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 March 31, 2014
(Stay Extension and Further Allen-Vanguard Motion)

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 a series of affidavits in these *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings, including an affidavit on September 30, 2013 in support of the initial application of the Fund pursuant to the CCAA, which I shall refer to herein as my "**Initial Affidavit**". I also swore an affidavit on November 20, 2013 (my "**Allen-Vanguard Affidavit**") in relation to the Fund's motion to determine certain key issues relating to the claim by Allen-Vanguard Corporation ("**Allen-Vanguard**" or "**AVC**")

against the Fund and other defendants (collectively, the "**Offeree Shareholders**") in a summary proceeding in these CCAA Proceedings (together with the related motions by Allen-Vanguard, the "**AVC Motion**"). Capitalized terms contained, but not defined herein, have the meanings provided in my Initial Affidavit or my Allen-Vanguard Affidavit.

3. I swear this affidavit in support of a motion for an order extending the Stay Period as defined in paragraph 14 of the Initial Order (defined below) (the "**Stay Period**") to May 9, 2014, and to respond to the questions posed by the Honourable Justice D.M. Brown at paragraph 64 of his reasons dated March 24, 2014 dealing with the AVC Motion (the "**Reasons**") and for no other or improper purpose.

BACKGROUND AND CCAA PROCEEDINGS

4. 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**").

5. In the face of the challenges described in my Initial Affidavit, including a $20 million secured payment obligation coming due to Roseway Capital S.a.r.l. ("**Roseway**"), the Fund sought and received Court protection pursuant to the CCAA in the form of an initial order of the Honourable Justice Newbould dated October 1, 2013, which was amended and restated on October 29, 2013 by the Honourable Justice Mesbur (as amended and restated, the "**Initial Order**").

6. The Stay Period has been extended by orders dated October 29, 2013, January 9, 2014 and March 6, 2014. It presently expires on April 10, 2014.

7. Among other steps in these CCAA proceedings to date, the Fund has completed a Claims Process and Sale and Investor Solicitation Process, each of which is described below.

CLAIMS PROCESS

8. On January 9, 2014, a procedure for identifying, assessing and determining claims against the Fund (the "**Claims Process**") was approved by order of the Honourable Justice McEwen (the "**Claims Order**").

9. The Claims Bar Date prescribed in the Claims Order was March 6, 2014 (the "**Claims Bar Date**").

10. I understand that FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), will provide further details regarding the Claims Process; however, at a high level, I understand that the only secured claim against the Fund was filed by Roseway and the significant unsecured claims filed appear to be the following alleged claims:

(a) claim by the former manager of the Fund in the amount of $18 million plus interest and costs;

(b) claim by Allen-Vanguard (discussed herein) (the "**AVC Claim**");

(c) claim by the Offeree Shareholders for contribution and indemnity in an amount "only for the Applicant's proportional damages adjudged to be owing insofar as such claim is asserted against the Offeree Shareholders as a joint and several claim", for an undefined amount, plus interest and costs; and

(d) claim by Douglas Milburn and other plaintiffs in litigation relating to Advanced Glazing Technologies Limited in the amount of $28 million plus interest.

11. None of the above unsecured claims has been assessed by the Monitor or the Fund as part of the Claims Process at this time. However, as previously reported, the Fund contests the allegations made by these claimants and is of the view that these claims are baseless and/or exaggerated. Accordingly, the Fund continues to be of the view that, when properly assessed, adjudicated and valued, the actual quantum of valid unsecured creditor claims against the Fund will not be significant.

SALE AND INVESTOR SOLICITATION PROCESS

12. On November 18, 2013, the Honourable Justice Morawetz granted an order approving a Sale and Investor Solicitation Process (the "**SISP**"). The purpose of the SISP was to canvass the market to solicit interest in purchasing or investing in the Fund's business and property. The Fund retained a financial advisor, The Commercial Capital Corporation (operating as CCC Investment Banking) (the "**Financial Advisor**"), to assist with this process.

13. As previously reported in my affidavit dated March 3, 2014 and in the Sixth Report of the Monitor, two proposals were submitted at the Phase 2 bid deadline of February 3, 2014, neither of which constituted a "Qualifying Bid" as defined in the SISP.

14. One proposal received at the Phase 2 bid deadline contemplated a purchase of only a portion of the Fund's assets at a price that, after taking into consideration the advice of the Financial Advisor, was unacceptable to the Fund (the "**Discounted Sale**

Offer"). The second proposal was neither a sale nor investment offer but rather was a proposal to take over the management of the Fund's investment portfolio (the "**Management Proposal**") for a fee. No offer to complete a merger transaction was received during Phase 2 of the SISP.

NEXT STEPS: ROSEWAY MANAGEMENT AGREEMENT

15. After receipt of the proposals at the Phase 2 bid deadline, the Fund, its advisors and the Monitor met with Roseway and its advisors to consider the Discounted Sale Offer and the Management Proposal and to discuss the best path forward for the Fund and its stakeholders, including Roseway.

16. The Fund recommended to Roseway that the Discounted Sale Offer be rejected because the price offered was inadequate and the remaining Fund assets would require continued management with reduced resources. Instead, the Fund recommended that it retain its assets to be managed and realized to repay Roseway and to preserve value for other stakeholders.

17. Roseway expressed concern that it was not familiar with the manager in the proposed Management Proposal and agreed to make further inquiries with respect to that entity.

18. The Fund is of the view that management of its assets over time such that they can be realized in the ordinary course when appropriate divestment (or "exit") opportunities arise is the most appropriate course of action for the Fund given the nature of the Fund's assets and the results of the SISP.

19. As described in my earlier affidavits, the Fund's investments in the Portfolio Companies are held in illiquid securities consisting primarily of minority equity interests

in private companies. The Fund's ability to divest of these illiquid investments at a profit is largely dependent on favourable market conditions for exit opportunities, typically at the stage of an initial public offering or a merger or acquisition involving a Portfolio Company. A forced sale of the Fund's investment assets, prior to an appropriate exit opportunity arising, generally results in depressed values and portfolio losses.

20. Given that the SISP revealed no acceptable offer to purchase all of the Fund's assets in a single transaction and no merger option was identified, the Fund believes that providing time to the Fund to realize its investment assets in the ordinary course, with a manager in place to identify and capitalize on exit opportunities as they arise and perform other management functions, is the best method to maximize recovery on the assets of the Fund for the benefit of its stakeholders.

21. Accordingly, the Fund indicated to Roseway that its main interest was to provide a structure for the Fund's investment assets to be managed over time by an appropriate manager (not necessarily the entity that had submitted the Management Proposal and with which Roseway was not familiar). The Fund therefore inquired of Roseway whether it would be interested in managing those assets itself, utilizing its expertise and knowledge of the Fund's portfolio. This led to discussions between the Fund and Roseway regarding the basis upon which Roseway could manage the Fund's investment assets going forward.

22. Those discussions led to a term sheet between the Fund and Roseway (the "**Term Sheet**"). The key elements of the Term Sheet are as follows:

(a) Roseway to act as the portfolio manager of the Fund, managing the investment assets of the Fund (consisting of securities of the Portfolio Companies) (the "**Portfolio**") for a 4 year term;

(b) in its capacity as the Fund's Portfolio manager, Roseway would perform the following services, among other things:

(i) make all portfolio investment decisions concerning the Portfolio, on a fully discretionary basis;

(ii) make all appropriate arrangements to implement the sale of the Fund's portfolio assets in the ordinary course and otherwise in accordance with its existing proceedings under the CCAA;

(iii) issue appropriate instructions to facilitate delivery and settlement of Portfolio transactions;

(iv) maintain necessary records relating to the Portfolio transactions and prepare quarterly written reports to the Fund;

(c) Roseway would be entitled to an annual base fee and, for the period after all of the Fund's obligations to Roseway have been paid in full, an incentive fee equal to a percentage of the aggregate proceeds of disposition of the remaining Portfolio assets;

(d) The proposed management agreement would be subject to Court approval.

23. The Fund and Roseway are presently working toward a definitive management agreement (the "**Roseway Management Agreement**"). In doing so, the parties are mindful of the role played by the Ontario Securities Commission ("**OSC**") as regulator

and have been in communication with staff of the OSC in relation to the potential Roseway Management Agreement to keep them informed. This has been done formally, through serving the OSC with Court material, and informally with updates, telephone calls and meetings.

24. The Fund is hopeful that the Roseway Management Agreement will be concluded soon and will return to Court for approval of the agreement at that time.

GOING FORWARD: THE RESTRUCTURING PLAN

25. Current projections prepared by the Financial Advisor, which take into consideration anticipated sales of certain securities held by the Fund and the anticipated dates on which various amounts held in escrow will be released to the Fund, among other things, suggest that, with a management agreement in place, Roseway will be paid in full from the assets of the Fund prior to the completion of the proposed term of the Roseway Management Agreement.

26. In fact, while based on assumptions and forward-looking projections, a recent projection prepared by the Financial Advisor indicates Roseway could be fully paid in one year to 18 months.

27. As noted above, the proposed Roseway Management Agreement provides for an incentive fee to be paid to Roseway in respect of divestments completed after the Fund's obligations to Roseway have been paid in full.

28. Ideally, after Roseway has been paid in full, the Fund would be able to assess and value its creditor claims and proceed to make a distribution to valid creditors using any additional funds realized from the disposition of its investments in the ordinary course.

29. As noted above, the Fund continues to believe the unsecured creditor claims filed against the Fund are unfounded and/or exaggerated. Accordingly, the Fund is hopeful it will be in a position to satisfy all creditor claims in full once the claims are assessed, adjudicated and valued. If that can be done, the Fund may then be able to exit from CCAA protection and continue to realize on its assets in the ordinary course. I refer to this strategy herein as the "**Restructuring Plan**".

ALLEN-VANGUARD CLAIM AND ISSUES RAISED BY BROWN, J.

30. The background to the AVC Claim is set out in my Allen-Vanguard Affidavit, the material filed by the other Offeree Shareholders on the AVC Motion and the Reasons.

31. I swore my Allen-Vanguard Affidavit on November 20, 2013 in support of the Fund's position on the AVC Motion. At that time, I expressed concern that the AVC Claim be dealt with expeditiously due to its potential impact on the restructuring of the Fund and, in particular, any potential merger transaction. I stated as follows, among other things:

> 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.

...

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 [whether AVC 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] 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.

32. After my Allen-Vanguard Affidavit was sworn, the SISP was concluded and no merger transaction or other acceptable purchase or investment transaction was identified. The AVC Motion was heard on February 11, 2014. At that time, counsel to the Fund advised the Court that no merger transaction had been identified.

33. At paragraph 64 of the Reasons, Justice Brown posed a series of questions, with the questions directed to the Fund chiefly relating to the change in circumstances as a result of the SISP outcome. I have attempted to address those questions here.

(i) Why does a need continue to exist to develop a CCAA claims process for the AVC claim? In light of the failure of the SISP Process, why does a continued, practical need exist for the determination of the AVC Claim in a summary fashion? Why is the determination of the AVC Claim in the CCAA proceeding needed to maintain the integrity of the CCAA process in light of the failure of the SISP?

34. While there is no longer a potential merger transaction driving an urgent adjudication of the AVC Claim, a need continues to exist for a CCAA claims process to address the AVC Claim for a number of reasons. First and foremost, if the AVC Claim were to continue to be adjudicated in the usual course of the existing litigation, it may impede distributions to unsecured creditors and impede completion of the Fund's Restructuring Plan.

35. As noted above, based on the information and analysis presently available, the Fund expects Roseway to be paid in full in the relatively near future (one year to 18 months). As set out in the description of the Restructuring Plan above, once Roseway is paid in full, the Fund would then expect to continue realizing on assets in the ordinary course and to distribute such funds to valid unsecured creditors, if any.

36. Given the magnitude of the AVC Claim, the Fund believes that it will be unable to distribute funds to valid creditors, if any, or other stakeholders, until the AVC Claim is either finally adjudicated or determined to be limited to the funds held in Escrow such that AVC is not a creditor of the Fund (but rather a claimant against the funds in the Escrow).

37. While the AVC Claim remains an undetermined claim potentially outstanding against the Fund for its portion of a $610 million claim, the Fund believes that it will not be able to make a distribution to creditors (if any) and will not be able to emerge from CCAA pursuant to the Restructuring Plan.

38. The action underlying the AVC Claim (the "**AVC Action**") was commenced in 2008 and has been marked by numerous days of discovery, many productions, highly contested motions, failures of Allen-Vanguard to meet its procedural obligations, significant amendments and other contentious procedural issues and delays as outlined in the affidavit of Paul Echenberg delivered on the AVC Motion (the "**Echenberg Affidavit**"). While the extreme urgency of the potential merger has been lifted, the Fund remains a CCAA debtor with a restructuring plan to execute for the benefit of its stakeholders (including AVC to the extent it has any valid claim).

39. Given the history of the AVC Action, if the stay is lifted to permit AVC to continue its action in the usual course and there is no supervision, control or restrictions imposed by the CCAA Court, the massive AVC Claim – which the Fund continues to believe is baseless – would, in my view, very possibly impede a distribution to unsecured creditors and the Restructuring Plan as a whole.

40. A second fundamental reason to develop a CCAA claims process for the AVC claim is to address that claim in a manner that is proportional and cost-effective. This reason is described further below in the answer to the second question posed by Justice Brown.

41. Third, the Fund faces a number of claims filed against it in the Claims Process that are similarly contingent, disputed claims against the Fund. It would be both impractical and an impairment to the integrity of the CCAA process to treat the AVC Claim differently by allowing it to proceed outside the CCAA process. Conversely, if all of the contingent claims against the Fund were permitted to proceed in the usual course without supervision by the CCAA Court, the cost and time required to address such claims would very likely impede the ability of the Fund to complete the

Restructuring Plan.

(ii) What tangible benefits, including dollars and cents benefits, would a CCAA claims process offer to the restructuring objectives underlying this particular CCAA proceeding at this point in time?

42. The Fund is cost-sensitive. It received CCAA protection because it was insolvent and, until Roseway is paid in full, it is burdened by significant interest costs in relation to the amounts owing to Roseway and to tight restrictions in terms of cash flow to secure Roseway's support for the process. In addition, the Fund is attempting to maximize value for its stakeholders and, therefore, expending costs for a protracted, contentious litigation process is not consistent with its efforts to restructure or with its obligations to its stakeholders.

43. Whether the CCAA claims process adjudicates the AVC Claim in the mini-trial format, as proposed, or by way of another summary procedure (which I understand from counsel is required by the CCAA to determine the amount of a claim of this nature), I expect, based on information provided by counsel to the Offeree Shareholders (referenced below), that this process would be more cost-efficient than proceeding with the AVC Action in the usual course – particularly given the procedural history of the AVC Action referenced above.

44. The Fund anticipates the following benefits from determining the AVC Claim pursuant to a process dictated by the CCAA Court, among others:

(a) I understand from Chris Hutchison, counsel to the Offeree Shareholders, that no additional discoveries or documentary productions are expected to be required prior to a mini-trial on the Key Issues. Conversely, as described in the Echenberg Affidavit (at

paragraphs 66 to 84) a number of additional steps must be completed prior to a trial. This includes a need for additional documentary productions and discoveries on, among other issues, the question of fraud (which is assumed at the mini-trial), as well as other procedural steps. These additional steps will take time, may give rise to further disputes and motions, and will have an associated cost to the Fund;

(b) Counsel to the Offeree Shareholders has estimated the mini-trial would be heard in one week. As discussed below, this has the potential to dispose of the claim against the Fund entirely, with costs of a one week trial instead of costs of a full trial and the associated procedural steps and delays that are anticipated;

(c) As described above, determination of the AVC Claim (or at minimum a determination that AVC is not a creditor of the Fund) in a mini-trial or other summary process in the CCAA proceedings is expected to occur in a timely manner, likely prior to payment of the Roseway secured debt in full, and therefore would not impede either any distributions to unsecured creditors thereafter or completion of the Restructuring Plan. It seems very unlikely that the AVC Action would be concluded in this timeframe if proceeding in the usual course;

(d) If the AVC Claim is adjudicated in the CCAA process, it will be subject to supervision by the CCAA Court, which is mindful of the cost and time constraints faced by the Fund as well as the competing stakeholder interests in the restructuring as a whole; and

(e) To the extent the Fund needs to make decisions and choices that affect the Restructuring Plan and the course of the restructuring of the Fund, it is important to know its true stakeholders so that the Fund can act throughout the restructuring in a manner that is mindful of the interests of the Fund's true stakeholders. For instance, if there truly are no (or limited) unsecured creditor claims against the Fund, after Roseway is paid in full, the focus of the Fund's restructuring will be on the fair distribution of value to its shareholders – chiefly individuals whose redemptions have been suspended since the Fall of 2011.

(iii) How would Growthworks' proposed two-stage claims process, involving an initial determination of the two Proposed Claims Issues, advance the ultimate determination of AVC's Claim and offer tangible dollars and cents benefits to the company in its efforts to re-organize?

45. The mini-trial proposed by the Fund is not necessarily a two-stage process. The Offeree Shareholders have proposed that three "Key Issues" be determined in a mini-trial. They are defined in the factum filed by the Fund on the AVC Motion (the "**Factum**") as follows:

> These key threshold questions (the "**Key Issues**"), which may dispose of the Allen-Vanguard Action entirely or limit the claim to the amount of the Escrow (and thereby determine that the Fund has no further liability in relation thereto but rather only a potential asset), are as follows:
>
> (a) Were the claims of Allen-Vanguard extinguished at law when it amalgamated with Allen-Vanguard Technologies Inc., formerly Med-Eng, on January 1, 2011?
>
> (b) Did Allen-Vanguard release the Offeree Shareholders from any and all claims and causes of action in its Plan of Arrangement and Reorganization?
>
> (c) Assuming Allen-Vanguard is capable of proving fraud on the part of the former management of Med-Eng, is it entitled under the SPA to seek damages

from the Fund and other Offeree Shareholders in excess of the Escrow for alleged breaches and misrepresentations of Med-Eng?

46. The Factum also describes that, if the judge hearing the mini-trial finds in favour of the Fund on either of the first two issues, then the AVC Claim will be disposed of in its entirety. See for instance paragraph 82 of the Factum. No second step would be required.

47. I expect that such an outcome would mean a significant cost savings for the Fund since it would dispose of the AVC Claim in its entirety after the one-week mini-trial rather than after a full trial, which longer trial would only occur after additional documentary and oral productions and various other steps as described in the Echenberg Affidavit.

48. If the Fund is not successful on the first Key Issue *and* not successful on the second Key Issue but is successful on the third Key Issue (that is, if the judge hearing the mini-trial agrees that AVC is not entitled under the SPA to seek damages from the Fund and other Offeree Shareholders in excess of the Escrow for alleged breaches and misrepresentations of Med-Eng even if there had been fraud (and does not agree with the Fund's position on the first two Key Issues)), then I am advised by Mr. Hutchison that there may be a two-step process arising and that two things will occur:

(a) It will be clear that AVC's claim against the Fund is limited to the Fund's proportional share of the Escrow and that AVC is not a creditor of the Fund but only has a claim against the funds held in escrow. At this stage, the Fund will not be impeded by the AVC Claim from making any possible distributions to creditors or others or from continuing with the Restructuring Plan.

(b) It will remain to be determined (or agreed via a settlement) whether AVC has any entitlement to the funds held in escrow. The method by which that is determined (if not resolved among the parties) would remain open and may require some form of further trial; however, one that is more limited and cost-effective as a result of the mini-trial determination for reasons including: 1) adjudication of AVC's entitlement to the Escrow will not require evidence of fraud, which is only relevant if there is a claim *beyond* the Escrow; and 2) as indicated in the Factum:

> If the Offeree Shareholders are successful in restricting damages to the Escrow, a trial may proceed seeking this more limited amount; however, the reduction in damages to the Escrow will undoubtedly result in a change in perspective (with this change being "game-changing" in the exact opposite direction than was the apparently ill-fated amendment to expand the damages claim) and the parties would be able to make use of the evidence and determinations reached in the mini-trial. In either event, however, the Fund – as a CCAA Debtor – will receive a significantly valuable result and the objectives of the CCAA and these proceedings would have been achieved.

49. Regardless of the outcome, the mini-trial process will advance the ultimate determination of the AVC Claim and assist in the restructuring objectives of the Fund for reasons including the following:

(a) The mini-trial may be dispositive of the AVC Claim if the Fund is successful on either of the first two Key Issues resulting in significant cost savings;

(b) If the Fund is not successful on the first two Key Issues but is successful on the third Key Issue then the restructuring objectives will

be advanced because it will be clear that AVC is not a creditor of the Fund and the AVC Claim will not be an impediment to any distribution to creditors or stakeholders or other steps in the restructuring;

(c) If the Fund is successful on the third Key Issue (but not the first two) then the parties may be more likely to resolve the AVC Action consensually since the two sides will be significantly closer together in terms of dollar amounts than is presently the case (with one side claiming $0 is owing and the other claiming $650 million);

(d) To the extent AVC's entitlement to the Escrow has to be litigated, as set out in the Factum, the parties may be able to make use of evidence led and determinations made on the mini-trial, may not have to prove fraud (or conduct the documentary and oral discovery and other preliminary steps related thereto), and may have a greater incentive to proceed efficiently given the significant reduction in potential recovery for the plaintiff; and

(e) Even if the Offeree Shareholders are unsuccessful on all Key Issues, the Key Issues will be finally resolved and will not be issues in any subsequent trial of the AVC Action.

(iv) Litigation Costs?

50. Counsel for the Offeree Shareholders, who will lead the litigation against AVC whether it be within a CCAA claims process or in the Ottawa Proceedings, has provided an outline of the anticipated steps and costs associated with each of the Ottawa Proceedings and the "mini-trial" in answer to the questions posed in the

Reasons in subparagraph 64(iv) (a), (b) and (c), respectively. Attached hereto as **Exhibit "A"** is a copy of the information provided to me by Mr. Hutchison.

STAY EXTENSION

51. The Initial Order included a stay of proceedings as against the Applicant until and including October 31, 2013, or such later date as the Court may order.

52. The Stay Period has been extended previously and presently expires on April 10, 2014.

53. The Fund seeks a further extension of the Stay Period to May 9, 2014 to formalize the Roseway Management Agreement and to take steps in furtherance of the Restructuring Plan.

54. An extension of the Stay Period will assist the Fund in preserving and maximizing the value of its assets for the benefit of its stakeholders as well as providing a structure to enable the Fund to execute the Restructuring Plan.

55. As referenced above, the Fund believes that realization of its investment assets over time, through ordinary course exit opportunities, is the course of action that is most likely to provide the greatest value to its stakeholders.

56. Without the protection of the CCAA stay to enable the Fund to complete its Restructuring Plan – the hallmark of which is providing sufficient time to the Fund to manage and realize on its assets in the ordinary course – the Fund's ability to recover appropriate value for its relatively illiquid assets may be impeded. For instance, if the stay is lifted, one might expect Roseway to bring an application for the appointment of a receiver. In addition to giving the appearance of a "fire sale", a receivership may

cause defaults in shareholder agreements to which the Fund is a party thereby forcing a sale of the Fund's investment assets prematurely ahead of any natural exit opportunity and at a discount to the price otherwise obtainable by the Fund in the ordinary course.

57. In addition, without the protection of the CCAA stay, there is a risk that the Fund may be liquidated in the short term, which could result in negative tax consequences for the Fund's shareholders. I am advised by McCarthy Tétrault LLP, counsel to the Fund, that shareholders of the Fund may suffer adverse tax consequences in the form of a lost tax credit if they do not hold their investment in the Fund for a certain period of time. The Restructuring Plan has been developed to be mindful of this potential impact on the Fund' shareholders and to attempt to minimize the negative effects upon those shareholders.

58. Accordingly, the CCAA Stay is providing protection to the Fund while it continues to have creditor claims against the Fund in order to prevent such creditors from causing a liquidation and possible wind-up of the Fund and the possible negative consequences for the shareholders of the Fund. The CCAA Stay also enables the Fund to continue to manage its assets in the ordinary course and to seek appropriate exit opportunities as they arise in order to maximize value for stakeholders.

59. I believe that the Fund and its stakeholders would benefit from having sufficient time and the protection of a CCAA stay to continue these steps, to continue negotiations with Roseway in relation to the Roseway Management Agreement, and to attempt to implement the Restructuring Plan.

60. The Applicant has acted in good faith and with due diligence since the granting of the Initial Order, including that the Applicant has, among other things:

(a) Conducted the SISP, as described above;

(b) Conducted the Claims Process, as described above;

(c) Worked with and addressed various issues with the former manager of the Fund in relation to providing certain critical transition services to the Fund;

(d) Updated and worked with Roseway, including in relation to the SISP, negotiating the Term Sheet and working towards the potential Roseway Management Agreement; and

(e) Taken steps to address the claim by Allen-Vanguard against the Fund.

61. The cash flow projection that I understand will be attached to the Monitor's seventh report shows that the Applicant has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 31st day of March, 2014.

Commissioner for taking affidavits

C. IAN ROSS

This is Exhibit "A" referred to in the affidavit of C. IAN ROSS sworn before me, this 31st day of MARCH 2014

A COMMISSIONER FOR TAKING AFFIDAVITS

(iv) Evidence Relating to Litigation Costs

(a) What has been the Fund's legal fees "burn rate" to date in the Ottawa Proceedings?

The Offeree Shareholders are jointly represented by Cavanagh LLP in the Ottawa Proceedings. All fees and disbursements are split proportionately based on the number of shares of Med-Eng Systems Inc. that were owned by each of the Offeree Shareholders. To date, the Fund has paid approximately $300,000 in legal fees in association with the Ottawa Proceedings. During this time period, there have been at least six motions, one appeal of a decision of Master MacLeod, at least 20 case conferences, over 25 days of discovery and over 15,000 documents produced by AVC have been reviewed.

(b) How much does the Fund expect it will have to spend on the proposed one-week "mini-trial"?

Given that the materials the Offeree Shareholders intend to rely on during the mini-trial are substantially completeand since fraud is not an issue at the mini-trial where it will be assumed, the only additional fees that would be incurred by the Fund for the proposed one-week mini-trial would be legal fees incurred during the "mini-trial" and legal fees incurred preparing for the mini-trial. I am informed by counsel to the Offeree Shareholders that it is anticipated that a five day "mini-trial" will require ten days of preparation time, as well as approximately 40-50 hours to prepare written submissions. These fees are estimated to total between $100,000 and $150,000. The Fund's proportionate share of those fees would be between $15,000 and $25,000.

(c) What litigation cost savings would result from proceeding with a "mini-trial" on the two Proposed Claims Issues in contrast to lifting the stay of proceedings and allowing the Ottawa Proceedings to continue in the fashion which they have to date?

If the Offeree Shareholders are successful in establishing that the claims of AVC were extinguished at law either during its amalgamation on January 1, 2011, or as a result of the release arising from its own CCAA proceeding in 2009, the mini-trial will dispense with the need to proceed with the Ottawa Proceedings. Such an outcome could result in savings to the Offeree Shareholders in excess of one million dollars.

The remaining steps remaining in the Ottawa Proceedings are both numerous and expensive:

- **Motions for Documentary Disclosure**

  As set out in paragraphs 67 through 72 of the affidavit of Paul Echenberg, sworn November 24, 2013 (the "Echenberg Affidavit"), the Offeree Shareholders have not yet received a substantive response to their request for documentary production in relation to the amendments to the pleadings. If a motion to compel production is ultimately necessary, the Fund will incur considerable costs.

The Fund will also incur considerable legal costs in relation to a contemplated privilege motion. As set out in the Echenberg Affidavit at paragraphs 73 to 77, AVC continues to claim privilege over approximately 4,649 documents. It is anticipated that a motion to challenge those claims of privilege will be necessary and that these motions will cost approximately $75,000. The Fund's proportionate share of those fees would be approximately $12,000.

The outcome of these motions may also cause the Offeree Shareholders to incur considerable fees and disbursements. In his February 22, 2013 Case Conference Endorsement, Master MacLeod stated "It is clear from the discussion today that there remains considerable potential for documentary disputes. Given the impact this may have on judicial resources and the costs and time that may be involved in numerous motions, I do not rule out the possibility of appointing a neutral third party discovery monitor." Attached as Exhibit "Z" to the Echenberg Affidavit is the Case Conference Endorsement dated February 22, 2013. The costs of involving a third party discovery monitor may be as high as $250,000 depending on the scope of a third party monitor's involvement. The Fund's proportionate share of those fees would be approximately $40,000.

- **Review of Fresh Documentary Production**

It is difficult to predict the number of documents that will be disclosed as a result of the motions contemplated above. If the number of documents disclosed is ultimately in the range of 4,000 to 8,000 documents, the legal costs associated with the review and analysis of those documents will likely total in excess of $50,000. The Fund's proportionate share of those fees would be approximately $8,000-$10,000.

- **Continued Examination for Discovery of David Luxton**

Based on the allegations outlined in AVC's amended statement of claim, the continued examination for discovery of Mr. Luxton is likely to last between ten and fifteen days. It is anticipated that the costs associated with these examinations for discovery as well the time required to prepare will cause the Offeree Shareholders to incur additional fees between $150,000 and $200,000. The Fund's proportionate share of those fees would be approximately $25,000 to $35,000.

- **Re-examination of David Luxton**

As set out in paragraph 82 of the Echenberg Affidavit, Mr. Lederman has informed counsel to the Offeree Shareholders that he intends to re-examine Mr. Luxton under Rule 34.11 of the *Rules of Civil Procedure.* It is unclear how much time Mr. Lederman will require for the re-examination, but if the re-examination occurred over the course of 2-5 days, the Offeree Shareholders would incur legal costs in the range of $15,000 to $37,500. The Fund's proportionate share of those fees would be approximately $3,000 to $6,000.

- **Complying with Undertakings and Undertaking and Refusals Motion**

As set out in paragraphs 80 through 81 of the Echenberg affidavit, it is expected that the Offeree Shareholders will have to expend further resources with respect to outstanding undertakings and refusals arising from examinations for discovery to date. There was originally an undertakings and refusals motion scheduled to occur on February 19, 2013, which was adjourned. It is anticipated that responding to the outstanding undertakings and refusals and preparing for a motion related thereto will cost approximately $25,000. The Fund's proportionate share of those fees would be approximately $3,750.

- **Expert Report(s)**

As detailed at paragraphs 61 through 62 of the Echenberg Affidavit, Allen-Vanguard served an expert's report on March 15, 2013, just weeks after it was granted leave to amend its statement of claim. The Low Report is over one hundred pages long and contemplates two damages scenarios which value Allen-Vanguard's damages well in excess of the Indemnification Escrow Amount. It is anticipated that the Fund's share of fees related to the preparation of a responding expert report will be approximately $150,000 to $250,000.

- **Mediation**

Paragraph 83 of the Echenberg Affidavit explains that mediation, which is mandatory prior to the trial of an action in Ottawa, has not yet occurred. Given the quantum of damages sought by Allen-Vanguard and lengthy and complex history of proceedings, it is anticipated that it will cost $50,000 to 75,000 to prepare for and participate in a two-day mediation. It is anticipated that the Fund's share of fees related to preparation for and participation in mediation will be approximately $7,500 to $12,500.

- **Pre-Trial Conference**

It is anticipated that the Court in Ottawa will schedule a two-day judicial pre-trial conference, which is estimated to cost between $30,000 and $50,000. It is anticipated that the Fund's share of fees related to preparation for and participation in mediation will be approximately $4,500 to 7,500.

- **Trial**

As is set out in the Echenberg Affidavit, the trial of this matter was set down for up to 10 weeks. It is estimated that the cost of preparing for and conducting an 8 to 10 week trial for $650 million in damages will be in excess of $1 million. It is anticipated that the Fund's share of fees related to the preparation for and conduct of trial will be $150,000 to 250,000.

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
(Re: Stay Extension)
(sworn March 31, 2014)

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