

**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 SEVENTH REPORT TO THE COURT**

**INTRODUCTION AND OVERVIEW**

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 24 July 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").
2. The stay of proceedings contained in the Initial Order has been extended by a series of Orders, the most recent of which was granted on February 29, 2008 to Thursday March 6, 2008 when a motion has been scheduled to be heard to determine the issues set out below. The court has requested the Monitor to file this report in order to set out the issues that need to be determined on that motion and the relevant facts pertaining to same.
3. Brake Pro conducted business in Concord Ontario for many years. It manufactured brake friction material for buses and trucks. The assets of the Company have been sold and the Monitor holds about Cdn\$2.7 million and US\$200,000 representing most of the proceeds from the sale net of disbursements.

4. The Monitor obtained and put before the court for approval a legal opinion that the security of the Company's operating lender, Wachovia Capital Finance Corporation Canada ("Wachovia"), would be valid as against a trustee in bankruptcy. This position has not been contested.
5. The amount owing to Wachovia is significantly more than the amounts it could stand to recover in a best case scenario. As such, there is no hope of a recovery for unsecured creditors as Wachovia projects suffering a significant shortfall of several million dollars even assuming that it is held to have priority over Tenneco Inc. ("Tenneco") in a dispute described below.
6. Tenneco is also a secured creditor. In or about November of 2007 a dispute arose between Tenneco and Wachovia as to which ranks ahead of the other. This issue is unresolved. While this dispute does not change the fact that unsecured creditors have no hope of recovery, it has delayed distribution of the funds in the hands of the Monitor.
7. The Monitor, its counsel and Company counsel were granted a first ranking administrative charge in the amount of \$100,000 for their fees from time to time. The directors of the Company were given a \$100,000 second ranking charge as protection for their liabilities.
8. By motion returnable February 29, 2008, the Company sought to extend the CCAA stay. It also sought an order that certain payments should be made out of the money held by the Monitor. The Company was supported by CRA in its request to pay certain amounts on account of GST and by its Union in its request to pay certain amounts on account of Canadian Vacation Pay.
9. Wachovia and Tenneco resisted these requests. Wachovia brought a motion returnable at the same time asking that the Monitor be given the power to act on behalf of the Company to assign the Company into bankruptcy.
10. The Monitor has advised the court that there are certain other expenses associated with completing the sale of the Company's assets (hereinafter called the "Post

Shut Down Payables”) which remain to be paid and that in the Monitor’s view there is a need to make these payments or reserve funds to do so as part of any transition from the CCAA to a bankruptcy, should the court order a bankruptcy filing is appropriate

11. In order to address these issues (as more fully set out below in the section entitled “Statement of Issues”) the Monitor has been asked to prepare this Report in order to set before the court the facts and issues which the court will need to review and consider in order to make a ruling on the matters set out above.

### **STATUS OF THE LIQUIDATION OF THE COMPANY**

12. Although the Company operated for a period of time following the commencement of its CCAA proceedings, it ceased operations on September 25, 2007 and terminated virtually all of its employees.
13. The shut down occurred because the Company ran out of money. The availability of funds from Wachovia under its lending arrangements was based upon a formula that took into account currency fluctuation. Purchases of raw material and the like were made by the Company based on its projected ability to have funds available to pay for the same when payment became due. Leading up to the shut down, a sudden and unexpected rise in the Canadian dollar reduced the Company’s borrowing availability by more than \$400,000, leaving it in a position where it was unable to pay those post filing suppliers who had supplied the Company on credit. This forced the Company to shut down.
14. From the start of the CCAA process the Company had been conducting a sales process to find a purchaser. It continued this after its shut down. Ultimately the purchaser selected, while acquiring substantially all of the Company’s equipment, did not wish to continue the business. The purchaser, Affinia Canada Corp. (the “Purchaser”) has removed all the purchased assets from the rented premises in which the Company conducted business. The premises have now been vacated and surrendered to the landlord as of February, 29 2008.

15. The Company's accounts receivable have been collected by Wachovia utilizing either the Company or collection agents and have been deposited into a lock box administered by Wachovia. Only a small amount of collections remain.
16. The Company's one remaining employee, being its owner and sole remaining director, has been quite cooperative in executing the required documentation and helpful in the process of collecting the accounts receivable and selling the inventory for the benefit of the secured creditors. This employee receives pay of \$16,000 per month and, since completion of the removal of the purchased assets at the end of February, 2008 may not have any further significant involvement in the continuing wind-down of the Company's affairs.
17. There has been no discussion at any time about the Company filing a plan of arrangement.
18. In December 2007, Wachovia approached the Monitor indicating a desire for a bankruptcy. The Monitor indicated that it did not then want to act as trustee because of environmental and other concerns that would arise from its taking possession of the business premises. Wachovia did not push this issue at that time. These concerns no longer exist now that the premises have been vacated as of the end of February 2008.
19. At the present time, the sole remaining activities that are necessary to finish the administration of the Company's affairs are to distribute funds, pay certain expenses and make certain administrative filings.

## **GST ISSUES**

20. Attached hereto as Schedule "C" is a month-by-month summary of GST from January 2007 through March 2008 (estimated).

### **Pre-filing GST**

21. In the normal course of operations, the Company sold the bulk of its goods to customers in the United States, which sales do not attract GST. It would file for

and receive each month GST tax refunds since its input tax credits always exceeded its GST collections. Typically, the monthly refund would be in excess of \$20,000. As such, there was no GST payable at the date of the commencement of the CCAA proceedings.

22. After the plant shutdown, CRA conducted a detailed audit of the Company's GST account. CRA proceeded to disallow the input tax credits claimed by the Company in the pre-filing period on the basis that it is now evident that the Company is unable to pay the unsecured trade debts which included the GST for which the Company had sought credit prior to the CCAA proceedings being commenced.
23. That the Company could not pay its unsecured trade debt, although always a risk, was not established as a certainty until well into the CCAA proceedings, and in particular until after the bidding closed in the sales process and the receivable collection was at a state where the amount of uncollectible receivables could be determined.
24. On February 1, 2008 CRA issued a notice of re-assessment of GST a copy of which is attached as Schedule "A" whereby it made a claim for \$189,270, (the "Reassessed GST"), plus an unsecured claim for interest of \$803, which amount it claims gives rise to a deemed trust in the Company's assets which takes priority over the positions of Wachovia and Tenneco.
25. The Company has unused pre-filing input tax credits of \$33,014 which it can offset against its obligation to remit GST. The Monitor understands that CRA is likely to accept this position and to reduce its pre-filing GST claim to \$157,058, as shown on Schedule "C", of which its claim for interest of \$803 ranks as unsecured. Additionally, the Monitor, with the assistance of a previous employee of the Company is reviewing the pre-filing records of the Company to determine if there are any additional ITC's available.

26. Attached hereto as Schedule "B" is a true copy of the Initial Order made in these proceedings. Paragraph 15 deals with payment of GST.

#### Post-Filing Pre-Shutdown GST

27. Post-filing GST, net of input tax credits, are estimated to be \$82,170 up to the date of shutdown. The Monitor is advised that this amount was not paid by the Company and that it has not been paid post shutdown.
28. Additionally, in the month of October 2007, being immediately after the shutdown, the Company sold certain inventory, utilized the net proceeds to pay ongoing post-shutdown costs and remitted certain amounts to Wachovia. The GST component of these post-shutdown sales and expenses are included in the post-filing, pre-shutdown GST liability figures.
29. Of the unpaid post-filing pre-shutdown payables of \$453,000, some \$214,000 is subject to GST. It is estimated that GST input tax credits of approximately \$12,848 could be reversed. Accordingly, this potential ITC reversal could increase the \$82,170 by an estimated \$12,848 to \$95,018, per Schedule "C".

#### Post-Shutdown GST

30. The Purchaser paid GST on the purchase price of the equipment in the amount of \$159,420 and GST has been collected on the post-shutdown sale of certain inventory of \$42,149 for a total of \$201,569. These amounts are part of the purchase price proceeds currently held by the Monitor. Some disbursements have been paid out of these funds with respect to professional fees as well as certain expenses associated with the completion of the sale of the purchased assets, including occupation costs during the period of the removal of the assets, which took several months. Resulting GST Input Tax Credits are an estimated \$31,429. Accordingly, the post-shutdown GST liability, net of the related ITC's, is estimated to total \$170,140, as set out in Schedule "C".

## VACATION PAY ISSUES

31. The Company owes employees approximately \$68,000, plus an estimated \$9,000 of employer CPP and EI contributions, with respect to Canadian vacation pay. These amounts are for both pre- and post-filing periods, including, for the small number of employees retained, the post-shutdown period.
32. It is agreed that the vacation pay would constitute a liability for the directors of the Company.
33. Attached as Schedule "D" is a copy of the Affidavit filed on behalf of the Company in support of its February 29<sup>th</sup> motion, together with certain correspondence concerning the payment of vacation pay. In addition, as part of the same schedule, the Monitor has included certain additional e-mails that it sent out touching on the issue of this payment.
34. The issue here is whether Wachovia consented to the payment of vacation pay and, if so, whether its consent was predicated upon this amount being paid as a distribution under the directors' charge so as to reduce such charge by the amount of the payment.

## POST SHUT DOWN PAYABLES

35. At the time that the Company shut down its operations it became clear that it would not be able to pay incurred post filing unsecured debts, of some \$453,000. It also became clear that additional funding was required to complete the disposition of the Company's assets and collection of its receivables (the "Post Shut Down Payables"). At that time, all receivables flowed to Wachovia through its lock box arrangements with the Company so that the Company had no funds to pay Post Shut Down Payables. At this time, the Company was acting upon the understanding that Wachovia was the first secured creditor and thus the most likely party to benefit from the sale and collection process.

36. Although carved out of the CCAA stay, following the shutdown of the Company's operations, Wachovia preferred not to seek the appointment of a receiver, interim receiver or bankruptcy trustee, and instead agreed to fund and see paid the reasonable expenses associated with the completion of the sales and collection process. Wachovia has since that time regularly received and monitored budgets and actual payment amounts related to the Post Shut Down Payables, as prepared by the Monitor in conjunction with the Company.
37. Initially, Wachovia committed to provide funding for the amounts so budgeted and did so. After the closing of the sale of the equipment, a priority dispute arose with Tenneco. It was then agreed that the budgeted expenses would instead be paid out of the sales proceeds which had been put into the hands of the Monitor rather than from further advances from Wachovia to the Company. These arrangements were then approved by order of the Honourable Mr. Justice Siegel, dated November 7, 2008. Since then the Monitor has been using the funds in its hands to fund the Company to pay these expenses on an ongoing basis and has routinely reported the actual and budgeted expenses to the Company, Tenneco and Wachovia, on an ongoing basis.
38. Attached hereto as Schedule "E" is a copy of the Post Shut Down Payables and projected amounts which have not been paid. Certain of these payables, such as utilities and telecommunications, were funded by the Occupancy Payments made to the Monitor by the Purchaser under the terms of the sale agreement and which the Monitor has simply been disbursing for the intended purpose. By and large, the amounts outstanding, or projected, are current and have been incurred within the month of February.
39. The Monitor wishes to pay, reserve and safeguard sufficient amounts out of the funds in its hands prior to a bankruptcy so as to ensure that all of the Post Shut Down Payables which remain outstanding are paid in full. Failing this, the Company's administrative insolvency would increase and there would be a

windfall to the secured creditors who have benefited from the restructuring process and approved these expenses.

## LANDLORD ISSUES

40. The Company's Canadian operations were conducted out of a single location, which premises have been vacated as of the end of February, 2008. It is not clear whether there will be any claims from the landlord beyond the Landlord Dispute Amount as defined below. The landlord has indicated that it may make a claim to the extent that (i) there may have been damage done during equipment removal (if not repaired), (ii) there has been a failure to clean the lands and premises as a result of operations during CCAA proceedings, and (iii) to repair or restore the premises during the CCAA period, all of which the landlord's counsel has advised that he would contend to be Post Shut Down Payables. To the best of the Monitor's knowledge, all rent has been paid for the post-CCAA period, but the Landlord Dispute Amount referred to below, however categorized, has not been paid. The Monitor has written to the Landlord's counsel requesting its position. A copy of the correspondence is attached as Schedule "F". The landlord's counsel has replied by giving comments on the Monitor's draft of this report which was sent to him and other parties, which comments are reflected below.
41. At the first court appearance after the granting of the Initial Order, the Landlord took issue with an assertion made by the Company in the Affidavit the Company had filed in support of the commencement of the CCAA proceedings, wherein the Company claimed that it was up to date on its rental payments. In fact, there was an amount of \$30,000 in dispute between the Company and its Landlord concerning repairs that the Company had made to the premises (the "Landlord Dispute Amount"). The Company had withheld from its rent payments the payments that it had made for the repair and the Landlord did not agree that it was entitled to do so pursuant to the terms of the Lease. The Company did not disclose the dispute to the Court at the time of its filing under the CCAA. Justice Spence held that if there was a subsequent determination that the Company was not

entitled to withhold from rent the Landlord Dispute Amount, such amount should be paid to the Landlord post filing, even though the non payment clearly had occurred prior to the CCAA proceedings. The Landlord has taken no steps since that date to bring the issue before the court for determination. The Landlord's solicitor asserts that he has continually notified all relevant parties that, unless the claimed monies were paid or the matter was settled, following the removal of the equipment by the purchaser of same and an assessment by the Landlord of whether the Landlord had sustained any damages as a result of equipment removal or otherwise by the operation of the business during the CCAA proceedings and as to whether there had been a failure to repair, restore and clean up as a result of operations during the CCAA proceedings and equipment removal, the Landlord would bring a motion to determine its rights and claim damages or payment accordingly as the Landlord contends that the Court has reserved its right to do.

42. Attached hereto as Schedule FF is a copy of an e-mail string, which the Landlord has requested that the Monitor put before the court, which on its face commenced February 26, 2008 when the Landlord states that it was notified of the recent motion to extend the stay returned on February 29 last. The Landlord's counsel indicates that he is unable to attend on the return of the motion scheduled for March 6 and attached in Schedule FF is a copy

### **PROFESSIONAL FEES**

43. Attached hereto as Schedule "G" is an Affidavit of Time of the Monitor and as Schedule "H" an Affidavit of Time of the Monitor's Counsel up to and including February 29, 2008.

### **STATEMENT OF ISSUES**

44. The court has requested the Monitor to set out the issues that need to be determined in order to complete the administration of the estate. The Monitor respectfully submits that the issues area as follows:

- (a) Should the Company be put into bankruptcy?
- (b) If yes, what payments should be made or reserved out of the funds in the hands of the Monitor prior to the bankruptcy? Various stakeholders contend that some or all of the following payments should be made prior to bankruptcy:
  - (i) Vacation pay related to the pre-CCAA period,
  - (ii) Vacation pay, if any, related to the post CCAA period,
  - (iii) The Purchase Price GST Amount,
  - (iv) The Reassessed GST,
  - (v) Post Shut Down Payables,
  - (vi) Professional fees of the Monitor, Monitor's counsel and Company counsel, and
  - (vii) The Landlord Dispute Amount.
- (c) If there is not to be a bankruptcy prior to the distribution of the money held by the Monitor, or at all, which of the amounts set out above should be paid in priority to the claims of the secured creditors? There appears to be sufficient funds such that issues of ranking among the various proposed payments set out in the preceding paragraph would not arise.
- (d) If any of the payments to be made relate to amounts for which the directors may have personal liability, should the payment of such amounts lead to a corresponding reduction of the amount of the directors' charge?
- (e) If some or all of the GST amount is to be paid, which of the Company's input tax credits are available to offset against any GST amount which may be ordered to be paid prior to bankruptcy?
- (f) Is the Reassessed GST claim barred by the CCAA stay? This question may not need to be addressed in certain circumstances where there is a bankruptcy and this claim is not paid prior to same.

## CONCLUSION AND RECOMMENDATION

45. All but one of the issues above is seen by the Monitor as stakeholder issues in respect of which the Monitor need not take any position. The Monitor has worked with the stakeholders to complete this Report so as to succinctly put

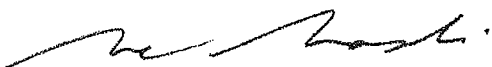
before the court the facts necessary for it to give directions and make rulings so that the administration of the Company's affairs can be completed in an efficient manner.

46. The Monitor does take a position with respect to the payment of Post Shut Down Payables which has been a process which it has administered. The Monitor contends that these amounts must be paid or reserved. The non payment of these amounts would constitute a windfall to the secured creditors who have benefited from the realization process and the non-payment of the related expenses should not be allowed.
47. All of which is respectfully submitted this 5th day of March, 2008.

BDO DUNWOODY LIMITED

Monitor

Per:



Uwe Manski, FCA, FCIRP  
President

# **SCHEDULE “A”**

**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 Plan of Compromise or Arrangement  
of BRAKE PRO, LTD.


Applicant

**AFFIDAVIT OF WENDY ROBINSON  
(Sworn February 28, 2008)**

**I, WENDY ROBINSON**, of the Town of Ajax in the Province of Ontario, **MAKE  
OATH AND SAY:**

1. I am a legal assistant employed with the firm of Blake, Cassels & Graydon LLP, solicitors for the Applicant, BrakePro, Ltd.
  
2. Attached hereto as Exhibit "A" is a copy of a Notice of Reassessment received by Brake Pro, Ltd. on February 2, 2008.

**SWORN BEFORE ME** at the )  
City of Toronto, in the Province )  
of Ontario, this 28th day of )  
February, 2008 )

  
\_\_\_\_\_)  
A Commissioner for taking Affidavits

  
\_\_\_\_\_  
**WENDY ROBINSON**



Sudbury ON P3A 5C1

Date of Mailing February 1, 2008
Business Number 13991 9096 RT0001
Period Covered 2007-04-01 to 2007-06-30

BRAKE PRO, LTD  
250 DONEY CRES  
CONCORD ON L4K 3A8

0012743

**NOTICE OF (RE)ASSESSMENT  
GOODS AND SERVICES TAX/HARMONIZED SALES TAX (GST/HST)**

**RESULTS**

This notice explains the results of our audit (re)assessment of return(s) you have or may have previously filed. Please refer to the "Summary of (Re)Assessment" for the specific period(s) covered.

Result of this (Re)Assessment	\$	190,072.34
Prior Balance	\$	0.00
		=====
Total Balance	\$	190,072.34

Failure to pay the balance owing may result in legal action being taken without further notice. If you have already paid this amount, please disregard this message.

Please keep this Notice of (Re)Assessment for your records.

William V. Baker  
Commissioner of Revenue





BRAKE PRO, LTD

Date of Mailing	February 1, 2008
Business Number	1399 1 9096 RT0001
Period Covered	2007-04-01 to 2007-06-30

**NOTICE OF (RE)ASSESSMENT  
GOODS AND SERVICES TAX/HARMONIZED SALES TAX (GST/HST)**

**SUMMARY OF (RE)ASSESSMENT**

RE: GST/HST Return

Reporting Period From: 2007/04/01 To: 2007/04/30

Reference Number: 07151000112360062

	Previous Assessment	Revised Assessment	Adjustments
Net Tax	\$ 25,318.33 Cr	\$ 12,321.49	\$ 37,639.82
Interest and Penalty			\$ 434.98
Arrears Interest			=====
			\$ 38,074.80
			Result of (Re)Assessment

**EXPLANATION**

The Net Tax amount does not take into consideration any rebate, instalment or payment amounts that have been applied to the account.

The details of the assessment are shown on the statement of audit adjustments provided to you separately.

We have charged arrears interest from May 31, 2007 on the amount that was unpaid on that date.



BRAKE PRO, LTD

Date of Mailing	February 1, 2008
Business Number	13991 9096 RT0001
Period Covered	2007-04-01 to 2007-06-30

0012744

**NOTICE OF (RE)ASSESSMENT  
GOODS AND SERVICES TAX/HARMONIZED SALES TAX (GST/HST)**

**SUMMARY OF (RE)ASSESSMENT**

RE: GST/HST Return

Reporting Period From: 2007/05/01 To: 2007/05/31

Reference Number: 07190003312360023

	Previous Assessment	Revised Assessment	Adjustments
Net Tax	\$ 23,712.27 Cr	\$ 56,058.28	\$ 79,770.55
Interest and Penalty			\$ 367.79
Arrears Interest			=====
			\$ 80,138.34
			Result of (Re)Assessment

**EXPLANATION**

The Net Tax amount does not take into consideration any rebate, instalment or payment amounts that have been applied to the account.

The details of the assessment are shown on the statement of audit adjustments provided to you separately.

We have charged arrears interest from June 30, 2007 on the amount that was unpaid on that date.





BRAKE PRO, LTD

Date of Mailing	February 1, 2008
Business Number	13991 9096 RT0001
Period Covered	2007-04-01 to 2007-06-30

**NOTICE OF (RE)ASSESSMENT  
GOODS AND SERVICES TAX/HARMONIZED SALES TAX (GST/HST)**

**SUMMARY OF (RE)ASSESSMENT**

RE: GST/HST Return

Reporting Period From: 2007/06/01 To: 2007/06/30

Reference Number: 07212009312360015

	Previous Assessment	Revised Assessment	Adjustments
Net Tax	\$ 5,329.00	\$ 77,188.20	\$ 71,859.20
			=====
			\$ 71,859.20

**EXPLANATION**

The Net Tax amount does not take into consideration any rebate, instalment or payment amounts that have been applied to the account.

The details of the assessment are shown on the statement of audit adjustments provided to you separately.

If you need more information please see "General Information."



Sudbury ON P3A 5C1

11 (Y)

BRAKE PRO, LTD  
250 DONEY CRES  
CONCORD ON L4K 3A8

For the period ending <b>December 14, 2007</b>
Business Number <b>13991 9096 RT0001</b>

0061664

**STATEMENT OF ARREARS  
Goods and Services Tax/Harmonized Sales Tax**

**What's New**

My Business Account, CRA's online service, provides convenient and secure access to a growing range of personalized business account information and services. My Business Account now offers access for authorized third parties and a full range of business account options.

Visit [www.cra.gc.ca/mybusinessaccount](http://www.cra.gc.ca/mybusinessaccount) to find out more about this exciting addition to our suite of electronic services for business.

The Canada Revenue Agency is firmly committed to reducing paper consumption. Therefore, starting in January 2008, we will no longer issue a monthly Statement of Arrears if the debit balance is \$50.00 or less.

**General Information**

If you have made a payment that was not processed by the date of this statement, it will be reflected on the next statement issued.

If the balances shown do not agree with your records or a payment has been misallocated, please contact our office.

When we process multiple credits with the same effective date, we may combine them as one refund payment.

Transactions with an effective date later than your statement date have not yet been finalized and may be subject to change. If adjustments are necessary, they will be reflected on your next statement.

Effective Date	Transaction	Amount (\$)	
<b>Processed Amounts</b>			
		For non-reporting period	
April 7, 2007	Previous balance	0.00	
Aug. 20, 2007	Transfer		
	from reporting period ending July 24, 2007	23,209.42 Cr	
Aug. 20, 2007	Transfer to reporting period ending July 24, 2007	23,209.42	
Dec. 14, 2007	Balance	0.00	
		For reporting period ending July 24, 2007	
April 7, 2007	Previous balance	0.00	
Sep. 21, 2007	Assessment	23,209.42 Cr	
Aug. 20, 2007	Transfer to non-reporting period	23,209.42	
Nov. 27, 2007	Reversal	23,209.42	
Aug. 20, 2007	Transfer from non-reporting period	23,209.42 Cr	
Dec. 14, 2007	Balance	0.00	
		For reporting period ending June 30, 2007	
April 7, 2007	Previous balance	0.00	
Aug. 3, 2007	Assessment	5,329.00	
	Interim payments applied	5,329.00 Cr	
Dec. 14, 2007	Balance	0.00	
		For reporting period ending May 31, 2007	
April 7, 2007	Previous balance	0.00	
July 18, 2007	Assessment	23,712.27 Cr	



BRAKE PRO, LTD

For the period ending <b>December 14, 2007</b>
Business Number <b>13991 9096 RT0001</b>

**STATEMENT OF ARREARS  
Goods and Services Tax/Harmonized Sales Tax**

<i>Effective Date</i>	<i>Transaction</i>		<i>Amount (\$)</i>
July 18, 2007	Refund		23,712.27
Dec. 14, 2007	Balance		0.00
For reporting period ending April 30, 2007			
April 7, 2007	Previous balance		0.00
June 11, 2007	Assessment		25,318.33 Cr
June 11, 2007	Refund		25,318.33
Dec. 14, 2007	Balance		0.00
For reporting period ending March 31, 2007			
April 7, 2007	Previous balance		0.00
May 8, 2007	Assessment	1,619.81	
	Interim payments applied	1,619.81 Cr	
Dec. 14, 2007	Balance		0.00
For reporting period ending Feb. 28, 2007			
April 7, 2007	Previous balance		0.00
April 24, 2007	Assessment		23,059.99 Cr
March 19, 2007	Transfer to 139919096RP0002		51.41
April 24, 2007	Refund		22,938.09
April 24, 2007	Refund		70.49
April 26, 2007	Arrears interest		0.00
Dec. 14, 2007	Balance		0.00
<b>Summary</b>			
Dec. 14, 2007	Non-reporting period		0.00
Dec. 14, 2007	Reporting period ending July 24, 2007		0.00
Dec. 14, 2007	Reporting period ending June 30, 2007		0.00
Dec. 14, 2007	Reporting period ending May 31, 2007		0.00
Dec. 14, 2007	Reporting period ending April 30, 2007		0.00
Dec. 14, 2007	Reporting period ending March 31, 2007		0.00
Dec. 14, 2007	Reporting period ending Feb. 28, 2007		0.00
Dec. 14, 2007	Total balance		0.00

Remember to visit our Web site at [www.cra.gc.ca/mybusinessaccount](http://www.cra.gc.ca/mybusinessaccount) to obtain more details about electronic services for business accounts.

For further information, contact:

Sudbury TC  
1050 Notre Dame Ave  
Sudbury ON P3A 5C1  
Fax (705) 671-0490  
Toll free number 1-800-959-5525

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

**AFFIDAVIT OF WENDY ROBINSON**  
**(SWORN FEBRUARY 28, 2008)**

**BLAKE, CASSELS & GRAYDON LLP**  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

**Susan Grundy** LSUC#19898J  
Tel: (416) 863-2572

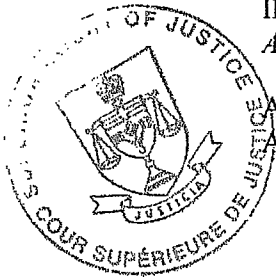
**Katherine McEachern** LSUC#: 38345M  
Tel: (416) 863-2566  
Fax: (416) 863-2653

Solicitors for Brake Pro, Ltd.

# **SCHEDULE “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 24th  
)  
JUSTICE STINSON ) DAY OF JULY, 2007



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BRAKE PRO, LTD. (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Russell Armer sworn July 23, 2007 (the "Armer Affidavit") and the Exhibits thereto and on hearing the submissions of counsel for Brake Pro, Ltd., (the "Applicant") and Wachovia Capital Finance Corporation (Canada) (the "Bank"), no one else appearing, and on reading the consent of BDO Dunwoody Limited ("BDO" or the "Monitor") to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

## THE BANK

4. THIS COURT ORDERS that, except as expressly set out in this Order, the Bank shall be an unaffected creditor in these proceedings and under this Order and the Plan and that the Bank shall, subject to the terms of any agreement between the Bank and the Applicant, be entitled to exercise any or all of its remedies under the Credit Facilities (as defined below) with the Applicant and all security granted by the Applicant in connection therewith, subject to all applicable laws, notwithstanding the pendency of these proceedings.

5. THIS COURT ORDERS, that for greater certainty,

(a) upon the occurrence of an event of default under the Forbearance Agreement (as defined below), the Bank may immediately exercise any and all of its rights and remedies against the Applicant or the Property (as defined below) under or pursuant to the Forbearance Agreement and the Bank Security (as defined below); and

(b) the foregoing rights and remedies of the Bank shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

6. THIS COURT ORDERS that the entering into by the Bank and the Applicant of the Forbearance Agreement dated July 23, 2007 (the "**Forbearance Agreement**") (which amended

the Amended and Restated Loan Agreement dated as of December 11, 2001, as amended by a First Amending Agreement to Loan Agreement dated as of April 12, 2002, a Second Amending Agreement to Amended and Restated Loan Agreement dated as of December 11, 2003, a Third Amending Agreement to Amended and Restated Loan Agreement dated as of March 14, 2005, a letter dated August 11, 2006, a letter dated December 15, 2006, a letter dated March 9, 2007 and a Fourth Amending Agreement to Amended and Restated Loan Agreement dated July 9, 2007 (together with the Forbearance Agreement collectively, the "**Credit Facilities**") providing for, *inter alia*, the continuation and amendment of the existing credit facilities provided by the Bank to the Applicant is approved, ratified, and confirmed.

7. THIS COURT ORDERS that notwithstanding any other provision of this Order, the Applicant is hereby authorized to borrow, repay, and re-borrow under the Credit Facilities for such purposes as are expressly provided for in the Forbearance Agreement.

8. THIS COURT ORDERS that all security agreements provided by the Applicant to the Bank in support of the Credit Facilities (the "**Bank Security**") shall continue in full force and effect securing all advances made to the Applicant by the Bank under the Forbearance Agreement in accordance with their terms and subject to all applicable laws.

9. THIS COURT ORDERS that the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Bank under and pursuant to the Credit Facilities (including for greater clarity, the utilization of the Blocked Account System defined below) as and when the same become due and are to be performed, notwithstanding any other provision of this Order, subject to the Charges and priorities provided for in paragraphs 43 and 45 of this Order.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

10. THIS COURT ORDERS that, subject to the terms of this Order, the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and

Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

11. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the blocked account and lockbox arrangements currently in place and established pursuant to the applicable banking arrangements with the Bank and Bank of Montreal and Harris Bank, (the "Blocked Account System"), and that the Bank and Bank of Montreal and Harris Bank in providing the Blocked Account System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Blocked Account System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Blocked Account System, shall be entitled to provide the Blocked Account System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Blocked Account System, and shall be, in their capacity as providers of the Blocked Account System unaffected creditors under this Order and the Plan with regard to any claims or expenses they may suffer or incur in connection with the provision of the Blocked Account System.

12. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses (including retention payments for key employees of the Applicant in accordance with the terms of the Forbearance Agreement and in such amounts and on such terms as the Bank and the Monitor agree, but in an aggregate amount not exceeding \$270,000), payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

13. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including outstanding and future premiums on existing or future directors and officers insurance including, without limitation, any premiums in connection with any extended reporting period), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) any other amounts the payment of which is provided for by the terms of this Order.

provided that, unless specifically contemplated in this paragraph, the Applicant shall only be entitled, (but not required) to pay costs and expenses that were incurred before the date of this Order to the extent such costs and expenses are deemed necessary for the preservation of the Property and/or the Business by the Applicant and the Monitor, and with the approval of the Bank, or upon further order in these proceedings.

14. THIS COURT ORDERS that, notwithstanding paragraph 13, the Applicant shall pay:

- (a) all outstanding and future fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Applicant, at their standard rates and charges but, subject to any assessment or taxation as provided for by this Order; and
- (b) all outstanding and future fees and expenses of the Bank, its counsel and agents retained on its behalf in respect of these proceedings.

15. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

16. THIS COURT ORDERS that unless and until the Applicant repudiates a real property lease in accordance with paragraph 18(c) of this Order, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated by the Applicant from time to time ("Rent"), for the period commencing from and including the date of this Order, bi-weekly, in advance (but not in arrears).

17. THIS COURT ORDERS that, except as specifically permitted herein including paragraphs 4 to 9, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens,

charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

18. THIS COURT ORDERS that the Applicant shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and, with the approval of the Monitor and the Bank, to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate, subject to paragraph 18(c), if applicable;
  - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate in accordance with its collective agreement, if applicable and/or on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
  - (c) in accordance with paragraphs 19 and 20, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days' notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
  - (d) except for its collective agreement repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;
  - (e) sell, convey, transfer, assign, lease, or in any manner dispose of the Property or any part or parts thereof;

- (i) in the ordinary course of business without the specific approval of the Court;
  - (ii) out of the ordinary course of business without the specific approval of the Court, but with the approval of the Monitor and the Bank, provided that the sale or transaction price does not exceed \$50,000 in any one transaction or \$250,000 in the aggregate;
  - (iii) otherwise subject to the prior approval of the Bank and the Court; and
  - (iv) provided that in all cases the Applicant applies any proceeds thereof in accordance with the Forbearance Agreement;
- (f) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), and (e)(ii) above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

19. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 18(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

20. THIS COURT ORDERS that if a lease is repudiated by the Applicant in accordance with paragraph 18(c) of this Order, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

21. THIS COURT ORDERS that, subject to the other provisions of this Order (including the payment of Rent as herein provided) and any further Order of this Court, the Applicant shall be permitted to dispose of any or all of the Property located (or formerly located) at such leased premises without any interference of any kind from landlords, warehousemen, storers or bailees wherever situate and, for greater certainty, the Applicant shall have the right to realize upon the Property and other assets in such manner and at such locations, including leased premises, as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom notwithstanding the provisions of any lease, other instrument or law affecting or limiting the rights of the Applicant to remove Property from leased premises.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

22. THIS COURT ORDERS that until and including **August 17, 2007**, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any 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.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

23. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

24. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

25. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

26. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

27. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

28. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, at any time, to make payments of the nature referred to in subparagraphs 13(a), 15(a), 15(b) and 15(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

29. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

30. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

#### **APPOINTMENT OF MONITOR**

31. THIS COURT ORDERS that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

32. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist and advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Bank, and any other projections or reports, which information shall be reviewed with the Monitor and delivered to the Bank and its counsel on a periodic basis, as agreed to between the Applicant and the Bank;
- (d) advise the Applicant in its development of a Plan and any amendments to a Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (f) supervise the Sale Process (as defined in paragraph 48 below), and otherwise assist the Applicant in carrying out the Sale Process, and any transaction arising therefrom including without limitation taking such steps in consultation with the Applicant as it considers necessary or desirable with respect thereto;
- (g) report to the Court on any sale by the Applicant of the Property and Business, or any part thereof;
- (h) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) be at liberty to serve as a “foreign representative” of the Applicant in any proceedings outside of Canada;
- (k) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

33. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

34. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

#### **THE BANK'S ACCESS TO INFORMATION**

37. THIS COURT ORDERS that the Monitor shall respond to all reasonable requests of the Bank for information concerning the Applicant's financial affairs and financial position, and, with the cooperation of the Applicant, to provide requested information to the extent such information is available or can be readily prepared.

38. THIS COURT ORDERS that the Monitor shall report to and consult with the Bank in accordance with the Forbearance Agreement.

39. THIS COURT ORDERS that the Monitor shall forthwith report to this Court and the Bank in the event of any default of the Forbearance Agreement, any material adverse change to the financial position of the Applicant, any material deterioration in the Applicant's asset value or any material adverse deviation from the cash flow projection attached as Exhibit "J" to the Armer Affidavit.

#### **ADMINISTRATIVE CHARGE**

40. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a periodic basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, reasonable retainers approved by the Bank to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

41. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

42. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

43. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, and the Bank Security, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000);

Second – Directors' Charge (to the maximum amount of \$100,000); and

Third – Bank Security.

44. THIS COURT ORDERS that the holders of each of the Directors' Charge and the Administration Charge (collectively, the "**Charges**") shall not be required to file, register, record or perfect their respective Charges, which shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall have priority over all present and future security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except the following:

- (a) in respect of any real property, existing (i) zoning, use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of such Property, (ii) notices of lease, (ii) subdivision agreements, site plan control agreements, development agreements, servicing agreements and other similar agreements with municipal and other governmental authorities, and (iv) permits, reservations, restrictions, covenants, servitudes, watercourse, rights of water, rights of access or user licences, easements, rights of way and rights in the nature of easements;
- (b) existing and future purchase-money security interests registered in accordance with applicable personal property security legislation and recognized under such legislation as being entitled to the priority of purchase-money security interests; and

- (c) Encumbrances in respect of the Property of the Applicant arising by operation of law (other than as a result of a default in payment or performance of an obligation by the Applicant) without any grant of a security interest by such Applicant and that are given priority over prior fixed charges by statute law in the event of the bankruptcy of such Applicant.

46. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicant also obtains the prior written consent of the Monitor, the Bank and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the execution, delivery or performance of any documents or obligations in respect thereof; and

- (c) the payments made by the Applicant pursuant to this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

## SALE PROCESS

48. THIS COURT ORDERS that the Monitor and the Applicant are hereby authorized to conduct a process for the solicitation of offers for and sale of the Property (the "Sale Process") in accordance with such steps and pursuant to such timetable as the Monitor and the Applicant may reasonably determine is necessary to obtain the best realization for the Property, in consultation with the Applicant and the Bank.

49. THIS COURT ORDERS that the Monitor may obtain advice and directions from the Court with respect to the Sale Process.

50. THIS COURT ORDERS that the Monitor and the Applicant shall, upon receipt, deliver to the Bank any offers or letters of intent received respecting all or any portion of the Property (other than regarding sales in the ordinary course of business) subject to reasonable confidentiality agreements.

51. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant and the Monitor shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicant or the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such

information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed.

### **SERVICE AND NOTICE**

52. THIS COURT ORDERS that the Monitor shall, within ten (10) business days of the date of entry of this Order, send notice of this Order to the Applicant's known creditors, other than employees and creditors to which the Applicant owes less than \$500, at their addresses as they appear on the Applicant's records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor, [www.bdo.ca/BrakePro](http://www.bdo.ca/BrakePro) (the "Website") and if such creditor is unable to obtain it by that means, such creditor may request a copy from the Monitor and the Monitor shall promptly send a copy of this Order to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, so provide it. Such notice shall be sufficient to comply with subsection 11(5) of the CCAA.

53. THIS COURT ORDERS that the Applicant, the Monitor and the Bank be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

54. THIS COURT ORDERS that the Applicant, the Monitor, the Bank and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

### **GENERAL**

55. THIS COURT ORDERS Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

56. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.


57. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

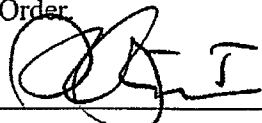
58. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

59. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Savings Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
BY / LE GÉREUR NO:  
LE / DANS LE REGISTRE NO.:

JUL 24 2007

PER/PAR: 

  
DG STINSON J.

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.  
AND IN THE MATTER OF THE APPLICATION OF BRAKE PRO, LTD.

Court File No. 07-CL-7106

Applicant

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED BY  
FILED / DEPOSE

JUL 24 2007  
INITIAL ORDER  
AT / A

BLAKE, CASSELL & GRAYDON LLP  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Susan Grundy LSUC#19898J  
Tel: (416) 863-2572  
Fax: (416) 863-2653

Katherine McEachern LSUC#: 38345M  
Tel: (416) 863-2566  
Fax: (416) 863-2653

Solicitors for the Applicant

# **SCHEDULE “C”**

**BRAKE PRO LIMITED  
GST TRACKING SCHEDULE**

Date	GST	ITC	Owing	Interest	Refund	Amount		Balance	Comments
						Paid/	(Received)		
<i>Pre-Filing</i>									
Jan-07	\$ 56,791	\$ 90,815	\$ -	\$ -	\$ (34,024)	\$ (34,024)			
Feb-07	66,746	89,735	-	-	(22,990)	(22,990)			Actual refund received \$23,009.
Mar-07	89,960	88,340	1,620	-	-	1,620			
Apr-07	73,026	98,345	-	-	(25,318)	(25,318)			
May-07	56,058	79,771	-	-	(23,712)	(23,712)			
Jun-07	77,188	71,859	5,329	-	-	5,329			
24-Jul-07	33,439	66,453	-	-	(33,014)	(33,014)			
					(56,004)				
								<b>\$ (33,014)</b>	
<i>CRA Claim</i>									
Apr-07			37,640	435					
May-07			79,771	368					
Jun-07			71,859	-					
			189,270	803					
								<b>190,072</b>	
								<b>\$ 157,058</b>	
<i>Post-Filing Pre-Shutdown</i>									
31-Jul-07	30,211	20,407	9,805						
Aug-07	59,921	37,792	22,129						
Sep-07	37,936	23,101	14,835						
Oct-07	41,105	5,704	35,402						
To Shut Down	169,173	87,003	82,170						
Estimated ITC Reversal		(12,848)	12,848						
								<b>\$ 95,018</b>	
<i>Total Post-Filing Pre-Shutdown</i>									
								<b>\$ 95,018</b>	
<i>Post Shut Down</i>									
Nov-07	14,693	4,172	10,521						
Dec-07	184,037	9,380	174,656						
Jan-08	2,839	5,878	(3,039)						Filed electronically
Feb-08	-	5,572	(5,572)						Professional fees drawn on 29 February
Mar-08	-	6,426	(6,426)						Anticipated ITC's per Schedule "E"
	201,569	31,429	170,140						
								<b>\$ 170,140</b>	
								<b>\$ 170,140</b>	

Accrual for reversal of ITC's on unpaid Canadian post-filing payables. Canadian post-filing payables estimated to be \$214,137.69. Reversal calculated at then current GST rate of 6%

Filed electronically  
Professional fees drawn on 29 February  
Anticipated ITC's per Schedule "E"

# **SCHEDULE “D”**

**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 Plan of Compromise or Arrangement  
of BRAKE PRO, LTD.


Applicant

**AFFIDAVIT OF WENDY ROBINSON  
(Sworn February 29, 2008)**

**I, WENDY ROBINSON**, of the Town of Ajax in the Province of Ontario, **MAKE  
OATH AND SAY:**

- 1. I am a legal assistant employed with the firm of Blake, Cassels & Graydon LLP, solicitors for the Applicant, BrakePro, Ltd.
- 2. Attached hereto as Exhibit "A" is a copy of an email from Mark Laugesen of Bennett Jones LLP to Blake Cassels & Graydon LLP dated September 28, 2007.
- 3. Attached hereto as Exhibit "B" is a copy of a letter from Susan Grundy of Blake Cassels & Graydon LLP to Mark Laugesen of Bennett Jones LLP dated December 10, 2007.

**SWORN BEFORE ME** at the )  
City of Toronto, in the Province )  
of Ontario, this 29th day of )  
February, 2008 )

  
\_\_\_\_\_  
A Commissioner for taking Affidavits

  
\_\_\_\_\_  
**WENDY ROBINSON**

## Exhibit "A"

**MCEACHERN, KATHERINE**

---

**From:** Mark Laugesen [laugesenm@bennettjones.ca]  
**Sent:** Friday, September 28, 2007 2:44 PM  
**To:** MCEACHERN, KATHERINE; GRUNDY, SUE  
**Cc:** Justin Fogarty; Renee Brosseau; FELKER, Barry; Vizgirda, Tony; LINDERMAN, Steve; MANSKI, Uwe; PORTER, Christopher; DOWDALL, Dan  
**Subject:** Brake Pro - Directors Liability and Expenses - Professional Fees

In Sue's e-mail to me at 4:26 on 26 September 2007, she asked me to confirm Wachovia's position on two issues: (1) the potential director's liability for accrued and accruing obligations faced by Russ Armer, and his claim for certain accrued and accruing expenses, and (2) the accrued and accruing professional fees of Blakes, BDO, and FMC (as BDO's counsel). Wachovia has instructed me to advise you as follows.

**(1) Directors Liability and Expenses**

Under cover of Sue's e-mail to me at 5:13 on 27 September 2007, she provided a schedule setting out a breakdown of estimated director's liabilities. There is a charge in the initial CCAA Order (which primes Wachovia) in the amount of \$100,000 for director's liability exposure. That charge already protects Armer from exposure for the Canadian hourly and salaried vacation pay exposure in the total amount of \$69,667.10 as at 25 September 2007, which we assume is current to and including the termination dates for all such employees.

We are of the view that the \$44,408.29, ostensibly for the accrued vacation pay obligations to US salaried employees current to 25 September 2007, does not create director's liability for Armer under either the ESA or the OBCA. Accordingly, we are of the view that there is some \$30,000 of "room" left under the \$100,000 directors liability charge to cover, for example, director's liability for GST (if there is any, which currently appears not to be the case).

Accordingly, Wachovia is of the view that there is no need to offer Armer any additional indemnity or like protection for his director's liability exposure for amounts accrued to 25 September 2007. If your legal position differs on the potential exposure as it relates to US employees of Brake Pro, please advise.

Provided that Armer continues to work with Brake Pro, Blakes, BDO, and Wachovia and its representatives, Wachovia will fund Brake Pro in the amount of \$40,454.69 (capped at this amount) to pay the accrued and accruing expenses of Armer and others as set out on the schedule of estimated directors liabilities sent under cover of Sue's e-mail to me at 5:13 on 27 September 2007. Funding will occur at the end of the two week period commencing on the date of the extension (i.e. 1 October 2007). Any further expenses would have to be the subject of discussion between Armer and Wachovia.

Wachovia has also asked Brake Pro to re-hire certain employees to assist in the liquidation. It is Wachovia's intention to fund Brake Pro for the payment of the wages and vacation pay of all such employees; however, to the extent that Wachovia fails to fund the company to do so and that failure results in directors liability to Armer for unpaid wages and vacation pay, Wachovia will indemnify Armer for such unpaid wages and vacation pay.

**(2) Professional Fees**

There is a charge in the initial CCAA Order (which primes Wachovia) in the amount of \$100,000 for the professional fees of Blakes and BDO and its counsel (FMC). We have been given a schedule prepared by BDO setting out the estimated outstanding professional fees of Blakes, BDO, and FMC as at 25 September 2007 in the total amount of \$155,542.50 (net of GST, which Uwe Manski has explained will be recovered as an ITC). The liquidation budget sent to us by BDO late on 27 September 2007 called for payment of \$55,000 between Blakes and BDO.

We are instructed to advise you that Wachovia will fund Brake Pro to pay Blakes and BDO this \$55,000 amount. We understand that, between this payment and the \$100,000 charge for professional fees, Blakes and BDO and

2/28/2008

its counsel will be more or less current to 25 September 2007.

As to amounts accrued since 25 September 2007 and estimated to accrue to end of day on 2 October 2007 (i.e. the day after the extension hearing), we are advised that Blakes estimates fees of about \$20,000 plus GST, and BDO and its counsel estimates fees of about \$30,000 plus GST (in both cases, however, we understand that applicable GST would be recoverable through the ITC process). We have asked Wachovia to confirm that it will ensure funding of Brake Pro to pay this additional \$55,000 to fund payments to Blakes and BDO and its counsel, but do not have instructions at this time.

We trust that you will nevertheless proceed with filing your materials for the extension motion, and we will get back to you as soon as we hear from Wachovia. If you are not satisfied with Wachovia's response on this additional point, you are free to withdraw your request for an extension before the return of the motion.

It is our intention and that of Wachovia and its liquidation representatives (Michael Listener and his team) to work with you after the extension to settle a definitive liquidation plan and a budget for same, which we will have two weeks to complete.

We appreciate the hard work and significant effort that has been put in by Blakes, BDO, FMC, and Russ Armer.

FYI, to respond to the point raised by Chris Porter and Uwe Manski, I am told that Wachovia funded Brake Pro to pay the rent late this morning.

Please call to discuss.

Regards.

Mark

Mark S. Laugesen  
Partner, Bennett Jones LLP  
Suite 3400, One First Canadian Place  
TORONTO, Ontario M5X 1A4  
e-mail: [laugesenm@bennettjones.ca](mailto:laugesenm@bennettjones.ca)  
tel: 416.777.4802  
fax: 416.863.1716

The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. Like other forms of communication, e-mail communications may be vulnerable to interception by unauthorized parties. If you do not wish us to communicate with you by e-mail, please notify us at your earliest convenience. In the absence of such notification, your consent is assumed. Should you choose to allow us to communicate by e-mail, we will not take any additional security measures (such as encryption) unless specifically requested.

2/28/2008

Exhibit "B"



Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 2800, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

December 10, 2007

**Susan M. Grundy**  
Dir: 416-863-2572  
susan.grundy@blakes.com

**VIA E-MAIL**

Reference: 42839/1

Mr. Mark Laugesen  
Bennett Jones LLP  
Suite 3400  
One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Re: Brake Pro, Ltd. ("Brake Pro")**

Dear Mr. Laugesen:

I understand that your client, Wachovia Capital Finance Corporation ("Wachovia") has taken the position that it is not prepared to fund Brake Pro to make any payments on account of vacation pay to employees, and that it opposes the payment of vacation pay from the sale proceeds being held by the Monitor, BDO Dunwoody Ltd.

This position is surprising, as it is in very clear contradiction of Wachovia's agreement throughout this process. In our view, Wachovia is not in a position to refuse to fund these payments, as they are the subject of the directors charge contained at paragraph 28 of the Initial Order, which has priority to Wachovia's security, and they are explicitly permitted by the provisions of paragraph 21 of Court Order issued by Justice Siegel on November 7, 2007.

Your client will recall that the Monitor is in possession of the proceeds of the sale to Affinia, as well as the proceeds of sale of inventory that has taken place. These proceeds stand in the place and stead of the assets of the Company, and are therefore subject to the directors charge imposed by paragraph 28 of the Initial Order, to the extent of \$100,000. That directors charge takes priority over your client's security. The vacation pay, in the amount of \$67,751.23, has been acknowledged by your client as a personal liability of the directors of Brake Pro. To the extent that this amount goes unpaid, it will be the subject matter of a claim against these individuals, for which they are entitled to resort to the directors charge for indemnity, in priority of any claim of your client to those proceeds. On this ground alone, it is appropriate for the Company to pay the vacation pay outstanding.

Your client obtained the continued cooperation of Mr. Armer and the Company to continue to realize for your client's benefit on the assets of the Company through the CCAA process, by explicitly agreeing that vacation pay and other employee related costs would be paid. In your email to me dated September 26, 2007, which email was copied to your client, you state, on behalf of your client:

"Under cover of Sue's e-mail to me at 5:13 on 27 September 2007, she provided a schedule setting out a breakdown of estimated director's liabilities. There is a charge in the initial CCAA Order (which

12170071.1