

**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 BRAINHUNTER INC.,  
BRAINHUNTER CANADA INC., BRAINHUNTER  
(OTTAWA) INC., PROTEC EMPLOYMENT SERVICES  
LTD., TREKLOGIC INC.**

**Applicants**

**AFFIDAVIT OF SAMANTHA HORN  
(sworn January 22, 2010)**

I, **Samantha Horn**, of the Town of Oakville, Province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate with Stikeman Elliott LLP counsel to a potential bidder for the Brainhunter assets (the "Bidder") and as such have knowledge of the matters to which I hereinafter depose, save and except where I have noted them to be on information and belief.
2. I swear this affidavit in response to the motion for directions sought by the Monitor and the Auction Rules proposed by the Monitor. Unfortunately despite earlier discussions with the Monitor and Company, the Monitor did not circulate proposed Auction Rules until after the bids had been submitted and as such this is our first opportunity to raise our objections to the proposed Auction Rules, and in particular, the valuation methodology included therein.
3. In accordance with the terms of the Bidding Procedures (attached as Exhibit B to the Monitor's Third Report), our client submitted a bid to the Monitor on Monday January 18, 2010. As required by the Bidding Procedures, the bid submitted by our client includes acknowledgment that the TD Bank debt and Roynat debt will be satisfied in full at closing, as well as various amounts that the stalking horse bidder and Bidding Procedures deemed

necessary (ie payment of \$700,000 break fee; \$250,000 administrative costs; \$180,000 KERP payment; payment of unsecured “critical suppliers” presently estimated in excess of \$14 million; acknowledgement re: D&O charge potentially to \$1.7 million; and payment of \$500,000 deposit).

4. While the nature and terms of our bid remain confidential, there are certain provisions which the Monitor has indirectly drawn attention to in its Report. I wish to address these issues.

#### **The Proposed Closing Date**

5. In our bid, the Bidder has now sought a closing date of February 17<sup>th</sup>. This date was sought as the earliest date in which to complete the mechanics of the necessary financing of the proposed transaction. It is important to note that the Bid is not conditional on financing – the February 17<sup>th</sup> date is merely to ensure that the mechanics of the financing can be completed. Our clients’ lender has advised that they will require 15 days after confirmation that our client is the successful bidder to complete the financing (February 15<sup>th</sup> being a holiday – Family Day).

6. The bidding procedures contemplate a closing up to February 25<sup>th</sup>. In the First Report of the Monitor, the Monitor notes: “the Stalking Horse APA contemplates a closing date of February 5, 2010 or such other date as agreed to by both the Vendors and the Purchasers, provided that such date is not to be later than February 25, 2010”. As such, our clients understood the outside closing date of February 25 was contemplated for the transaction.

7. Our client seeks the Court’s assistance in ensuring that the additional 12 days (8 business days) are provided to the Bidding Procedures in order that our bid may be permitted to continue to participate in the process.

### **A Possible “Credit Bid”**

8. At the present time our client’s bid does not envision a credit bid situation, however we advised the Monitor prior to and at the time that the bid was submitted, that a credit bid may be forthcoming. The terms of an arrangement which would permit a credit bid were finalized with a group of noteholders on January 18, 2010 after the bid was submitted, and on January 19, 2010 we advised the Monitor on a more formal basis that a credit bid, if required, may be submitted at the auction.

9. The credit bid concept relates to the remaining secured creditors of the company – the Noteholders. As noted in the Monitor’s Third Report, these notes were issued in 8% and 10% tranches. The Monitor has issued a security opinion in respect of the notes. The notes are held by individuals and are not the subject of a trust indenture.

10. I understand through discussions with the Monitor and noteholders, that in total \$10,710,357 of 8% and 10% notes are technically outstanding. I further understand that in respect of the notes are held by Raj Singh (the stalking horse bidder) and his sister Pratima Kalicharran, a corresponding loan is held on the books of the company in respect of the quantum of notes held, which would offset any obligation owing to such noteholders and as such the total amount of notes must be reduced accordingly (a total of \$408,000 of 8% notes and \$53,095 of 10% notes for a total of \$461,095 in disqualified notes).

11. The proposed credit bid is based on and similar to the description of the Roynat lock up agreement outlined in earlier materials filed with the Court. That is, the Bidder has the support of various noteholders and as such will be in a position to tender the notes held by these supportive noteholders to the company at closing for cancellation as a debt of the company. This will result in the benefit to the company, and consideration to the company, of the face value of the notes tendered for cancellation. As well (as outlined in the Third Report), the noteholders represent the vast majority of intercompany debt and as such the cancellation of various secured notes, will correspond to a reduction of claims at the intercompany level therefore removing them from the pool of potential unsecured creditors eligible to share in any additional consideration available at an auction to this category of claimants.

12. The ability to participate in the arrangements with the Bidder was offered to all of the noteholders. The majority of the offers were communicated, or attempted, through the offices of Fraser Milner, counsel to the committee of noteholders, and particularly Dan Dowdall and Denise Williams.

13. I am advised by Mr. Dowdall that each of the noteholders were contacted, save for:

- (a) two employees of the company who were contacted by our office directly, with the participation of Ernst & Young on these calls. In total these individuals hold \$43,608.34 of 8% notes. We continue to await their response to the offer;
- (b) a member of the special committee of the Board of Brainhunter, who was contacted but did not respond to Mr. Dowdall's messages. This individual holds \$200,000 of 8% notes;
- (c) Raj Singh and his sister Pratima Kalicharran. Mr. Dowdall sought to enter into a confidentiality protocol with these individuals through discussions with Mr. Singh's counsel John Ball prior to communicating the offer however he was not able to reach a satisfactory arrangement with these individuals and therefore the offer was not communicated. In any event, we understand that the notes held by the individuals (\$408,000 of 8% notes and \$53,095 of 10% notes) are offset by corresponding loans in favour of the company regarding the notes held and therefore irrelevant to this review.

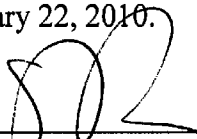
14. Therefore based on the support received to date, the Bidder has obtained the support of \$10,005,654.06 of the noteholders of a potential maximum \$10,710,357 (if all insiders/special committee/employees considered or 93% of total notes. Removing the notes held by the stalking horse bidder and his sister (\$461,095) from the total principal amount outstanding, the supportive noteholders represent 98% of the outstanding notes). Full particulars of the supporting and outstanding groups will be made available to the Court at the hearing, however in light of the sensitive nature of the information, the information will not be publicly filed.

15. The form of the Lock Up Agreement has not been provided to date to the Monitor. Again, a copy will be available at the Court, if necessary to consider to determine any of the issues before the Court.


16. In our view the proposed Auction Rules fail to take into account the proper valuation of the credit bid which may be submitted at the Auction. The credit bid should be valued at the face value of the notes tendered for cancellation as well as any additional consideration (cash or otherwise) made available to the non-participating noteholders (if any) during the course of the auction. I say "if any" as the remaining noteholders may not qualify (for the reasons outlined above) to be considered the minority noteholders.

17. I swear this affidavit in response to the motion for directions sought by the Monitor, and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Toronto, Province of Ontario, on  
January 22, 2010.

  
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Commissioner for Taking Affidavits

Liz Pillay

  
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SAMANTHA HORN

**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 BRAINHUNTER INC., BRAINHUNTER CANADA INC.,  
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**Court File No.: 09-8482-00CL**

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

Proceeding commenced at **TORONTO**

**AFFIDAVIT OF SAMANTHA HORN  
(SWORN JANUARY 22, 2010)**

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