

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 PLAN
OF COMPROMISE OR ARRANGEMENT OF
GROWTHWORKS CANADIAN FUND LTD.

**FIRST SUPPLEMENT TO THE SEVENTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

April 7, 2014

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

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

AND IN THE MATTER OF A PLAN
OF COMPROMISE OR ARRANGEMENT OF
GROWTHWORKS CANADIAN FUND LTD.

**FIRST SUPPLEMENT TO THE SEVENTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013, which stay of proceedings was thereafter extended until April 10, 2014 (the “**Stay of Proceedings**”) and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. On Thursday April 3, 2014, the Monitor served and filed its Seventh Report to the Court: (i) in support of the Applicant’s motion for an extension of the Stay of Proceedings until May 9, 2014; and (ii) in order to comment on the Allen-Vanguard Litigation and outline the

Monitor's responses to certain of the matters raised by Justice Brown in his reasons dated March 24, 2014 (the "**Seventh Report**").

3. In the Seventh Report, the Monitor noted that, as of the date of the Seventh Report, the Monitor had received from the Fund and counsel to the Offeree Shareholders their proposed timetable and estimate of costs of a mini trial. However, the Monitor had not yet received a fee estimate or proposed litigation timetable from counsel to Allen-Vanguard.

4. Allen-Vanguard did not submit any additional evidence but served its submissions with respect to the April 8th motion on Friday April 4, 2014.

5. In the Seventh Report, the Monitor indicated to the Court that it would file a further brief report prior to the return of the stay extension motion with respect to the fee estimates and costs provided by each of the parties.

PURPOSE OF THIS REPORT

6. The purpose of this first supplement to the seventh report of the Monitor is to inform the Court of the following:

- (a) the Monitor's comments on Allen-Vanguard's assertion that the Stay of Proceedings should not be extended; and
- (b) the Monitor's comments with respect to fees estimates and costs provided by each of the parties

TERMS OF REFERENCE

7. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Applicants' books

and records and discussions with various parties including advisors to Roseway and the Fund's management and advisors. The Monitor has not audited or otherwise verified the litigation fee estimates provided by the parties.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

9. Capitalized terms not defined herein shall have the meaning ascribed to in the Seventh Report, filed on April 3, 2014.

10. This report should be read in conjunction with the Seventh Report as certain information contained in the Seventh Report has not been included herein in order to avoid unnecessary duplication.

STAY EXTENSION

The Stay of Proceedings should be Extended

11. As noted in the Seventh Report, the Stay Period currently expires on April 10, 2014, and accordingly, the Fund is seeking an extension of the Stay of Proceedings to May 9, 2014. The Monitor in its Seventh Report expressed its support of the short stay extension sought by the Fund in order to conclude a management and advisory agreement with Roseway.

12. Assuming such an agreement with Roseway is completed, the Monitor understands that the Fund will then look to obtain Court approval of a longer extension of the Stay of Proceedings to provide the Applicant with a stable environment to harvest and realize on the Fund's Portfolio over the next few years through appropriate exit opportunities. The goal of these activities is to pay Roseway in full and to be in a position to make distributions to unsecured creditors and shareholders of the Fund to the extent possible.

13. In the submissions of Allen-Vanguard, Allen-Vanguard asserts that there remains no justifiable basis for the continuance of the CCAA proceedings and that a continuation of the Stay of Proceedings is not in the interest of any stakeholder.

14. In the Monitor's view, the Fund has demonstrated meaningful progress towards the restructuring of its affairs. The Fund implemented a SISP which did not yield acceptable results. However, the Fund is working towards the implementation of an alternative and viable restructuring plan that involves the management of the Fund's Portfolio by its only secured creditor.

15. The Fund is regulated by the Ontario Securities Commission ("OSC") and has been in discussions with the OSC regarding the proposed management agreement with Roseway. The Monitor has been advised by both Roseway and the Fund that the OSC has indicated that it will not take a position in respect to the proposed management arrangement with Roseway while the Fund remains subject to these CCAA proceedings.

16. The restructuring plan of the Fund, and its implementation as part of these CCAA proceedings, in the Monitor's view, represents the best available option in the circumstances for the Fund and its stakeholders. The continued harvesting and realization of the Portfolio over time is necessary in order to manage its illiquid investments to facilitate the payment in full to Roseway and thereafter, to be in a position to make any distributions to unsecured creditors and shareholders of the Fund.

17. Accordingly, the extension of the stay is for the benefit of all stakeholders of the Fund, including Allen-Vanguard, if and to the extent, Allen-Vanguard is successful in its litigation against the Fund. In addition, the extension of the stay is in furtherance of the CCAA's

fundamental purposes- the restructuring of insolvent companies for the benefit of all stakeholders.

18. The Monitor understands that the Fund filed for CCAA protection in part to avoid a liquidation of its assets in a receivership that would have otherwise been commenced by Roseway absent the Fund filing for protection under the CCAA. In addition, counsel to Roseway has informed the Monitor that if the Stay of Proceedings is not extended at this time or at any time during the term of the proposed Roseway Agreement, Roseway will look to file an application to appoint a receiver over all of the property, assets and undertakings of the Fund, at which time, Allen-Vanguard's litigation against the Fund will be dealt with by any receiver appointed.

19. Furthermore, the Monitor understands that a liquidation of the Fund's assets through a receivership could result in negative tax consequences to the Fund and its shareholders. Under the *Income Tax Act*, the Monitor understands that the Fund could not continue to meet its "pacing" requirement to have at least 60% of its equity in certain permitted investments in order to avoid tax penalties. In addition, the Monitor has been advised by the Fund that the Fund's shareholders may be subject to wind-up tax penalties upon either dissolution or a bankruptcy of the Fund. In that regard, continuation of the CCAA avoids the risk of such tax penalties on the Fund and its shareholders.

20. Accordingly, the Monitor is of the view that the Stay of Proceedings should be extended and the CCAA Proceedings should be continued in the best interest of all of the Fund's stakeholders.

The Stay of proceedings vis a vis Allen-Vanguard

21. As outlined in the Seventh Report, it is the Monitor's view that there is no reason why Allen-Vanguard's disputed claim should not proceed. Further, as explained in the Seventh Report, it is the Monitor's view that the manner in which Allen-Vanguard's claim proceeds should be cost efficient and structured as to avoid further and undue delay in order to ensure that the Allen-Vanguard Litigation does not impede the Fund's ability to determine and quantify any claims or to make distributions, to the extent possible, to creditors and investors of the Fund in accordance with their priorities prior to the end of 2015.

THE ALLEN-VANGUARD LITIGATION PROCEEDINGS

22. The Monitor has now received from the Fund, counsel to the Offeree Shareholders and Allen-Vanguard, each of the parties' proposed timetables and estimate of costs of a mini trial as described above.

23. Upon reading the submissions of the Fund, the Offeree Shareholders and Allen-Vanguard, it is clear that the parties fundamentally disagree as to: (i) whether a mini trial should be conducted; (ii) the scope of any mini trial; (iii) the evidence required to be submitted with respect to any mini trial; (iv) the costs of a mini trial relative to the costs of a full trial; and (v) the length of time required to conduct a mini trial relative to the estimated time for a full trial.

24. Despite the significant differences outlined by the parties as to the various options asserted as the "best way forward", including arguments in support of a mini trial of discrete issues, a bifurcated trial of liability and damages or a full trial, the Monitor has attempted to provide the Court with a summary of the positions taken by each of the parties as set out below:

	Mini Trial		Full Trial	
	Fund's Position	Allen -Vanguard's	Fund's position	Allen - Vanguard Position
Principal Argument	Mini Trial of three issues discrete with fraud on the part of the Offeree Shareholders assumed to be proven true	No Mini Trial. or Mini Trial only if fraud and breaches of representations <u>admitted</u> by Offeree Shareholders	No Full Trial – Summary or Mini Trial only	Full trial or Bifurcated Trial of liability and damages
Costs to the Fund	\$15,000 to \$25,000 for the Fund	\$60,000-\$80,000 for the Fund	\$400,000-\$650,000 for the Fund for a Full Trial	\$100,000-\$125,000 for the Fund for a Bifurcated Trial \$165,000-\$210,00 for the Fund for a Full Trial
Timing	1 week hearing to occur approximately in 15 weeks.	3 weeks	Not provided but Offeree Shareholders assert that Trial would not be ready to proceed in September 2014	6-7 weeks for Trial without damages (to be heard in September-October 2014) 12-17 weeks for Full Trial (to be heard in 2015)
	Preparation prior to hearing will include filing affidavits, case management conference and filing of expert report	No breakdown provided as to total amount of time required prior to hearing		
Evidence	- no expert evidence required (Offeree shareholders willing to compromise on this issue) - three short affidavits	- expert evidence to be admissible - affidavit evidence from members of Allen-Vanguard's board in support of allegations of fraud - expert evidence on M&A transactions - summons to witness and cross examination of Paul Timmons		

	Mini Trial		Full Trial	
	Fund's Position	Allen -Vanguard's	Fund's position	Allen - Vanguard Position
		- summons to witness from other parties to the share purchase agreement		

25. Given that the parties have been unable to reach any type of compromise as to form, scope, timing, evidence admitted and costs of a particular litigation plan, and that the Monitor has not incurred the costs of an independent litigation audit to verify the reasonableness of the information provided by the parties, the Monitor is unable to make a specific recommendation as to a litigation timetable and proposed plan submitted by the parties to resolve Allen-Vanguard's disputed claim

26. However, as noted in the Seventh Report, notwithstanding the disagreement between the parties, the Monitor is of the view that Allen-Vanguard's claim needs to be dealt with and would benefit from a court-supervised process where the supervising court can establish a timetable that will prevent any further potential lengthy and undue delays as a result of the inability of the parties to work co-operatively or come to any consensual resolution of the issues. A court-supervised process will best address the concerns of the Monitor as to costs of the litigation incurred by the Fund's estate and further delays which may impede on the claims process and payments, if any, to unsecured creditors and shareholders of the Fund.

27. In that regard, the Monitor remains of the view that a summary procedure to determine the claims, if any, of Allen-Vanguard against the Fund, within the CCAA proceedings

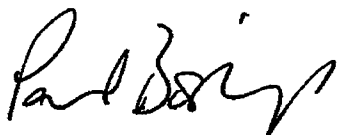
or in Ottawa, with parameters and restrictions as to timing and evidence established by this CCAA Court, will best address the Monitor's concerns.

The Monitor respectfully submits to the Court this First Supplement to the Seventh Report.

Dated this 7th day of April, 2014.

FTI Consulting Canada Inc.

in its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its personal or corporate capacity



Paul Bishop
Senior Managing Director



Jodi B. Porepa
Managing Director

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

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

Ontario
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FIRST SUPPLEMENT TO THE SEVENTH
REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Marc Wasserman (LSUC#44066M)
Tel: (416) 862-4908
Email: mwasserman@osler.com

Caitlin Fell (LSUC #60091H)
Tel: (416) 862-6690
Email: cfell@osler.com

Solicitors for the Monitor
F. 1145565