

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

THE HONOURABLE) THURSDAY, THE 27TH
)
JUSTICE ~~NEWBOULD~~ ^{WILTON-SIBRIS}) DAY OF NOVEMBER, 2014

AKNS

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.



CONSENT ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Fund**”) for certain relief set out in the Notice of Motion herein dated October 31, 2014 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, the Responding and Cross Motion Record of GrowthWorks WV Management Ltd. (the “**Former Manager**”) and the consent, filed and on hearing the submissions of counsel for the Fund and the Former Manager, no one appearing for any other party although duly served as appears from the affidavit of service.

1. THIS COURT ORDERS that the document protocol attached hereto as Schedule “A” (the “**Protocol**”) is hereby approved.
2. THIS COURT ORDERS AND DIRECTS the Fund and the Former Manager to comply with the Protocol.
3. THIS COURT ORDERS that the Protocol may be varied on written consent of the Fund, the Former Manager and FTI Consulting Canada Inc. (the “**Monitor**”), or by order of the court.

4. THIS COURT ORDERS that the motion by the Fund served October 31, 2014 is hereby adjourned to February 17, 2014.

HMJ

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



NOV 27 2014

As per - HMJ

Schedule A

Protocol Governing Delivery of Fund Records

WHEREAS GrowthWorks WV Management Ltd. (the “**Former Manager**”) was the manager of the business and affairs of GrowthWorks Canadian Fund Ltd. (the “**Fund**”) under an amended and restated management agreement dated July 15, 2006 (the “**Management Agreement**”);

AND WHEREAS Article 8.5 of the Management Agreement provides as follows:

“8.5 **Delivery of Records** – Upon termination of this Agreement under Sections 8.2 or 8.3, the Manager shall promptly deliver to the Fund all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in its custody, possession or control.”

AND WHEREAS Article 8.6(b) of the Management Agreement provides as follows:

“8.6. **Payments on Termination** – Upon termination of this Agreement, the Fund shall pay to the Manager:

- (b) if this Agreement is terminated pursuant to Section 8.2, all reasonable transfer, wind-down and transition costs incurred by or put to the Manager as a result of having to transition operations to a successor manager.

The Manager shall calculate the amounts payable to the Manager under (a) and (b) above and the Fund shall pay such amounts to the Manager on or about the 25th Business Day after receipt by the Fund of an invoice for the same.”

AND WHEREAS the Fund has terminated the Management Agreement purportedly pursuant to Article 8.2 of the Management Agreement (which termination the Former Manager asserts was wrongful) and requested delivery of all fund records described in Article 8.5 (“**Fund Records**”) in the custody, possession or control of the Former Manager;

AND WHEREAS the Former Manager advised the Fund that the Former Manager has delivered the Fund Records;

AND WHEREAS the Fund is unable to determine at this time with certainty whether any Fund Records have not been delivered by the Former Manager to the Fund and whether the Fund Records that have been delivered are in a form accessible to the Fund;

AND WHEREAS the Fund and the Former Manager disagree with each other in their respective interpretations of the meaning of the phrase “a form accessible to” the Fund as that term is used in section 8.5 of the Management Agreement, among other things;

AND WHEREAS the Fund and the Former Manager disagree as to whether the Former Manager is entitled to payment in accordance with Article 8.6 of the Management Agreement with respect to its reasonable transfer and transition costs incurred by or put to the Former Manager with respect to the cost of the transfer of the Fund Records;

NOW THEREFORE the Fund and the Former Manager hereby agree that this Protocol shall govern the terms and conditions upon which additional Fund Records shall be sought and delivered.

1. **Request for Delivery of Fund Record(s):** At any time from the date hereof to the date that is 90 days following the winding up of the Fund, the Fund may request in writing any Fund Records that it believes remain in the custody, possession or control of the Former Manager and that it believes have not been delivered to the Fund or have not been delivered in a form accessible to the Fund. The written request shall include, without limitation, the following information:
 - (a) the Fund Record(s) sought;
 - (b) the Fund’s belief that the Fund Record(s) sought remain(s) in the custody, possession or control of the Former Manager and/or that the Fund Record(s) sought have not been delivered to the Fund in a form accessible to the Fund;
 - (c) the location of the Fund Record(s) sought, if known to the Fund; and
 - (d) the format and location for delivery of the Fund Record(s).
2. **Response to a Request for Delivery:** If a request is made in accordance with section 1 of this Protocol, the Former Manager shall conduct a diligent search and upon locating the Fund Record(s) requested, shall deliver to the Fund (or to such person as the Fund may direct in writing) within 30 days of the request, all Fund Records requested and, if possible, in the format specified in the request.

3. **If Fund Records Cannot Be Located:** If the Former Manager discovers that Fund Record(s) requested cannot be located or is not in the Former Manager's possession or control, the Former Manager shall advise the Fund in writing within 15 days and shall include, without limitation, the following information:
 - (a) the request to which the response relates; and
 - (b) if the Fund Record(s) sought are not in the possession or control of the Former Manager, the location of the Fund Record(s) sought, if known to the Former Manager.
4. **If Fund Records Cannot Be Delivered in the Format Specified:** If the Fund Records cannot be delivered in the format specified in a request pursuant to section 1 of this Protocol, the Former Manager shall advise the Fund in writing forthwith and shall arrange to deliver to the Fund (or to such person as the Fund may direct in writing) the Fund Records in their then existing format. The written response shall include, without limitation, the following information:
 - (a) the request to which the response relates;
 - (b) the reason(s) that the fund Record(s) cannot be delivered in the format specified in the Fund's request; and
 - (c) the Former Manager's proposal of reasonable alternative methods of delivery of the Fund Records for consideration by the Fund and an estimate of the cost of delivering the Fund Records in the proposed format.
5. **The Fund and the Former Manager will Negotiate in Good Faith:** If the Fund Records cannot be delivered in the format specified in the Fund's request, the Fund and the Former Manager shall negotiate in good faith in an effort to agree on the format of the Fund Records to be delivered and which of them is required to pay the cost of delivering the Fund Records in the agreed format. If the Fund and Former Manager are unable to reach a negotiated agreement within 14 days, the procedure set out in section 9 of this Protocol shall govern.
6. **Destruction of Fund Records:** The Former Manager shall not destroy, spoil, alter, corrupt or dispose of any Fund Records except with the prior written consent of the Fund. To the extent that the Former Manager may, in the normal course of its business, engage in an act that may cause the destruction, spoliation, alteration, corruption, or disposition of a Fund Record, the Former Manager shall seek the Fund's prior written consent.
7. **Notices:** Any demand, notice or other communication to be given in connection with this Protocol must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To the Fund:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
66 Wellington St W, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Email: jgrant@mccarthy.ca and eyng@mccarthy.ca
Attention: Jonathan Grant and Emily Ng

To the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Email: paul.bishop@fticonsulting.com and
jodi.porepa@fticonsulting.com

Attention: Paul Bishop and Jodi Porepa

With a copy to (which will not constitute notice):

Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON M5X 1C1

Email: mwasserman@osler.com and cfell@osler.com
Attention: Marc Wasserman and Caitlin Fell

To the Former Manager:

GrowthWorks WV Management Ltd.
2600-1055 West Georgia St.
Vancouver, BC V6E 3R5

Email : conrad@rcmorris.com
Attention: Conrad Krebs

With a copy to (which will not constitute notice):

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, British Columbia V6C 0A3

Email : kjackson@fasken.com
Attention: Kibben Jackson

8. **Effectiveness:** This Protocol shall become effective only upon approval by the Court.
9. **Procedure for Resolving Disputes under the Protocol:** Disputes relating to the terms, intent or application of this Protocol may be addressed by FTI Consulting Canada Inc. (the “**Monitor**”), the Fund, and the Former Manager upon notice in accordance with section 7 above. If the dispute cannot be resolved with the assistance of the Monitor, the parties may seek the advice and direction of the Court in the CCAA proceedings herein. Notice of court proceedings relating to this Protocol shall be provided pursuant to the *Rules of Civil Procedure*, or in accordance with a timetable to be agreed between the parties, or pursuant to court order.
10. **Protocol Binding Upon Successors:** This Protocol shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
11. **No Waiver of Rights:** The Fund and Former Manager acknowledge and agree that this Protocol shall not be construed as any waiver of any rights, remedies or protections, including, without limitation, the Former Manager’s right to advance a claim for payment of its costs of compliance with this Protocol, and the Fund’s right to defend against such claim.

ACKNOWLEDGED AND AGREED by the Monitor, the Fund and the Former Manager on this _____ day of November, 2014, by their counsel, which have authority to bind same.

GrowthWorks Canadian Fund Ltd.

GrowthWorks WV Management Ltd.

McCarthy Tétrault *per Kevin Hoyle*

McCarthy Tétrault LLP
Per: Jonathan Grant, Counsel



Fasken Martineau DuMoulin LLP
Per: Aubrey E. Kauffman, Counsel

FTI Consulting Inc.

Osler Hoskin & Harcourt *per Caitlin Fell*

Osler Hoskin & Harcourt LLP
Per: Caitlin Fell, Counsel

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C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER

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