

Court File #: 31-1932502  
31-1932534  
31-1932540  
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31-1932553  
31-1932555

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF**  
**CRATE MARINE SALES LIMITED, F.S. CRATE MARINE LTD.,**  
**1282648 ONTARIO LTD., 1328559 ONTARIO LTD., 1330732 ONTARIO LTD.,**  
**1382415 ONTARIO LTD., 1382416 ONTARIO LTD.**  
**OF THE TOWN OF KESWICK**  
**IN THE PROVINCE OF ONTARIO**

**SECOND REPORT TO COURT OF PROPOSAL TRUSTEE**  
**DATED DECEMBER 3, 2014**

**INTRODUCTION**

1. On November 4, 2014, Crawmet Corp. (“**Crawmet**”) issued to Crate Marine Sales Limited (“**Crate**”) a Notice of Intention to Enforce on Security (“**Notice to Enforce**”) pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3 (the “**BIA**”).
2. On November 14, 2014 (the “**Filing Date**”), Crate, F.S. Crate Marine Ltd. (“**F.S. Crate**”), 1282648 Ontario Ltd. (“**648**”), 1328559 Ontario Ltd. (“**559**”), 1330732 Ontario Ltd. (“**732**”), 1382415 Ontario Ltd. (“**415**”), 1382416 Ontario Ltd. (“**416**”) (collectively, the “**Debtors**” or the “**Companies**”) filed with the Official Receiver Notices of Intention

to Make a Proposal (“**NOI**”) to its creditors and named Dodick Landau Inc. (“**DLI**”) as Proposal Trustee (the “**Proposal Trustee**”).

3. The first report (the “**First Report**”) of the Proposal Trustee was made in connection with the motion of Crawmet requesting an order pursuant to section 50.4(11) of the BIA, declaring that the period for filing a proposal by the Debtors be terminated; appointing A. Farber & Partners Inc. (“**Farber**”) as receiver over the properties, assets and undertakings of five out of the seven Debtors (not 416 and 415) and substituting Farber as bankruptcy Trustee over these entities, and declaring that the stay of proceedings referred to in section 69(1) of the BIA no longer operates in respect of Crawmet with respect to five out of seven Debtors (the “**Receivership Motion**”).
4. On November 21, 2014, the Court adjourned the Receivership Motion to December 1, 2014, and appointed Farber as Interim Receiver (the “**Interim Receiver**”) over the property, assets and undertakings of five out of the seven Debtors. Following its appointment, Farber carried out various steps to preserve and protect the assets, including changing the locks at all marina locations and contacting the Debtors’ banks in order that they may obtain view only access to all transactions in the Debtors’ bank accounts. The Proposal Trustee facilitated this process by providing the Interim Receiver with the Debtors’ bank account information, and other information requested by the Interim Receiver.
5. On December 1, 2014 the Court ordered a further adjournment of the Receivership Motion to December 9, 2014 (the “**Return Date**”). In addition, at the December 1, 2014 hearing the Court placed restrictions (“**Restrictions**”) on the Debtors activities including requiring that all future collections of pre-paid 2015 storage and slip rental payments

received be segregated and not used by the Debtors pending the hearing on the Return Date, and that two weeks' notice be provided to the Interim Receiver before completing any boat sales.

6. The purpose of this report is to:
- (a) provide background information to the Court regarding the Debtors' insolvency proceedings;
  - (b) describe a material adverse change in Crate's ability to meet its cash flow forecast;
  - (c) highlight the Proposal Trustee's concerns with regards to safeguarding Third-Party Property (as hereinafter defined) at the marina locations; and
  - (d) request that if the relief that Crawmet is seeking is granted by the Court, that Farber should also be substituted as Bankruptcy Trustee of the Additional Debtors (as hereinafter defined).

## **DISCLAIMER**

7. In preparing this Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, the Debtors' books and records, discussions with the management of the Company ("**Management**") and information from other third-party sources (collectively, the "**Information**"), including information provided by the Interim Receiver. Except as described in this Report:

- (a) the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance in respect of the Information; and

(b) the Proposal Trustee has prepared this Report in its capacity as a Court appointed officer. Parties using this Report, other than for the purpose of the motion, are cautioned that it may not be appropriate for their purposes.

8. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

## **BACKGROUND**

9. Crate was established in 1931 in Keswick, Ontario and is owned and operated by the third and fourth generation members of the Crate family.

10. At the date of the filing of the NOIs, Crate employed 74 people at the following four marina locations (the “**Marinas**”):

(a) 290 The Queensway S., Keswick, Ontario, L4P 2B3 (“**Keswick Marina**”)

(b) 951A Rue Principale, St.-Paul-Ile-Aux-Noix, Quebec, J0J 1G0

(c) 150 Laguna Parkway, Brechin, Ontario, L0K 1B0 (“**Lagoon City Marina**”)

(d) 1354 Metro Rd. N., Willow Beach, Ontario, L0E 1F0

11. Crate is the sole operating company among the group of Companies. The remaining Debtors are the owners of various lands comprising the Keswick Marina or are holding companies. Crate’s other three marina locations operate from leased facilities.

12. Crate is engaged in selling new and pre-owned boats/yachts up to 60 feet long and providing marina services to its customers which include removal of boats from the water, winterization of boats (nearing completion), storage of boats on land over the Winter, servicing/maintaining customer boats throughout the year, as required, placing customer boats in the water in the Spring and providing various facilities to boat owners on its grounds.

**MATERIAL ADVERSE CHANGE**

13. The Proposal Trustee has discovered that after repeated assurances made by Management that Crate had sufficient cash to fund its source deduction remittances, Crate confirmed that it is now unable to do so, despite the fact that it had provided for these remittances in its cash flow forecast which was filed with the Court in advance of the December 1, 2014 hearing. Management explained that due to the Restrictions placed on its collections of slip revenue and boat sales by the Court, as well as challenges it has faced collecting accounts receivable since the commencement of the Interim Receivership, Crate has been unable to meet the targeted collections in its cash flow forecast.
14. As a result, pursuant to section 50.4(7) of the BIA, the Proposal Trustee is reporting to the Court that a material adverse change has occurred in Crate's ability to meet its cash flow forecast and Crate will likely not be able to remedy this negative cash flow variance unless it is able to receive an injection of cash from a third-party in the very near term. The Proposal Trustee has asked the Debtors' whether they are able to secure a third-party injection of cash that would be sufficient to remedy its negative cash flow variances but to date has not received a response. The cash flow variances are described in further detail in the Interim Receiver's Second Report to Court dated December 3, 2014.
15. While the Debtors have filed a consolidated cash flow forecast for all the Companies, the cash flow forecast relates primarily to the operations of Crate, the sole operating business among the Debtors. The consolidated cash flow forecast includes disbursements for realty taxes, utilities and debt servicing costs for the other entities as they are only owners of lands on which the Keswick Marina is located. However, these entities rely on Crate to fund these costs and without cash generated from Crate's operations these entities will not be able to fund these disbursements.

**THIRD-PARTY PROPERTY**

16. According to Management, the marinas currently hold over 700 boats/yachts which belong to third-party individual owners (“**Third-Party Property**”) with an estimated value in excess of \$70 million. The vast majority of the Third-Party Property is located at the Keswick Marina. Crate pays approximately \$23,000 per month for various insurance coverages including insurance associated with the services it provides to its customers.
17. Since the filing of the NOIs, the Proposal Trustee has received numerous calls from concerned boat owners requesting assurances that their boats will be safeguarded throughout these insolvency proceedings. Many of these calls were forwarded to the Proposal Trustee by the Interim Receiver. The Proposal Trustee explained to these boat owners what has occurred to date with regards to the insolvency proceedings and advised them to contact either the Proposal Trustee or the Interim Receiver at a later date for further updates as these insolvency proceedings unfold.
18. On November 23, 2014, two days following the appointment of the Interim Receiver, a boat at the Lagoon City Marina had taken on water and sank. Further information about the incident is included in the Interim Receiver’s First Report to Court and in the Affidavit of Steven Crate sworn November 28, 2014, which each provide different accounts of the incident. Notwithstanding who may, or may not, be responsible for this incident, the incident highlights the issue of responsibility over the Third-Party Property at the four marina locations during these insolvency proceedings. It is the Proposal Trustee’s view that the issue of responsibility over Third-Party Property should be addressed by the Court at the time that the receivership application is heard to ensure that

at all times during these insolvency proceedings the Third-Party Property at all four marina locations is safeguarded by the party responsible for the marina operations.

### **ADDITIONAL DEBTORS**

19. As described in the Proposal Trustee's first report to Court, it should be noted that the Notice to Enforce, and the relief requested by Crawmet in its motion materials, excludes the Debtors 415 and 416 (the "**Additional Debtors**") who also each filed an NOI. If the relief that Crawmet is seeking is granted by the Court, then Farber should also be substituted as Bankruptcy Trustee of the Additional Debtors.

### **RECOMMENDATION**

20. The Proposal Trustee is of the view that, unless Crate is able to provide assurances to the Court that it is able to secure third-party funding in the very near term that is sufficient to meet its cash flow needs, the Court should approve Crawmet's motion with the addition of the Additional Debtors and inclusion of the appropriate terms to safeguard the Third-Party Property located at Crate's four marinas.

All of which is respectfully submitted this 3<sup>rd</sup> day of December, 2014.

#### **DODICK LANDAU INC.**

In its capacity as the Proposal Trustee of  
Crate Marine Sales Limited ("**Crate**"), F.S.  
Crate Marine Ltd., 1282648 Ontario Ltd.,  
1328559 Ontario Ltd., 1330732 Ontario Ltd.,  
1382415 Ontario Ltd., 1382416 Ontario Ltd.  
and not in its personal capacity.



Per:

Rahn Dodick, CPA, CIRP  
President

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MARINE LTD., 1282648 ONTARIO LTD., 1328559 ONTARIO LTD., 1330732 ONTARIO LTD., 1382415  
ONTARIO LTD., 1382416 ONTARIO LTD. OF THE TOWN OF KESWICK IN THE PROVINCE OF  
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**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**Proceeding commenced at Toronto**

**SECOND REPORT TO COURT OF  
PROPOSAL TRUSTEE  
DATED DECEMBER 3, 2014**

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