

**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
BRAKE PRO, LTD.**

MONITOR'S SIXTH REPORT TO THE COURT

A. INTRODUCTION

1. BDO Dunwoody Limited (the "Monitor") was appointed Monitor of Brake Pro, Ltd. (also referred to as "Brake Pro", the "Applicant" or the "Company") by an Initial Order of the Honourable Mr. Justice Stinson of the Ontario Superior Court of Justice on July 24, 2007 (the "Initial Order"), pursuant to the application (the "Application") to the Court by the Applicant for protection from its creditors under the *Companies' Creditors Arrangement Act* (the "CCAA"). The Applicant was granted protection for an initial period of 24 days until August 17, 2007 (the "Stay Period").
2. The Application was made on notice to the Applicant's major secured creditor, Wachovia Capital Finance Corporation (Canada) ("Wachovia"), which did not oppose the Initial Order. Pursuant to the Initial Order, Wachovia is an unaffected creditor.
3. On July 23, 2007, Brake Pro entered into a Forbearance Agreement with Wachovia (the "Forbearance Agreement"), pursuant to which Wachovia agreed to extend credit to Brake Pro through the CCAA process subject to various conditions.

4. In addition to the Stay Period, the Initial Order authorized Brake Pro and the Monitor to undertake a sale process (the "Sale Process") whereby the assets of the Company would be marketed for sale as a going-concern.

5. As reported previously by the Monitor, a number of extensions of the Stay of Proceedings have been obtained. Most recently, on November 7, 2007, Justice Siegel granted an order (the "Sale Approval and Fifth Extension Order") to, *inter alia*, approve the sale of the assets of the Company, with the exception of the inventory and the accounts receivable, to Affinia Canada Corp. ("Affinia") and to extend the stay of proceedings to February 29, 2008.

6. The purpose of this report is to advise the Court on the following:
 - (a) Brake Pro's activities since the last report of the Monitor;
 - (b) The Monitor's activities to date;
 - (c) Brake Pro's planned activities during the requested extension of the Stay Period to March 31, 2008; and
 - (d) to recommend in favour of Brake Pro's request for an extension of the Stay Period to March 31, 2008 to enable the Company, with the assistance of the Monitor, to finalize its affairs;and to request the Court's approval of its fees and disbursements, and those of its legal counsel, Fraser, Milner & Casgrain LLP, as set out in paragraphs 32 and 33 herein.

B. EXECUTIVE SUMMARY

7. In summary, the Monitor reports as follows:

- Affinia has been removing the purchased assets and has undertaken to complete its removal by February 29, 2008;
- The Company has been winding up its affairs, both in Georgia and at its premises in Concord;
- The Company anticipates being able to vacate its Concord premises at 250 Doney Crescent on February 29, 2008;
- The Company, with the concurrence of Wachovia, has engaged a third party collection agency to pursue outstanding US receivables;
- The Company has continued to market and sell inventory, subject to the conditions of the Sale Approval and Fifth Extension Order; and
- The Company with the assistance of the Monitor is winding up its affairs.

Terms of Reference

8. The information contained in this report has been obtained from the accounting records of Brake Pro and is based on discussions with, and representations made by management, including in particular Mr. Russ Armer, President.
9. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or decision made based on it, is the responsibility of such party.
10. Capitalized terms not otherwise defined are as defined in the Initial Order and/or in the Affidavit of Russell Armer, sworn July, 23 2007. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

C. BACKGROUND

11. As previously reported, Brake Pro and the Monitor marketed the Company for sale as a going concern, as agreed with Wachovia as part of the terms of the Forbearance Agreement. A number of interested parties were identified and information was distributed. Four potential purchasers submitted expressions of interest or letters of intent. Two potential bidders conducted substantial due diligence while a third was interested in conducting due diligence but was unable to meet the deadline. Notwithstanding the extensive due diligence conducted, no binding offers were submitted by the September 19, 2007 deadline that was provided for in the Forbearance Agreement.
12. During the period following the Initial Order, the Company continued to conduct its business, within the parameters of the Forbearance Agreement. For a number of weeks following the CCAA filing, the Company exceeded forecast with respect to its income and expenses. Unfortunately, starting on or about September 10, 2007, the Canadian dollar unexpectedly appreciated rapidly against the US Dollar. As a result, over a two week period, the borrowing availability from Wachovia was reduced by some \$400,000 below what the Company had projected at the time that it made certain payment commitments, relying on its projected banking availability which could not and did not anticipate this rapid rise in the Canadian dollar. The Company was then not able to meet many of its obligations, or to purchase new raw materials.
13. On September 25, 2007 (“Shut Down”), Wachovia advised that it could no longer support the Company. Under the circumstances, the Company had no choice but to shut down the plant and lay off its employees.
14. Employees were paid up to and including September 25, 2007. However, due to a lack of funds, the Company has been unable to pay certain post-filing liabilities incurred. As previously reported, the Company has calculated that the unpaid balance of post-filing obligations is approximately \$460,000, owed to some 100 creditors (the “Post-filing Creditors”). Based on the information available to the Monitor, it appears that there will be a

shortfall to secured creditors, and there are no funds with which to pay these post-filing obligations. Additionally, there will be no funds for any pre-filing creditors other than the secured creditors Wachovia and/or Tenneco Canada Inc (“Tenneco”), and any other creditors ranking in priority to their security.

15. As previously reported, subsequent to the September 25, 2007 cessation of operations, the Company, with the assistance of the Monitor, continued to market the business of the Company seeking either a going concern or an en-bloc sale. In consultation with Wachovia, it was determined that an offer would be sought that would yield the best net price, had the greatest probability of closing and had the earliest closing date. The Company and the Monitor continued to market the business of the Company until an offer acceptable to the Company, the Monitor and Wachovia, subject to the approval of this Honourable Court, was received.
16. As previously reported, the Company, with the concurrence of Wachovia, negotiated a transaction with Affinia for the sale of the equipment and machinery, the intellectual property and the computer systems and furniture of the Company. This transaction was approved by this Honourable Court on November 7, 2007 and closed shortly thereafter.
17. As ordered by this Honourable Court, the Monitor holds the net proceeds of this transaction, as well as most of the proceeds of subsequent inventory sales, net of disbursements by the Company, in its trust account. A Statement of Receipts and Disbursements is attached hereto as Appendix I.
18. Recently, a dispute has arisen between Wachovia, and Tenneco, previously thought to be second in priority, pursuant to a postponement agreement said to be in effect between Wachovia and Tenneco. Tenneco advises that its postponement agreement may have lapsed. Based on the books and records of the Company, Tenneco is owed about \$4 million. The Monitor understands there are ongoing negotiations between Wachovia and Tenneco, to settle this dispute.

D. BRAKE PRO'S ACTIVITIES SINCE THE ISSUANCE OF THE FIFTH EXTENSION ORDER

19. The Company has continued to conduct its winding-up process of collecting receivables and selling inventory. Wachovia's consultants, Lissner Associates Ltd., assisted the Company in this endeavour until mid-November. Subsequently, the Company engaged Receivables Control Corporation ("RCC") to collect outstanding receivables, particularly those from customers located in the United States of America. The Monitor is advised that that funds collected by RCC, net of its fees, are being held in RCC's trust account for a net balance of approximately \$138,000. An additional \$48,000 of payments, recovered by RCC, was made by customers directly to the lock box in favour of Wachovia.
20. In accordance with the Order of this Honourable Court dated October 25, 2007, authorizing the Company to negotiate sales of inventory on such terms and at such prices as the Company could negotiate with the consent of Wachovia and the Monitor, without the need for further Court approval, the Company has continued to market and sell its inventory. At this stage substantially all of the remaining inventory is slow moving, the marketable inventory having been sold. This remaining inventory is becoming increasingly more difficult to sell and recoveries have decreased markedly.
21. As at February 16, 2008, inventory sales since Shut Down have been about \$1.2 million. The Company cannot estimate the quantum of any further recoveries. All sales are being made on an "As is, Where is" basis and in accordance with paragraph 9 of the Sale Approval and Fifth Extension Order. Inventory incapable of being sold by February 29, 2008 is to be left to the Landlord.
22. As well, some \$2.4 million of Accounts Receivable has been collected since Shut Down. Based on RCC's estimates, the Company estimates further recoveries to be approximately \$40,000.

23. All funds received by the Company from the collection of accounts receivable since Shut Down have been paid into the lockbox maintained in favour of Wachovia as permitted by the provisions of the Initial Order, as well as some \$48,000 of the funds collected by RCC, as noted in paragraph 19 above. All but \$250,000 of the proceeds of the sales of certain inventory to BRF Precision Inc. have been retained by the Company, in its bank accounts, as required by the Order of Justice Siegel dated October 15, 2007, and the Order of Justice Lederman, dated November 8, 2007. The \$250,000 was remitted to Wachovia in error, and the right to ask for a return of these funds has been reserved. As well, some US\$81,186 of proceeds from inventory sales were remitted by purchasers to the lockbox and are, therefore, in the possession of Wachovia.

E. EXTENSION OF THE STAY PERIOD

24. The agreement with the Purchaser allows, on the payment of occupancy costs (which have been remitted to the Monitor), occupancy up to February 29, 2008 in order allow the orderly removal of the Purchased Assets. The Purchaser has been diligently working to remove the purchased assets and has assured the Company and the Monitor that it will complete its removal of the Purchased Assets by February 29, 2008, as arranged. The Purchaser has sold certain of the Purchased Assets to a company related to the Company's landlord, and those assets will remain onsite.

25. While the Company has substantially wound up its affairs, there remain a number of matters to be dealt with, including the distribution of cash on hand, the filing of income tax returns and other statutory filings, and dealing with enquiries from former employees. It is anticipated that most of these matters will be dealt with during the extension period.

26. During the extension period, the Monitor proposes to send a reporting letter to all known Pre- and Post-Filing Creditors on the status of the filing, and to advise them that no Plan of Arrangement will be filed, as there are no funds available for creditors other than secured creditors, and creditors with claims ranking in priority to the claims of secured creditors.

27. The Monitor anticipates that the Company will have to make certain payments and filings and prepare various documents during the extension period. There are anticipated to be no employees or officers of the Company available to prepare documents, or to prepare and sign cheques. As the Monitor is holding funds in its trust account, it proposes to make payments on behalf of the Company from the funds held in trust, in accordance with the direction of this Honourable Court.

F. DISTRIBUTION OF PROCEEDS OF SALE

28. The Monitor contemplates that additional costs will be incurred by the Company and the Monitor to complete the liquidation and wind-up of the Company. These costs will include post filing GST, professional fees, utilities, and other related costs, which the Monitor estimates to be \$793,710, including Canadian Vacation Pay, the CRA property claim and additional professional fees currently outstanding and estimated to accrue hereafter, all of which are discussed below. The Monitor has prepared a Statement of Receipts and Disbursements and projection of costs for the period commencing September 25, 2007 based on information provided to it by the Company, Wachovia and other sources. This is attached hereto as Appendix I.

29. In its Fifth Report, the Monitor anticipated the payment of outstanding Vacation Pay to the former Canadian employees ("Canadian Vacation Pay") of approximately \$70,000, plus employer CPP and EI contributions and costs for a total of approximately \$77,000. It was anticipated that the Canadian Vacation Pay would be paid pursuant to the Director's Charge, as set out in the Initial Order. At the time of writing, the Bank has not approved this payment; therefore, the Canadian Vacation Pay has not yet been paid to the employees. The Company has disputed this opposition to payment and this issue may require a Court determination. Further details of the dispute are set out in the affidavit of Russell Armer, dated February 26, 2008 submitted separately to the Court.

30. Canada Revenue Agency ("CRA") has filed a property proof of claim in the amount of \$189,269.57. Following a lengthy audit by CRA, as a result of which Goods and Services Tax ("GST") Input Tax Credits ("ITCs") on the unpaid pre-filing Accounts Payable were reversed, the Company received a reassessment of its pre-filing GST liability. The Company has advised the Monitor that it believes that CRA has not processed all of the pre-filing GST returns and that some \$33,000 of ITCs should be credited against the claim of \$189,269.57, to reduce it accordingly. At the time of writing, CRA has advised the Monitor that the pre-filing returns have not yet been processed and that the account has not yet been adjusted.
31. The budgeted costs going forward include an amount payable by the Company on account of professional fees and disbursements incurred by the Monitor for the period from November 1, 2007 up to and including December, 31 2007 and by its legal counsel from October 23, 2007 up to and including January 23, 2008. These amounts, exclusive of GST, total approximately \$68,500. Further, the budgeted costs project estimated additional Monitor's costs of \$25,000 and its legal counsel costs of \$20,000, exclusive of GST, to completion of this file during March 2008.

G. PAYMENT OF PROFESSIONAL FEES

32. Attached hereto as Appendices II and III are affidavits of the Monitor and of Fraser Milner Casgrain LLP, counsel to the Monitor, attesting to their respective fees and disbursements for the above noted periods. The Monitor's fees and disbursements for the period from November 1, 2007 to December 31, 2007, total \$44,785.98, and the fees of its legal counsel for the period from October 23, 2007 to January 23, 2008, total \$26,848.83, both inclusive of GST. The Monitor hereby seeks approval of the fees and disbursements described therein.
33. The Monitor is additionally seeking authorization to pay the approved fees and disbursements out of the funds held in its trust account.

H. RECOMMENDATION

34. The Monitor has reviewed a draft copy of this Report with Brake Pro's management who concurred with the factual content of same.
35. The Monitor is of the view that Brake Pro is acting in good faith and with due diligence. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period and recommends that this Honourable Court approve an extension of the Initial Stay of Proceedings until March 31, 2008.
36. The Monitor therefore makes this Report in support of an Order:
- (a) Extending the Stay Period to March 31, 2008 to permit the Company to continue the winding-up of its affairs.
 - (b) Approving its fees and disbursements, and those of its legal counsel, Fraser, Milner & Casgrain LLP, as set out in paragraphs 32 and 33 herein.

All of which is respectfully submitted this 26th day of February, 2008.

BDO DUNWOODY LIMITED
Monitor
Per:



Uwe Manski, FCA, FCIRP
President

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BRAKE PRO, LTD.

Court File No. 07-CL-7106

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MONITOR'S SIXTH REPORT TO COURT

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