

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

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.

TWENTY-FIFTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR

December 16, 2019

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**TWENTY-FIFTH REPORT OF
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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 (the “**Initial Order**”, a copy of which, as amended and restated is attached hereto as Appendix “A”) by the Ontario Superior Court (Commercial List) (the “**Court**”) was granted.
2. The Initial Order, among other things, granted a stay of proceedings against the Applicant, which stay of proceedings was most recently extended until December 31, 2019 (the “**Stay of Proceedings**”). The Initial Order also appointed FTI Consulting Canada Inc., as monitor of the Fund (the “**Monitor**”).
3. The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

BACKGROUND

4. The Fund is a labour sponsored venture capital fund that held a diversified portfolio (the “**Portfolio**”) consisting primarily of investments made in small and medium-sized Canadian businesses (each a “**Portfolio Company**”).

5. The Fund was formed in 1988 with the investment objective of achieving long-term appreciation for its Class A shareholders, who principally comprise retail investors.

6. At the commencement of these CCAA proceedings, approximately \$25.7 million was outstanding and owing to Roseway Capital S.a.r.l, the Fund’s sole secured creditor.

7. In or around the beginning of 2016, Roseway was paid out in full by the Fund, leaving only unsecured creditor and shareholder claims.

PURPOSE OF THIS REPORT

8. The purpose of this Twenty-Fifth report of the Monitor is to provide an update to the Court and provide the Monitor’s comments on, *inter alia*:

- (a) update on the status of litigation;
- (b) the status of the Fund’s Portfolio and realizations of the Portfolio since March 22, 2019;
- (c) next steps for the Fund in these CCAA Proceedings;
- (d) the Fund’s cash flow projections for the period from December 11, 2019 to September 30, 2020; and
- (e) the Fund’s request for an extension of the Stay of Proceedings until September 30, 2020.

TERMS OF REFERENCE

9. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Applicant's books and records and discussions with various parties and the Fund's investment and other advisors.

10. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

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

12. Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the affidavit of Ian Ross, sworn December 16, 2019 and filed (the "**Fund Affidavit**").

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

LITIGATION

14. Prior to the commencement of these CCAA Proceedings, the Fund's day-to-day operations with respect to the Portfolio were delegated to a fund manager, GrowthWorks WV Management Ltd. (the "**Former Manager**"). On September 30, 2013, the Fund terminated the management agreement between the Former Manager and the Fund (the "**Management Agreement**").

15. The termination of the Management Agreement formed the basis of a significant claim filed against the Fund in the amount of \$18 million and a counter-claim filed by the Fund against the Former Manager. (the "**Former Manager Litigation**").

16. Following completion of the trial in respect of the Former Manager Litigation, the Court dismissed the Former Manager's claim for damages. With respect to the Fund's counter-claim against the Former Manager, the Court also dismissed this claim. However, the Court awarded

to the Fund, damages in respect of certain other claims made by the Fund in relation to the Former Manager's other breaches of its obligations under the Management Agreement. To date, the Fund has received \$229,000 in respect of costs, being the funds (plus interest) held as security for costs.

17. As mentioned in the Monitor's Twenty-Fourth Report, on March 13, 2019, a motion was brought against GWC LP and Newbury seeking the payment of certain deferred proceeds. On April 17, 2019, the Court released its decision in favour of the Fund.

CURRENT STATUS OF THE PORTFOLIO

18. At the commencement of these CCAA Proceedings, the Fund's Portfolio consisted of investments in approximately 71 companies. These investments principally comprised minority equity and debt holdings in private software, technology and biotech companies.

19. Over the past seven years the Fund has undertaken methodical divestiture of its Portfolio in order to maximize recovery for stakeholders. The timing of the divestment of the Portfolio has been critically important. By selling the Portfolio at appropriate times over the course of these CCAA Proceedings, the Fund avoided a fire sale of its assets, thereby generating considerable return and maximizing value for the Fund's stakeholders. The Fund currently holds 17 investments. The Monitor has been advised by the Fund and its investment manager, Crimson Capital Inc (the "**Investment Advisor**"), that 8 of those investments have negligible value.

20. While the Fund has not undertaken a formal valuation of its remaining Portfolio, the Investment Advisor estimates that the remaining realizable value of the Portfolio is between approximately \$15 million and \$23 million. The Monitor notes that this estimate is subject to variation as to timing of disposition and market prices.

21. The Monitor, on behalf of the Fund, is currently holding approximately US\$3.49 million and CDN \$780 thousand in cash.

22. In its Twenty-Second Report to the Court, the Monitor noted that the Investment Advisor anticipated pursuing divestments of the Portfolio with the goal of monetizing the entire

Portfolio by the end of 2019. This goal was not achieved. However, as noted at the time, the divestment of the Fund's remaining Portfolio depends on the existence of favourable market conditions and events such as regulatory approval of medical devices. Therefore, the exact timing of the disposition of the remainder of the Portfolio was and is still not certain. Moreover, as the Fund does not hold a controlling position in any of the Portfolio investments, it is not able to force a sale without the consent of a Portfolio Company's other shareholders.

23. In view of the foregoing, the Investment Advisor, with the oversight of the board of directors (the "**Board**") and the Monitor, continues to balance the necessity for favourable market conditions to dispose of the Portfolio (in order to maximize value), with the need to efficiently realize on the Fund's investments for distribution to stakeholders.

STRATEGIC REVIEW

24. The Board and the Monitor are mindful of the need to complete these CCAA proceedings and distribute funds to Shareholders. However, as noted in this and previous Monitor's reports, the timing of sale or realization on investments is uncertain and in large part beyond the control of the Fund. Therefore, as noted in the Monitor's Twenty-Fourth Report, the Board engaged Commercial Capital Corporation (operating as CCC Investment Banking) ("**CCC**"), as financial advisor, to engage in a strategic review and to advise the Board as to whether there were appropriate alternatives to monetize the Fund from the current course of action, being the slow and orderly liquidation of the remaining Portfolio.

25. Commencing in March 2019, CCC undertook a limited marketing process, contacting parties that had previously expressed interest in acquiring the Portfolio and/or the tax losses associated with the Portfolio. No acceptable proposals were put forward as a result of this limited marketing.

26. In July 2019, CCC, at the direction of the Board, and with the approval of the Monitor, commenced a broader marketing of the Portfolio, contacting approximately 75 parties which were considered potential purchasers of the Portfolio. These potential purchasers were primarily small to medium size investment funds and private family investment funds (the "**Second Canvassing**").

27. CCC actively marketed the Portfolio in the Second Canvassing for approximately 5 months, however, no acceptable offers were forthcoming. Accordingly, in December 2019, the Board, with the concurrence of the Monitor, rejected all offers and proposals received.

28. At this time, based on market conditions, it is the view of the Investment Advisor, the Board and the Monitor, that continuation of an orderly liquidation of the Portfolio is in the best interests of stakeholders, principally being the shareholders of the Fund.

29. Notwithstanding the continued liquidation, under the supervision of the Monitor and with assistance from third party advisors, the Board will continue an analysis of strategic alternatives and a limited market check to determine if there are any other sources of value for its stakeholders. To the extent that market conditions change or that the Fund, in consultation with CCC, its Investment Advisor, and the Monitor, determine that an en-bloc sale of the Portfolio and/or of its shares is in the best interests of the Fund and its stakeholders, the Monitor will advise the Court of any such developments.

30. The Monitor concurs with the Board's decision to extend Investment Advisor's contract to September 30, 2020.

NEXT STEPS IN THE CCAA PROCEEDINGS

General

31. During the next proposed stay period, the Board with the assistance of the Monitor, will continue to pursue an orderly liquidation of the remaining investments as well as continue its strategic review as noted above.

32. The Board, with the assistance of the Monitor, will also consider ways to further reduce the Fund's operating costs. In addition, the Fund, in consultation with the Monitor, will pursue the Former Manager for payment of the Cost Award, less the amount of \$229,000 noted above which was held as security for costs.

Claims Process

33. As mentioned in the Twenty-Fourth Report of the Monitor, the Monitor, with the assistance of the Fund, must complete the pre-filing claims process previously approved by the Court on January 9, 2014 (the “**Claims Process Order**”).

34. Under the Claims Process Order, pre-filing claims against the Fund and the officers and directors of the Fund were solicited. However, as there was uncertainty at this time as to whether there would be recovery to unsecured creditors, the Monitor was not obligated to review or adjudicate these claims. Instead, the Monitor retained the discretion to review and adjudicate such claims if it appeared that there would be sufficient proceeds available for creditors to warrant the cost of doing so. During the proposed Stay Period (as defined herein), the Monitor will complete its review of pre-filing claims.

35. The Monitor has delayed commencing a post-filing claims process until such time that it is apparent that the Fund is nearing completion of the disposition of the remaining Portfolio. This has been done in order to avoid the potential for having to incur costs to complete two post filing claims processes in the event that there ended up being a significant period of time as between a post-filing claims process and completion of these CCAA Proceedings.

ACTUAL RECEIPTS AND DISBURSEMENTS OF THE FUND FOR THE PERIOD FROM MARCH 20, 2019 TO DECEMBER 10, 2019

36. The Fund’s actual net cash flow for the period from March 20, 2019 to December 10, 2019 (the “**Current Period**”) together with an explanation of key variances as compared to the forecast attached to the Monitor’s Twenty-Fourth Report (the “**Prior Forecast**”) is set out below.

Forecast v. Actual

Actuals as at December 10, 2019

(CAD in thousands)	Forecast	Actual	Variance
Beginning Cash Balance	3,121	3,121	-
Cash Flow from Operations			
Receipts	5,295	3,103	(2,191)
Fund Legal Fees - General	(306)	(80)	227
Fund Legal Fees - Litigation	(199)	(74)	125
D&O Insurance	-	-	0
Back Office and Administrative	(133)	(137)	(4)
CEO and Board Fees	(162)	(122)	41
Legal Fees re: Transactions	(100)	-	100
Other Expenses and Contingency	(78)	(38)	40
Realized FX Gain (Loss)	-	(26)	(26)
Operating Cash Flows	4,316	2,627	(1,689)
Monitor Fees	(103)	(72)	31
Counsel to the Monitor Fees	(94)	(15)	79
IAA Disbursements	(1,770)	(256)	1,514
Projected Net Cash Flow	2,349	2,283	(65)
Ending Cash Balance	5,469	5,404	(65)

37. The negative variance in receipts is caused by the delay in the occurrence of forecast Portfolio Company divestments. The monetization of these investments is anticipated to occur at a later date, although timing and amount realized are uncertain at this time. As a result of the delay of these divestments, there is a positive variance in the line item of disbursements related to disposition of the investments (IAA Disbursements and Legal Fees re: Transactions), as these disbursements include provisions for fees payable on investment exits and for legal fees to close these transactions.

38. The positive variance in Fund general and litigation fees is due to lower than anticipated litigation costs. The positive variance in CEO and Board Fees are primarily due to timing and expected to reverse in future periods. The positive variance in back office and administrative, other expenses and contingency, as well as Monitor's Fees and Monitor's Counsel Fees is principally due to lower than expected costs.

THE FUND'S CASH FLOW FORECAST

39. The Fund has prepared a cash flow forecast for the period from December 11, 2019 to September 30, 2020 (the "Forecast"). A copy of the Forecast is attached as Appendix "B". The

Forecast shows a closing balance of approximately \$14 million. The Forecast is summarized below:

(CAD in thousands)	
	Total
Beginning Cash Balance	5,404
Cash Flow from Operations	
Receipts	10,570
Fund Legal Fees - General	(139)
Fund Legal Fees - Litigation	(45)
Back Office and Administrative	(130)
CEO and Board Fees	(162)
Legal Fees re: Transactions	(110)
Other Expenses and Contingency	(84)
Operating Cash Flows	9,900
Monitor Fees	(116)
Counsel to the Monitor Fees	(38)
IAA Disbursements	(954)
Projected Net Cash Flow	8,792
Ending Cash Balance	14,196

40. It is anticipated that throughout the Forecast period the Fund's projected liquidity requirements will be met from cash currently on hand and future investment exits. It is anticipated that approximately \$11 million will be realized from investments during the proposed stay extension period, however, we note that timing and quantum of such receipts remain subject to change.

STAY EXTENSION

41. The stay period currently expires on December 31, 2019 (the "**Stay Period**") and the Fund is seeking an extension of the Stay of Proceedings to and including September 30, 2020.

42. The Monitor is supportive of the longer stay extension in order for the Fund to continue to preserve and maximize the value of the Fund's Portfolio, consisting primarily of illiquid assets, for the benefit of the Fund's stakeholders.

43. The Monitor is of the belief that stakeholders and creditors of the Fund would not be materially prejudiced by the extension of the Stay Period. The Monitor is also of the belief that

the Fund has acted, and is acting, in good faith and with due diligence and that circumstances exist that warrant an extension of the stay to September 30, 2020.

The Monitor respectfully submits to the Court this Twenty-Fifth Report.

Dated this 16th day of December 2019.

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

APPENDIX "A"

APPENDIX “B”

Growthworks Canadian Fund Ltd.

APPLICANT'S EXTENDED 9 MONTH CASH FLOW FORECAST

(CAD in thousands)

Month Ending Forecast Month	31-Dec-19 0	31-Jan-20 1	29-Feb-20 2	31-Mar-20 3	30-Apr-20 4	31-May-20 5	30-Jun-20 6	31-Jul-20 7	31-Aug-20 8	30-Sep-20 9	Total
Beginning Cash Balance	5,404	5,288	5,192	6,715	7,169	7,106	7,042	13,672	14,285	14,308	5,404
Cash Flow from Operations											
Receipts	-	-	1,760	600	-	-	7,350	750	110	-	10,570
Fund Legal Fees - General	(9)	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(40)	(139)
Fund Legal Fees - Litigation	-	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(45)
Back Office and Administrative	(29)	(36)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(130)
CEO and Board Fees	(29)	(8)	(8)	(29)	(8)	(8)	(29)	(8)	(8)	(29)	(162)
Legal Fees re: Transactions	-	-	(30)	(10)	-	-	(50)	(10)	(10)	-	(110)
Other Expenses and Contingency	(6)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(9)	(84)
Operating Cash Flows	(73)	(69)	1,689	528	(41)	(41)	7,238	699	59	(90)	9,900
Monitor Fees	(28)	(11)	(11)	(11)	(7)	(7)	(11)	(11)	(11)	(7)	(116)
Counsel to the Monitor Fees	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(38)
IAA Disbursements	(12)	(12)	(151)	(59)	(12)	(12)	(593)	(71)	(20)	(12)	(954)
Projected Net Cash Flow	(116)	(96)	1,523	454	(63)	(63)	6,630	613	23	(113)	8,792
Ending Cash Balance	5,288	5,192	6,715	7,169	7,106	7,042	13,672	14,285	14,308	14,196	14,196

Notes:

- [1] The purpose of this cash flow forecast is to determine the liquidity requirements of the Applicant during the forecast period.
- [2] Forecast Cash flow from operations assumptions are based on existing Accounts Payable.
- [3] Monitor and Monitor's Counsel Fees include professional fees associated with the CCAA Proceedings, the Applicant's restructuring efforts.
Professional fee disbursement assumptions are based on budgeted time and expenses for the various legal and financial advisors expected to participate in the CCAA Proceedings.
- [4] The opening cash balance contains \$3,491,066 USD which is converted at the December 10, 2019 Bank of Canada rate of 1.3233 CAD/USD.
- [5] Forecast receipts are the result of anticipated proceeds from portfolio divestitures.

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Proceeding commenced at Toronto

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