> All that said, it remains theoretically possible in the view of the regional manager to accommodate a 10 week trial in 2014 particularly, if as I suspect, another long civil trial currently on the list has settled in whole or in part. *I would be very surprised however if either counsel for the offeree shareholders or counsel for Allen-Vanguard is prepared (or able) to set the Ottawa action down and certify that they are ready for trial at this time.* It would be possible to accommodate a trial of 10 weeks in early 2015 or in the fall of that year. (emphasis added)

My inquiries to RSJ Hackland about the availability of trial dates yielded similar information. Realistically, then, the Ottawa Proceedings will not proceed to trial until sometime in 2015 and continued litigation skirmishing between the parties might well push that date back further if past history is any indicator of future conduct.

V. Positions of the parties

[49] Growthworks, supported by the other Offeree Shareholders, seeks the holding of a "mini-trial" on the two Proposed Claims Issues in the context of its *CCAA* proceeding. It offered some details on how such a "mini-trial" would operate. Growthworks would file affidavit evidence on the process of negotiating the SPA. Specifically, it would tender evidence from:

(i) Robert Chapman, a lawyer at McCarthy Tetrault involved in negotiating and drafting the SPA;

(ii) Cécile Ducharme, an advisor to Schroder Venture Managers (Canada) Ltd. who provided instructions to Chapman on behalf of some Offeree Shareholders during the negotations; and,

(iii) Paul Echenberg, who would discuss some of the positions taken by Offeree Shareholders during the SPA negotiations.[5]

In addition, the Fund would file documentary evidence on two issues: (i) the history of AVC's amalgamations; and, (ii) evidence that during its own 2009 – 2010 *CCAA* proceeding AVC did not suggest that it had a potential claim of $650 million against the Offeree Shareholders;

[50] On its part, AVC opposed the continuation of the stay as against the Ottawa Proceedings arguing that that litigation would not affect the Fund's ability to continue its business or to restructure and that Growthworks would have "very limited involvement in the litigation with" AVC. That said, AVC did not back down from its pleaded position that the Fund's maximum exposure in the AVC Action would be joint and several liability for the full $650 million damage claim.

[51] As to the "mini-trial" proposed by Growthworks, AVC argued that it (i) would not finally dispose of the dispute between the parties, (ii) would result in additional litigation costs, perhaps

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[5] I make no comment on the admissibility of any part of that proposed evidence.

in the range of hundreds of thousands of dollars, (iii) could not be completed within one week, but would require three weeks, (iv) would require an examination of AVC's allegations of fraud in order to interpret provisions of the SPA, albeit AVC couched this part of its argument in terms of the "factual matrix" necessary for contractual interpretation, and (v) would unfairly restrict AVC's rights of appeal. AVC did not describe the type of evidence it might call on a "mini-trial", which I must confess was quite unhelpful given that the issue was four-square on the table in these motions. Instead, AVC proposed that the most efficient way of proceeding was to bifurcate the liability and damages issues in the Ottawa Proceedings and "secure an early trial date for the liability trial". Luxton deposed:

> The bottom line is that this case is ready to proceed to trial on all of the liability issues and there is no practical reason why it should not proceed.

I do not accept Luxton's assessment; it is belied by the evidence of the history of the Ottawa Proceedings to date.

VI. Analysis

A. What the parties really are seeking on their motions

A.1 AVC really is asking to lift the stay of proceedings in respect of the Ottawa Proceedings

[52] AVC submitted that it was not moving to lift the *CCAA* stay of proceedings, but "rather to confirm that the stay imposed by the Initial Order will not be extended to apply to the Allen-Vanguard Proceedings". The simple response to that submission is that the Initial Order, by its terms, applied to the Ottawa Proceedings, at least to the extent of the Fund's involvement in them. Paragraph 14 of the Initial Order could not be clearer:

> [A]ny and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

Growthworks is a party to the Offeree Action and the AVC Action. Both are proceedings "in respect of the Applicant or affecting the Business or the Property". Both therefore are stayed in respect of the participation of Growthworks in those proceedings. Master MacLeod accurately summarized the effect of the stay of proceedings in paragraphs 3 through 5 of his November 12, 2013 endorsement.

[53] Although the stay does not extend, by its terms, to a person other than Growthworks – and no request was made to extend the Initial Order to non-parties – the practical consequence of the pleading of joint and several liability underpinning AVC's claim against Growthworks is that it is most difficult for the Ottawa Proceedings to move forward without the Fund's involvement, and AVC is not abandoning its joint and several liability claim against the Fund.

[54] Accordingly, although AVC sought, as its primary relief, an order that the stay of proceedings in the Initial Order did not apply to the continuation of the Ottawa Proceedings, I

regard its request as one, in substance, to lift the stay of proceedings in respect of Growthworks' involvement in the Ottawa Proceedings – i.e. the Fund's potential liability in those proceedings.

[55] AVC sought, by way of alternative relief, an order confirming that the stay had no effect on the Ottawa Proceedings in respect of any party other than Growthworks. The Initial Order did not purport to stay any proceeding except one "against or in respect of" the Fund or "affecting the Business or the Property". So, AVC's articulation of its alternative relief does nothing more than describe the actual scope of the stay in the Initial Order. Yet, based on the evidence filed by AVC, it really is not seeking the alternative relief because it wants to proceed to a full, traditional, expensive, conventional trial against all Offeree Shareholders, including Growthworks, and it wants any finding of liability and damages to bind Growthworks. As a practical matter, then, one must treat AVC's motion as a request to lift the stay of proceedings against Growthworks.

A.2 Growthworks really is asking for a two-stage claims process under the *CCAA*

[56] Looked at one from one perspective, one could regard the Fund's request for a "mini-trial" within the *CCAA* proceeding as nothing more than an attempt to re-schedule its proposed summary judgment motion in the Ottawa Proceedings from a judge in Ottawa to a judge on the Toronto Region Commercial List. Indeed, Echenberg contended that the proposed mini-trial would deal with the same issues as those in the intended summary judgment motion which RSJ Hackland is scheduled to hear. If the request was based on nothing more than that, it would be a misuse of the *CCAA* process. But, the record disclosed that more was at play on the Fund's motion.

[57] Growthworks did secure protection from this Court under the *CCAA* and this Court has made a Claims Procedure Order. That order referred the issue of the process to determine the AVC Claim to a later consideration by this Court. Section 20(1)(a)(iii) of the *CCAA* provides that the amount represented by a claim of any unsecured creditor is the amount "proof of which might be made under the *Bankruptcy and Insolvency Act*". Section 121(2) of the *BIA* requires that the determination whether any contingent claim is a provable claim and the valuation of such a claim must be made in accordance with *BIA* s. 135. Section 135(1.1) of the *BIA* requires a trustee to determine whether any contingent claim is a provable claim and, if it is, to value it. *CCAA* s. 20(1)(a)(iii) modifies that process because it states that if the amount of a provable contingent claim "is not admitted by the company, the amount is to be determined by the court on *summary application* by the company or by the creditor".

[58] Against that statutory background, I regard the motion brought by Growthworks, in essence, as one seeking to establish, under paragraph 46 of the Claims Procedure Order, a procedure for determining the Allen-Vanguard Claim.[6] Growthworks, in effect, proposes a two-

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[6] I see no merit in the bifurcation argument advanced by AVC in paras. 66 *et seq.* of its February 5, 2014 Factum. The Fund's proposal for a "mini-trial" was made in the context of developing a summary claims process in a *CCAA* proceeding. If AVC does not wish to proceed with a claim against Growthworks in the *CCAA* proceeding, it can so

stage claims process. First, the court would determine the two Proposed Claims Issues. Then, second…well, the second stage is difficult to discern from the Fund's materials; it is somewhat shrouded in the mists of the future. But, as I understand the position of Growthworks, if a court determines the two Proposed Claims Issues, the parties would have a clearer picture of what issues remained in play regarding the Allen-Vanguard Claim against Growthworks and, presumably, in light of that clearer picture, could make a concrete proposal about the second step in the claims procedure.

[59] In any event, in light of the deeming provisions in paragraphs 42 and 43 of the Claims Procedure Order, there now exists in the Growthworks *CCAA* proceeding a contingent claim advanced by AVC which "is not admitted by the company", so *CCAA* s. 20(1)(a)(iii) directs the court to determine the amount "on summary application". What that summary application process should look like is at the heart of the Fund's motion.

B. What to do

[60] A stay of proceedings is a key element of any *CCAA* process. It affects the positions of a company's secured and unsecured creditors, as well as others who could potentially jeopardize the success of the restructuring plan and the continuance of the company. A stay affords a company breathing room in which to re-organize its affairs and compromise its obligations, or to divest assets to enable the business to operate under different ownership while generating funds to pay obligations or, in complex situations, to effect an orderly liquidation of the business enterprise. As stated by Farley J. in *Lehndorff General Partner Ltd. (Re)*:

> It has been held that the intention of the *CCAA* is to prevent any manoeuvres for positioning among the creditors during the period required to develop a plan and obtain approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed....The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the *CCAA* because this affect is offset by the benefit to all creditors and to the company of facilitating a reorganization. The court's primary concerns under the *CCAA* must be for the debtor and *all* of the creditors.[7]

A party seeking to lift a stay bears a heavy onus of persuading a court to do so.[8]

[61] Although many of AVC's submissions focused on opposing any extension of the stay of proceedings, the reality of this *CCAA* proceeding is that a stay remains in place until April 10, 2014. Growthworks will have to apply to this Court before that time for a further extension if it wishes to continue to benefit from the protection of the *CCAA*. Given the proximity of the

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advise the Monitor and be bound by the consequences of a final order in the *CCAA* proceeding. If it does wish to continue with a claim against Growthworks, then it must face the reality that a *CCAA* proceeding is underway.

[7] (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div.), p. 32.

[8] *Re Timminco*, 2012 ONSC 2515, para. 16.

forthcoming stay extension motion, I see no point in considering, at this point of time, whether to lift the stay of proceedings in respect of the Fund's involvement in the Ottawa Proceedings.

[62] Instead, I am seizing myself of the motion to extend the stay of proceedings which expires on April 10, 2014, and I will put over to that date my formal consideration of the two competing motions now before me.

[63] On the return of that stay extension motion, not only must Growthworks file evidence to address the requirements for an extension specified in *CCAA* s. 11.02(3), but both it and AVC must also adduce evidence to address certain factors identified by this Court in *Canwest Global Communications*[9] relating to a request to lift a stay of proceedings.

[64] The first factor involves whether the plan is likely to fail or, whether after the passage of almost half a year, the *CCAA* applicant, Growthworks, is no closer to a proposal than at the commencement of the stay period. The ground has shifted significantly since the argument of these motions on February 11, 2014. The SISP did not succeed. No merger transaction materialized. Growthworks remains in discussions with its only secured creditor, Roseway, about where to go from here. And although the Monitor ran a claims process, in its Sixth Report it stated that it did not "anticipate responding to or adjudicating disputed claims until such time as Roseway is paid in full and there are, or are likely to be, remaining funds for distribution to unsecured creditors of the Fund". In light of that state of affairs, Growthworks must explain certain matters to the Court:'

(i) Why does a need continue to exist to develop a *CCAA* claims process for the AVC Claim? Ross, in his November 20, 2013 affidavit, cast the need for some determination of the extent of AVC's Claim in terms of establishing the necessary groundwork for a possible merger transaction. In his view, if a court were to determine the issue of whether the Offeree Shareholders' exposure under the SPA was limited to the $40 million Indemnification Escrow Amount and AVC's Claim in excess of that amount was dismissed, then "the continuation of the [AVC] 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". 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?[10]

(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 of time?

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[9] 2009 CarswellOnt 7882 (S.C.J.), para. 33.
[10] *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 (Ont. Gen. Div.), para. 25.

(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?

(iv) On the latter point, the record was devoid of any evidence about the amount of litigation costs Growthworks has incurred and is incurring in the Ottawa Proceedings. That kind of evidence is most relevant to crafting a proportionate *CCAA* summary claims process. Proportionality is a hard-nosed, concrete concept, not an airy, theoretical one. Stripped down to its basics, proportionality requires parties to demonstrate, with respect to any proposed litigation step, what litigation bang will be achieved for the expenditure of each litigation buck. Translated to the present motions:

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

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

(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?

In other words, what would be the effect on the Fund's restructuring process of spending money on legal fees in a mini-trial type of summary claims process as compared to the Fund's litigation costs of continued Ottawa Proceedings?

I would appreciate the Monitor weighing in on these issues, especially given that it did not file a report on the initial return of the motions.

[65] The second factor is how AVC, an unsecured contingent creditor, would be significantly prejudiced by a refusal to lift the stay and instead be required to prove its claim against Growthworks in a summary *CCAA* claims process. As mentioned, the record disclosed little prospect of the Ottawa Proceedings going to trial until sometime in 2015, if then. A 10-week trial of all issues sometime in 2015 hardly qualifies as a "summary application" of a claim for purposes of *CCAA* s. 20(1)(a)(iii). In my lexicon "summary application" equates to "quick and lean".[11] A one-week hearing using primarily written evidence, with only limited, focused *viva voce* cross-examination, strikes me not only as "quick and lean", but also reasonable should I direct a Stage One claims hearing on the two Proposed Claims Issues, a decision I have not yet made. In its motion materials AVC did not address the type of evidence it would file at such a summary hearing. That was not helpful. I expect it to do so on the return of the extension motion.

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[11] As to the summary nature of *CCAA* claims procedures, see *Re Stelco Inc.*, 2006 CanLII 16526 (ON CA), para. 9.

[66] Indeed, I expect a higher degree of co-operation amongst counsel in these *CCAA* proceedings than that revealed in the record of the Ottawa Proceedings. On the return of the stay motion I expect all parties to have co-operated in order to place before me a clear picture of what a *motionless*, one-week hearing of the Proposed Claims Issues would look like, employing the assumption that (i) written openings would be filed in advance, (ii) all evidence-in-chief would be adduced by way of affidavit, (iii) *viva voce* cross-examinations would not exceed 3.5 days of hearing time, and (iv) closing arguments would be a combination of one day of oral arguments supplemented by written submissions. If, in the light of the additional evidence which I have directed be filed, I conclude that such a summary *CCAA* claims hearing should be held, I would be inclined to schedule it for early July, with reasons to be released just after Labour Day.

VII. Summary

[67] By way of summary, in light of the material events which have transpired in the Fund's *CCAA* proceeding since the hearing of these motions last month and in light of the material evidentiary gaps in the records filed on those motions, I defer my disposition of those motions until consideration of the forthcoming motion to extend the stay period, of which I seize myself, and I direct the filing of the additional evidence described above.

[68] I would conclude by observing that there is a certain "tail wagging the dog" aspect to these motions, if such a metaphor remains culturally acceptable. Growthworks was a 12.5% shareholder in Med-Eng, with its litigation exposure initially capped at foregoing 12.5% of $40 million, or $5 million. For business reasons which were accepted by this Court, Growthworks secured protection under the *CCAA*, a reality which all parties must accept. As I mused at the hearing, it is always open to the parties to find some way that the tail stops wagging the dog.

D. M. Brown J.

Date: March 24, 2014

TAB C

CITATION: Growthworks Canadian Fund Ltd. (Re), 2014 ONSC 2990
COURT FILE NO.: CV-13-10279-00CL
DATE: 20140514

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO Growthworks Canadian Fund Ltd., Applicant

BEFORE: D. M. Brown J.

COUNSEL: K. McElcheran, for the Applicant, Growthworks Canadian Fund Ltd.

C. Fell, for the Monitor, FTI Consulting Canada Inc.

I. MacLeod, for Allen-Vanguard Corporation

D. Bell, for the Offeree Shareholders in Ottawa Court Files Nos. 08-CV-43188 and 08-CV-43544

T. Reyes, for Roseway Capital S.a.r.l.

HEARD: May 14, 2014

REASONS FOR DECISION

Extend stay period, advisory agreement approval and Monitor's fees approval motions in a *CCAA* proceeding

[1] Growthworks Canadian Fund Ltd. ("Growthworks" or the "Fund"), moved to extend the Stay Period set out in paragraph 14 of the Initial Order of Newbould J. made October 1, 2013 under the *Companies' Creditors Arrangement Act*[1] from May 16, 2014 until November 30, 2014. The history of these proceedings was set out at length in my prior reasons: 2014 ONSC 1856 and 2014 ONSC 2253.

[2] Growthworks seeks approval of an Investment Advisory Agreement with Roseway Capital S.a.r.l dated as of May 9, 2014. The Monitor, in its Tenth Report, expressed the view that the terms of the IAA were fair and reasonable and the implementation of the IAA should substantially reduce the costs incurred by the Fund in these proceedings. No person opposed approval of the IAA. Having reviewed the evidence concerning the IAA, I am satisfied that the

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[1] R.S.C.1985, c. C-36.

proposed agreement is fair and reasonable, and I approve it. As well, I grant the Monitor the enhanced powers sought in respect of the tasks it must perform concerning the IAA as set out in the proposed Monitoring Enhancement Order.

[3] As to the extension of the stay period until November 30, 2014, the Monitor supports the extension and no person opposes. The evidence disclosed that circumstances existed which made the order appropriate and that the applicant had satisfied the criteria set out in *CCAA* s. 11.02(3)(b). I grant the extension of the stay period until November 30, 2014. In addition, as contemplated by paragraph 45(vii) of my Reasons dated April 10, 2014, I continue the partial lifting of the stay of proceedings therein granted in respect of the Allen-Vanguard Corporation action ("AVC Action") until November 30, 2014.

[4] Let me make two comments about the AVC Action. First, the cash-flow contained in the Monitor's Tenth Report showed that legal fees in respect of the AVC Action, together with restructuring costs, are projected to constitute the biggest expenses of the Fund through until November 30, 2014, with the result that by that date the Fund would be close to exhausting its present cash balance. That re-inforces, in my mind, the need to see the AVC Action come to trial on the timelines I ordered in my April 10 Reasons.

[5] Second, I was concerned that portions of the Monitor's Tenth Report dealing with the AVC Action could be read as suggesting that the parties to the action were already positioning themselves to fail to meet the trial preparation timelines ordered in my April 10 Reasons. Specifically, paragraphs 23 and 26 of the Tenth Report raised concerns that the parties to the AVC Action might be unable to meet those timelines because of the difficulty they contended they were encountering in obtaining case management dates in Ottawa. I cannot express any view on the process of scheduling of a case management conference in Ottawa, but I would observe that case management is not intended as a substitute for litigation counsel exercising their skills and judgment in moving a case to trial. Most issues which arise during the course of trial preparation can most certainly be resolved by counsel without the assistance of the Court. In reading the Monitor's report I was concerned that the parties were regarding case management as some sort of "nanny service", resort to which was required before taking a next step forward; that is not the function of case management.

[6] Perhaps I misread those portions of the Monitor's report, and I observe the Monitor did report that counsel in the AVC Action were consulting in the absence of a case conference to work out problems, which is a good thing. At the hearing counsel in the AVC Action informed me that a case conference would take place before Master McLeod on May 27, 2014, the parties would be seeking approval of a March, 2015 trial date and the parties were considering retaining a retired judge to arbitrate certain discovery disputes. All of that is fine. I simply wish to emphasize to counsel that I regard the timelines I set in my April 10 Reasons as quite achievable given the already lengthy history of the AVC Action, and the parties should not expect a sympathetic hearing from the Court if, when they appear on the November stay/lift stay continuation hearing, they do not report that they will be going to trial in the first part of 2015. I think it important to communicate that expectation clearly to the parties to the AVC Action at this point of time.

[7] The Monitor moved for approval of its activities and fees and disbursements. No person opposed. I regard the activities and fees as reasonable and grant the order sought by the Monitor.

[8] I have signed the draft orders filed by the applicant and the Monitor.

D. M. Brown J.

Date: May 14, 2014

TAB D

This is Exhibit D referred to in the affidavit of Donna Parr sworn before me, this 15th day of December 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CV-43544

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ALLEN-VANGUARD CORPORATION

Plaintiff

and

RICHARD L'ABBE, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED IN ITS CAPACITY AS GENERAL PARTNER OF EACH OF SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP1, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP2, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP3, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP4, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP5, SCHRODER CANADIAN BUY-OUT FUND II LIMITED PARTNERSHIP CLP6, SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of SCHRODER CANADIAN BUY-OUT FUND II UKLP, and on behalf of SCHRODER CANADIAN BUY-OUT FUND II COINVESTMENT SCHEME and SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

Defendants

- AND -

Court File No. 08-CV-43188

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

RICHARD L'ABBÉ, 1062455 ONTARIO INC., GROWTHWORKS CANADIAN FUND LTD., SCHRODER VENTURE MANAGERS (CANADA) LIMITED

in its capacity as general partner of each of
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP4,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5,
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6, and
SCHRODER VENTURES HOLDING LIMITED,
in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and
SVG CAPITAL plc (formerly, Schroder Ventures International Investment Trust plc)

Plaintiffs

and

ALLEN-VANGUARD CORPORATION,
ALLEN-VANGUARD TECHNOLOGIES INC. and
COMPUTERSHARE TRUST COMPANY OF CANADA

Defendants

MINUTES OF SETTLEMENT

WHEREAS Allen-Vanguard Corporation ("**Allen-Vanguard**") entered into a Share Purchase Agreement, made as of August 3, 2007, with Richard L'Abbé, 1062455 Ontario Inc., GrowthWorks Canadian Fund Ltd., Schroder Venture Managers (Canada) Limited and Schroder Ventures Holdings Limited (collectively, the "**Offeree Shareholders**") to purchase all of the shares of Med-Eng Systems Inc. for approximately $600,000,000.00, plus an amount established at approximately $50,000,000.00 for the purpose of excess working capital (the "**Share Purchase Agreement**");

AND WHEREAS Allen-Vanguard and the Offeree Shareholders entered into an Escrow Agreement, made as of September 17, 2007 (the "**Escrow Agreement**"), pursuant to which $40,000,000.00 of the purchase price paid by Allen-Vanguard to purchase all of the shares of Med-Eng Systems Inc., plus accrued interest, was held in escrow by Computershare Trust Company of Canada (the "**Escrow Agent**");

AND WHEREAS Allen-Vanguard delivered a Notice of Claim in accordance with the terms of the Share Purchase Agreement and Escrow Agreement on September 10, 2008, and the Offeree Shareholders delivered a Notice of Objection in respect of Allen-Vanguard's Notice of Claim on October 6, 2008;

AND WHEREAS Allen-Vanguard and the Offeree Shareholders are parties to two actions commenced in Ottawa (Court File Nos. 08-CV-43188 and 08-CV-43544) (collectively, the "**Allen-Vanguard Actions**");

AND WHEREAS Allen-Vanguard and the Offeree Shareholders have agreed to fully and finally settle the matters raised in the Allen-Vanguard Actions and any and all other matters or claims arising from, or connected with, the Share Purchase Agreement;

AND WHEREAS this settlement and these Minutes of Settlement as they affect GrowthWorks Canadian Fund Ltd. ("**GrowthWorks**") require approval from the Ontario Superior Court of Justice Commercial List (the "**CCAA Court**") pursuant to the application made by GrowthWorks on October 1, 2013 under the *Companies' Creditors Arrangement Act*;

AND WHEREAS this settlement and these Minutes of Settlement and the Mutual Full and Final Release herein shall be effective and enforceable only if and conditional upon completion of the settlement of the companion Action, Ottawa Court File No. 08-CV-41899, (the "**Timmis Action**"), and on the parties' execution and delivery of the Minutes of Settlement and Mutual Full and Final Release in the Timmis Action;

NOW THEREFORE, Allen-Vanguard and the Offeree Shareholders hereby covenant and agree as follows:

Settlement/Release of Escrow Funds

1. The Offeree Shareholders and Allen-Vanguard agree to jointly authorize and direct the Escrow Agent to release the Indemnification Escrow Fund (as defined in the Escrow Agreement) as follows:

   (a) To Allen-Vanguard: $28,000,000 (CDN) as at November 10, 2014, which amount shall be comprised of capital as to $25,591,286.43 and accumulated interest thereon to November 10, 2014 as to $2,408,713.57.

(b) To the Offeree Shareholders: The balance of the Indemnification Escrow Fund, including all additional accumulated interest on that balance will remain invested with the Escrow Agent and shall be distributed to the Offeree Shareholders and the other former shareholders of Med-Eng Systems Inc. in accordance with an order of the Ontario *Superior Court of Justice (Commercial List)*.

2. Concurrently with the execution and delivery of these Minutes of Settlement, Allen-Vanguard and the Offeree Shareholders shall execute and deliver to the Escrow Agent the Joint Direction attached as Schedule "A", which provides for the Escrow Agent to release the Indemnification Escrow Fund in accordance with the terms of the Joint Direction.

3. Allen-Vanguard and the Offeree Shareholders agree to take such further and other reasonable steps as may be required by the Escrow Agent to obtain the immediate release of the Indemnification Escrow Fund in accordance with the Joint Direction.

Mutual Full and Final Release

4. Concurrently with the execution and delivery of these Minutes of Settlement, Allen-Vanguard and the Offeree Shareholders shall execute and deliver the Mutual Full and Final Release attached as Schedule "B" (the "**Mutual Full and Final Release**"). The parties acknowledge that by entering into these Minutes of Settlement no party is admitting liability of any kind and that any such liability is expressly denied.

Dismissal of the Allen-Vanguard Actions

5. The Allen-Vanguard Actions shall be dismissed on consent without costs, and such Orders shall be obtained expeditiously by counsel for Allen-Vanguard.

Costs and Fees

6. Allen-Vanguard and the Offeree Shareholders shall each bear their own legal fees and disbursements.

7. The costs of the Arbitration with the Honourable Colin L. Campbell, Q.C. are to be divided equally between Allen-Vanguard and the Offeree Shareholders.

Other Terms

8. The parties agree not to make any derogatory/disparaging remarks about any other party. No party shall make any public statement or comment upon the settlement, and the terms of the Minutes of Settlement and Mutual Full and Final Release, except as may be required by law, regulation, order by a governmental authority or is required or admissible in connection with any arbitration or other legal proceeding including the CCAA proceedings in respect of GrowthWorks.

9. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

10. These Minutes of Settlement may be executed in counterparts and exchanged by facsimile or electronic transmission, each copy of which shall be deemed to be an original, and that such separate counterparts shall together constitute one and the same agreement.

11. Time is of the essence of this agreement.

GrowthWorks CCAA Court Approval

12. Notwithstanding all of the above, and the parties' agreements reflected in these Minutes of Settlement and the Mutual Full and Final Release, the parties further agree that the settlement, these Minutes of Settlement and the Mutual Full and Final Release shall not be effective, enforceable or acted upon until the approval of this settlement has been obtained from the CCAA Court.

13. The parties consent to seek approval from the CCAA Court and to expedite the motion to the CCAA Court to obtain such approval. Upon such approval, and subject to paragraphs 14 and 15 below, the settlement, these Minutes of Settlement and the Full and Final Mutual Release shall become immediately effective.

Settlement Conditional on Timmis Action Settlement

14. The parties acknowledge and agree that the settlement, these Minutes of Settlement and Mutual Full and Final Release, even if approved by the CCAA Court, shall be effective and enforceable only if and conditional upon the settlement of the Timmis Action and the execution and delivery of the Minutes of Settlement and Mutual Full and Final Release therein by the parties to the Timmis Action.

Deadline for Payment

15. The parties agree that Allen-Vanguard shall receive payment pursuant to paragraph 1(a) above by no later than December 29, 2014. In the event that payment is not received by Allen-Vanguard by that date and in accordance with the terms herein, Allen-Vanguard may, in its sole and absolute discretion, treat this settlement, these Minutes of Settlement and the Mutual Full and Final Release as null and void and of no force or effect.

IN WITNESS WHEREOF the undersigned have executed these Minutes of Settlement on December ____, 2014.

ALLEN-VANGUARD CORPORATION

By: _____

Name
Title

I have authority to bind the company

RICHARD L'ABBÉ

_____ _____

Witness Richard L'Abbé

1062455 ONTARIO INC.

By: _____

Name
Title

I have authority to bind the company

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name
Title

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name CATHERINE LYNG
Title DIRECTOR

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name
Title

I have authority to bind the company

SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

By: _____

Name
Title

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name
Title

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name Susan Cooper
Title Director

I have authority to bind the company

SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

By: _____

Name
Title

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name
Title

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name
Title

I have authority to bind the company

SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

By: _____

Name T.S. BALLARD
Title Company Secretary

I have authority to bind the company

SCHEDULE "A"

JOINT DIRECTION

TO: Computershare Trust Company of Canada, (the "**Escrow Agent**")

RE: Escrow Agreement made as of September 17, 2007 (the "**Escrow Agreement**") between Allen-Vanguard Corporation, the Offeree Shareholders (as defined therein), Med-Eng Systems Inc. and the Escrow Agent

Capitalized terms are as defined in the Escrow Agreement, unless otherwise noted.

Pursuant to Section 4.1 of the Escrow Agreement, the undersigned hereby irrevocably direct the Escrow Agent to release the Indemnification Escrow Fund as follows:

(a) To the Purchaser: $28,000,000 (CDN) as at November 10, 2014, which amount shall be comprised of capital as to $25,591,286.43 and accumulated interest thereon to November 10, 2014 as to $2,408,713.57.

(b) To the Offeree Shareholders: The balance of the Indemnification Escrow Fund, including all additional accumulated interest on that balance will remain invested with the Escrow Agent and shall be distributed to the Offeree Shareholders and the other former shareholders of Med-Eng Systems Inc. in accordance with an order of the Ontario *Superior Court of Justice (Commercial List)*.

This joint direction shall not be effective, enforceable or acted upon:

(i) Unless and until an order is made by a judge of the Ontario *Superior Court of Justice (Commercial List) In the Matter of GrowthWorks Canadian Fund Ltd.*, Court file number CV-13-10279-00CL, directing the Escrow Agent to pay the Purchaser in accordance with this joint direction; and

(ii) Unless this joint direction is received by the Escrow Agent and payment made to the Purchaser pursuant to paragraph (a) above by December 29, 2014, except as may be otherwise agreed to by Allen-Vanguard in its sole and absolute discretion.

DATED as of December ____, 2014.

ALLEN-VANGUARD CORPORATION

By: _____
Name
Title

I have authority to bind the company

RICHARD L'ABBÉ

_____ _____
Witness Richard L'Abbé

1062455 ONTARIO INC.

By: _____
Name
Title

I have authority to bind the company

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name C. Ian Ross
Title CHAIRMAN

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name CATHERINE LYNG
Title DIRECTOR

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name
Title

I have authority to bind the company

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name
Title

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name
Title

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name Susan Cooper
Title Director

I have authority to bind the company

SVG CAPITAL plc (formerly, SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc)

By: _____

Name T. S. BALLARD

Title Company Secretary

I have authority to bind the company

SCHEDULE "B"

MUTUAL FULL AND FINAL RELEASE

WHEREAS it is agreed that terms not defined in this Mutual Full and Final Release have the meaning given to them in the Minutes of Settlement dated December ____, 2014 to which this Mutual Full and Final Release is attached as Schedule "B".

NOW THEREFORE AND IN CONSIDERATION of the execution of the Minutes of Settlement and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, Allen-Vanguard of the first part, and the Offeree Shareholders of the second part, (hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**") do hereby release, remise and forever discharge, without limitation or qualification, each other and their agents, predecessors, successors, personal representatives, heirs, executors, administrators, assigns, and affiliated, associated, subsidiary or related partnerships, trusts, corporations, companies or other entities, including the respective past, present and future officers, directors, trustees, employees, servants, shareholders, agents, successors or assigns of each of the foregoing, of and from all manner of claims, potential claims, actions, causes of action, suits, proceedings, demands, debts, expenses, compensation, damages, monies, losses, complaints, awards, judgments, interest, costs (legal or otherwise) and liabilities howsoever arising, whether in law or equity, whether implied or expressed, whether currently known or unknown, in any way related to or arising out of the Allen-Vanguard Actions and any and all other matters or claims arising from, or connected with, the Share Purchase Agreement, including those claims that were advanced or could have been advanced up to and including the date of this Mutual Full and Final Release in the Allen-Vanguard Actions (the "**Released Claims**").

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, the Parties declare that the intent of this Mutual Full and Final Release is to conclude all issues in respect of, relating to, or arising out of, the Released Claims and it is understood and agreed that this Mutual Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect

of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof.

IT IS FURTHER UNDERSTOOD AND AGREED that neither Party shall make or continue any claim or take any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, from the other Party in connection with the Released Claims.

IT IS FURTHER UNDERSTOOD AND AGREED that neither Party has assigned to any person, partnership, trust, corporation, company, or any other entity any of the Released Claims, nor any of the matters about which it agrees herein not to make any claim or take any proceedings.

IT IS FURTHER UNDERSTOOD AND AGREED that this Mutual Full and Final Release is entered into without any admission of liability by the Parties.

IT IS FURTHER UNDERSTOOD AND AGREED that the provisions hereof shall enure to the benefit of and shall be binding upon the successors and assigns of the Parties.

AND IT IS FURTHER UNDERSTOOD AND AGREED that this Mutual Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

AND IT IS ACKNOWLEDGED that this Mutual Full and Final Release has been read by the undersigned and the terms of the aforementioned agreement are fully understood by each of the undersigned, that each undersigned is executing this Mutual Full and Final Release freely, voluntarily and without duress after having received legal advice, and that, except as set out in the Minutes of Settlement and this Mutual Full and Final Release, none of the undersigned have been induced to execute this Mutual Full and Final Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting this Mutual Full and Final Release except as provided in the Minutes of Settlement and herein.

AND IT IS ACKNOWLEDGED that this Mutual Full and Final Release may be executed by the undersigned in one or more separate counterparts (including by facsimile or other electronic transmission), each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of the Parties, and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF the undersigned have executed under seal this Mutual Full and Final Release on December ____, 2014.

ALLEN-VANGUARD CORPORATION

By: _____
Name
Title

I have authority to bind the company

RICHARD L'ABBÉ

_____ _____
Witness Richard L'Abbé

1062455 ONTARIO INC.

By: _____
Name
Title

I have authority to bind the company

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name C. Ian Ross
Title CHAIRMAN

I have authority to bind the company

SVMCL MANAGEMENT CANADA LIMITED in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: _____

Name CATHERINE LYNG
Title DIRECTOR

I have authority to bind the company

SCHRODER VENTURES HOLDINGS LIMITED in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme

By: _____

Name
Title

I have authority to bind the company