

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")**

**MOTION RECORD
(ORDER AUTHORIZING DISTRIBUTIONS TO ROSEWAY CAPITAL S.À.R.L.)
(returnable November 28, 2013)**

November 22, 2013

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

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SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**MOTION RECORD
(ORDER AUTHORIZING DISTRIBUTIONS TO
ROSEWAY CAPITAL S.À.R.L.)
(returnable November 28, 2013)**

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TAB 1

**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.**

**NOTICE OF MOTION
(Order Authorizing Distributions to Roseway Capital S.a.r.l.)
(Returnable: November 28, 2013)**

ROSEWAY CAPITAL S.A.R.L. ("Roseway") will make a motion to a judge presiding over the Commercial List on Thursday, November 28, 2013, at 10:00 am, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

- (a) that the security agreement granted by GrowthWorks Canadian Fund Ltd. ("GrowthWorks") to Roseway Capital LP and subsequently assigned by Roseway Capital LP to Roseway (the "Security Agreement") creates a valid security interest in the Collateral (as defined in the Security Agreement; herein the "Collateral") perfected in accordance with the *Personal Property Security Act* (Ontario)(the "PPSA"); and
- (b) that GrowthWorks, with the consent of FTI Consulting Canada Inc., in its role as court-appointed Monitor to Growthworks (the "Monitor"), may make distributions of the Collateral or the proceeds from the Collateral from time to time to Roseway, without further Order of this Court, subject to certain conditions as set out in the draft Order.

THE GROUNDS FOR THE MOTION ARE:

- (a) Roseway is the sole secured creditor of GrowthWorks;
- (b) the Monitor appointed herein has sought and obtained an independent legal opinion from its counsel, Osler, Hoskin & Harcourt LLP, with respect to the validity of the Roseway security agreement and the perfection of the security interest granted therein pursuant to the provisions of the PPSA;
- (c) GrowthWorks may from time to time during the within proceedings have funds available for distribution to its creditors;
- (d) subject to the payment of "Priority Payables", as defined in the draft order contained in this Motion Record, Roseway (as GrowthWorks' sole secured creditor) is entitled to payment in priority to other creditors, who are unsecured;
- (e) it is in the interests of GrowthWorks and its stakeholders that GrowthWorks' indebtedness to Roseway be reduced promptly and regularly to reduce the amount of interest accruing and payable to Roseway pursuant to the Security Agreement;
- (f) it will reduce professional costs and demands on Court time if GrowthWorks is authorized to make distributions to Roseway as funds permit, without the need to seek Court approval of each distribution;
- (g) section 67(c) of the PPSA; and
- (h) such further and other grounds as counsel may advise and this Honourable Court may permit.

The following documentary evidence will be used at the hearing of the motion:

- (a) the affidavit of Michael Forer sworn on November 22, 2013; and
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

November 22, 2013

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TO: THE ATTACHED SERVICE LIST

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")**

**APPLICATION UNDER THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**SERVICE LIST
(as of November 21, 2013)**

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<p>FTI Consulting Canada Inc. TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, Ontario Canada M5K 1G8</p> <p>Paul Bishop Email: paul.bishop@fticonsulting.com Tel: 416 649 8100 Fax: 416 649 8101</p> <p>Jodi Porepa Email: jodi.porepa@fticonsulting.com Tel: 416.649.8070 Fax: 416.649.8101</p>	<p>Monitor</p>

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<p>DELOITTE RESTRUCTURING INC. 2300 – 360 Main Street Winnipeg, MB R3C 3Z3</p> <p>John R. Fritz Email: jofritz@deloitte.ca Tel: (204)942-0051 Fax: (204)947-2689</p>	<p>Deloitte Restructuring Inc. In its capacity as Monitor of The Puratone Corporation, Niverville Swine Breeders Ltd., and Pembina Valley Pigs Ltd.</p>

<p>LENCZNER SLAGHT 130 Adelaide St W Suite 2600 Toronto, ON M5H 3P5</p> <p>Ronald G. Slaght Email: rslaght@litigate.com Tel: 416-865-2929</p> <p>Ell Lederman Email: elederman@litigate.com Tel: 416-865-3555</p> <p>Ian MacLeod Email: imacleod@litigate.com Tel: 416-865-2895</p> <p>Fax: 416-865-9010</p>	<p>Counsel for Allen-Vanguard Corporation (Court File No. 08-CV-43544)</p>
<p>CAVANAGH LLP 1111 Prince of Wales Drive, Suite 401 Ottawa ON K2C 3T2</p> <p>Thomas G. Conway Email: tconway@cavanagh.ca Tel: 613-780-2011 Fax: 613-569-8668</p> <p>Christopher J. Hutchison Email: chutchison@cavanagh.ca Tel: 613-780-2013 Fax: 613-569-8668</p> <p>Calina N. Ritchie Email: critchie@cavanagh.ca Tel: 613-780-2014 Fax: 613-569-8668</p>	<p>Counsel for RICHARD L'ABBÉ, 1062455 ONTARIO INC., AND SCHRODER VENTURE MANAGERS (CANADA) LIMITED, et al, the Defendants including Growthworks in the Allen-Vanguard action (File Court No. 08-CV-43544)</p>
<p>ONTARIO SECURITIES COMMISSION Mostafa Asadi Legal Counsel, Investment Funds Branch Ontario Securities Commission 20 Queen Street West, 19th Floor Toronto, Ontario M5H 3S8 Email: masadi@osc.gov.on.ca Tel: (416) 593-8171</p>	<p>Counsel for Ontario Securities Commission</p>

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")

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TAB 4

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

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

DRAFT

THE HONOURABLE) THURSDAY, THE 28TH
MADAM JUSTICE MESBUR) DAY OF NOVEMBER, 2013

**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.**

ORDER AUTHORIZING DISTRIBUTIONS

THIS MOTION, made by Roseway Capital S.a.r.l. ("Roseway") for an order:

- (a) that the security agreement granted by GrowthWorks Canadian Fund Ltd. ("GrowthWorks") to Roseway Capital LP and subsequently assigned by Roseway Capital LP to Roseway (the "Security Agreement") creates a valid security interest in the Collateral (as defined in the Security Agreement; herein the "Collateral") perfected in accordance with the *Personal Property Security Act* (Ontario)(the "PPSA"); and
- (b) that GrowthWorks, with the consent of FTI Consulting Canada Inc., in its role as court-appointed Monitor to Growthworks (the "Monitor"), may make distributions of the Collateral or the proceeds from the Collateral from time to time to Roseway, without further Order of this Court, subject to certain conditions as set out in the draft Order,

was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the the Motion Record of Roseway, including the affidavit of Mirchael Forer sworn November 22, 2013, and on hearing the submissions of counsel

for Roseway, GrowthWorks and the Monitor, no one else appearing although properly served as appears from the affidavit of service of Marna McGeorge sworn on November 22, 2013, filed,

1. THIS COURT ORDERS AND DECLARES that the Security Agreement creates a valid security interest in the Collateral perfected in accordance with the PPSA.

2. THIS COURT ORDER THAT GrowthWorks, with the consent of the Monitor, may make distributions of the Collateral or the proceeds from the Collateral from time to time to Roseway, without further Order of this Court, provided however that prior to making such distributions the Monitor shall be satisfied, acting reasonably, that the Priority Payables (as defined below) are being paid when due and that the funds remaining in the hands of GrowthWorks and the Monitor after any such distribution to Roseway are sufficient to pay Priority Payables accrued to the date of any such distribution.

3. THIS COURT ORDERS that for the purposes of this Order, the term "Priority Payables" shall mean:

(a) amounts secured by the Administration Charge (as defined in the Amended and Restated Initial Order made herein and dated October 1, 2013 (the "Initial Order")), to the maximum amount of \$500,000,

(b) amounts secured by the Directors' Charge (as defined in the Initial Order), to the maximum amount of \$1,000,000,

(c) amounts secured by the Critical Supplier's Charge (as defined in the Initial Order), to the maximum amount of \$50,000,

(d) amounts due to the Government of Canada or a Province (each, a "Governmental Entity") which, by virtue of a statutory deemed trust or lien in favour of such Governmental Entity, are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway, and

(e) amounts due to employees or former employees of GrowthWorks which are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway.

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4. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the *Companies' Creditors Arrangement Act* or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the making of any distribution to Roseway in accordance with this Order, save and except for any gross negligence or wilful misconduct on its part.

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ORDER

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