

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

In Re Growthworks Canadian Fund Ltd.

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

| Counsel | Telephone No: | Facsimile No: |
|---------|---------------|---------------|
|         |               |               |
|         |               |               |

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

All parties have been served. Two objections have been received but none of the objectors appear this morning. The only significant ground of objection pertains to the action commenced against the ~~Offeree~~<sup>Offeree</sup> Shareholders. However, the following considerations are relevant in concluding that this is not a basis for denying the order. First, there is no allegation that the Offeree Shareholders had knowledge of the alleged fraudulent misrepresentations.

March 3/15  
Date

W. Han-Int J.  
Judge's Signature

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## Judges Endorsment Continued

There is therefore a significant possibility that the claim against them could not succeed given the language of the share purchase agreement which appears to limit claims to the Soreen Fund. Second, even if such claims were successful, given the lack of knowledge of the Offeree Shareholders, there is a probability of contribution claims over against the remaining shareholders. In these circumstances, I conclude that, based on the evidence before the Court, the settlement was for the benefit of all of the shareholders insofar as an amount is released in their favour from the Soreen Fund.

Based on the foregoing I am satisfied that the Offeree Shareholders should receive their costs of the litigation on the basis that it resulted in a settlement of benefit to all of the shareholders on a pro rata basis. I am also satisfied that the mechanism for finalisation of these costs contains appropriate protection for

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Judges Endorsment Continued

all of the shareholders inasmuch as each of  
the Officer Shareholders have a material interest  
in the determination of reasonable expenses based  
on their shareholdings in the Corporation prior  
to rate.

Order to go on the form attached.