

**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., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited

Applicants

**AFFIDAVIT OF DON MCCREESH**

I, DON MCCREESH, of the Town of Oakville, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am the Chairman of the Board of Brainhunter Inc. ("**Brainhunter**" or the "**Company**"). I have been invited to and have attended a number of meetings of the special committee of the Board, which is comprised of independent directors and charged with overseeing and implementing the Applicants' restructuring efforts (the "**Special Committee**"). As such I have personal knowledge of the matters referred to in this affidavit.

2. I swear this Affidavit in support of a request by the Applicants that the court authorize payment of a success fee that is calculated including the Noteholder Consideration (as defined below) to the Applicants' Chief Restructuring Advisor, Breakwall Financial Corp. ("**Breakwall**").

- 2 -

3. Breakwall was retained by Brainhunter in August 2009 as a restructuring advisor and the engagement letter was revised on October 3, 2009 (the "**Breakwall Engagement**"). A copy of the Breakwall Engagement letter is attached to my Affidavit as Exhibit "**A**". The Breakwall Engagement was approved by Court Order made December 2, 2009 (the "**Initial Order**").

4. With the assistance of Breakwall, the Applicants have implemented a court approved sale and auction process through which they have entered into an asset purchase agreement with one of the bidders that participated in the process. The facts leading up to this motion are described in the reports prepared by Deloitte & Touche Inc. in its capacity as the court appointed monitor (the "**Monitor**"). In summary:

- (a) the Court approved sale process and auction included a stalking horse purchase agreement that served as a stalking horse bid for the purposes of the auction (the "**Stalking Horse Bid**"). The consideration received pursuant to the Stalking Horse Bid included satisfaction of all amounts owed to the Applicants' first and second secured creditors and assumption of all obligations owed to the Applicants' contractors;
- (b) prior to the expiry of the deadline for receiving bids, Zylog Systems (Canada) Ltd. and Zylog Systems (India) Limited (together "**Zylog**") entered into lock-up agreements (the "**Lock-up Agreements**") with all of the holders of approximately \$11 million in term notes issued pursuant to an amending agreement dated April 1, 2009 (the "**Noteholders**"), except for notes held by parties related to the Stalking Horse Bidder. Pursuant to the Lock-up Agreements, the Noteholders agreed to tender their notes (the "**Notes**") to Zylog in respect of the Transaction;
- (c) the Monitor brought a motion for directions and asked the Court to determine what value the Notes should be given if tendered during the auction. The Court determined that any Notes tendered should receive face value;

- 3 -

- (d) the Applicants have not been provided with complete copies of the Lock-up Agreements and as a result do not know what consideration the Noteholders have received, or will receive, pursuant to the Lock-up Agreements (the "**Noteholder Consideration**");
  - (e) Zylog submitted an offer to purchase the Applicants' assets prior to the expiry of the deadline for bids to be received. Other than the Stalking Horse Bid, Zylog's offer was the only offer received;
  - (f) The Monitor confirmed, in accordance with the court approved bid process, that Zylog's offer was the superior bid, equivalent in value to the purchase price payable under the stalking horse purchase agreement, plus the Break Fee of \$700,000 payable to the stalking horse purchasers as required by the bid process, plus \$150,000 in additional cash consideration;
  - (g) the auction was held on January 25, 2010. I am advised by our counsel who was present at the auction and believe that at the beginning of the auction, the Stalking Horse Bidder advised all parties attending the auction that while they had upwards of \$7 million that could have been used in the auction, in light of the fact that any notes tendered by Zylog would receive face value, they would not bid in the auction;
  - (h) the Monitor declared Zylog's offer to be the successful bid, the Stalking Horse Bid to be the back-up bid and the auction concluded; and
  - (i) the Applicants and Zylog have entered into an asset purchase agreement (the "**Zylog Transaction**"). By Order dated February 1, 2010, the Zylog Transaction was approved and a vesting order was granted vesting in Zylog the purchased assets following the filing of a Monitor's Certificate confirming that all closing conditions have been satisfied. The Zylog Transaction is to be closed by February 17, 2010.
5. Pursuant to the Breakwall Engagement, Breakwall is to be paid a Success Fee in respect of any transaction that results in the sale of the Applicants equal to \$325,000 plus 3.5% of the amount by which "the purchase price for the assets and undertakings of Brainhunter" exceeds \$25,001,000. The purpose of the Success Fee in the Breakwall Engagement was to provide an incentive to Breakwall to obtain the maximum

- 4 -

possible recovery for stakeholders through these proceedings as well as to reward Breakwall for its success in doing so.

6. The value of the Zylog Transaction exceeds \$25,001,000 without including the Noteholder Consideration. On this motion, the Applicants seek an order that the calculation of the Success Fee payable to Breakwall include the Noteholder Consideration.

7. The Breakwall Engagement does not expressly address how the Noteholder Consideration should be treated for the purpose of calculating the Success Fee. However, the intent of the Applicants and Breakwall was for Breakwall to receive the Success Fee of 3.5% for every dollar of value received by the Applicants' stakeholders through these proceedings in excess of \$25,001,000 whether such value was received directly by the purchasers as part of the purchase price or indirectly by payment directly to creditors. As such, the Applicants are of the view that the Success Fee in the Breakwall Engagement should be calculated taking into account the value received by the Noteholders. The fact that the value was received indirectly, in the sense that it did not form part of the purchase price paid by Zylog to the Applicants, but is instead an amount paid by Zylog directly to the Noteholders, should not undermine the purpose of the Success Fee. That Fee is to be payable in respect of any dollar of value received by the Applicants' creditors through this proceeding in excess of \$25,001,000.

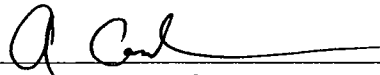
8. I have discussed this issue with Mr. Jewitt and he agrees that the Noteholder Consideration should be included in the calculation of the Success Fee. Indeed, if

- 5 -

either the Applicants or Breakwall had been asked at the time they executed the Breakwall Engagement whether the Success Fee would be payable in respect of value received indirectly by creditors (like the value being received by the Noteholders) both would have agreed that it most clearly would and should be payable.

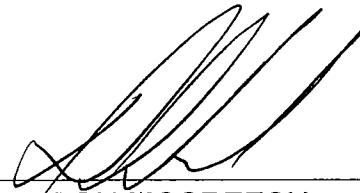
9. The Special Committee held a meeting on February 8, 2010 to consider, among other things, whether the calculation of Breakwall's Success Fee should include the Noteholder Consideration. I attended this meeting by invitation. The Special Committee unanimously approved the payment to Breakwall of a Success Fee that is calculated including the Noteholder Consideration. I support and agree with the decision of the Special Committee.

SWORN BEFORE ME in  
the City of Toronto, in the  
Province of Ontario, this  
9th day of February, 2010



Commissioner for taking  
Affidavits, etc.

**Andrew Richard Carlson, a Commissioner, etc.,**  
Province of Ontario, while a **Student-at-Law**,  
Expires: Dec 2, 2011.



DON MCCREESH

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 Brainhunter Inc. et al.

Court File No: 09-8482-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**AFFIDAVIT OF DON MCCREESH**

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