

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

Court File No. 31-1932502

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE  
MARINE SALES LIMITED

Court File No. 31-1932534

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF F.S. CRATE &  
SONS LIMITED

Court File No. 31-1932548

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1330732  
ONTARIO LIMITED

Court File No. 31-1932557

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1328559  
ONTARIO LIMITED

Court File No. 31-1932540

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1282648  
ONTARIO LTD.

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**FIRST REPORT OF THE INTERIM RECEIVER  
NOVEMBER 30, 2014**

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**GOLDMAN SLOAN NASH & HABER LLP**

480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2

**Michael B. Rotsztain**

LSUC #: 17086M

Tel: 416-597-7870

Email: rotsztain@gsnh.com

**R. Brendan Bissell**

LSUC #: 40354V

Tel: 416-597-6489

Email: bissell@gsnh.com

Lawyers for A. Farber & Partners Inc. in its capacity as the Court  
appointed Interim Receiver of Crate Marine Sales Limited, F.S.  
Crate & Sons Limited, 1330732 Ontario Limited, 1323559  
Ontario Limited and 1282648 Ontario Limited

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**TAB 1**

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ONTARIO LTD.**

**FIRST REPORT OF THE INTERIM RECEIVER**

**NOVEMBER 30, 2014**

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

**CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED AND 1282648 ONTARIO  
LIMITED**

**FIRST REPORT OF THE INTERIM RECEIVER**

**November 30, 2014**

**A. Farber & Partners Inc.**, in its capacity as the Court-Appointed Interim Receiver (the “**Interim Receiver**”) of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1323559 Ontario Limited and 1282648 Ontario Limited (collectively the “**Companies**”) hereby reports to the Court as follows:

**INTRODUCTION**

1. On November 14, 2014, the Companies each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and named Dodick Landau Inc. as proposal trustee (“**Proposal Trustee**”).
2. On November 20, 2014, one of the major secured creditors, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint the Interim Receiver as a receiver over the properties, assets and undertakings of the Companies and (iii) to substitute the Interim Receiver to become the bankruptcy trustee of the Companies. At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.



3. At the November 21, 2014 hearing, the Interim Receiver was appointed Interim Receiver pursuant to section 47.1 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) of the Companies to preserve and protect the assets, undertakings and properties of the Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Appointment Order**”). A copy of the Appointment Order is attached at **Appendix “A”**. A copy of the endorsement dated November 21, 2014 is attached at **Appendix “B”**.

### **PURPOSE OF THIS REPORT**

4. This is the first report of the Interim Receiver (the “**First Report**”). Its purpose is to:
- a) advise the Court and the stakeholders of the Companies of the steps taken by the Interim Receiver to date to fulfil its mandate under the Appointment Order;
  - b) advise the Court and the stakeholders regarding information obtained since appointment on November 21, 2014 that may be relevant to certain evidence and issues raised in the Affidavit of Steven Crate sworn November 28, 2014 (the “**Crate Affidavit**”) and the Affidavit of Benn-jay Spiegel sworn November 20, 2014 (the “**Spiegel Affidavit**”); and
  - c) advise the Court and stakeholders of the Companies of issues and matters that have come to the attention of the Interim Receiver in the course of its mandate, which may require review.

### **LIMITATION OF REVIEW**

5. The Interim Receiver has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not independently reviewed or verified such information. The Interim Receiver has prepared this First Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) STEPS TAKEN TO FULFILL THE MANDATE OF THE APPOINTMENT ORDER**

6. The Appointment Order was issued around 4:00 p.m. Friday November 21, 2014. The Interim Receiver attended the various premises to preserve and protect the Property as authorized in paragraph 5(b) of the Appointment Order.

7. The steps taken by the Interim Receiver have been guided by the fact that the Appointment Order was made pursuant to s. 47.1 of the BIA as an Interim Receiver for a short period of time (Nov. 21 to Dec. 1), and in circumstances in which the Companies are already in NOI proceedings and operating under the monitorship of the Proposal Trustee.

8. The Interim Receiver conducted discussions with the employees of the Companies regarding the nature of the Property and the procedures already in place for safeguarding the Property, including through the involvement of the Proposal Trustee. As will be further detailed below, the Interim Receiver came to the conclusion as a result that in several instances procedures were already in place so long as the Companies complied with the Appointment Order and acted in good faith, and further that the nature of the business of the Companies at this time of year does not require that the Interim Receiver exercise the strongest preservation measures of taking possession as authorized (but not required) in paragraph 5(a) of the Appointment Order.

9. The Interim Receiver instead determined that the most appropriate step was to exercise the powers of control under paragraph 5(a) of the Appointment Order, and the powers to preserve and protect the Property in paragraph 5(b) of that Order, the details of which are set out in detail below. This was in order to avoid undue interference in the business of the Companies or the exercise of management of the Companies.

10. To date, the activities undertaken by the Interim Receiver include, but are not limited to the following:

### **Attendance**

- a) Immediately attending at the Companies' Ontario premises in Keswick, Willow Beach, Lagoon City and Port Credit.

- b) Before November 27, due to snow impeding access, the Interim Receiver investigated with staff for the Companies to determine if any assets still exist at the Port McNichol facility, which was apparently abandoned in the summer of 2014. On November 27, the snow subsided and the Interim Receiver arranged for someone to attend at this location. No personnel of the Companies appeared to be present. There is a 30' x 40' marine lift that appears to be in good used condition and which may be leased according to a May 30, 2011 PPSA registration by 1728259 Ontario Inc. (at page 35 of the PPSA search attached at Exhibit "L" to the affidavit of Benn-jay Spiegel sworn November 20, 2014). There is another older marine lift and front-end loader also present, and for which the ownership has not yet been determined.
- c) Arrange for the Interim Receiver's Quebec agent to attend the Companies' location in St.-Paul-Ile-Aux-Noix, Quebec.
- d) Meeting with staff to discuss the appointment of the Interim Receiver and that the Companies' continue to operate 'business as usual' under the NOI protection afforded by the BIA.
- e) Ongoing discussions and correspondence with the Companies' principal, Mr. Steven Crate, regarding all aspects of the Interim Receiver's appointment and issues faced by the Interim Receiver identifying and locating assets and supporting documents for pending transactions.
- f) Posting notices on the doors of the premises occupied by the Companies alerting to the appointment of the Interim Receiver. Due to inadvertence, one sign errantly advised of appointment of the Interim Receiver as "Receiver" at the Lagoon City location. The sign was only in place from the evening of November 21 to the afternoon the next day and was corrected within an hour of the error being brought to the Interim Receiver's attention.
- g) Attending to changing locks for the locations. For locations other than Keswick and Quebec, the Interim Receiver designated key delegates among employees of the Companies. At the Keswick and Quebec locations, representatives or agents of the

Interim Receiver open and close the facilities on days of operation. Where security systems are present at the facilities used by the Companies, they are not in operation so no steps have been taken regarding security codes.

- h) Discussions with staff and attendance at the premises to permit and accommodate the ongoing ordinary course activities of the Companies every day (including both weekends) following the Interim Receiver's appointment.
- i) Review of the Companies' existing security program and continued use of the same internal and external security guards for night inspections of the various properties.
- j) Confirmed with the Companies' that the pre-existing insurance coverage remains in place and confirmed in the notes to the cash flow prepared for BIA purposes that insurance premiums are included in the forecasted disbursements.
- k) Attempt to gain cooperation of the Companies for access to the electronic books and records of the Companies for all locations and numerous discussions and emails with staff to attempt to arrange same. Privilege issues were asserted by the Companies' counsel, resulting in an interim arrangement by which Froese Forensic Partners Ltd. is in the process of taking and safeguarding copies of these books and records pending either further Court order or consent of the parties, as outlined in the e-mails between counsel attached at **Appendix "C"**.

### **Banking, receipts and disbursements**

11. Upon appointment, the Interim Receiver discussed the operations of the Companies with employees and discussed controls on the receipts and disbursements of the Companies with the employees and the Proposal Trustee.

12. The Interim Receiver concluded as a result that at this time of year, the operations of the Companies do not yield substantial receipts, and the receipts that are taken in are predominantly in the form of cheques or credit card charges, such that cash transactions are minimal. The Interim Receiver accordingly determined that the provision of daily online bank statement printouts by the controller for the Companies to the Interim Receiver was

sufficient control. Arrangements to establish independent online access to the bank accounts are underway with the banks but have not been finalized.

13. The Interim Receiver's review of disbursements at the Companies was that there was a pre-existing procedure in place with the Proposal Trustee under which all disbursements would be submitted for pre-approval. The Interim Receiver maintained that approval process and added the requirement that it also approve after the Proposal Trustee had approved.

14. The detailed steps taken by the Interim Receiver in these respects are as follows:

- a) Correspond with the three banks for the Companies to gain access to review the transactions flowing through the six bank accounts.
- b) Review outstanding cheques issued by the Companies prior to November 21, 2014.
- c) In the course of overseeing the disbursements by the Companies, the Interim Receiver has had discussions with counsel for the Companies regarding a request by counsel for a further retainer of \$30,000 in addition to retainer funds of \$60,000 that appear to have been already advanced. The Interim Receiver has asked for clarification of the amounts remaining in respect of prior retainers paid, remaining trust funds and billed or unbilled time. The Interim Receiver is awaiting a response before making a determination on that issue. A copy of the e-mail exchanges with counsel for the Companies in that regard is attached as **Appendix "D"**. The Interim Receiver later determined that this payment was made nonetheless, as described in paragraphs 46-48, below.
- d) Arrangements are underway to set in place independent on-line access to bank accounts for the Companies, which will likely be implemented after December 1, 2014 subject to further direction of the Court at that hearing.
- e) Follow up with the Proposal Trustee for clarification regarding various assumptions and items on the 5-week cashflow and reports as they pertain to

assets and expected revenue of the Companies and expenses and requirement for approved disbursements under the Approval Order.

### **Accounts Receivable**

- f) Review of the accounts receivable subledger with the Companies and the Companies' efforts to collect the outstanding amounts.
- g) Identify approximately 50 accounts receivable in credit balances (i.e. accounts payable) totalling approximately \$1,605,000 and advise the Companies and the Proposal Trustee that these payables were not on the mailing list included with the NOI notice to creditor packages.
- h) Review of the accounts receivable in respect of amounts owing from customers that purchased boats but appear not to have been paid, some of which go back several years. The Interim Receiver awaits explanations from Steven Crate on these matters. The Interim Receiver did so in order to assess the soundness of the receivables and steps that may be necessary to safeguard them.
- i) Discussions with management and the Proposal Trustee regarding the billing and collection of 2015 slip rental income and the intended treatment of the funds collected during the NOI.

### **Inventory**

15. The review by the Interim Receiver of inventory of the Companies, which primarily consists of boats, has been limited by two factors.

16. First, most boats have been shrink-wrapped for winter storage, which prevents meaningful physical inspection, including confirmation of serial numbers. The removal of the shrink wrap was not economical as it would need to be re-done. As a result, the Interim Receiver was required to rely on the verbal advice of the Companies' staff that a boat listed on the inventory lists was in fact a boat being inspected.

17. Second, the Companies' records regarding the boat inventory owned by the Companies were not complete. The inventory lists provided by the Companies to the Interim Receiver for the Keswick and Lagoon City locations is attached as **Appendix "E"** and the list for the Quebec location is attached as **Appendix "F"**. As shown on Appendices "E" and "F", the serial numbers for 17 of the 58 boats are not listed, which complicates review.

18. The detailed steps taken by the Interim Receiver are as follows:

- a) Ongoing meetings with staff, review of the Companies' records (where available) and review of the boats on the various Companies' sites to attempt to compile a Companies'-owned boat inventory list from the various partial lists.
- b) Initial steps to take an inventory of customer-owned boats. This process is facing the same documentation and identification issues as the Companies'-owned boats noted above.
- c) More detailed review of available documents and discussions with staff regarding various boats on the sites for which the Companies were unable to identify who owned the boats.
- d) Review and monitoring of the Companies' ongoing activities to remove the boats still in the water on November 21, 2014 and winterize and shrink-wrap the remaining boats for the end of the 2014 season.
- e) Review the Companies'-owned boats reported to be located at related and/or third-party sites in Saint-Jean-Sur-Richelieu.
- f) Steps taken with respect to a 50' yacht that was on the Companies' inventory list with a book value of \$1,178,665 removed from the Keswick facility on the morning of the NOI filing:
  - i. the Interim Receiver reviewed the Companies' records and had discussions with Borden Ladner Gervais LLP ("**BLG**") as counsel for the supplier, Marquis Yachts. The Companies records showed the book value noted above, and there was also a corresponding payable to

Northpoint Commercial Finance, being the financier of the Marquis Yacht's for \$1,014,445 on the Companies' balance sheet as at November 22, 2014. Northpoint was not shown as a creditor on the Proposal Trustee's creditor list attached to its First Report;

- ii. the Interim Receiver had discussions and correspondence with the trucking company that moved the 50' yacht to their yard in Pickering, Ontario and confirmed the boat will remain secured at their site pending further instructions from the Interim Receiver or order of this Honourable Court; and
- iii. the Interim Receiver has entered into discussions and correspondence with BLG to attempt to agree upon arrangements to monetize the 50' yacht through a sale to a third party in Florida for approximately US\$850,000, before selling and transportation costs, with funds then being paid to the Interim Receiver in trust pending either agreement or adjudication by this Court as to entitlement to the proceeds of sale. This matter is ongoing.

**B) INFORMATION OBTAINED SINCE APPOINTMENT THAT MAY BE RELEVANT TO CERTAIN EVIDENCE AND ISSUES RAISED IN THE CRATE AFFIDAVIT AND THE SPIEGEL AFFIDAVIT**

**No initiation of contact by the Interim Receiver, and publicity by others**

19. Paragraphs 67 and 68 of the Crate Affidavit assert that there is concern and nervousness on the part of staff and customers of the Companies. The Interim Receiver has not, however, initiated any contact with customers, suppliers or other third parties having relationships with the Companies, except for the banks as noted above. All contact from parties external to the Companies has been initiated by others.

20. The Interim Receiver is aware that publicity of the need for restructuring on the part of the Companies has been made by persons outside the control of the Interim Receiver. In particular:



- a) the Proposal Trustee was required to issue notices to the creditors listed on the Companies' NOI filings on November 21, 2014 under the BIA;
- b) other members of the Crate family have sent letters stating that other Crate marina operations are separate from and unaffected by the restructuring at the Crate Keswick facility, which appear to have been sent to all customers of the Companies (whether customers of the unaffected business or those subject to NOI and Interim Receiver proceedings), copies of which are attached as **Appendix "G"**; and
- c) the media has reported on the restructuring, which has involved quoted interaction by personnel of the Companies. An example of such reporting on November 24 is attached as **Appendix "H"**. The Interim Receiver is reported in that article as not responding to media, and it has not provided any comment to the media nor had any discussions with them since.

**No loss of sale due to actions of the Interim Receiver**

21. Paragraph 68 of the Crate Affidavit states that a sale, the details of which are not specified, was lost as a result of the Interim Receiver's appointment. The Interim Receiver is only aware of one sale that has been cancelled since the Appointment Order, and the information available to the Interim Receiver about that is different from that described in the Crate Affidavit.

22. The Interim Receiver was advised by the Companies that there was a possible purchaser of a boat owned by a third party (for which the Companies would act as broker on the sale), who had made a \$10,000 deposit pre-NOI. That individual made a further deposit of \$50,000 post-NOI. The Interim Receiver was advised by the Proposal Trustee that it had discussed with the purchaser the existence and effect of the NOI restructuring proceedings on the transaction and deposits paid.

23. The Interim Receiver's only direct dealings with this possible purchaser were when he advised the Interim Receiver (Stuart Mitchell) that he was unable to proceed with the proposed transaction due to inability to get suitable financing.

24. The Interim Receiver was also advised by Steven Crate that he believed that this individual was going to get in touch with the boat owner directly, which would have the effect of excluding the Companies from earning fees on the sale, but the Interim Receiver is unaware of the foundation for Mr. Crate's belief in that regard.

**No interference with the ability of management to carry on the business of the Companies**

25. Paragraph 66 of the Crate Affidavit states that the Interim Receiver has interfered with the ability of management of the Companies to carry out obligations to customers. The Interim Receiver is unaware of any instances where this has been the case and the employees and management of the Companies have not raised this issue since the Appointment Order.

26. The only complaint that management of the Companies has made about the operations of the Interim Receiver is that management believes that the Interim Receiver has undertaken a review of the affairs of the Companies that is not called for in the Appointment Order. This issue has arisen in circumstances where the affairs of the Companies have been described to the Interim Receiver in ways that raise the issue for the Interim Receiver that possible assets (whether in the form of accounts receivable, or inventory), possible liabilities and possible transactions may not be fully or accurately reflected on the Companies' records.

27. Management of the Companies and some employees have also in some cases brought customers to speak to representatives of the Interim Receiver about concerns such as pre-NOI deposits for boat repairs, or whether slip rentals will be available in 2015. This appears to reflect a misunderstanding on the part of management that any loss of such deposits or uncertainty about continued operations is the result of the actions or decisions of the Interim Receiver. The difficulties posed for such customers arise from the insolvency situation facing the Companies. The Interim Receiver's representatives have attempted in such cases to clarify what the Interim Receiver is able to do, and what is the responsibility of others or is dependent on the Court's process. The Interim Receiver explained to those depositors that the freeze is a result of the NOI filed by the company, not the Appointment Order, and suggested that they speak to the Proposal Trustee should they wish further confirmation or information.

28. There have been no written complaints from the Companies about actions or inactions

of the Interim Receiver.

29. Without the benefit of any further details on the complaint of interference with management in the Crate Affidavit, the Interim Receiver is unable to report further to the Court on this issue.

30. The Interim Receiver does note, however, that although the controller of the Companies was initially very cooperative in answering questions, she refused to do so further on November 28 and stated that she was under direction from management not to provide any further information before the December 1, 2014 hearing before this Court.

**No loss of a boat due to action or inaction of the Interim Receiver**

31. The Crate Affidavit describes in paragraph 65 that a boat sank at the Lagoon City Marina, and goes on to state that interference by the Interim Receiver in the operations at that facility caused or contributed to this event. The Receiver's information differs as follows:

- a) the Interim Receiver's representative, Noah Litwak, who is a licenced trustee, attended at Lagoon City at 4:45pm on November 21, 2014, and met with Wayne McPhee, who is the site manager at that location. At that point the locks were changed.
- b) Mr. Litwak discussed with Mr. McPhee on November 21 that there were plans to continue boat lift and wrapping operations for the approximately 12 boats still left in the water due to pre-appointment actions or inaction at the facility. Those lift and wrapping operations were stated by Mr. McPhee to be planned for Sunday November 23.
- c) On Saturday, November 22, Mr. Litwak contacted Mr. McPhee to advise that Mr. McPhee was going to be authorized as a key delegate for that facility with a key being available that day so that the planned work could take place on the weekend. Mr. McPhee indicated that the relevant employees no longer wanted to work on the weekend, and he instead asked to meet Mr. Litwak at the facility on Monday morning and received a key at

that time.

- d) When Mr. Litwak arrived on the morning of Monday November 24, he opened the facility and was notified shortly thereafter by employees that a boat was taking on water. The boat was not owned by the Companies, but was instead owned by Al Tupper and was a 1974 36' Trojan. After the boat was raised, Mr. McPhee inspected it and advised the Interim Receiver that there was no apparent damage to the hull that would have allowed water to enter.
- e) Mr. McPhee advised Mr. Litwak that Mr. Tupper attended later on the morning of November 24 and had insurance paperwork in hand and did not seem upset. The Interim Receiver has since been advised that Mr. Tupper's insurer has agreed to cover the loss.
- f) Further review by Mr. Litwak with facility employees indicated that Mr. McPhee and Mark Kitley (the site mechanic) had been on site on the prior afternoon to move the bubblers (used to prevent icing), at which time no boats appeared to be taking on water. The information provided to the Interim Receiver indicated that the mild weather that weekend meant that no further steps were required before Monday November 24. Further, the security logs indicated that the security guard had been on site at 12:30 am early on Monday morning, and nothing out of the ordinary had been reported.

32. The Interim Receiver did not prevent the removal over the weekend of any boats that the Lagoon City location still had in the water as of the date of the Appointment Order, nor did the Interim Receiver fail to have the maintenance and security operations at the facility as normally operated by the Companies. Mr. Tupper has not had any direct contact with the Interim Receiver.

**Particular boats referred to in the Spiegel Affidavit**

33. The Interim Receiver has reviewed the inventory lists prepared by the Companies

against the boats referred to in Exhibit “H” to the Spiegel Affidavit. The Interim Receiver was also provided by counsel for Crawmet with title and other documents for additional boats (the “**Crawmet Documents**”), copies of which are attached as **Appendix “I”**. The Interim Receiver was advised by counsel for Crawmet that these documents pertain to boats owned by Crates Belleville Inc. a wholly owned subsidiary of Crawmet (note that this is a different company than Crate Belleville Inc., which is a marina operated by Ryan Crate and which the Interim Receiver understands is owned by the nephews of Steven Crate as well as Mr. Spiegel). In total, Exhibit H of the Spiegel Affidavit and the Crawmet Documents refer to 13 boats where an ownership interest is asserted.

34. The Interim Receiver has searched the inventory lists prepared by the Companies, attached as Appendices “E” and “F”, for the serial numbers of the boats listed in the Crawmet Documents. The Interim Receiver has also raised these issues with Ron Wright, consultant for the Companies, who has provided some information. He advises that he continues to look for further information. The accuracy of the information provided by Mr. Wright has not been verified by the Interim Receiver.

35. The following is the result of this review by the Interim Receiver on this issue to-date. As is summarized below, 4 of the 13 boats that Crawmet claims are owned by its subsidiary have been confirmed as sold by Mr. Wright:

	<b>Boat serial #</b>	<b>On inventory list of the Companies?</b>	<b>Comments from Ron Wright or management</b>
1.	CVRR7024K314	No	Ron believes this is in Keswick. A deposit has been received for a purchase agreement.
2.	CVRR7029B414	No	Ron has confirmed this boat is sold and is on the customer boats listing for Quebec as owned by Pierre Gagnon.
3.	CVRR7003A313	No	Ron believes this is in Belleville.
4.	CRSEE130H213	No	Ron has confirmed this is sold.

5.	KCSBF155F314	Yes	According to management, this boat is in Belleville.
6.	CVRX4001A414	No	Ron has confirmed this is sold.
7.	CRSXH132I314	No	Ron has confirmed this is sold.
8.	CRSEC157J314	Yes	Management showed the Interim Receiver a shrink-wrapped boat in Keswick said to be this boat.
9.	KCSFF114F314	No	Ron believes this is in Belleville.
10.	KCSBA122E315	Yes	According to management, this boat is in Belleville.
11.	KCSBA123E315	Yes	Management showed the Interim Receiver a boat in the Keswick showroom said to be this boat.
12.	KCSBA124F315	No	Ron is investigating the whereabouts of this boat.
13.	KCSBA125H315	Yes	Management showed the Interim Receiver a boat in the Keswick showroom said to be this boat.

**C) ISSUES AND MATTERS THAT HAVE COME TO THE ATTENTION OF THE INTERIM RECEIVER IN THE COURSE OF ITS MANDATE**

**Request for refunds of deposit**

36. The Interim Receiver has received correspondence from counsel for Paul Tobey and Nancy Houle in connection with a \$25,000 deposit said to have been retained by the Companies for purchase of a boat in the future, a copy of which is attached as **Appendix “J”**. Inquiries to the controller of the Companies about the whereabouts of the deposit have not been answered due to the management instruction given to her as noted in paragraph 30, above.

## CRA

37. A representative of CRA contacted Stuart Mitchell of the Interim Receiver on November 27, 2014 by voice-mail. Mr. Mitchell has attempted to make contact with the CRA representative on November 28 without success. The nature and extent of the issues for which CRA wanted to contact the Interim Receiver is accordingly not yet known.

## Information not provided by the Companies

38. Despite request, the Interim Receiver has not been provided with information by the Companies relating to the following issues over the past week since the Appointment Order:

- a) Customer deposits. The existence of any deposits to be held in trust is material for an understanding of the assets of the Companies and the manner in which various funds on hand should be appropriately safeguarded by the Interim Receiver.
- b) 2015 slip rentals. The quantum, timing of billing and timing of receipt of these amounts is again material to the assets to be safeguarded.
- c) Pending repairs. The amount of expected repairs is both material to control the disbursements for parts and equipment for repairs, and to expected revenue constituting assets.
- d) Pending boat sales. The quantum and timing of any pending boat sales is highly material to the financial position of the Companies that the Interim Receiver is required to protect. The amount of money at issue for the sorts of boats sold by the Companies ranges from the tens of thousands to more than a million dollars per unit. The timing of sales interfaces with how deposits must be safeguarded and can eventually be released and used for the Companies' purposes.

## **Reports from customers of the Companies regarding boat sales**

39. The Appointment Order does not authorize or require the Interim Receiver to engage in the detailed form of analysis of the affairs of the Companies that would arise in a full receivership appointment, particularly with respect to matters pre-dating November 21, 2014.

40. The Interim Receiver has, however, been approached by a number of individuals who advise of transactions involving the Companies in the sale of boats on behalf of customers without remitting the proceeds to the boat owner, or sales of boats with financing encumbrances that have not been discharged and that now remain outstanding against the original boat owner (and possibly the boat).

41. The Interim Receiver has not conducted any independent review with employees of the Companies regarding the advice so received. The Interim Receiver cannot accordingly verify the accuracy or lack thereof of the information that it has been provided.

42. The Interim Receiver is of the view that the proper exercise of its duties in these circumstances is to bring these issues to the attention of the Court and the stakeholders of the Companies for the appropriate analysis and direction. The information that has been received, along with details of the source of that information, is as follows:

- a) Don Rogers wrote to advise that he purchased a Carver boat from the Companies in 2008, which was financed by a Bank of Montreal loan, and he then traded that boat in to the Companies in 2010 for a Cruisers that was financed by a National Bank loan. The Carver was traded in for sale by the Companies in January of 2010, but the loan was not paid off and remains outstanding. Mr. Rogers was only made aware of the outstanding loan on the Carver boat to Bank of Montreal recently when the Companies stopped making loan payments that had been made without Mr. Rogers' knowledge. The Carver boat is still at the Keswick facility and may be owned by someone named Miller. The Cruisers was returned for sale, but the proceeds were never paid to Mr. Rogers and the loan from National Bank was not repaid. Mr. Rogers advised that after pressing Steven Crate for a year, Mr.



Crate admitted the non-payment of the loans and gave title to two further 2010 Regal and 2007 Carver boats to Mr. Rogers as collateral for the amounts owing. The 2010 Regal was shipped to the United States without payment to Mr. Rogers and despite it being in his name. The 2007 Carver is still at the Keswick facility. A copy of Mr. Rogers' e-mail to the Interim Receiver is attached as **Appendix "K"**.

- b) Greg Crate, the brother of Steven Crate, advised that the Companies recently sold a 2000 Sea Ray 380 Sundancer on behalf of Rocco Morra, for which Mr. Morra is owed \$62,000;
- c) Greg Crate advised that the Companies sold a 1987 Carver 3297 Mariner on behalf of Robert Bittle to Fortunato Ignacio, for which Mr. Bittle is similarly owed some or all of the sale price. The records of the Companies show that amount as \$25,000;
- d) Greg Crate advised that the Companies sold a 1989 Sea Ray 340 Sundancer on behalf of Bill Mooney in September, for which Mr. Mooney is similarly owed some or all of the sale price. The records of the Companies show that amount as \$18,000;
- e) Ron Wright advised that the Companies sold a 1998 Sea Ray 330 Sundancer on behalf of Ian Smith to Ryan Shakell on August 24, 2014 for \$34,470, for which Mr. Smith is owed \$29,271. Mr. Shakell now wishes to remove the boat and the Companies have refused permission;
- f) Ryan Crate, the son of Greg Crate and nephew of Steven Crate, has advised that he owned two boats, a 2008 22' Regal and a 2005 33' Monterey, which were sold by the Companies but registered financing in favour of Bank of Montreal and Royal Bank of Canada was not repaid and discharged such that Mr. Crate is now personally liable for \$162,000 on the loans;
- g) Ryan Crate has advised the Interim Receiver that Dan Bedard has recently contacted him about a 57' Carver boat, which Mr. Bedard bought from the

Companies in 2012 and sometime later entrusted it with the Companies to sell for him when he purchased a larger boat. Mr. Crate further advises that the Companies sold the boat to Stan Kirshenblatt and did not pay out the balance owing to Mr. Bedard, who appears on the NOI listing of creditors with a balance owing of \$127,571.31. The Interim Receiver was contacted directly by Stan Kirshenblatt who sold this same boat to the Companies in August of 2014 and advises that the Companies still owe him approximately \$122,000 of the approximate \$492,000 total sale price and there is still a PPSA registration against the boat. Mr. Kirshenblatt appears on the NOI listing of creditors as MP Accounting Services for \$122,887.50. Mr. Crate advises that Benn-jay Spiegel bought this boat from the Companies in August of 2014. Mr. Spiegel advises the Interim Receiver that he paid the Companies in full for the boat, and moved it to Belleville and used it in the remainder Summer of 2014.

43. The foregoing issues and allegations, if accurately described, merit review. In the instance where the Interim Receiver has raised these issues with Steven Crate and senior management of the Companies, there has been no response (except as described above involving Greg and Ryan Crate). The Interim Receiver has not otherwise done any review to probe the accuracy of these accounts as noted above.

44. To the extent that the potential claimants noted above are owed money, only Messrs. Bittle, Morra, Bedard and MP Accounting Services (for Mr. Kirshenblatt) appear on the Companies' creditor listings in the NOI. The other individuals noted do not.

45. The Interim Receiver accordingly has concerns that there may be creditors and other stakeholders (such as purchasers of encumbered boats) who have not had notice of the restructuring issues in relation to the Companies and may therefore not be in a position to take any steps to protect their interests.

**Disbursement by the Companies to legal counsel**

46. As noted in paragraph 14(c), above, the Interim Receiver has asked for information regarding a further disbursement to Dickinson Wright LLP as counsel for the Companies for which the Interim Receiver's approval had been sought. The information requested by the Interim Receiver is outstanding, despite follow-up.

47. No notice of an intent to refuse to answer the Interim Receiver's requests was provided, nor that this disbursement would be made without the Interim Receiver's approval.

48. On November 28, 2014 the Interim Receiver learned from bank account statements provided by the controller for the Companies that the Companies executed a wire transfer of CAD \$30,000 to Dickinson Wright LLP. This was without authorization from the Interim Receiver and was contrary to the controls previously established (and respected for all other transactions to the knowledge of the Interim Receiver).

**D) CONCLUSION**

49. The Interim Receiver will request at the hearing on December 1, 2014 that this First Report, and the activities of the Interim Receiver and its counsel as described in the First Report, be approved.

All of which is respectfully submitted this 30<sup>th</sup> day of November, 2014

**A. FARBER & PARTNERS INC.  
COURT-APPOINTED INTERIM RECEIVER OF CRATE MARINE SALES LIMITED,  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
LIMITED and 1282648 ONTARIO LIMITED**



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Per: Stuart Mitchell  
Senior Vice President