

**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.**

**RESPONDING MOTION RECORD  
(returnable November 4, 2015)**

October 9, 2015

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Ltd.

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(the "APPLICANT")

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**TAB 1**

**ONTARIO  
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OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.

**AFFIDAVIT OF C. IAN ROSS  
(sworn October 9, 2015)**

I, C. Ian Ross, of the Town of Blue Mountains, in the Province of Ontario, MAKE  
OATH AND SAY:

**Introduction**

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), as well as a director of the Fund and its interim chief executive officer. In that role, I am responsible for the daily operations of the Fund, acting under the oversight of the Fund's board of directors. As such, I have personal knowledge of the facts to which I hereinafter depose,
2. I have reviewed the affidavit of Michael Forer sworn October 1, 2015 (the "**Forer Affidavit**") and the affidavit of Donna Parr sworn September 30, 2015 (the "**Parr Affidavit**").

**Overview: the Fund did not manipulate the timing of payments to Roseway**

3. Roseway alleges that the Fund intentionally delayed repayment of the Outstanding IAD (as defined below) in order to deprive Roseway Capital S.a.r.l. (“**Roseway**”) of an Additional Fee (as defined below) in respect of the PerspecSys Disposition (as defined below). This allegation is false. The Fund did not manipulate the timing of payment of the Outstanding IAD.

4. In assessing Roseway’s allegation, there are two key points to keep in mind:

(a) Throughout these CCAA proceedings, the Fund has had to manage its cash very carefully. As a result, the Fund was careful not to pay the remaining Outstanding IAD until the PerspecSys Disposition had closed and the proceeds of that transaction had been received by the Fund. Based upon my business judgment and years of business experience, and given the Fund’s available cash resources, I felt at the time (and remain of the view today) that it would have been irresponsible to pay the Outstanding IAD until the PerspecSys Disposition had actually closed and the Fund had actually received the cash proceeds from that transaction.

(b) Contrary to the image portrayed by the Parr Affidavit, the closing of the PerspecSys Disposition remained uncertain right up to the time that the proceeds were received by the Fund late on the evening of July 31, 2015 – both in terms of *whether* closing would occur and *when* it would occur. Moreover, leading up to closing the Fund had far less information about the status of the ProspectSys Disposition than Ms. Parr apparently did.

### **The Fund**

5. The Fund is a labour-sponsored venture capital fund with a diversified portfolio of investments in small and medium-sized Canadian businesses. On September 30, 2013, the Fund was granted protection from its creditors under the CCAA, and has been in these CCAA proceedings since then.

### **My background and that of the Fund's other directors**

6. I was called to the Ontario Bar in 1968, but decided not to practise law after completing my articles. Instead, as outlined below, I have been involved in business since that time. I remain a member in good standing of the Law Society of Upper Canada, but my status with the Law Society is "Not Practising Law".

7. I have extensive business experience. My full curriculum vitae is attached as Exhibit "A". Among other things, I have worked for Bank of Montreal and the Export Development Corporation, each of which provided me with experience as a lender. I have been involved in several restructurings, including one involving Paperboard Industries Corporation, which provided me with experience as a borrower. Between 2003 and 2014 I was a member of the board of directors of Ontario Power Generation Inc. (commonly known as OPG). During that time, among other things, I served on the board's Audit and Finance Committee and the board's Nuclear Oversight Committee, and was Chairman of the board's Risk Committee.

8. I have been involved in many transactions. Despite the efforts of Mr. Forer and Ms. Parr to disparage or downplay my expertise, I am well familiar with what a closing is, and am well familiar with the contingencies and uncertainties associated with closing the sale of a private business.

9. The other two members of the Fund's board of directors also have extensive experience. Peter Crombie has many years of experience in business, and has served as CEO of the venture capital arms of OPG and BCE Inc. John Cole has many years of industrial labour relations expertise, including more than 20 years as Senior Labour Adviser to NB Power.

#### **The IAA**

10. The Fund and Roseway entered into an Investment Advisor Agreement dated May 9, 2014 (the "IAA"). The IAA is found at Exhibit "A" to the Forer Affidavit.

11. On September 8, 2015, the Fund gave notice to Roseway pursuant to section 9.3(i) of the IAA that the Fund is terminating the IAA effective December 9, 2015.

12. Among other things, the IAA provided that Roseway was to act as investment advisor to the Fund to assist it in the management of the Fund's portfolio of securities (the "**Portfolio**") with a view to realizing on the Fund's assets to repay its debt obligations and maximize value for the Fund's shareholders. The IAA permitted Roseway to delegate its obligations under the IAA. Roseway retained Crimson Capital Inc. ("**Crimson Capital**"), a company controlled by Ms. Parr, as a sub-contractor for that purpose.



13. Under the IAA, Roseway and its sub-contractors were required to exercise their powers and discharge their duties and responsibilities under the IAA “diligently, honestly and in good faith, and in the best interests of the Fund and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a speciality and experience as an investment advisor would exercise in the same circumstances”. See Section 5.4.1 of the IAA.

14. As consideration for acting as the Fund’s investment advisor, the IAA provides that Roseway is entitled to an annual fee of \$350,000 and reimbursement of certain expenses. Section 7.3.1 of IAA provides that, from and after such time as the Investment Advisor Debt has been paid in full, Roseway is also entitled to a fee (an “**Additional Fee**”) equal to 15% of the aggregate gross proceeds of disposition of the then remaining Portfolio securities held by the Fund.

### **The Settlement Agreement**

15. By the fall of 2014, the Fund had materially reduced the amount of the outstanding Investment Advisor Debt (as defined in the IAA), which the Fund viewed as a significant achievement given the amount of debt owing by the Fund to Roseway at the commencement of these CCAA proceedings and the high rate of interest payable on that debt. In light of this development, the Fund initiated discussions with Roseway in late 2014 with a view to settling the amount of Investment Advisor Debt (the quantum was disputed) and otherwise conclude the Fund’s creditor relationship with Roseway. The Fund undertook those discussions in an effort to

further stabilize the Fund's operations and provide greater certainty as to its future operations, including its efforts to emerge from these CCAA proceedings.

16. Following long and protracted negotiations between the Fund, Roseway and their respective advisors, the Fund and Roseway entered into a settlement agreement (the "**Settlement Agreement**") in late May of this year. The Settlement Agreement is found at Exhibit "E" to the Forer Affidavit.

17. Among other things, the Settlement Agreement fixed the amount of the Investment Advisor Debt and other amounts payable by the Fund to Roseway (the total and fixed amount payable by the Fund to Roseway is referred to in the Settlement Agreement and this affidavit as the "**Outstanding IAD**") and provided that payment in full of the Outstanding IAD would constitute repayment in full of the Investment Advisor Debt for all purposes of the IAA.

#### **The Fund's approach to payment of the Outstanding IAD**

18. Section 2.04(1)(c) of the Settlement Agreement required the Fund (with the consent of the Monitor) to pay the Outstanding IAD as soon as reasonably practicable, taking into account the Fund's commercially reasonable estimate of its actual and projected liquidity, capital resources and expenditures.

19. In determining when to pay the Outstanding IAD, the Fund was subject to certain constraints under which the Fund has had to manage its cash in these CCAA proceedings:

- (a) The Fund's cash resources are limited. As noted in the e-mail of Jim Cade found at Exhibit "H" of the Forer Affidavit, as at July 28, 2015 (prior to the closing of

the PerspecSys Disposition) the Fund had only \$122,428 in its expense accounts and \$1,230,248 in a blocked account maintained by the Monitor for the benefit of the Fund (the "**Blocked Account**").

- (b) The Fund's ability to generate additional cash is limited. The Fund's sole source of incoming cash is dispositions from the Fund's holdings of securities, most of which are securities in early stage private companies. The Fund has no ongoing operations other than the management of its Portfolio and ancillary activities and the oversight of the Fund's financial condition, with no other source of incoming cash. Since the Fund does not have DIP financing or any other source of borrowing, the Fund has, for the past several years, also sought to maintain something of a cushion so that some cash is always available in the event of unforeseen needs.
- (c) Both the timing of dispositions of securities and the receipt of cash proceeds from dispositions have been highly contingent and uncertain until dispositions have been completed. This is for two reasons. The first is the nature of early stage private companies, which are inherently uncertain. The second is the fact that the Fund generally holds minority positions in the companies in which it holds investments. This means that the Fund does not have significant control over the affairs of its investee companies, including a decision to sell the company.
- (d) At the time the Monitor received the sale proceeds from the PerspecSys Disposition, the Fund had significant unpaid post-filing payables in addition to the Outstanding IAD of \$955,404. Those payables were approximately \$699,000. They included, among other things, directors' fees to members of the Fund's

board (which were in arrears by approximately six months), fees to the Fund's legal counsel, and fees and expenses to Roseway (in its capacity as investment advisor to the Fund) and its counsel (which accounted for approximately 30% of the total post-filing payables).

20. As a result of these constraints, the Fund was very cautious about paying the Investment Advisor Debt (and, subsequently, the Outstanding IAD) and only paid it down when (i) cash had actually been received from dispositions; and (ii) it was clear that there would be sufficient cash remaining after a proposed payment to avoid a material risk that the Fund would run out of cash.

21. Thus, in an email dated June 30, 2015 from Paul Bishop of the Monitor to William Rogers of CCC Investment Banking, the Fund's financial advisor, the Monitor expressed some concern over the Fund's liquidity should it repay in full the Outstanding IAD. In response to a question from Mr. Rogers as to whether the initial proceeds anticipated to be received from a possible disposition (the "**PerspecSys Disposition**") of the Fund's interest in a Portfolio company, PerspecSys Inc., would be sufficient to enable the Fund to repay the remaining Outstanding IAD (which, at that time, amounted to \$955,404), Mr. Bishop stated at that time: "Yes, we have enough on hand to payout Roseway but it would clean us out, so the PerspecSys money will enable us to pay out Roseway and have sufficient funds to administer the estate going forward." Mr. Bishop's email of June 30, 2015 is attached as Exhibit "B".

22. The manner in which the Fund handled a payment towards the Outstanding IAD in early June 2015 well illustrates the Fund's approach. At that time, the Outstanding IAD amounted to approximately \$2.2 million. The Fund paid approximately \$1.045 million to Roseway to reduce the Outstanding IAD, but also secured Roseway's consent to the concurrent payment of another

\$500,000 towards other payables. The payment to Roseway did not pay the Outstanding IAD in full, and some cash was retained by the Fund. In other words, payments towards the Outstanding IAD were only undertaken to the extent that sufficient cash had already been received and could safely be disbursed, taking into account the Fund's estimate of its actual and projected liquidity, capital resources and expenditures.

23. The Fund's approach regarding those June 2015 payments are illustrated in an email to me on June 9, 2015 from Mr. Bishop. In his email, Mr. Bishop provided the Fund with an update on the Fund's cash balances held by the Monitor and proposed payments on account of the Outstanding IAD to Roseway and the Fund's accounts payables. At that time, the Monitor took the position that the Fund's cash balances should not be reduced below the then current level of approximately \$1.3 million until such time as the next anticipated cash inflow (a payment from OPKO Health, Inc.) was actually received. Mr. Bishop stated in his email that: "These transfers would leave \$2.2 million in the Roseway blocked account, from which we will pay the \$900k in respect of withholdings on July 15. The balance will be retained *until such time as the OPKO milestone payment is received, at which time Roseway will be paid the balance due under the settlement agreement.*" [Emphasis added.] Mr. Bishop's email of June 9, 2015 is attached as Exhibit "C".

24. Between June 9, 2015 and July 31, 2015, the Fund received no inflows of cash whatsoever. During that period, however, the Fund's accounts payables continued to increase.

### **The PerspecSys Disposition**

25. As is common with private sale transactions, the timing of the completion of the PerspecSys Disposition remained uncertain. In an email dated July 24, 2015, Ms. Parr advised me that a definitive merger agreement in relation to the proposed PerspecSys Disposition had just been signed and that “best-case is closing mid-next week but may take longer to get all agreements with option holders and stockholders into place”. Ms. Parr’s email of July 24, 2015 is attached as Exhibit “D”.

26. On July 28, 2015, Jim Cade of Norton Rose Fulbright LLP, legal counsel to Roseway and a representative of Roseway for purposes of the Blocked Account, wrote to the Fund’s legal counsel to advise the Fund that he and Ms. Parr were of the belief that the remaining Outstanding IAD should be paid in full immediately using the cash held by the Monitor. In his email, Mr. Cade acknowledged that such a payment would leave the Fund with total cash of just \$387,282. Mr. Cade’s email of July 28, 2015 is attached as Exhibit “H” to the Forer Affidavit.

27. On July 29, 2015, the Fund’s counsel, Jonathan Grant of McCarthy Tétrault LLP, responded to Mr. Cade to advise him that Section 2.04(1)(c) of the Settlement Agreement required the Fund to repay the Outstanding IAD as soon as reasonably practicable, taking into account the Fund’s commercially reasonable estimate of its actual and projected liquidity, capital resources and expenditures. In his email, Mr. Grant noted that, in the past, payments on account of the amounts owing to Roseway had only been made by the Monitor on behalf of the Fund as it received cash and then only after carefully considering those liquidity factors. He also noted that the timing of the closing of the PerspecSys Disposition remained uncertain at that time as the

parties to the transaction sought to satisfy closing conditions. Mr. Grant's email of July 29, 2015 is attached as Exhibit "I" to the Forer Affidavit.

28. In my view, Mr. Cade's email to Mr. Grant on July 28, 2015 was an attempt to pressure the Fund and its directors into making a premature decision as to the use of its limited cash resources and take an unnecessary risk with respect to the Fund's liquidity should the PerspecSys Disposition be delayed or not occur at all, solely to enable Roseway and Ms. Parr to share in a \$450,000 fee to which neither of them is otherwise entitled. In my experience and business judgment, both at the time and even now in retrospect, it would have been irresponsible to pay the Outstanding IAD until the PerspecSys Disposition actually closed and proceeds were actually received by the Fund.

29. The Forer Affidavit and the Parr Affidavit both assert that in late July the closing of the PerspecSys Disposition "was imminent". This was not communicated to the Fund at the time. The Fund did not receive the e-mails found at Exhibits "A", "C", "G", "H" and "I" of the Parr Affidavit (I first saw them when I received the Parr Affidavit). Even Mr. Cade's email of July 28, 2015 did not say that the closing of the PerspecSys Disposition was imminent. Rather it merely asserted that he and Ms. Parr were of the view that the Outstanding IAD should be paid. Nor did it give any consideration to the Fund's other payables and future expenditures at that time. Mr. Cade did not respond to Mr. Grant's July 29, 2015 e-mail to refute the Fund's position.

30. I understand from Crimson Capital that the Fund completed the PerspecSys Disposition on July 30, 2015 and generated proceeds to the Fund of approximately U.S. \$2.45 million. At 10:35 p.m. on the evening of Friday, July 31, 2015 – the Friday before the August long weekend

– Paul Bishop of the Monitor confirmed by email that the Monitor was in receipt of those proceeds. In that email, Mr. Bishop also advised me that the Monitor had been advised by Mr. Cade that Mr. Cade had revoked his prior approval of repayment of the balance of the “Roseway IAD” (which I believe is a reference to the Outstanding IAD) apparently given to the Monitor at an earlier date. Mr. Bishop’s email of July 31, 2015 is attached as Exhibit “E”.

31. On July 16, 2015, I received an email from Ms. Parr setting out a breakdown of the proceeds anticipated to be received by the Fund in connection with the sale of its interest in PerspecSys Inc. In that email, Ms. Parr indicated that an Additional Fee (amounting to 15% of the gross proceeds received by the Fund from the PerspecSys Disposition) would be payable by the Fund to Roseway in respect of the PerspecSys Disposition. Ms. Parr’s email of July 16, 2015 is attached as Exhibit “F”.

32. The Forer Affidavit claims at paragraph 69 that Mr. Forer believes that the Fund did not want to commit to writing its view that no Additional Fee was payable on the PerspecSys Disposition until after it had closed. Mr. Forer’s belief is incorrect. Shortly after Ms. Parr’s July 16, 2015 email I advised Ms. Parr by telephone that, under the terms of the IAA, an Additional Fee was only payable to Roseway in respect of dispositions of remaining Portfolio securities made by the Fund after the Investment Advisor Debt had been paid in full, and that since \$955,404 of the Investment Advisor Debt remained outstanding no Additional Fee was payable. Thus there was no secrecy about the Fund’s position. I had no occasion to put this position in writing until August 6, 2015.

33. In paragraph 47 of the Forer Affidavit, Mr. Forer states that there was a further contingent payment that “was expected to close before the end of August, and was expected to



yield approximately U.S. \$1.2 million". I assume that Mr. Forer is referring to a possible payment from OPKO Health, Inc. The timing and quantum of this payment was highly uncertain at the end of July 2015 and Ms. Parr advised the Fund as much. On July 30, 2015, Ms. Parr sent me an email in reference to this possible payment in which she said: "The OPKO payout should be on Aug. 27th. There is a little confusion over whether it is 30 days from verbal or written FDA approval (expected Aug 14th range) however the committee believes it is the former since we have been notified by the company of the FDA acceptance. The latter would obviously add more time. No word yet on if cash or shares but expecting shares." Further, the payment was expected to be made in the form of shares of OPKO Health, Inc. and therefore was subject to the risk that those shares could decrease in value over the month of August and therefore the actual amount was not reasonably or reliably determinable at that time. A copy of Ms. Parr's email of July 30, 2015 is attached as Exhibit "G".

34. In paragraph 68 of the Forer Affidavit, Mr. Forer states that Roseway is entitled to 15% of the proceeds to be received by the Fund in the future in respect of the sale of the Fund's interest in PerspecSys Inc. This is not accurate. Any future entitlement of Roseway to further payments from the Fund in relation to that disposition are governed by the IAA and are subject to several conditions.

#### **Payment of the Outstanding IAD**

35. Following confirmation from the Monitor of receipt of those funds late on July 31, 2015, the Fund's board promptly met on August 5, 2015 (the first time the board was able to meet following the August long weekend) to review the Fund's actual and projected liquidity, capital

resources and expenditures and consider a payment on account of the remaining Outstanding IAD. At that meeting, the board determined that the Fund had sufficient cash resources to fully repay the Outstanding IAD and authorized the Fund to make that payment and satisfy its related obligations to Roseway under the Settlement Agreement.

36. Later that day, the Fund then sought and obtained the consent of the Monitor to make that payment. An email dated August 5, 2015 from Paul Bishop of the Monitor confirming such consent is attached as Exhibit "H".

37. However, Roseway blocked the Fund's attempt to pay the Outstanding IAD (Roseway had control over the Blocked Account), and the Fund was required to bring a motion to compel Roseway to allow the payment to occur. Roseway responded by bringing a cross-motion for payment of the Additional Fee. On September 4, 2015, the Honourable Justice Newbould granted the Fund's motion, ordered Roseway to permit payment of the Outstanding IAD, adjourned the cross-motion, and ordered Roseway to pay \$20,000 in costs within 10 days. Payment of the Outstanding IAD occurred on September 15, 2015 pursuant to Justice Newbould's order.

38. In paragraphs 12 and 74 of the Forer Affidavit, Mr. Forer inaccurately states that Roseway did not oppose Justice Newbould's order of September 4, 2015. I was present at the hearing before Justice Newbould and this is not an accurate characterization of what happened. Justice Newbould *ordered* the payment over Roseway's objection. It was only after it was clear that Roseway had lost that its counsel purported not to oppose the Fund's motion.

**The amounts Roseway has extracted from the Fund**

39. To place Roseway's claim for the Additional Fee in context, it is necessary to understand how much money Roseway has managed to extract from the Fund.

40. In May 2010, the Fund and Roseway entered into a participation agreement (the "**Participation Agreement**"). Under that agreement, Roseway advanced \$20 million to the Fund in exchange for a "participating interest" in certain portfolio investments held by the Fund which entitled Roseway to a percentage of the proceeds of disposition realized by the Fund in respect of those investments. However, the Participation Agreement guaranteed Roseway the return of its \$20 million advance three years later *plus* a minimum return of \$17.1 million over that three year period.

41. To date, the Fund has repaid that initial \$20 million advance, the \$17.1 million minimum return, and approximately \$6 million in interest, fees and expenses. Thus Roseway has received over \$23 million and the return of its original advance of \$20 million. Yet it is not satisfied – it wants still more, in the form of the Additional Fee, to which it is not entitled under the terms of the IAA.

**Repayment of the Outstanding IAD is governed by section 2.04 of the Settlement Agreement**

42. The Forer Affidavit seems to suggest in his affidavit that the Investment Advisor Debt is owing under the IAA. I presume this is an effort to argue that section 2.04 of the Settlement

Agreement somehow does not apply to repayment of the Investment Advisor Debt. Mr. Forer's assertion is incorrect. The Investment Advisor Debt arose under the Participation Agreement or the Security Agreement (as that term is defined in the Settlement Agreement), and as such section 2.04 of the Settlement Agreement governs the mode of repayment of the Investment Advisor Debt.

43. This fact is reflected in the IAA between the Fund and Roseway. Section 1.1 of the IAA defines "Investment Advisor Debt" as follows:

**"Investment Advisor Debt"** means the amount owing by GW CDN to the Investment Advisor *pursuant to the Participation Agreement and/or Security Agreement plus any accrued interest thereon*, which as of May 9, 2014 includes principal and interest of \$18,924,319, as such amount may be increased or decreased by a Resolution as determined in accordance with Section 3.5; [Emphasis added.]

44. Among other things, the Settlement Agreement terminated the Participation Agreement and Roseway subsequently delivered to the Fund a full and final release pursuant to which Roseway released the Fund from all claims and losses Roseway, in any capacity, had under the Participation Agreement, the Security Agreement or the IAA up to the time of the release.

45. As a result, any amount that was owing by the Fund to Roseway when the parties entered into the Settlement Agreement was included in the amount fixed by the Settlement Agreement as owing to Roseway. That amount is referred to in the Settlement Agreement as the "**Outstanding IAD**" and also included a variety of other debts, including expenses and accrued and unpaid interest.

46. Importantly, the Outstanding IAD represented a new debt obligation of the Fund to Roseway and replaced whatever debts were owing to Roseway under the Participation

Agreement, the Security Agreement, the IAA or any other agreement between the parties at the time of the Settlement Agreement.

47. It is for this reason that Section 2.04(1)(c) of the Settlement Agreement includes a separate covenant of the Fund to pay the Outstanding IAD, and that Section 2.04(1)(b) of the Settlement Agreement sets out an acknowledgement and agreement of Roseway that “payment in full of the Outstanding IAD will constitute repayment in full of the Investment Advisor Debt for all purposes of the IAA”.

48. However, the Fund’s obligation to repay the Outstanding IAD is not a bald promise to pay. Rather, it is a covenant to pay which reflects the acknowledgement and agreement of Roseway that the Fund’s liquidity and capital resources are, and will continue to be, uncertain, that any determination as to the Fund’s actual and projected liquidity, capital resources and expenditures is one made by the Fund alone, and that any decision to repay the Outstanding IAD will be made by the Fund after taking into account the Fund’s commercially reasonable estimate of actual and projected liquidity, capital resources and expenditures of the Fund at that time and obtaining the consent of the Monitor. Section 2.04(1)(c) of the Settlement Agreement provides that:

“(c) with the consent of the Monitor, GW Cdn will pay the Outstanding IAD *as soon as reasonably practicable, taking into account GW Cdn’s commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of GW Cdn, and (ii) expenditures of GW Cdn;* and” [Emphasis added]

49. Once the Fund had received confirmation from the Monitor that it had received a cash inflow from the PerspecSys Disposition late on July 31, 2015, the Fund’s board of directors moved promptly to review its actual and projected liquidity, capital resources and expenditures. Prior to that date, there was no change in the Fund’s cash resources and neither Ms. Parr nor

Roseway provided any firm assurance that future cash inflows would be received, notwithstanding that each had ample opportunity to do so prior to that date. Paying the Outstanding IAD before actual receipt of sufficient cash proceeds to do so in light of the Fund's actual and projected liquidity, capital resources and expenditures was not required by the Settlement Agreement or the IAA, would not have been consistent with past practice since the CCAA filing, would not have been in the best interests of the Fund, and would not have been supported by the information available to the Fund from the Monitor, Roseway and Crimson Capital at that time and upon which the Fund reasonably relied.

#### **The role of Roseway and Crimson Capital**

50. In several places the Forer Affidavit and the Parr Affidavit go to great lengths to embellish and overstate the role of Roseway and Crimson Capital. For example, Roseway and Crimson Capital claim credit for the decision to hold rather than sell shares of Ambit Biosciences Corporation ("Ambit"). In fact, the decision to hold was made by the Fund several months before Roseway and Crimson Capital even became involved with the Fund as investment advisors.

51. In paragraph 33 of the Parr Affidavit, Ms. Parr alleges that I have relied on Roseway and Ms. Parr entirely for the Fund's "activities, prospects and financial condition". This is incorrect. Roseway has responsibility for making investment and divestment decisions with respect to the Portfolio. However, the activities of the Fund extend beyond that responsibility and include proper maintenance of the Fund's records, compliance with applicable laws and, importantly, the oversight and management of the Fund's financial affairs, including determinations as to when to

disperse the Fund's limited available cash. These responsibilities lie with the board and the officers of the Fund and have never been ceded to Roseway or Ms. Parr.

SWORN BEFORE ME at the City )  
of Toronto in the Province of )  
Ontario, this 9th day of October, )  
2015 )



\_\_\_\_\_  
Commissioner for taking affidavits


**GEOFF R. HALL**



\_\_\_\_\_  
**C. IAN ROSS**

**Tab A**



This is Exhibit <sup>A</sup> referred to in the  
affidavit of C. Ian Ross  
sworn before me, this 9<sup>th</sup>  
day of October 2015  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

**C. IAN ROSS**

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## PROFILE

Appointed as an interim Director for Ontario Power Generation in December 2003 with responsibility as lead Director Finance. In April 2004, confirmed as a Director together with the Chair and the other external Director with a mandate to expand the Board to twelve and search for a new Chief Executive Officer. Continued as a Director of Ontario Power Generation until April 2014. During that time served as a member of the Audit and Finance Committee, Nomination and Governance Committee, Nuclear Oversight Committee and as Chair of the Risk Oversight Committee and the Ad Hoc Committee.

Appointed a Director of the Nuclear Waste Management Organization (NWMO) in 2007, an organization created by Federal Statute reporting to Parliament created to deal with used nuclear fuel. NWMO is funded by the Members, Ontario Power Generation, Hydro Quebec and NB Power. Currently Chair of the Audit Finance and Risk Committee and the Human Resources and Compensation Committee and is a member of the Low and Intermediate Level Waste Deep Geological Repository Committee.

In June 2007, appointed Chairman of Menu Foods Income Trust a wet pet food manufacturer whose units are traded on the TSX.

Appointed Chairman of the Board of Directors of PetValu Inc., a specialty retailer of pet food and related products whose shares are traded on the TSX in September of 2003.

From July 1999 until September 2003, Senior Director, Administration in the Dean's Office at the Richard Ivey School of Business, University of Western Ontario, with responsibility for managing the critical support functions for Canada's leading Business School.

Appointed to the Board of Directors of Working Ventures Canadian Fund Inc. (now GrowthWorks Canadian Fund Limited), as Non Executive Chair in 1999. Instigated the reduction of the Board from 16 to 12 and was instrumental in establishing a process for the Board of Directors to consider strategic alternatives resulting in a change of managers to GrowthWorks Capital Inc., managers of the successful Working Opportunities Fund in British Columbia.

As President and CEO of Provincial Papers Inc., a producer of coated fine papers, lead a turnaround of the Company from losses of \$30 million per year to a profit of \$20 million. The 100% employee owned business which was acquired for \$1.00 in 1993 was sold for \$26 million in 1997.

Restructured and revitalized management with a new market responsive strategy focused on producing top quality consistently.

As President and CEO of Paperboard Industries Corporation lead the creation of Canada's largest integrated manufacturer of paper based packaging from recycled fibre.

Comprehensive involvement in all aspects of the business including finance, human resources, manufacturing and marketing as well as identifying and completing acquisitions and disposition

Experienced in international transactions, Federal and Provincial government matters and developing technologies in the computer software industry.

A leader with strong financial and legal background who developed and implemented the growth strategy for Paperboard Industries Corporation that took the company from \$80 million in sales and \$9 million in operating earnings to sales of \$700 million, and operating earnings of \$70 million in 4 years.

## **BUSINESS EXPERIENCE**

### **Richard Ivey School of Business**

Appointed to the newly created position as Senior Director, Administration in July of 1999, and became responsible for Finance, Human Resources, Career Management Services, Marketing and Communications, Information Technology and Public Affairs. Worked closely with the Associate Deans as a member of the Dean's Executive Committee as well as the Director of Advancement comprising development and alumni affairs to ensure that the Business School successfully transitions from a government supported institution to a de-regulated business which is challenged to maintain and improve its competitive position while generating surplus cash for reinvestment.

Liaised closely with the Chair of the Advisory Board, its Executive Committee and various specifically mandated Task Forces to address particular issues of concern to the Dean and the Advisory Board.

Established an improved working relationship and integrated approach for the delivery of support services to relevant stakeholders in a manner consistent with the strategic objectives of the Business School and the high expectations of the stakeholders.

### **Chairman, Working Ventures Canadian Fund Inc.**

The assets of the Fund were shrinking and investment performance was deteriorating. Through the Chair's leadership at the Board of Directors a consensus was developed that resulted in the creation of a Special Committee of the Board chaired by the Chair of the Fund in June 2002 to consider strategic alternatives. A process was put in place to invite interested parties to make proposals with respect to the possible alternatives and Newport Securities was retained as advisor to the Fund. The ensuing process resulted in an accepted Letter of Intent on October 16, 2002 and a completed transaction November 29, 2002 after receiving a strong endorsement from shareholders. GrowthWorks Inc. a Vancouver-based manager of labour sponsored funds with an excellent record of financial performance were put in place as Manager in time for the 2003 RRSP fundraising season.

## **Ortech Corporation**

In October 1997 appointed by the Province of Ontario as a Member of the Board of Governors of Ortech Corporation, a research and development organization created in 1928 by Provincial statute as the Ontario Research Foundation to support small and medium sized businesses. The Province of Ontario decided to privatize Ortech Corporation in April 1998 and in order to facilitate a management led bid the incumbent CEO was given a leave of absence.

Appointed President and CEO in May of 1998 to manage the business and oversee the Privatization process. Ortech had revenue of approximately \$20 million and operating losses of about \$5.0 million with 240 employees. The mandate was to stabilize the organization, reduce or eliminate employee turnover through the retention of the employee group throughout the Privatization process. Provided a bridge to the selling agent, the Privatization Secretariat and the Ministry of Economic Development Trade and Tourism as well as their financial and legal advisors. Developed the descriptive materials necessary for the sale process jointly with the financial advisors and organized and lead the senior management presentation to approximately 20 prospective purchasers. The Privatization process was successfully concluded in January of 1999 with a minimum of disruption to the business, its customers and employees.

## **Provincial Papers Inc.**

A 100% employee owned manufacturer of fine coated papers for the commercial printing, label, book publishing and magazine markets with sales of approximately \$200 million based in Thunder Bay, Ontario.

## **Chairman, President and C.E.O.**

Following an employee buyout (75% owned by unionized workforce) for \$1.00 on June 1, 1993 from Abitibi-Price, elected Chairman of the Board of Directors and became President and Chief Executive Officer in July of 1993. Lead the transformation from a money losing manufacturing location of a highly centralized newsprint company to an independent self-sustaining business. Reversed the losses which exceeded \$100 million in the previous three years to a profit of almost \$20 million in fiscal 1995. Selected as Ontario Turnaround Entrepreneur of the Year in October 1995 under a recognition program sponsored by Ernst & Young, Bank of Montreal, McCarthy Tetrault and other prominent Canadian institutions. Completed the turnaround through the sale of Provincial Papers Inc. to Rolland Inc. for \$26 million in April 1997 thereby realizing a capital gain and ensuring long term employment for the former employee owners.

## Key Accomplishments

- Reduced customer base from 150 to concentrate on key customers providing high quality market responsive products and improved service resulting in expanded sales from \$123 million to \$200 million between 1993 and 1995.
- Reduced the number of stock keeping units (SKUs) from 207 to 66 between 1993 and 1995 resulting in longer production runs and reduced labour costs.
- Chose 4 product development projects from 100 that were ongoing and cancelled the rest with priority on development of wet strength label which captured 36% of the North American wet strength label market for bottled beverages within two years supplementing primarily offshore suppliers. End users include Coca Cola, Labatt Breweries, Molson Breweries, Miller Breweries, Quaker Oats ("Snapple" and "Gatorade").
- Instigated the development of matte products for the book publishing industry meeting demanding product specifications resulting in the start up of a paper machine which had been shut down for over 3 years and brought it to full capacity on a 7 day, 24 hour basis.
- Developed and implemented a strategy for the necessary management information system which had previously been supplied by Company parent.
- 1995- Turnaround Entrepreneur of the Year for Ontario.
- Identified major acquisition target with sales of \$350 million; developed strategy to negotiate purchase; arranged financing of \$300 million debt and equity including a "bought deal" public equity transaction using innovative warrants.
- Directed going private transaction in January 1998 which was first of many that followed significant reduction in market value of shares after the October 1987 market crash. 98% of available stock tendered to the offer.
- Maintained loyal and committed support of 4,000 strong work force even as dispositions and plant closures were implemented. Achieved this through careful preparation, involvement of union leadership and analysis of various options resulting in defensible decisions effectively communicated in face to face meetings and written announcements.
- Conceived, negotiated and implemented replacement of \$300 million of short term floating rate debt to long term fixed rate debt with extended grace period in 1988 in anticipation of the recession which materialized in 1990.
- Advised Province of Ontario on restructuring of major tier 2 supplier to the aerospace industry including federal and provincial assistance and major Canadian Chartered Bank participation.

- Negotiated initial \$500 million line of credit with U.S.S.R while at Export Development Corporation.
- Financed major paper manufacturing projects in Wisconsin and Virginia; mini-steel mill in New Jersey.
- Structured and negotiated first major syndicated loan lead by Bank of Montreal for P.T. Inco, Indonesia.

## **SUMMARY**

### **December 2003 – 2014**

Director, Ontario Power Generation

### **March 2007 – Present**

Director, Nuclear Waste Management Organization

### **December 2007 – Present**

Chairman, Independent Review Committee, Tangerine Bank Asset Management Limited

### **February 2008 – Present**

Director, Clearford Industries Inc. – TSX-V Listed

### **June 2007 – 2010**

Trustee and Chairman, Menu Foods Income Trust-TSX Listed

### **June 2007-2012**

Director, Ruggedcom Inc. – TSX Listed

### **June 2007- January 2010**

Director, 6N Silicon Inc.

### **September 2003-August 2009**

Chairman, Board of Directors, PetValu Inc.

### **1999 - May 2008**

Director, Comcare Canada Limited (Health Services) Chair Audit Committee

### **1999 – November 2009**

Director, eJust Systems Inc.

**2000-2007**

Chairman of the Board of Directors of World Heart Corporation a TSE/NASDAQ listed Company from September 2003 until June 2007. Director and Chairman of the Audit Committee from February 2000 to September 2003.

**1999- September 2003**

Senior Director, Administration, Richard Ivey School of Business, University of Western Ontario

**1999-2001**

Trustee, McMichael Canadian Art Collection Chair Governance Committee

**1997-1999**

Executive in Residence, Institute of Entrepreneurship, Innovation and Growth, Richard Ivey School of Business, University of Western Ontario

**October 1997- February 1999**

Governor, ORTECH Corporation

**May 1998- February 1999**

President and CEO, ORTECH Corporation

**1993-1997**

Chairman, President and CEO, Provincial Papers Inc.

**1986-1990**

President and Chief Executive Officer, Paperboard Industries Corporation

**1979-1986**

Executive Vice-President, Finance and Development, Kinburn Corporation, Ottawa, ON.

**1977-1979**

Assistant Vice President Loans-U.S., Caribbean, Central & South America, Export Development Corporation, Ottawa, ON.

**1975-1977**

Group Manager-Europe, Export Development Corporation, Ottawa, ON

**1973-1975**

Senior Account Manager, Oil & Gas, Bank of Montreal, London, England

**1971-1973**

Account Manager, International Banking, Bank of Montreal, Montreal, Quebec

**1970-1973**

International Banking Officer, Bank of Montreal, Montreal, Quebec

### **OTHER ACTIVITIES**

**1992-1997**

Chairman, Telular Canada Inc.

**1987-1989**

Chairman, Eastern Ontario Development Corporation

**1982-1989**

Director, Eastern Ontario Development Corporation

**1987-1989**

Director, Ontario Development Corporation

**1989-1990**

Member Federal Governmental Advisory Board on Forest Products Industry (SAGIT)

**1980-1990**

Director, SHL Systemhouse Inc.

**1980-1990**

Director, Paperboard Industries Corporation

**1985-1990**

Director, Accugraph Corporation

**1970-1973**

President, Canadian Bobsled Club

**1972**

Manager, Canadian Bobsled Team at Olympics in Sapporo, Japan

### **EDUCATION**

Law Society of Upper Canada 1968

University of Toronto-LLB 1966

University of Western Ontario-B.A. 1963

### **MEMBERSHIPS**

Rideau Club (Ottawa)

Craigleith Ski Club

Law Society of Upper Canada

### **OUTSIDE INTERESTS**

Current affairs, reading, tennis, downhill skiing, bicycling.

**Tab B**



**Grant, Jonathan R.**

---

**From:** Bishop, Paul <Paul.Bishop@fticonsulting.com>  
**Sent:** Tuesday, June 30, 2015 12:17 PM  
**To:** Bill Rogers; Ian Ross; Grant, Jonathan R.  
**Subject:** RE: Crimson

Thanks Bill,

Yes, we have enough on hand to payout Roseway but it would clean us out, so the Perspecsys money will enable us to pay out Roseway and have sufficient funds to administer the estate going forward

PB

---

**From:** Bill Rogers [mailto:brogers@cccinvestmentbanking.com]  
**Sent:** Tuesday, June 30, 2015 12:13 PM  
**To:** Ian Ross; Grant, Jonathan R.; Bishop, Paul  
**Subject:** Crimson

Ian, Paul & Jonathan: I spoke to Donna this morning and she is very pleased to have been chosen. I told her that MT would prepare a first draft of the new agreement over the next few weeks. She also thinks that Percepsys will close in July and the initial proceeds will be approx. \$1.7 million. Paul – will this be enough to allow the Fund to repay Rsoeway in full?

Regards, Bill

W.F. Rogers  
Managing Director & CEO  
CCC Investment Banking  
150 King Street West, Suite 2020, Toronto, Ontario, M5H 1J9  
Email: [brogers@cccinvestmentbanking.com](mailto:brogers@cccinvestmentbanking.com)  
General: 416-599-4206 | Direct: 416-619-9120 | Fax: 416-599-9250  
[www.cccinvestmentbanking.com](http://www.cccinvestmentbanking.com)



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This is Exhibit..... "B" .....referred to in the  
affidavit of..... C. Ian Ross .....  
sworn before me, this..... 9<sup>th</sup> .....  
day of..... October ..... 20..... 15.....

A handwritten signature in black ink, appearing to read 'Bill', is written over a horizontal line of dots.

.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

# Tab C

Grant, Jonathan R.

From: Bishop, Paul <Paul.Bishop@fticonsulting.com>  
Sent: Tuesday, June 09, 2015 4:21 PM  
To: Ian Ross  
Cc: Grant, Jonathan R.; 'Kevin McElcheran (kevin@mcelcheranadr.com)'; 'Caitlin Fell (cfell@osler.com)'; Wasserman, Marc  
Subject: Canadian Fund Payments

This is Exhibit "C" referred to in the affidavit of C. Ian Ross sworn before me, this 9th day of October 2015.

*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

Ian,  
The Fund's cash balances on hand as of today are:

**Growthworks Canadian Fund Ltd.**

**Growthworks Account Balances as of June 9th, 2015**

Date	Account Name	Account Number	CAD	USD
June 9, 2015	GW I - CAD	47696 17773 19	\$ 324,830.08	
June 9, 2015	GW I - USD	47696 17419 18		\$ 1,547.72
June 9, 2015	GW II - CAD	47696 17797 10	\$ 28,968.17	
June 9, 2015	GW II - USD	47696 17499 15		\$ 27.14
June 9, 2015	GW - Roseway CAD	47696 01710 18	\$ 3,738,024.70	
June 9, 2015	GW - Roseway USD	47696 20275 18		\$ 52,882.94
	Balance		\$ 4,091,842.95	\$ 54,457.20
			<b>TOTAL CAD</b>	<b>TOTAL USD</b>

Prior to the original settlement agreement hearing we had a number of discussions with NRF re payment of the settlement amount. As you will recall Roseway were looking for part payment of the settlement amount, and we agreed that a part payment would be considered, provided we were given assurances by Jim Cade that the balance of funds after any part payment would be available to the fund to meet its expenses. We received these assurances from Jim Cade and accordingly, as the settlement agreement has now been approved I am proposing that we request that we be directed by Jim Cade to pay \$1 million from the Roseway Blocked to Roseway on account of the settlement agreement, and that we be directed to transfer \$500,000 from the Roseway blocked account to our Roseway GW 1 account to fund a reduction in the considerable accounts payable due to McCarthy's, Osler and FTI, none of whom have been paid in several months. These transfers would leave \$2.2 million in the Roseway blocked account, from which we will pay the \$900k in respect of withholdings on July 15. The balance will be retained until such time as the OPKO milestone payment is received, at which time Roseway will be paid the balance due under the settlement agreement.

Please do not hesitate to contact me if you have any questions

Regards

Paul

FTI Consulting Canada Inc.

79 Wellington Street West  
Suite 2010  
Toronto, Ontario  
M5K 1G8

Direct Line 416 649 8053  
Cell 416 305 8589  
Fax 416 649 8101

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# Tab D

**Grant, Jonathan R.**

---

This is Exhibit..... "D" ..... referred to in the  
affidavit of..... C. Ian Ross .....  
sworn before me, this..... 9<sup>th</sup> .....  
day of..... October ..... 20. 15 .....  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** Donna Parr [mailto:parrdonna@gmail.com]  
**Sent:** July-24-15 5:05 PM  
**To:** Ian Ross; Bishop, Paul  
**Subject:** PerspecSys

The merger agreement was just signed. 'Best-case is closing is mid-next week' but may take longer to get all agreements with option holders and stockholders into place. Will update as I know.

# Tab E

**Grant, Jonathan R.**

---

**From:** Bishop, Paul <Paul.Bishop@fticonsulting.com>  
**Sent:** Friday, July 31, 2015 10:35 PM  
**To:** Ian Ross  
**Cc:** Grant, Jonathan R.; Cade, James (James.Cade@nortonrosefulbright.com); Wasserman, Marc; 'Caitlin Fell (cfell@osler.com)'; Reyes, Tony; Dong, Ellen; 'Donna Parr (parrdonna@gmail.com)'  
**Subject:** FW: Congratulations on the closing transaction of Perspecsys, Inc.

Ian,

I confirm receipt of the funds set out below, less a wiring fee of \$15. The funds are held in the US \$ Roseway blocked account.

I also confirm receipt of Jim Cade's instructions revoking the previous approval of repayment of the balance of the Roseway IAD.

Regards

Paul

This is Exhibit.....<sup>"E"</sup>.....referred to in the  
affidavit of.....*C. Ian Ross*.....  
sworn before me, this.....*9<sup>th</sup>*.....  
day of.....*October*.....20.....*15*  
.....*Mell*.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** [payments@acquiom.com](mailto:payments@acquiom.com) [mailto:payments@acquiom.com]  
**Sent:** Friday, July 31, 2015 7:45 PM  
**To:** Bishop, Paul  
**Subject:** Congratulations on the closing transaction of Perspecsys, Inc.

July 31, 2015

Dear Growthworks Canadian Fund Ltd,



Congratulations on the closing of the transaction between Perspecsys, Inc. and Blue Coat Systems, Inc. Acquiom Clearinghouse LLC has been hired to administer the payment of transaction consideration to you. We are here to make this process as easy as possible for you, so please don't hesitate to let us know what we can do to help.

At the closing, Blue Coat Systems paid the purchase price to Perspecsys. Those proceeds are now being distributed to the former Perspecsys security holders. This letter is to inform you that your payment of \$2,539,977.87 has been processed via the instructions you provided to Acquiom.

If you have any questions, please do not hesitate to contact us via email at [support@acquiom.com](mailto:support@acquiom.com) or by phone at (303) 222-2080.

Sincerely,

Acquiom Clearinghouse LLC

Client Services

Acquiom Clearinghouse LLC

Direct: (303) 222-2075

Email: [support@acquiom.com](mailto:support@acquiom.com)

Web: [www.acquiom.com](http://www.acquiom.com)

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# Tab F

Hall, Geoff R.

---

This is Exhibit.....<sup>"F"</sup>.....referred to in the  
affidavit of.....C. Ian Ross.....  
sworn before me, this.....<sup>9th</sup>.....  
day of.....October.....20.<sup>15</sup>.....  
.....[Signature].....  
A COMMISSIONER FOR TAKING AFFIDAVITS

From: Donna Parr [mailto:parrdonna@gmail.com]  
Sent: July-16-15 1:08 PM  
To: Ian Ross <ianross@bell.net>; Bishop, Paul <Paul.Bishop@fticonsulting.com>  
Subject: Fwd: Proton - Merger Agreement CONFIDENTIAL

Ian and Paul

Attached is the word chart that summarizes payments to be made regarding PerspecSys. I am also including the spreadsheet which is extremely temperamental so you may want to stick to the word document. Here is the deal which has changed from before to put the holdback in the second payment so GW gets a bigger payment at close:

**Plan to close asap** - targeting tomorrow but will be next week since some points are still being negotiated:

**Payment at close - US\$30M at close net of Working Capital position** - currently a small deficit but may increase it by \$200+ more because buyer wants some cash in the company so these payments may move somewhat. At this point, next week GW gets US\$2.57M which is close to C\$3.3M at today's FX rates. This is prior to the Roseway 15% Additional Fee which is calculated in the chart (GW net payment is approx. C\$2.8M (using \$1.27 FX rate which is lower than today's). I also deducted 5% from the Roseway capital gain on the Follow-on financing but this will be adjusted down since it is to be paid net of taxes and I don't have that information yet.

**Guaranteed payout US\$15M at 6 months from close** - US\$5.5M (10% purchase price) taken off the holdback. Gross payment to GW is approx. C\$573k (net C\$487k) using a \$1.20 FX rate.

Hall, Geoff R.

---

**From:** Grant, Jonathan R.  
**Sent:** Friday, October 09, 2015 8:48 AM  
**To:** Hall, Geoff R.  
**Subject:** Fwd: Proton - Merger Agreement CONFIDENTIAL  
**Attachments:** Schedule of Payments for PerspecSys - July 16, 2015.docx; ATT00001.htm; Copy of Perspecsys -- Waterfall GW Cdn F + RW.xlsx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

**From:** Ian Ross <[ianross@bell.net](mailto:ianross@bell.net)>  
**Date:** October 9, 2015 at 8:30:39 AM EDT  
**To:** "Grant, Jonathan R." <[JGRANT@MCCARTHY.CA](mailto:JGRANT@MCCARTHY.CA)>  
**Subject:** FW: Proton - Merger Agreement CONFIDENTIAL

I think this is what you are looking for. See you at 930. I assume I do not need to bring a hard copy.

Ian

**From:** Donna Parr [<mailto:parrdonna@gmail.com>]  
**Sent:** July-16-15 1:08 PM  
**To:** Ian Ross <[ianross@bell.net](mailto:ianross@bell.net)>; Bishop, Paul <[Paul.Bishop@fticonsulting.com](mailto:Paul.Bishop@fticonsulting.com)>  
**Subject:** Fwd: Proton - Merger Agreement CONFIDENTIAL

Ian and Paul

Attached is the word chart that summarizes payments to be made regarding PerspecSys. I am also including the spreadsheet which is extremely temperamental so you may want to stick to the word document. Here is the deal which has changed from before to put the holdback in the second payment so GW gets a bigger payment at close:

**Plan to close asap** - targeting tomorrow but will be next week since some points are still being negotiated:

**Payment at close - US\$30M at close net of Working Capital position** - currently a small deficit but may increase it by \$200+ more because buyer wants some cash in the company so these payments may move somewhat. At this point, next week GW gets **US\$2.57M** which is close to **C\$3.3M** at today's FX rates. This is prior to the Roseway 15% Additional Fee which is calculated in the chart (GW net payment is approx. **C\$2.8M** (using \$1.27 FX rate which is lower than today's). I also deducted 5% from the Roseway capital gain on the Follow-on financing but this will be adjusted down since it is to be paid net of taxes and I don't have that information yet.

**Guaranteed payout US\$15M at 6 months from close** - US\$5.5M (10% purchase price) taken off the holdback. Gross payment to GW is approx. C\$573k (net C\$487k) using a \$1.20 FX rate.

**Holdback release at 12 months from close** - Gross payment to GW is approx. C\$326k (net C\$277k) using a \$1.20 FX rate.

**Additional Earnout** - \$10M within 2 months after 12 months of close - was supposed to be an in-the-bag metric like employee retention but has now moved to payment on revenues or bookings - TBD still (hence not closing tomorrow) - This is in the buyer's hands but apparently Bluecoat has paid them on past acquisitions. If paid, anticipated gross payment to GW is approx. C\$571k (net C\$486k) using a \$1.20 FX rate.

**Total anticipated payments to GW with the Additional Earnout - Gross - US\$3.79MM or C\$4.7M (net C\$4.0M) and without US\$3.3M or C\$4.2M (net C\$3.5M).**

The big issue for us is that the Board and key shareholders have decided to waive accrued dividends and interest on the Convertible Debt since management did not see any payment until the Additional Earnout net of the broker fee. One could argue that payment is entirely in their hands but the Board wanted them to get something earlier and bigger. Since inception \$27.7M has been invested and accrued dividends add \$11.6M and interest on Conv Debt adds \$341k. The amount lost for GW is US\$1.4M on accrued dividends (primarily the Pref A) although it is not apples to apples because there is more on the payments being received now by GW on an as-converted basis than if the dividends came off first.

I asked NortonRose whether we have some grounds to block the loss of accrued dividends as GW is 31% of the Pref As since we are clearly outvoted on all other fronts given GW's minimal ownership of the Bs. It appears one needs 2/3rds to carry any type of class vote. We can not expect Common Shareholders to support us since they lost their dividends by not participating in the last round. The conclusion is there is minimal course except to improve the potential recourse on indemnities to a maximum 10% of our payments for which I will now rabble-rouse. I have attached Michael Wahl's comments.

Please let me know if you have any questions or issues. I am being asked if McCarthys or the Monitor's counsel need to be included this time round (comparing to the re-org) and I said no. Please correct me ASAP if you beg to differ.

Thanks  
Donna

----- Forwarded message -----

From: **Wahl, Michael** <[Michael.Wahl@nortonrosefulbright.com](mailto:Michael.Wahl@nortonrosefulbright.com)>  
Date: Wed, Jul 15, 2015 at 4:47 PM  
Subject: RE: Proton - Merger Agreement CONFIDENTIAL  
To: Donna Parr <[parrdonna@gmail.com](mailto:parrdonna@gmail.com)>  
Cc: "Cade, James" <[James.Cade@nortonrosefulbright.com](mailto:James.Cade@nortonrosefulbright.com)>

Donna,

As discussed, after reviewing the merger agreement, below are the key issues that remain:

1. **Forfeit of Accrued Dividends.** The dividends accruing on the Class A and Class B Preferred Shares held by Growthworks Canadian Fund have been forfeited. As you had indicated, the vote by the board and common shareholders effected the cancelation of the amounts owing in respect of this accrued dividends and interest.

2. **Voting Agreement.** Section 2 of the Shareholder Voting Agreement states that in the event that the board and 50% of the Class A Preferred Shares and common shareholders approve a sale then the parties to the voting agreement are bound to vote and do all other things in favour of the transaction.

This is supported by the inclusion in the purchase agreement of the rep in Section 2.4 that the company only needs a majority of the voting power of the outstanding shares voting as a single class under the voting agreement.

There appears to be one way out of this. Section 2.3 of the voting agreement is a list of exceptions to the rule. Essentially, it is a list of deal requirements where if the proposed deal doesn't comply then the parties are not bound by the drag-along provisions. The company seems to be complying with all of the requirements, except for one, which is that each shareholder's liability will be limited to a pro rata share of an escrow not to exceed 10% in the aggregate of the consideration payable. There are no carve-outs here nor is the liability cap limited to reps and warranties, as is the case in the indemnification section of the purchase agreement.

I have not yet assessed what the corporate law requirements are under Delaware law in the event that you do not have to vote along with transaction.

3. **Inclusion of 280G.** As I had discussed with you earlier, the inclusion by purchaser's counsel of the 280G language likely means that the aggregate compensation of management in respect of retention bonus, accelerated payments due on the closing of the transaction, RSUs, base salary with purchaser, etc. is likely 3x that of their current base salary.

4. **Reps and Warranties.** While the majority of the reps and warranties favour the purchaser slightly, the IP reps are overwhelmingly against the company's interest in that they are either too broad, unlimited in time, or not qualified by knowledge or by materiality. This may make them susceptible to breach and claims under the indemnity.

5. **Indemnity.** The indemnification section contains provisions that are quite purchaser friendly, such as: (i) pro-sandbagging provisions; (ii) inclusion of incidental and consequential damages;

(iii) the indemnity not being the exclusive remedy; and (iv) other remedies available if the deal does not close. In addition, clarity needs to be added surrounding the liability of the Class A Preferred Shareholders.

**6. One-Year Earnout.** Clarification needs to be sought surrounding the metrics of the one-year earnout and the discretion of Parent in pursuing the metrics.

Regards,

**Michael Wahl**  
Associate

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4, Canada  
T: +1 416.216.2999 | F: +1 416.216.3930  
Michael.Wahl@nortonrosefulbright.com

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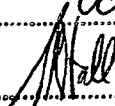
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**Tab G**



Grant, Jonathan R.

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This is Exhibit..... "G" .....referred to in the  
affidavit of..... C. Ian Ross .....  
sworn before me, this..... 9th .....  
day of..... October ..... 20 15  
  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** Donna Parr <parrdonna@gmail.com>  
**Sent:** Thursday, July 30, 2015 11:35 AM  
**To:** Bishop, Paul; Ian Ross  
**Subject:** OPKO timing

The OPKO payout should be a on Aug. 27th. There is a little confusion over whether it is 30 days from verbal or written FDA approval (expected Aug 14th range) however the committee believes it is the former since we have been notified by the company of the FDA acceptance. The latter would obviously add more time. No word yet on if cash or shares but expecting shares.

Thanks  
Donna

**Tab H**

**Grant, Jonathan R.**

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This is Exhibit.....<sup>"H"</sup>.....referred to in the  
 affidavit of.....C. Ian Ross.....  
 sworn before me, this.....<sup>9th</sup>.....  
 day of.....October.....20<sup>15</sup>.....  
 \_\_\_\_\_  
 A COMMISSIONER FOR TAKING AFFIDAVITS

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**From:** Bishop, Paul [<mailto:Paul.Bishop@fticonsulting.com>]  
**Sent:** Wednesday, August 05, 2015 1:40 PM  
**To:** Grant, Jonathan R.  
**Cc:** 'Ian Ross'; Wasserman, Marc; Fell, Caitlin; Kevin McElcheran; Ng, Emily  
**Subject:** RE: GrowthWorks Canadian Fund Ltd. - Repayment of the Outstanding IAD

Jonathan

The Monitor consents to the payment of \$955,404 referenced in your attached email.

Regards

Paul

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**From:** Grant, Jonathan R. [<mailto:JGRANT@MCCARTHY.CA>]  
**Sent:** Wednesday, August 05, 2015 12:29 PM

Suite 5300, TD Bank Tower, Box 48, 66 Wellington Street West, Toronto, ON M5K 1E6

**Confidentiality Notice:**

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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**  
**(sworn October 9, 2015)**

**McCarthy Tétrault LLP**  
Suite 5300, Toronto Dominion Bank Tower  
Toronto ON M5K 1E6

**Geoff R. Hall** LSUC#: 347010  
Tel: (416) 601-7856  
Email: ghall@mccarthy.ca

Lawyers for GrowthWorks Canadian Fund Ltd.

DOCS 14914650 v. 5

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.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD  
(returnable November 4, 2015)**

**McCarthy Tétrault LLP**  
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Toronto ON M5K 1E6

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