An initial cursory review of documents gathered but previously identified as not relevant has already resulted in the identification of numerous documents

which are highly relevant to the issue of Allen-Vanguard's limited right to indemnification. Completing this review will be a time consuming undertaking, and will certainly result in further examination for discovery of Allen-Vanguard.

27. Allen-Vanguard will also need to engage in further documentary review and production in light of the assertions made in the Amended Statement of Claim. It is readily apparent, for instance, that if Allen-Vanguard is going to advance a claim directly against the Offeree Shareholders for the alleged misrepresentations of Med-Eng, then it must disclose all documents relating to the negotiation of the Share Purchase Agreement, arguably including those documents which would formerly have been subject to claims for solicitor-client privilege.

28. The Offeree Shareholders will argue that Allen-Vanguard was aware that the Share Purchase Agreement was specifically drafted in order to prevent exposing the Offeree Shareholders to claims for indemnification relating to representations made by Med-Eng. By now advancing claims against the Offeree Shareholders directly, Allen-Vanguard has waived any privilege over documents relating to the negotiation and drafting of the Share Purchase Agreement.

29. If this Court is not willing to order the disclosure of these documents as a term of the order granting Allen-Vanguard's amendments, and Allen-Vanguard is not willing to consent and produce these documents, a pre-trial motion for production of these documents will be necessary. This motion will also have to be scheduled before the completion of Mr. Luxton's examination for discovery.

30. Finally, there are likely other, non-privileged, documents that will need to be produced by Allen-Vanguard.

31. It is very difficult at this juncture to anticipate the amount of time that these additional documentary disclosure steps will take. We do know, however, that Allen-Vanguard has until April 30, 2013 to complete its review of the scope of production required in respect of the Amended Statement of Claim. Even if Allen-Vanguard was able to produce all of its additional productions shortly thereafter, that would leave less than four months for the Offeree Shareholders to review, analyze and conduct examinations for discovery of Allen-Vanguard in respect of those documents.

32. In short, the amendment of Allen-Vanguard's statement of claim necessitates additional and significant documentary production. In an email response to Master MacLeod on February 6, 2013, Mr. Chris Hutchison, counsel to the Offeree Shareholders, indicated that he did not believe Allen-Vanguard's proposed amendments would likely give rise to requests for additional documents. It was not clear to Mr. Hutchison at that time that Allen-Vanguard would be advancing an argument which put squarely at issue the negotiation and drafting of the Share Purchase Agreement. For this reason, and all those outlined above, additional documentary production is absolutely necessary. Consequently and unfortunately, the September 2013 trial date must be adjourned.

Further Examinations for Discovery

33. As indicated above, further discovery of an Allen-Vanguard representative will be necessary as a result of the Amended Statement of Claim. It should also be noted that the

original examination for discovery of David Luxton had not even been completed prior to the delivery by Allen-Vanguard of the Amended Statement of Claim.

34. It is difficult, if not impossible, to determine the amount of further discovery that will be necessary until Allen-Vanguard has produced the documents relevant to the Amended Statement of Claim. At a minimum, Mr. Luxton will need to be examined with respect to the negotiations surrounding the Share Purchase Agreement, the evidence that Allen-Vanguard will put forth in support of its allegation that it would not have completed the transaction if "the true state of MES's affairs had been accurately represented"[3] as well as the extensive damages claimed by Allen-Vanguard.

35. For instance, as Allen-Vanguard has alleged that it "spiraled into insolvency" as a result of the alleged misrepresentations and breaches of representations, warranties and covenants, the Offeree Shareholders will need to examine a corporate representative of Allen-Vanguard in respect of all facets of Allen-Vanguard's business from *at least* September of 2007 through 2009, and perhaps beyond. This would include *all* of the business and financial information of Allen-Vanguard and its subsidiaries. For example, the Offeree Shareholders will also need to examine a corporate representative of Allen-Vanguard in respect of the development and sales of Allen-Vanguard's own military technology and not just that which it acquired with Med-Eng in 2007.

36. The Offeree Shareholders also anticipate that there will be considerable discovery relating to Allen-Vanguard's attempts to mitigate its losses. This is in addition to the further

[3] Amended Statement of Claim, paragraph 105.