

Marshall, John D.

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From: Harvey G. Chaiton <Harvey@chaitons.com>  
Sent: November-24-14 5:41 PM  
To: Marshall, John D.  
Subject: Re: Crate Marina

Thx

Harvey G. Chaiton  
Partner | Chaitons LLP | T: 416.218.1129

----- Original Message -----

From: Marshall, John D. [<mailto:jmarshall@blg.com>]  
Sent: Monday, November 24, 2014 05:33 PM  
To: Harvey G. Chaiton  
Subject: RE: Crate Marina

Harvey:

I will forward the documents shortly, including some information Farber should find helpful re: value. In that regard, Farber might also want to ask Crate about any offers they received for the boat over the last 2 years.

Best regards,  
John

John D. Marshall  
Partner  
T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com) Scotia Plaza, 40 King St W,  
Toronto, ON, Canada M5H 3Y4

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| Waterloo Region blg.com

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-----Original Message-----

From: Harvey G. Chaiton [mailto:Harvey@chaitons.com]  
Sent: November-22-14 7:29 PM  
To: Marshall, John D.  
Cc: 'smitchell@farberfinancial.com'  
Subject: Re: Crate Marina

John

Any sale is subject to Farbers confirming sale price is FMV. Assuming it is, Farbers will require the purchase price be paid to it in escrow before possession and title is transferred to buyer and to be released from escrow once sale completed.

Harvey G. Chaiton  
Partner | Chaitons LLP | T: 416.218.1129

----- Original Message -----

From: Harvey G. Chaiton  
Sent: Saturday, November 22, 2014 07:11 PM  
To: 'jmarshall@blg.com' <jmarshall@blg.com>  
Cc: 'smitchell@farberfinancial.com' <smitchell@farberfinancial.com>  
Subject: Crate Marina

John

The interim receiver has determined that the 50' Marquis is recorded as inventory of Crate Marina. I understand that the boat may be in transport to Marquis or its customer. In court yesterday you advised Justice Penny that the sale proceeds would be paid over to the interim receiver. We would ask you to provide us with a copy of the Bill of Sale and advise when Farbers can expect to receive the cheque.

Harvey G. Chaiton  
Partner  
Direct Tel: 416.218.1129  
Direct Fax: 416-218-1849  
<mailto:Harvey@chaitons.com>

Chaitons LLP  
5000 Yonge Street, 10th Floor, Toronto, Canada, M2N 7E9 <http://www.chaitons.com>

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**Marshall, John D.**

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**From:** Harvey G. Chaiton <Harvey@chaitons.com>  
**Sent:** November-25-14 4:33 PM  
**To:** Marshall, John D.  
**Cc:** John Hendriks (jhendriks@farberfinancial.com)  
**Subject:** RE: Crate Marine

Thx john  
 We'll be back to you tomorrow

Harvey G. Chaiton  
 Partner | Chaitons LLP | T: 416.218.1129

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**From:** Marshall, John D. [mailto:jmarshall@blg.com]  
**Sent:** Tuesday, November 25, 2014 4:09 PM  
**To:** Harvey G. Chaiton  
**Cc:** John Hendriks (jhendriks@farberfinancial.com)  
**Subject:** Crate Marine

Harvey:

I have attached a copy of the sale agreement for the Marquis 50 Sport Bridge yacht. I have also been informed by our client that 5 other such yachts have been sold in the past year for the following Net prices (in U.S. dollars):

E5038-13 \$735,000 8/6/14  
 E5040-13 \$865,000 5/28/14  
 E5045-14 \$925,000 7/2/14  
 E5047-14 \$750,000 7/23/14  
 E5049-14 \$800,000 8/5/14

The purchase price on the current agreement of \$850,000 is closer to the upper range and, I am advised, much higher than any offers Crate received for the yacht over the last 2 years. Back-up documentation can be obtained if the IR insists upon it. However, we are under time constraints here due to the U.S. Thanksgiving holiday which begins on Thursday and if possible the deal should be done tomorrow.

Marquis can arrange for delivery of the title documents (which are in Marquis' possession) to the dealer in exchange for payment of the purchase price on an escrow basis. The mechanics of getting the funds to the IR can be worked out.

Please let me know your position.

Best regards,  
 John Marshall



**John D. Marshall**

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)


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**Marshall, John D.**

---

**From:** Harvey G. Chaiton <Harvey@chaitons.com>  
**Sent:** November-25-14 5:50 PM  
**To:** Marshall, John D.  
**Cc:** John Hendriks (jhendriks@farberfinancial.com); Stuart Mitchell  
**Subject:** RE: Crate Marine

John

The IR has no objection to the completion of the sale at this price and will authorize release of boat, subject to us agreeing on payment arrangements. The IR will hold the funds in trust pending determination of entitlement by agreement or court order. May I have your proposal?

**Harvey G. Chaiton**  
 Partner | Chaitons LLP | T: 416.218.1129

**From:** Marshall, John D. [<mailto:jmarshall@blg.com>]  
**Sent:** Tuesday, November 25, 2014 4:09 PM  
**To:** Harvey G. Chaiton  
**Cc:** John Hendriks ([jhendriks@farberfinancial.com](mailto:jhendriks@farberfinancial.com))  
**Subject:** Crate Marine

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 E5045-14 \$925,000 7/2/14  
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Please let me know your position.

Best regards,  
 John Marshall



Borden Ladner Gervais

**John D. Marshall**

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)  
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**Marshall, John D.**

---

**From:** Harvey G. Chaiton <Harvey@chaitons.com>  
**Sent:** November-26-14 5:41 PM  
**To:** Marshall, John D.  
**Cc:** 'keithc@jacobs-mgmt.com'; 'smitchell@farberfinancial.com'  
**Subject:** Re: Crate Marine - Marquis Yachts

John

Thx for this, however, as you can appreciate, as an officer of the court mandated to preserve and protect the property, Farbers is uncomfortable allowing the boat to leave the jurisdiction w/o advance payment of the purchase price or security therefor. Can you canvass with your client what it can do to facilitate the t/a in these unique circumstances? Thx and we look forward to hearing from you again soon.

---

Harvey G. Chaiton  
 Partner | Chaitons LLP | T: 416.218.1129

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**From:** Marshall, John D. [<mailto:jmarshall@blq.com>]  
**Sent:** Wednesday, November 26, 2014 02:13 PM  
**To:** Harvey G. Chaiton  
**Cc:** [keithc@jacobs-mgmt.com](mailto:keithc@jacobs-mgmt.com) <[keithc@jacobs-mgmt.com](mailto:keithc@jacobs-mgmt.com)>  
**Subject:** Crate Marine - Marquis Yachts

Harvey:

Further to our telephone discussion yesterday Marquis proposes to proceed as follows with respect to the Marquis 50 yacht.

1. The IR would forthwith authorize the trucking company to proceed with transporting the yacht to Marquis' dealer in Florida.
2. Marquis would have its dealer complete the sale to the retail customer after reassembly of the yacht and completion of the necessary sea trial. If necessary, the IR and Crawmet will release any interest they may have in the yacht to facilitate the closing.
3. Upon completion of the sale Marquis will cause the dealer to direct the net sale proceeds to the IR's trust account (we will need wire instructions). If there is any reluctance on the part of the dealer to remit directly to the IR Marquis will receive the funds and remit them itself. Please note that the net proceeds will be US \$800,000. The dealer will be retaining \$50,000 from the sale price for its commission and the payment of local sales taxes and any related fees.
4. The proceeds will be held in trust by the IR pending agreement amongst the parties, or an order of the court, determining entitlement to the proceeds.
5. In the event the sale does not close within the next 60 days Marquis will pay the net purchase proceeds of US\$800,000 to the IR to be held in trust pending determination, by agreement or court order, of entitlement to the funds. Upon receipt of the funds the IR and Crawmet will release any interest they may have in the yacht. With respect to the net proceeds, in this event Marquis will have to attempt to sell the yacht through another dealer who will also require a commission. As to the 60 day period, Marquis hopes that its dealer will close the deal much sooner but given the time of year,

and the fact that the completion of the sale of yachts such as these often takes time, the 60 days represents a cautious approach.

Please let me know if these terms are acceptable.

Best regards,  
John Marshall



**John D. Marshall**

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)  
Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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**Marshall, John D.**

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**From:** Harvey G. Chaiton <Harvey@chaitons.com>  
**Sent:** November-28-14 4:11 PM  
**To:** Marshall, John D.  
**Cc:** Jaipargas, Roger; 'keithc@jacobs-mgmt.com'; 'smitchell@farberfinancial.com'  
**Subject:** Re: Marquis Yachts - Crate Marine and Crawmet Corp.

John

Thx for this. The IR has retained Michael Rotsztain and Bendan Bissell of Goldman Sloan as independent counsel. You should deal with them on this issue.

**Harvey G. Chaiton**

Partner Chaitons LLP | T: 416.218.1129

---

**From:** Marshall, John D. [mailto:jmarshall@blg.com]  
**Sent:** Thursday, November 27, 2014 08:33 PM  
**To:** Harvey G. Chaiton  
**Cc:** Jaipargas, Roger <RJJaipargas@blg.com>; keithc@jacobs-mgmt.com <keithc@jacobs-mgmt.com>  
**Subject:** Marquis Yachts - Crate Marine and Crawmet Corp.

Harvey:

In reply to your email of yesterday, I have taken instructions on this. The IR's position is not reasonable. Our client thought that we had a deal when we spoke on Tuesday. Our proposal is a reasonable solution to this issue. The proceeds of the sale would be paid to the IR in trust and if, for any reason, the sale were not to close Marquis has agreed to pay the net purchase price to the IR in trust in place of the yacht. That is a guarantee that can be reflected in a formal agreement if the IR so wishes. That should be sufficient security for the IR in the circumstances. Marquis assumes the risk of the deal not closing.

It is not in the interests of either Crawmet or Marquis as secured creditors to lose the Florida sale. The result of losing the sale will be the incurring of additional storage and other costs associated with the yacht and returning it to Crate, not to mention additional professional fees going forward. In that regard our client reserves its right to recover from the IR any additional storage costs resulting from the IR's refusal to facilitate the sale. Moreover, if the yacht goes back to Crate Marine in Keswick it is highly unlikely that the IR will be able to sell it for anything near the purchase price under the Florida deal. I therefore urge you and the IR to confirm the arrangement proposed in my email of November 26.

There is obviously a priority dispute between Crawmet and Marquis with respect to the yacht or, preferably, the proceeds of its sale. In that regard I have attached copies of Marquis' security. I have also attached a copy of the PMSI notice sent to your client Crawmet. The affidavit filed by your client was obviously incorrect in that regard. We therefore believe that Marquis' interest in the yacht takes priority over that of Crawmet. In that event the stance taken by the IR is extremely prejudicial to Marquis. As a result, our client is concerned that the IR, who is apparently being represented by Crawmet's counsel, is not acting with an even hand amongst the creditors. The IR will need to retain independent counsel to review and opine on the Crawmet and Marquis security as well as to advise the IR on other matters that your firm as counsel to Crawmet cannot deal with. In that regard please advise forthwith as to whom the IR intends to engage as independent counsel so that we may contact that counsel directly.

I look forward to hearing from you.

Best regards,  
John Marshall

**Marshall, John D.**

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**From:** Michael Rotsztain <rotsztain@gsnh.com>  
**Sent:** December-03-14 11:50 PM  
**To:** Marshall, John D.  
**Cc:** Michael A. Weinczok; Stuart F. Mitchell (smitchell@farberfinancial.com); Harvey G. Chaiton; Brendan Bissell  
**Subject:** Marquis Yachts ? Crate Marine interim receivership

John, I'm working with Brendan on this matter and am replying to your email of late last night (reproduced below).

Despite our efforts, the point our clients have not been able to agree on, which is a critical one, is how to adequately protect Crate Marine and its creditors should the Yacht be allowed to leave Ontario, but the sale to the purchaser does not close. The IR rejects your views on what you have described as its "unreasonable" position. The IR's position is that the unsecured guarantee offered by your client (who apparently has few if any assets in Ontario), is not adequate, a prudent and commercially reasonable view in the circumstances. Only the purchase price being paid in escrow, cash collateral, an L/C or first security on an asset in Ontario (such as another Yacht owned by your client) prior to release of the Yacht, would suffice, in each case on terms satisfactory to the IR, the Debtors and Crawmet. I'm copying this email to counsel for the Debtors and Crawmet.

I don't believe the IR has ever asserted that it has, in your words, "dominion over the Yacht", whatever the meaning of that term may be. To this time the IR's appointment is on an interim basis (its powers being directed largely to preservation and protection of assets) and it does not have full receiver and manager powers, such as the power to sell the Yacht or any other asset. If Marquis wishes to assert priority over the Yacht, in current circumstances only a court order to that effect would be sufficient to grant it such priority. I suspect that Crawmet would oppose such an assertion and that the Debtors would also have a position. The current situation that has resulted in the Yacht's being effectively frozen, absent satisfactory arrangements being reached on an adequate substitution for the Yacht, is a consequence of the court's November 21<sup>st</sup> order, and the IR has the responsibility to see that the terms of that order are respected. In its report to the Court for the December 9<sup>th</sup> hearing, should that hearing proceed, the IR proposes to provide an update on developments regarding the Yacht and if need be more specific directions on this issue can be sought.

Please let me know if you wish to discuss this further.

Dear Mr. Bissell:

**Re: Marquis Yachts – Crate Marine interim receivership**

I have taken instructions with respect to our telephone discussion of December 1, 2014.

I understand that you are fully informed of the correspondence between me and Mr. Chaiton, counsel for Crawmet, with respect to the proposed disposition of the Marquis 500 yacht (the "Yacht") that is currently being held at the Balsdon transport yard in Pickering. In particular, I understand that you are aware of the specific proposal made on behalf of my client, Marquis Yachts LLC ("Marquis"), to the effect that the Yacht would be released to be transported to Florida in order to complete a sale for the net purchase price of \$800,000 (gross \$850,000 less \$50,000 dealer commission, etc.). Under that proposal the net purchase proceeds would be paid to the Interim Receiver (IR) in trust to be held pending determination of the priority dispute between Crawmet and Marquis. Marquis has also offered to pay to the IR an amount equal to the net sale proceeds in the event that the sale does not close within 60 days and is prepared to execute a guarantee in that regard.

I understand that the IR is not prepared to accept our client's proposal. I further understand that the IR is demanding some sort of security from Marquis for the full purchase price of the Yacht (either by

way of L/C, cash payment or specific security on some other asset) before the Yacht will be released to permit the Florida sale to be completed.

Marquis believes that the IR's position is unreasonable. Marquis is not prepared to pay twice for the Yacht either by way of cash, L/C or other security. Marquis holds the original title documents to the Yacht. Marquis (and its assignee Northpoint Commercial Finance LLC) also claims a first priority PMSI interest in the Yacht. Crate has not made any payment with respect to the Yacht and there is no equity in it for the estate. I provided copies of Marquis' security to the IR's former lawyer, Mr. Chaiton, and assume you obtained them from him. If not, let me know and I will resend them.

As the IR claims to have dominion over the Yacht, if it is not prepared to accept Marquis' proposal forthwith it should take steps immediately to retrieve the Yacht from the Balsdon yard. Marquis will no longer be responsible for the costs of storage. Marquis will complete the Florida sale by providing another vessel to the dealer. We presume that the IR will proceed to sell the Yacht in a commercially reasonable manner and hold the proceeds in trust pending determination of the priority dispute between Marquis and Crawmet. We doubt, however, that the IR will be able to fetch a price as advantageous as that of the aborted Florida sale.

We will be bringing on a motion to determine the relative priority to the Yacht and its proceeds as soon as possible. As apparently no independent counsel has yet reviewed or opined on the Crawmet and Marquis security we suggest that that be done as soon as possible as the value of the Yacht is depreciating.

Marquis reserves all of its rights to recover the loss and damage it has incurred, and will incur, as a result of the actions of Crawmet and the IR.

Best regards,

John Marshall

Regards,

Michael

**MICHAEL B. ROTSZTAIN**



We're social, follow us:



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pride member of



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Marshall, John D.

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**From:** Marshall, John D.  
**Sent:** December-04-14 1:07 AM  
**To:** 'Michael Rotsztain'  
**Subject:** RE: Marquis Yachts ? Crate Marine interim receivership

Michael:

Thanks for your email, and good to hear from you.

Let me address your points in the order they appear in your email.

First, the Yacht is subject to security in favour of 2 competing secured creditors: Marquis and Crawmet. The debt owed to each exceeds any possible sale value of the Yacht (although Crawmet apparently holds security over other assets that may be sufficient to take it out without resort to the Yacht). Accordingly, the "estate" has no economic interest in the Yacht.

Marquis has found a buyer for the Yacht at a price that significantly exceeds anything the Debtor has been able to fetch in the last year and anything we expect the IR could fetch in the near future. It is a depreciating asset. The sale therefore benefits both competing secured creditors: Marquis and Crawmet. They will fight over the proceeds. The Debtors have no interest in the Yacht – the sale will simply reduce its indebtedness, and the guarantee of its principals. I would therefore be very surprised if the Debtors object to Marquis' proposal. The only relevant objection is Crawmet's.

The IR has clearly asserted dominion over the Yacht. It has contacted the transporter, Balsdon, and demanded, based on the IR order, that the Yacht not be moved from the Balsdon yard in Pickering or transported to its ultimate destination in Florida. Balsdon has acquiesced to that demand, thereby jeopardizing the completion of the sale arranged by Marquis. Purporting to control the possession and destination of the Yacht is what I meant by exercising dominion over it.

Marquis believes that it has a clear PMSI priority over the Yacht. Crawmet may disagree. The court will decide. What is puzzling to Marquis in the interim, however, is the position taken by the IR on the Marquis proposal. While there are 2 competing secured creditors, one with at least a *prima facie* priority, the IR is insisting that that creditor alone pay for the Yacht or post security in order to complete a transaction that is clearly for the benefit of both competing secured creditors. Our client does not see this as being even-handed. As I stated in my previous email, Marquis is not prepared to pay twice for the yacht, either by cash or security. Its guarantee should be sufficient. In any event, it will not lose the Florida sale. It will complete it with another yacht and bring on its priority motion as soon as possible. Given the IR's actions in effectively seizing the Yacht, we expect the IR to retrieve the Yacht and sell it in a commercially reasonable manner. Unfortunately, we don't expect the IR will fetch the same price as did Marquis, but if he does, that benefits everyone. If he does not, there will no doubt be further litigation.

There is no need to discuss this matter further. However, the IR may want to consider reviewing the competing security of Crawmet and Marquis to arrive at its own opinion on the priority question with a view to advising the court or recommending a resolution of the dispute on a timely basis. If you wish to discuss that aspect of the matter I would be pleased to do so.

I look forward to hearing from you in this regard.

Best regards,

John Marshall

**From:** Michael Rotsztain [mailto:rotsztain@gsnh.com]  
**Sent:** December-03-14 11:50 PM  
**To:** Marshall, John D.  
**Cc:** Michael A. Welnczok; Stuart F. Mitchell (smitchell@farberfinancial.com); Harvey G. Chaiton; Brendan Bissell  
**Subject:** Marquis Yachts ? Crate Marine Interim receivership

John, I'm working with Brendan on this matter and am replying to your email of late last night (reproduced below).

Despite our efforts, the point our clients have not been able to agree on, which is a critical one, is how to adequately protect Crate Marine and its creditors should the Yacht be allowed to leave Ontario, but the sale to the purchaser does not close. The IR rejects your views on what you have described as its "unreasonable" position. The IR's position is that the unsecured guarantee offered by your client (who apparently has few if any assets in Ontario), is not adequate, a prudent and commercially reasonable view in the circumstances. Only the purchase price being paid in escrow, cash collateral, an L/C or first security on an asset in Ontario (such as another Yacht owned by your client) prior to release of the Yacht, would suffice, in each case on terms satisfactory to the IR, the Debtors and Crawmet. I'm copying this email to counsel for the Debtors and Crawmet.

I don't believe the IR has ever asserted that it has, in your words, "dominion over the Yacht", whatever the meaning of that term may be. To this time the IR's appointment is on an interim basis (its powers being directed largely to preservation and protection of assets) and it does not have full receiver and manager powers, such as the power to sell the Yacht or any other asset. If Marquis wishes to assert priority over the Yacht, in current circumstances only a court order to that effect would be sufficient to grant it such priority. I suspect that Crawmet would oppose such an assertion and that the Debtors would also have a position. The current situation that has resulted in the Yacht's being effectively frozen, absent satisfactory arrangements being reached on an adequate substitution for the Yacht, is a consequence of the court's November 21<sup>st</sup> order, and the IR has the responsibility to see that the terms of that order are respected. In its report to the Court for the December 9<sup>th</sup> hearing, should that hearing proceed, the IR proposes to provide an update on developments regarding the Yacht and if need be more specific directions on this issue can be sought.

Please let me know if you wish to discuss this further.

Dear Mr. Bissell:

**Re: Marquis Yachts – Crate Marine interim receivership**

I have taken instructions with respect to our telephone discussion of December 1, 2014.

I understand that you are fully informed of the correspondence between me and Mr. Chaiton, counsel for Crawmet, with respect to the proposed disposition of the Marquis 500 yacht (the "Yacht") that is currently being held at the Balsdon transport yard in Pickering. In particular, I understand that you are aware of the specific proposal made on behalf of my client, Marquis Yachts LLC ("Marquis"), to the effect that the Yacht would be released to be transported to Florida in order to complete a sale for the net purchase price of \$800,000 (gross \$850,000 less \$50,000 dealer commission, etc.). Under that proposal the net purchase proceeds would be paid to the Interim Receiver (IR) in trust to be held pending determination of the priority dispute between Crawmet and Marquis. Marquis has also offered to pay to the IR an amount equal to the net sale proceeds in the event that the sale does not close within 60 days and is prepared to execute a guarantee in that regard.

I understand that the IR is not prepared to accept our client's proposal. I further understand that the IR is demanding some sort of security from Marquis for the full purchase price of the Yacht (either by way of L/C, cash payment or specific security on some other asset) before the Yacht will be released to permit the Florida sale to be completed.

Marquis believes that the IR's position is unreasonable. Marquis is not prepared to pay twice for the Yacht either by way of cash, L/C or other security. Marquis holds the original title documents to the Yacht. Marquis (and its assignee Northpoint Commercial Finance LLC) also claims a first priority PMSI interest in the Yacht. Crate has not made any payment with respect to the Yacht and there is no equity in it for the estate. I provided copies of Marquis' security to the IR's former lawyer, Mr. Chaiton, and assume you obtained them from him. If not, let me know and I will resend them.

As the IR claims to have dominion over the Yacht, if it is not prepared to accept Marquis' proposal forthwith it should take steps immediately to retrieve the Yacht from the Balsdon yard. Marquis will no longer be responsible for the costs of storage. Marquis will complete the Florida sale by providing another vessel to the dealer. We presume that the IR will proceed to sell the Yacht in a commercially reasonable manner and hold the proceeds in trust pending determination of the priority dispute between Marquis and Crawmet. We doubt, however, that the IR will be able to fetch a price as advantageous as that of the aborted Florida sale.

We will be bringing on a motion to determine the relative priority to the Yacht and its proceeds as soon as possible. As apparently no independent counsel has yet reviewed or opined on the Crawmet and Marquis security we suggest that that be done as soon as possible as the value of the Yacht is depreciating.

Marquis reserves all of its rights to recover the loss and damage it has incurred, and will incur, as a result of the actions of Crawmet and the IR.

Best regards,

John Marshall

Regards,

Michael

MICHAEL B. ROTSZTAIN



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Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct 416 597 7870 | Fax 416 597 3370 | [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com) | [www.gsnh.com](http://www.gsnh.com)

Assistant | Annessa Cenerini | 416 597 9922 ext. 126 | [cenerini@gsnh.com](mailto:cenerini@gsnh.com)

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**Marshall, John D.**

---

**From:** Michael Rotsztain <rotsztain@gsnh.com>  
**Sent:** December-04-14 8:33 AM  
**To:** Marshall, John D.  
**Cc:** Stuart F. Mitchell (smitchell@farberfinancial.com); Brendan Bissell; Michael A. Weinczok; Harvey G. Chaiton  
**Subject:** RE: Marquis Yachts ? Crate Marine interim receivership

Thanks, John. I'll be very brief since as you know there are more pressing matters to deal with in court this morning. Just a few points:

1. Your client is not being asked to pay twice. Asking the IR to accept an unsecured guarantee when the sale your client proposes is in the US is unreasonable. Your client appears unwilling even to consider offering something to shore up the guarantee so that the Yacht can leave the country. Perhaps Mr. Chaiton could let us know if his client has any interest in assisting with security for the Yacht in order to enable it to leave Canada for the proposed sale.
2. The interests the IR are required to protect include Crawmet, who in fact seems to have the largest stake in this matter.
3. If the IR's powers are elevated, we will consider the other matters you raise. I have already advised you of the IR's current limited powers.

Regards,

Michael

**MICHAEL B. ROTSZTAIN**



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1Y2

Direct 416.597.7870 | Fax 416.597.3370 | [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com) | [www.gsnh.com](http://www.gsnh.com)

Assistant | Annessa Cenerini | 416.597.9922 ext. 126 | [cenerini@gsnh.com](mailto:cenerini@gsnh.com)

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**From:** Marshall, John D. [<mailto:jmarshall@blg.com>]  
**Sent:** Thursday, December 04, 2014 1:07 AM  
**To:** 'Michael Rotsztain'  
**Subject:** RE: Marquis Yachts ? Crate Marine interim receivership

Michael:

Thanks for your email, and good to hear from you.

Let me address your points in the order they appear in your email.



First, the Yacht is subject to security in favour of 2 competing secured creditors: Marquis and Crawmet. The debt owed to each exceeds any possible sale value of the Yacht (although Crawmet apparently holds security over other assets that may be sufficient to take it out without resort to the Yacht). Accordingly, the "estate" has no economic interest in the Yacht.

Marquis has found a buyer for the Yacht at a price that significantly exceeds anything the Debtor has been able to fetch in the last year and anything we expect the IR could fetch in the near future. It is a depreciating asset. The sale therefore benefits both competing secured creditors: Marquis and Crawmet. They will fight over the proceeds. The Debtors have no interest in the Yacht – the sale will simply reduce its indebtedness, and the guarantee of its principals. I would therefore be very surprised if the Debtors object to Marquis' proposal. The only relevant objection is Crawmet's.

The IR has clearly asserted dominion over the Yacht. It has contacted the transporter, Balsdon, and demanded, based on the IR order, that the Yacht not be moved from the Balsdon yard in Pickering or transported to its ultimate destination in Florida. Balsdon has acquiesced to that demand, thereby jeopardizing the completion of the sale arranged by Marquis. Purporting to control the possession and destination of the Yacht is what I meant by exercising dominion over it.

Marquis believes that it has a clear PMSI priority over the Yacht. Crawmet may disagree. The court will decide. What is puzzling to Marquis in the interim, however, is the position taken by the IR on the Marquis proposal. While there are 2 competing secured creditors, one with at least a *prima facie* priority, the IR is insisting that that creditor alone pay for the Yacht or post security in order to complete a transaction that is clearly for the benefit of both competing secured creditors. Our client does not see this as being even-handed. As I stated in my previous email, Marquis is not prepared to pay twice for the yacht, either by cash or security. Its guarantee should be sufficient. In any event, it will not lose the Florida sale. It will complete it with another yacht and bring on its priority motion as soon as possible. Given the IR's actions in effectively seizing the Yacht, we expect the IR to retrieve the Yacht and sell it in a commercially reasonable manner. Unfortunately, we don't expect the IR will fetch the same price as did Marquis, but if he does, that benefits everyone. If he does not, there will no doubt be further litigation.

There is no need to discuss this matter further. However, the IR may want to consider reviewing the competing security of Crawmet and Marquis to arrive at its own opinion on the priority question with a view to advising the court or recommending a resolution of the dispute on a timely basis. If you wish to discuss that aspect of the matter I would be pleased to do so.

I look forward to hearing from you in this regard.

Best regards,  
John Marshall

**From:** Michael Rotsztain [<mailto:rotsztain@qsnh.com>]

**Sent:** December-03-14 11:50 PM

**To:** Marshall, John D.

**Cc:** Michael A. Weinczok; Stuart F. Mitchell ([smitchell@farberfinancial.com](mailto:smitchell@farberfinancial.com)); Harvey G. Chaiton; Brendan Bissell

**Subject:** Marquis Yachts ? Crate Marline interim receivership

John, I'm working with Brendan on this matter and am replying to your email of late last night (reproduced below).

Despite our efforts, the point our clients have not been able to agree on, which is a critical one, is how to adequately protect Crate Marine and its creditors should the Yacht be allowed to leave Ontario, but the sale to the purchaser does not close. The IR rejects your views on what you have described as its "unreasonable" position. The IR's position is that the unsecured guarantee offered by your client (who apparently has few if any assets in Ontario), is not adequate, a prudent and commercially reasonable view in the circumstances. Only the purchase price being paid in escrow, cash collateral, an L/C or first security on an asset in Ontario (such as another Yacht owned by your client) prior to release of the Yacht, would suffice, in each case on terms satisfactory to the IR, the Debtors and Crawmet. I'm copying this email to counsel for the Debtors and Crawmet.

I don't believe the IR has ever asserted that it has, in your words, "dominion over the Yacht", whatever the meaning of that term may be. To this time the IR's appointment is on an interim basis (its powers being directed largely to preservation and protection of assets) and it does not have full receiver and manager powers, such as the power to sell the Yacht or any other asset. If Marquis wishes to assert priority over the Yacht, in current circumstances only a court order to that effect would be sufficient to grant it such priority. I suspect that Crawmet would oppose such an assertion and that the Debtors would also have a position. The current situation that has resulted in the Yacht's being effectively frozen, absent satisfactory arrangements being reached on an adequate substitution for the Yacht, is a consequence of the court's November 21<sup>st</sup> order, and the IR has the responsibility to see that the terms of that order are respected. In its report to the Court for the December 9<sup>th</sup> hearing, should that hearing proceed, the IR proposes to provide an update on developments regarding the Yacht and if need be more specific directions on this issue can be sought.

Please let me know if you wish to discuss this further.

Dear Mr. Bissell:

**Re: Marquis Yachts – Crate Marine interim receivership**

I have taken instructions with respect to our telephone discussion of December 1, 2014.

I understand that you are fully informed of the correspondence between me and Mr. Chaiton, counsel for Crawmet, with respect to the proposed disposition of the Marquis 500 yacht (the "Yacht") that is currently being held at the Balsdon transport yard in Pickering. In particular, I understand that you are aware of the specific proposal made on behalf of my client, Marquis Yachts LLC ("Marquis"), to the effect that the Yacht would be released to be transported to Florida in order to complete a sale for the net purchase price of \$800,000 (gross \$850,000 less \$50,000 dealer commission, etc.). Under that proposal the net purchase proceeds would be paid to the Interim Receiver (IR) in trust to be held pending determination of the priority dispute between Crawmet and Marquis. Marquis has also offered to pay to the IR an amount equal to the net sale proceeds in the event that the sale does not close within 60 days and is prepared to execute a guarantee in that regard.

I understand that the IR is not prepared to accept our client's proposal. I further understand that the IR is demanding some sort of security from Marquis for the full purchase price of the Yacht (either by way of L/C, cash payment or specific security on some other asset) before the Yacht will be released to permit the Florida sale to be completed.

Marquis believes that the IR's position is unreasonable. Marquis is not prepared to pay twice for the Yacht either by way of cash, L/C or other security. Marquis holds the original title documents to the Yacht. Marquis (and its assignee Northpoint Commercial Finance LLC) also claims a first priority PMSI interest in the Yacht. Crate has not made any payment with respect to the Yacht and there is no equity in it for the estate. I provided copies of Marquis' security to the IR's former lawyer, Mr. Chaiton, and assume you obtained them from him. If not, let me know and I will resend them.

As the IR claims to have dominion over the Yacht, if it is not prepared to accept Marquis' proposal forthwith it should take steps immediately to retrieve the Yacht from the Balsdon yard. Marquis will no longer be responsible for the costs of storage. Marquis will complete the Florida sale by providing

another vessel to the dealer. We presume that the IR will proceed to sell the Yacht in a commercially reasonable manner and hold the proceeds in trust pending determination of the priority dispute between Marquis and Crawmet. We doubt, however, that the IR will be able to fetch a price as advantageous as that of the aborted Florida sale.

We will be bringing on a motion to determine the relative priority to the Yacht and its proceeds as soon as possible. As apparently no independent counsel has yet reviewed or opined on the Crawmet and Marquis security we suggest that that be done as soon as possible as the value of the Yacht is depreciating.

Marquis reserves all of its rights to recover the loss and damage it has incurred, and will incur, as a result of the actions of Crawmet and the IR.

Best regards,  
John Marshall

Regards,  
Michael

**MICHAEL B. ROTSZTAIN**



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Direct 416 597 7870 | Fax 416 597 3370 | [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com) | [www.gsnh.com](http://www.gsnh.com)  
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This is Exhibit "V" referred to  
in the affidavit of Keith Carpenter  
sworn before me this 18<sup>th</sup> day  
of December, 2014.

Shelly L. Mann

A notary public in and for the  
State of Minnesota



Court File Number: ~~000~~ 31-1932502

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Crate Marine Sales, Limited

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

In this matter, the principal creditors made demand on November 4, 2014. The Debtors served a notice of intention to make a proposal on November 14, 2014. On Friday afternoon, November 21, 2014, I heard an urgent application to appoint a receiver. The Debtors counsel were away. They had to find a draughtsman who essentially requested an adjournment.

Dec. 1, 2014  
Date

[Signature]  
Judge's Signature

Additional Pages \_\_\_\_\_

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

The original request for an adjournment ~~was~~ for a week. Mr. Chariton was not available and asked that the matter be returned ~~to~~ today.

Now the Debtors seek to rescind 2014 at which time they propose to move for DIP financing, \$ which would be secured by a super priority.

I cannot imagine approving that kind of financing in the absence of a concrete proposal which holds out some hope, at least of support from the creditors.

The interim court appointed receiver has indicated that it would like to pursue certain avenues for more information. There is an allegation of erosion of the creditor's equity, but, apart from fees, there is

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

no evidence of ongoing shortfalls.  
 I would like to see ~~the~~ more  
 information from the Court-appointed  
 receiver on the question of whether  
 there is, in fact, ongoing material  
 erosion.

At the end of the day, if the  
 Debtor had asked for an adjournment  
 to December 9 on November 21, 2014,  
 I would have been inclined to  
 grant it, absent clear evidence  
 of prejudice.

I am mindful of the Court's power  
 to cut the process short as I am  
 being asked to do by the Creditors  
 here.

I am also mindful of the look at

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

This point, of any, hint of a proposal.

However, I do not see evidence of material prejudice in allowing the Debtors until December 9, 2014 to try to persuade the Creditors that they might be better off under a proposal scenario. I say this because the interests which will remain in place, as will the proposal itself.

The fact that the principal creditors say they will never agree to anything is not dispositive. Many creditors have changed their minds once the Debtors are given a chance. However, unlike that may be



Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

In this case, I do not think the circumstances require that I accede to Mr. Chinton's request on behalf of the Creditors today.

The matter is further adjourned to December 9, 2014 before me. At that time, the Debtor will be expected to put all its cards on the table or to use language from another circumstance, if left fast forward.

If the Debtor fails that, Mr. Chinton is at liberty to renew his request.

~~Do~~ In the meantime, order to give approving the interim receiver's first report.

I will be forward to the Receiver additional input into the issue

Court File Number. \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

noted above ~~and~~ any other urgent  
 for receiver has between now and  
 December 9, 2014.

Any issues relating to costs are reserved  
 to December 9, 2014.

Service may continue to be made by  
 email, as well as delivery of  
 additional materials to me.

I order that the interim receiver's  
 powers under my order of November 21, 2014  
 shall continue and be expanded  
 to include investigation and review of Receiver's  
 affairs of the Debtors <sup>more generally</sup>.  
 I <sup>would</sup> expect the interim receivers <sup>emphasis</sup> ~~to~~ will  
 be a matter that will assist the  
 Court in the determinations it is likely  
 to have to make on December 9, 2014.

Page 6 of 9Judges Initials MAP

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsement Continued
The issue of <del>privilege</del> <sup>protection</sup> shall be dealt with as follows.
The interim receiver shall begin full access to the hard and electronic copies of the Debtors documents.
As an officer of the court, the interim receiver shall be alert to any privileged documents. If it finds any, it shall identify them and stop filing at them. In any event the interim receiver shall make no disclosure or use of identified privileged documents without the consent of the Debtors or further order of the Court. The interim receiver shall in no event, be disqualified from continuing to act merely by having seen and identified privileged documents in accordance with this endorsement.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The debtors have indicated they have no intention to sell more boats this winter. In the circumstances, there shall be an order that no boats shall be sold without 14 days prior notice to the interim receiver.

Boat slip revenues received for boat slip rental in 2015 shall be reserved for 2015 boat slip services.

On other word, these funds shall not be available to the Debtors for general revenue ~~is by~~ pending December 9, 2014, return.

Timetable

to the interim receiver

before December 9, 2014

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

The Debtor's material shall be filed by noon on December 1, 2014.

The Creditors may file additional regarding material by ~~noon~~ <sup>noon</sup> Monday December 1, 2014.

The confidential appraisal shall remain ~~is~~ confidential and unopened until Dec. 9, 2014.

The issue of who gets to see them will be revisited Dec. 9 depending on what use, if any, is intended to be made of them.

The amount sought to have to get to Dec 9 shall be presented to them. If there is a problem about this, it shall be addressed by conference call tomorrow at 9:30.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Court File No. 31-1932502

BETWEEN:

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

Court File No. 31-1932534

BETWEEN:

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

Court File No. 31-1932548

BETWEEN:

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

Court File No. 31-1932557

BETWEEN:

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

Court File No. 31-1932540

BETWEEN:

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

---

**ENDORSEMENT OF MR. JUSTICE PENNY DATED DECEMBER 1, 2014**  
**(Unofficial typed transcription)**

---

In this motion, the principal creditors made demand on November 4, 2014. The Debtors serve a notice of intention to make a proposal on November 14, 2014.

On Friday afternoon, November 21, 2014, I heard an urgent application to appoint a receiver. The Debtors' counsel were way. They had to find a stand in, who essentially requested an adjournment. The original request for an adjournment was for a week. Mr. Chaiton was not available and asked that the motion be returned today.

Now, the Debtors seek to December 9, 2014 at which time they propose to move for DIP financing, which would be secured by a superpriority. I cannot imagine approving that kind of financing in the absence of a concrete proposal which holds out some hope, at least, of support from the creditors.

The interim Court appointed receiver has indicated that it would like to pursue certain avenues for more information. There is an allegation of erosion of the Creditor's equity but, apart from fees, there is no evidence of ongoing shortfalls. I would like to see more information from the Court-appointed receiver on the question of whether there is, in fact, ongoing material erosion.

At the end of the day, if the Debtor had asked for an adjournment to December 9 on November 21, 2014, I would have been inclined to grant it, absent clear evidence of prejudice.

I am mindful of the Court's powers to cut the process short, as I am being asked to do by the Creditors here.

I am also mindful of the lack, at this point, of any hint of a proposal.

However, I do not see evidence of material prejudice in allowing the Debtors until December 9, 2014 to try to persuade the Creditors that they might be better off under a proposal scenario. I say this because the interim receiver will remain in place, as will the proposal trustee.

The fact that the principal creditors say they will never agree to anything is not dispositive. Many creditors have changed their minds once the Debtors are given a chance. However, unlikely that may be in this case, I do not think the circumstances require that I accede to Mr. Chaiton's argument on behalf of the Creditors today.

The matter is further adjourned to December 9, 2014 before me. At that time, the Debtor will be expected to put all its cards on the table or, to use language from another circumstance, its best foot forward.

If the Debtors fall short, Mr. Chaiton is at liberty to renew his request.

In the meantime, order to issue approving the interim receiver's first report.

I will look forward to the Receiver's additional insight into the issue noted above, and any other insight the receiver has between now and December 9, 2014.

Any issues relating to costs are reserved to December 9, 2014.

Service may continue to be made by email, as well as delivery of additional materials to me.

I order that the interim receiver's powers under my order of November 21, 2014 shall continue and be expanded to include investigation and review of the financial affairs of the Debtors more generally. I would expect the interim receiver's emphasis will be on matters that will assist the Court in the determinations it is likely to have to make on December 9, 2014.

The issue of possible privilege shall be dealt with as follows.

The interim receiver shall be given full access to the hard and electronic copies of the Debtors' documents. As an officer of the Court, the interim receiver shall be alert to any privileged documents. If it finds any privileged documents, it shall identify them and stop looking at them. In any event the interim receiver shall make no disclosure or use of identified privileged documents without the consent of the Debtors or further order of the Court. The interim receiver shall in no event, be disqualified from continuing to act merely by having seen and identified privileged documents in accordance with this endorsement.

The Debtors have indicated they have no intention to sell more boats this winter. In the circumstances, there shall be an order that no boats shall be sold without 14 days prior notice to the interim receiver.

Boat slip revenue received for boat slip rental in 2015 shall be reserved for 2015 boat slip services. In other words, these funds shall not to the extent received before December 9, 2014 be available to the Debtors for general revenue pending the December 9, 2014 return.

Timetable:

The Debtors' materials shall be filed by noon on December 5, 2014.



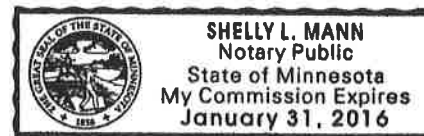
The Creditors may file additional responding materials by noon Monday December 8, 2014.

The confidential appraisals shall remain confidential and unopened until December 9, 2014. The issue of who gets to see these will be revisited December 9 depending on what use, if any, it intended to be made of them. The amount sought for fees to get to December 9 shall be provided today. If there is a problem about this, it shall be addressed by conference call tomorrow at 9:30.

This is Exhibit "W" referred to  
in the affidavit of Keith Carpenter  
sworn before me this 18<sup>th</sup> day  
of December, 2014.

Shelly L. Mann

A notary public in and for the  
State of Minnesota





ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.  
JUSTICE NEWBOULD

)  
)  
)

MONDAY, THE 8<sup>TH</sup> DAY  
OF DECEMBER, 2014

Court File No. 31-1932502

BETWEEN:

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

Court File No. 31-1932534

BETWEEN:

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

Court File No. 31-1932548

BETWEEN:

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

Court File No. 31-1932557

BETWEEN:

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

Court File No. 31-1932540

BETWEEN:

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

**ORDER**

(Terminating the Proposal Debtors' Proposal Proceedings and Appointing a Receiver)

THIS MOTION made by Crawmet Corp. ("Crawmet") for an Order:

1. validating the service and filing of the consolidated reply motion record, factum and brief of authorities of Crawmet be filed solely in court file number 31-1932502;
2. pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3 (the "BIA"), declaring that the period for filing a proposal by Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1282638 Ontario Ltd., 1328559 Ontario Limited and 1330732 Ontario Limited (collectively, the "Debtors") be terminated;
3. pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing A. Farber & Partners Inc. ("Farber") as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario; and
4. substituting Farber as bankruptcy trustee (the "Trustee") of the Debtors and 1382415 Ontario Ltd. and 1382416 Ontario Ltd. (together with the Debtors, the "Proposal Debtors").

ON READING the affidavit of Benn-Jay Spiegel sworn November 20, 2014, the supplementary affidavit of Benn-Jay Spiegel sworn November 30, 2014, the Report of Dodick Landau Inc., in its capacity as Proposal Trustee of the Debtors (the "Proposal Trustee"), the Affidavits of Steven Crate each sworn November 28, 2014, the First Report of Farber in its capacity as Interim Receiver of the Debtors (the "Interim Receiver"), the Second Report of the Interim Receiver, the Supplementary Report to the Second Report of the Interim Receiver, the Second Report of the Proposal Trustee, the Affidavit of Steven Crate sworn December 5, 2014, the Affidavit of Benn-Jay Spiegel sworn December 7, 2014 and the Third Report of the Interim Receiver, on hearing the submissions of counsel for Crawmet, counsel for the Debtors, counsel

for the Proposal Trustee, counsel for the Interim Receiver and such other counsel as are present, and on reading the consents of Farber to act as the Receiver and the Trustee,

#### **FILING**

1. **THIS COURT ORDERS** that the service and filing by Crawmet, the Proposal Trustee, the Interim Receiver and the Debtors of consolidated materials be hereby validated and directs that these materials be filed solely in Court File No. 31-1932502.

#### **TERMINATION OF THE PROPOSAL PROCEEDINGS**

2. **THIS COURT ORDERS AND DECLARES** that, pursuant to section 50.4(11) of the BIA, the period for filing a proposal by each of the Proposal Debtors in their respective proceedings be and hereby is terminated and that A. Farber & Partners Inc. be and hereby is substituted as the bankruptcy trustee of the Proposal Debtors.

#### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Proposal Debtors acquired for, or used in relation to a business carried on by the Proposal Debtors, including all proceeds thereof (the "Property").

#### **RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

- 4 -

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Proposal Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Proposal Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Proposal Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Proposal Debtors and to exercise all remedies of the Proposal Debtors in collecting such monies, including, without limitation, to enforce any security held by the Proposal Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Proposal Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Proposal Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Proposal Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

- 6 -

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Proposal Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Proposal Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Proposal Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Proposal Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Proposal Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Proposal Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant



immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Proposal Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE PROPOSAL DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Proposal Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Proposal Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Proposal Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Proposal Debtors to carry on any business which the Proposal Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Proposal Debtors 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 THE RECEIVER**

11. **THIS COURT ORDERS** that 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 Proposal Debtors, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Proposal Debtors 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 Proposal Debtors 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 Receiver, and that the Receiver shall be entitled to the continued use of the Proposal Debtors' current 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 Receiver in accordance with normal payment practices of the Proposal Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Proposal Debtors shall remain the employees of the Proposal Debtors until such time as the Receiver, on the Proposal Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver 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 Receiver, 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 Proposal Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

**LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

**RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al>>'.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute 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 facsimile transmission to the Proposal Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Proposal Debtors and that any such service or distribution by courier, personal delivery or facsimile 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.

#### **GENERAL**

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver 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, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

David J.



**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number ~~\_\_\_-CL-\_\_\_\_\_~~, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

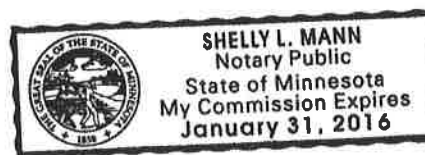
Name:

Title:

This is Exhibit "X" referred to  
in the affidavit of Keith Carpenter  
sworn before me this 8<sup>th</sup> day  
of December, 2014.

Shelly L. Mann

A notary public in and for the  
State of Minnesota



**Marshall, John D.**

---

**From:** Marshall, John D.  
**Sent:** December-15-14 6:13 PM  
**To:** 'Michael Rotsztain'  
**Cc:** Jaipargas, Roger; Stuart F. Mitchell (smitchell@farberfinancial.com); Brendan Bissell (bissell@gsnh.com)  
**Subject:** RE: Crate Marine

Michael:

You can be assured that we have taken into account all actual events and our assertions are not groundless.

Best regards,  
 John



**John D. Marshall**

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | jmarshall@blg.com  
 Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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**From:** Michael Rotsztain [mailto:rotsztain@gsnh.com]  
**Sent:** December-15-14 5:46 PM  
**To:** Marshall, John D.  
**Cc:** Jaipargas, Roger; Stuart F. Mitchell (smitchell@farberfinancial.com); Brendan Bissell (bissell@gsnh.com)  
**Subject:** RE: Crate Marine

John, we'll no doubt be communicating again soon. I'll get more specific if and when I have to, but allow me to comment for now that you seem to have taken great pains to give a very one-sided account of actual recent events. Particularly troubling is your simplistic assertion that "Marquis has done its best to monetize the Yacht for everyone's benefit. Its efforts, however, have been impeded by the Receiver." I would have thought that you would have taken great care to take into account all actual events before suggesting something as groundless as this in respect of a court-officer.

Regards,

Michael

**MICHAEL B. ROTSZTAIN**

**Marshall, John D.**

---

**From:** Marshall, John D.  
**Sent:** December-15-14 5:20 PM  
**To:** 'rotsztain@gsnh.com'  
**Cc:** 'Keith Carpenter'; David McMichael (dmcmichael@northpointcf.com); Jaipargas, Roger  
**Subject:** Crate Marine

Michael:

I am writing in reply to your email of December 12 regarding the Receiver's conditions on the possible sale of the Yacht at the Toronto International Boat Show.

As I advised in my email to you of December 10, 2014, if the Yacht were to be sold at the Show transportation arrangements would have to have been made by December 12. It is now too late to make such arrangements and the proposal is therefore academic.

The Receiver's conditions were subject to Crawmet's concurrence, which was not received, and two of the Receiver's additional conditions are not acceptable in any event.

First, the requirement in item 5 that the net sale proceeds be paid to the Receiver before the Yacht left the Show is impracticable. No rational purchaser of a Yacht of this size would pay over US\$800,000 in cash or equivalent to a dealer before the Yacht is delivered, commissioned and sea-tried.

Second, the minimum figure of US\$800,000 contained in item 7 is not realistic. We suggested that the Receiver propose a minimum gross sale price. Instead he provided a minimum "net proceeds" figure. When costs such as commission, taxes and other costs are added the minimum gross sale price would exceed the price of the Florida transaction that has now been lost. As we noted in previous correspondence, the Florida price was at the high end of the range of reasonably expected sales prices.

If Marquis' priority PMSI claim is valid there is no equity in the Yacht for either Crawmet or the estate as the Yacht is worth much less than Marquis' debt. Any further delays in the monetization of the Yacht significantly erodes Marquis' security. We therefore suggest that the Receiver review the security of both Marquis and Crawmet immediately and advise us of the Receiver's position.

Marquis has done its best to monetize the Yacht for everyone's benefit. Its efforts, however, have been impeded by the Receiver. Storage fees continue to mount and the value of the Yacht is depreciating. As the Receiver is exerting control over the Yacht, please let us know as soon as possible how the Receiver intends to deal with those costs as well as the disposition of the Yacht.

Best regards,  
John



**John D. Marshall**

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)

Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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**Marshall, John D.**

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**From:** rotsztain@gsnh.com  
**Sent:** December-12-14 7:16 PM  
**To:** Marshall, John D.  
**Subject:** Re: Crate Marine - Marquis Yachts

Thanks John. I'm waiting to hear from Harvey on Crawmet.

Sent from my BlackBerry device on the Rogers Wireless Network

---

**From:** "Marshall, John D." <jmarshall@blg.com>  
**Date:** Fri, 12 Dec 2014 22:35:46 +0000  
**To:** Michael Rotsztain<rotsztain@gsnh.com>; bissell@gsnh.com<bissell@gsnh.com>; harvey@chaitons.com<harvey@chaitons.com>  
**Cc:** Stuart F. Mitchell (smitchell@farberfinancial.com)<smitchell@farberfinancial.com>; keithc@jacobs-mgmt.com<keithc@jacobs-mgmt.com>; dMcMichael@Northpointcf.com<dMcMichael@Northpointcf.com>; Jaipargas, Roger<RJaipargas@blg.com>  
**Subject:** RE: Crate Marine - Marquis Yachts

Michael:

Thanks for this. I will try to get instructions. I should point out the obvious, however, with respect to item 5. I think it highly unlikely that any purchaser will pay US\$800,000 before delivery of the yacht and a sea trial. In any event I will seek instructions and get back to you. Please let me know if Crawmet accepts your proposal.

Best regards,

John



**John D. Marshall**  
 Partner  
 T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | jmarshall@blg.com  
 Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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**From:** Michael Rotsztain [mailto:rotsztain@gsnh.com]  
**Sent:** December-12-14 4:54 PM  
**To:** Marshall, John D.; bissell@gsnh.com; harvey@chaitons.com  
**Cc:** Stuart F. Mitchell (smitchell@farberfinancial.com)  
**Subject:** RE: Crate Marine - Marquis Yachts

John, the following are terms acceptable to the Receiver (our additions to your email of earlier today are in bold):

1. **Marquis Yachts LLC and Northpoint Commercial Finance LLC (collectively, "Marquis")** will arrange and pay for the Yacht to be transported to the **Toronto International Boat Show (the "Show")**, to be held at the **Direct Energy Centre, Exhibition Place, Toronto, January 9 – 18, 2015.**
  2. Marquis or its designated dealer or representative will be in charge of the sale. No one associated with Crate will be involved.
  3. **Marquis certifies that the Yacht is already insured under an umbrella policy maintained by Marquis.**
  4. If the Yacht is sold Marquis will make all necessary arrangements to have the Yacht delivered to the purchaser, the sale completed and the Yacht commissioned.
  5. **Prior to the Yacht being transported from the Show, the net proceeds of sale will be paid to the Receiver to be held in a separate interest-bearing trust account pending determination of the priority dispute and the issue of the applicability of the court-ordered Receiver's charges against the Yacht.** Net proceeds will consist of the gross sale price less all costs related to the sale. Those costs will include: (i) the cost of transportation referred to in item 1 above; (ii) commission, if any, taxes and fees on the sale; (iii) the costs of delivery and commissioning referred to in item 4 above; (iv) promotional and advertising costs related to the Yacht; and (v) the storage costs incurred by Marquis for storage of the Yacht at the Baldson yard. With respect to the last item, the costs to December 2 amount to approximately \$6000. Additional fees are accruing at \$100 per day.
  7. **Without the prior written consent of the Receiver and Crawmet, the Yacht shall not be sold at the Show unless the net proceeds are at least USD\$800,000.00.**
  8. If the Yacht is not sold at the Show Marquis will arrange for the Yacht to be transported to a destination to be determined by the Receiver. The cost of such transportation would be shared equally by Marquis and Crawmet.
  9. **Nothing in this agreement shall prevent the Interim Receiver or Receiver from seeking court approval of the activities of the IR and the Receiver after those activities described in the Interim Receiver's First Report.**
- If you on behalf of Marquis and Harvey Chaiton on behalf of Crawmet confirm the acceptability of these terms on behalf of your respective clients, then the 3- Party agreement shall be effective and binding on the parties.

Regards,

Michael

**MICHAEL B. ROTSZTAIN**



We're social, follow us.



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct 416 597 7870 | Fax 416 597 3370 | [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com) | [www.gsnh.com](http://www.gsnh.com)

Assistant | Annessa Cenerini | 416 597 9922 ext. 126 | [cenerini@gsnh.com](mailto:cenerini@gsnh.com)

practitioner of

**LAWFORD**

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**From:** Marshall, John D. [mailto:jmarshall@blg.com]  
**Sent:** Friday, December 12, 2014 2:05 PM  
**To:** Michael Rotsztain; [bissell@gsnh.com](mailto:bissell@gsnh.com); [harvey@chaitons.com](mailto:harvey@chaitons.com)  
**Cc:** Stuart F. Mitchell ([smitchell@farberfinancial.com](mailto:smitchell@farberfinancial.com))  
**Subject:** RE: Crate Marine - Marquis Yachts

WITH PREJUDICE

Michael:

Thank you for your email. The Receiver's proposed conditions are not acceptable to our client. As I advised you in my email of December 10, if the Yacht is to be sold at the Toronto Boat Show arrangements must be made today. We do not have time to negotiate the kind of conditions you are seeking. Marquis is prepared to do the following:

1. Marquis will arrange and pay for the Yacht to be transported to the show facility.
2. Marquis or its designated dealer or representative will be in charge of the sale. No one associated with Crate will be involved.
3. The Yacht is already insured under an umbrella policy maintained by Marquis. Marquis will not try to add the Receiver as loss payee.
4. If the Yacht is sold Marquis will make all necessary arrangements to have the Yacht delivered to the purchaser, the sale completed and the Yacht commissioned.
5. The net proceeds of sale will be paid to the Receiver to be held in a separate interest-bearing trust account pending determination of the priority dispute. Net proceeds will consist of the gross sale price less all costs related to the sale. Those costs will include: (i) the cost of transportation referred to in item 1 above; (ii) commission, if any, taxes and fees on the sale; (iii) the costs of delivery and commissioning referred to in item 4 above; (iv) promotional and advertising costs related to the Yacht; and (v) the storage costs incurred by Marquis for storage of the Yacht at the Balsdon yard. With respect to the last item, the costs to December 2 amount to approximately \$6000. Additional fees are accruing at \$100 per day.
6. Any fees claimed by the Receiver will not be deducted or paid from the sale proceeds. The question of whether the Receiver's charge applies to the proceeds of sale of the Yacht, and whether the Yacht forms part of the bankrupt's Property, is in issue and should be determined at a future date on motion to the court.
7. It is impracticable to require Marquis or its representative to negotiate a sale of the Yacht at the show subject to the Receiver's approval or court order. If the Receiver is concerned that Marquis will not negotiate the best price possible we suggest you set a minimum price below which Marquis cannot sell.
8. If the Yacht is not sold at the show Marquis will arrange for the Yacht to be transported to a destination to be determined by the Receiver. The cost of such transportation would be shared equally by Marquis and Crawmet.
9. It is premature to seek approval of the activities of the IR and the Receiver, at least with respect to the Yacht. It is Marquis' position that such approval should be dealt with on or after the motion determining the priority dispute.

Please let us know your position at your earliest opportunity.

Best regards,  
John Marshall



Borden Ladner Gervais

John D. Marshall

Partner

T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)

Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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**From:** Michael Rotsztain [<mailto:rotsztain@qsnh.com>]  
**Sent:** December-11-14 6:54 PM  
**To:** Marshall, John D.; [blissell@qsnh.com](mailto:blissell@qsnh.com); [harvey@chaitons.com](mailto:harvey@chaitons.com)  
**Cc:** Stuart F. Mitchell ([smitchell@farberfinancial.com](mailto:smitchell@farberfinancial.com))  
**Subject:** RE: Crate Marine - Marquis Yachts

WITHOUT PREJUDICE

Re: Crate Marine Sales Limited - Marquis 500 Yacht (the "Yacht") currently held by M. Baldson Trucking Ltd. ("Baldson")

John,

I'm writing on behalf of our client, A. Farber & Partners Inc., court-appointed Receiver of Crate Marine Sales Limited ("Crate Marine") et al. Prior to being appointed Receiver, A. Farber & Partners Inc. acted as the interim receiver of Crate Marine et al. (the "Interim Receiver"), appointed by order dated November 21, 2014.

The Receiver views favourably the outline of proposal in your email, provided that definitive terms are agreed upon by the Receiver, Marquis Yachts LLC and Northpoint Commercial Finance LLC (collectively, "Marquis") and Crawmet Corp. ("Crawmet"), to whom Crate Marine has granted a general security agreement. The following are the terms proposed by the Receiver for an agreement among these three parties (collectively, the "Parties"):

1. Until entitlement to the Yacht and its proceeds is determined by (a) an agreement among all the Parties, or (b) a final, unappealable order of the Superior Court of Justice Court (the "Court") or an appellate court (an "Order"), the Yacht and the proceeds thereof shall be included in the Property, as defined in paragraph 3 of the order appointing the Receiver dated December 8, 2014, and therefore, inter alia, until the occurrence of (a) or (b) the Yacht shall be deemed to be within the Receiver's control despite any of the arrangements agreed upon herein. However, neither the foregoing provisions of this section 1 nor any other provisions of this agreement shall affect the Parties' legal entitlement to the Yacht and its proceeds, and all the Parties reserve their rights respecting such entitlement.
2. No later than \_\_\_\_\_, the Yacht shall at Marquis' expense and risk of loss or damage be transported in a safe and prudent manner, in compliance with all applicable laws and regulations, from the Baldson yard in Pickering, Ontario to Marquis' exhibit and sales area at the Toronto International Boat Show (the "Show"), to be held at the Direct Energy Centre, Exhibition Place, Toronto, January 9 – 18, 2015. The Yacht shall be displayed at the Show for sale, without the participation of any of the shareholders, directors, management or employees, or persons related thereto, of Crate Marine or any of the other debtor companies in receivership. If the Yacht is sold at the Show in accordance with the provisions of this agreement, Marquis shall make the necessary arrangements at its

expense to complete the sale and commission the Yacht through another authorized dealer. If the Yacht is not sold at the Show in accordance with this agreement, no later than January x, 2015 it shall at Marquis' expense be transported in a safe and prudent manner, in compliance with all applicable laws and regulations, to a place to be agreed upon by all the Parties prior to y. Marquis shall at its expense maintain adequate insurance coverage in respect of such transportation and display of the Yacht, as approved by the Receiver and Crawmet, and Marquis shall cause the Receiver to be shown as one of the loss payees in the applicable insurance policy.

3. The Yacht shall not be sold at the Show or elsewhere without the written consent of all the Parties or an Order. The Net Proceeds as defined below, of any such sale shall be paid to the Receiver, and shall be held by the Receiver in trust, in interest-bearing form, pending determination of entitlement pursuant to section 1(a) or (b), whereupon the Net Proceeds shall be paid by the Receiver to the Party entitled to receive them or such other person directed by an Order. The Net Proceeds shall be the gross proceeds of sale of the Yacht, after deduction of (i) HST and any other applicable taxes required to be paid by the vendor; (ii) any commission or fees on the sale, in an amount agreed upon by all the Parties or an Order; (iii) all necessary transportation and storage costs (including the \$x in costs required to be paid to Baldson for the release of the Yacht), except those that are the responsibility of Marquis pursuant to section 2; insurance costs, except those that are the responsibility of Marquis pursuant to section 2; (iv) other costs necessary for a sale of the Yacht, as agreed upon by all the Parties or directed by an Order, including promotional and advertising costs; and (v) the fees of the Receiver and its legal counsel directly related to the preservation, protection and sale of the Yacht, in amounts agreed upon by all the Parties or an Order. If any of these enumerated deductions are paid directly by any of the Parties prior to any such sale, each such party receive reimbursement therefor out of the gross proceeds of sale and the Net Proceeds shall be reduced by the aggregate amount of any such reimbursements.
4. If (a) the Yacht is not sold at the Show or otherwise in accordance with the provisions of this agreement; and (b) entitlement to the Yacht and its proceeds has not been determined pursuant to section 1(a) or (b), at the time the Receiver applies for an order of the Court approving of a sales process for the Property, it shall be included in the Property offered for sale and sold by the Receiver pursuant to the sales process approved by such order and an approval and vesting order, respectively.
4. Crawmet and Marquis hereby (a) consent to an order of the Court approving of the activities, decisions and conduct of the Interim Receiver and its counsel, as described in the Interim Receiver's Second Report, Supplementary Report to the Second Report and Third Report, and (b) hereby approve of the activities, decisions and conduct of the Receiver and its counsel in respect of the Yacht from and including December 8, 2014 to and including the date of this agreement.
5. Such usual and standard terms of an agreement of this nature, as agreed upon by all the Parties.

There shall be no legal and binding agreement among the Parties unless and until a definitive agreement is executed by all the Parties or emails are exchanged by counsel for all the Parties stating that the Party represented by such counsel has agreed to be bound by identical terms set out in the emails.

John please advise once you've obtained instructions.

Regards,

Michael

**MICHAEL B. ROTSZTAIN**



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2  
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 Assistant | Annessa Cenerini | 416.597.9922 ext. 126 | [cenerini@gsnh.com](mailto:cenerini@gsnh.com)

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**From:** Marshall, John D. [<mailto:jmarshall@blg.com>]  
**Sent:** Wednesday, December 10, 2014 4:00 PM  
**To:** [bissell@gsnh.com](mailto:bissell@gsnh.com); Michael Rotsztain ([rotsztain@gsnh.com](mailto:rotsztain@gsnh.com)); [harvey@chaitons.com](mailto:harvey@chaitons.com)  
**Cc:** Keith Carpenter; [dmc michael@northpointcf.com](mailto:dmc michael@northpointcf.com)  
**Subject:** Crate Marine - Marquis Yachts

**Counsel:**

I am writing further in regard to the Marquis 500 Yacht.

Marquis has space at the upcoming Toronto International Boat Show held at the Direct Energy Centre, Exhibition Place, commencing January 9, 2015. Historically the show has been a good opportunity for sales. Marquis is prepared to move the yacht from the Balsdon yard, at its expense, to its space at the show to be displayed for sale. If sold, the net proceeds would be paid to the Receiver to be held in trust as previously proposed. Marquis would complete the sale and commission the yacht through another active dealer.

Marquis must confirm transportation arrangements by December 12, 2014. Would you therefore please advise whether the Receiver is prepared to proceed in this manner as soon as possible.

Best regards,

John Marshall



**John D. Marshall**  
 Partner  
 T 416.367.6024 | F 416.361.2763 | M 416.367.6000 | [jmarshall@blg.com](mailto:jmarshall@blg.com)  
 Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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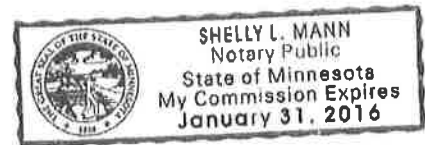
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This is Exhibit "Y" referred to  
The affidavit of Keith Carpenter  
Sworn before me this 18<sup>th</sup> day  
Of December, 2014.

Shelly L Mann

A notary in and for the  
State of Minnesota



M Balsdon Trucking Ltd  
 1702 Bayly Street  
 Pickering, Ontario  
 L1W 3N3

PHONE : 1-905-683-5917 / FAX: 1-905-683-2157

1-800-823-6693

email : [karen@balsdontrucking.ca](mailto:karen@balsdontrucking.ca)

December 2, 2014

Charges to date for 500 Marquis Powerboat bearing Hull # MOYE5048L314

2 truck load

Load # 1 Flybridge assembly - BL# 6330 - November 13, 2014 loading date

Crate Marine Sales, Keswick Ont. To Balsdon Yard, Pickering, Ont .... \$1,000.00  
 (includes permits )

Storage on trailer from November 14 to December 2, 2014  
 19 days @ 50.00 .....\$ 950.00

Michigan Permit.....\$ 76.76  
 2 E Manifests entries.....\$ 54.00  
 Preparation of Customs papers and Admin fee.....\$ 140.00

Total to December 2, 2014...in Canadian dollars.....\$ 2,220.00

If this load does not go to the USA - and returns to Keswick HST will have to be  
 Applied to this transport rate as the load did not leave Ontario.

If Bridge Portion has to be transported from Pickering back to Keswick, Ontario  
 For any reason the transport rate will be as at December 2, 2014

Rate would be: \$ 1,130.76 + HST @ .13 % \$ 146.99 = \$ 1,277.75

Please Note that rates include storage on trailer up to and including December 2, 2014  
 If storage goes beyond that date the per day charge is \$ 50.00

M Balsdon Trucking Ltd  
 1702 Bayly Street  
 Pickering, Ontario  
 L1W 3N3

---

PHONE : 1-905-683-5917 / FAX: 1-905-683-2157

1-800-823-6693

email : [karen@balsdontrucking.ca](mailto:karen@balsdontrucking.ca)

---

December 2, 2014

Charges for 500 Marquis bearing Hull # MOYE5048L314

Load # 2 - Hull portion of boat - BL # 6331- loaded November 14, 2014

Crate Marine Sales, Keswick to Balsdon Yard, Pickering, Ontario .....	\$ 2,200.00
Escort for oversize load - Keswick to Pickering .....	\$ 500.00
Purchase of 2 regional permits .....	\$ 250.00

Storage on trailer from November 15 to December 2, 2014

17 days @ 50.00.....	\$ 850.00
----------------------	-----------

Customs paper preparation and Admin fee.....	\$ 140.00
--	-----------

Total to December 2, 2014 .....	<u>\$ 3,940.00</u>
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If this load does not proceed to the USA and returns to Keswick, HST will have to be applied to this transport rate as load did not leave Ontario

If the hull portion has to be returned to Keswick, Ontario from Pickering, Ontario for any reason the transport rate will be as at December 2, 2014

Rate would be: \$ 2,950.00 + HST @ .13 % \$383.50 = \$ 3,333.50

Please note that rates include storage on trailer up to and including December 2, 2014  
 If storage goes beyond that date the per day charge for trailer storage is \$ 50.00 per day

**IN THE MATTER OF The Receivership of Crate Marine Sales  
Limited et al.**

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

**PROCEEDINGS COMMENCED AT  
TORONTO**

**MOTION RECORD OF MARQUIS  
YACHTS LLC  
(December 19, 2014)**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
Scotia Plaza  
40 King Street West  
Toronto, Ontario  
M5H 3Y4

**John D. Marshall**  
Tel: (416) 367-6024  
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LSUC No. 16960Q

**Roger Jaipargas**  
Tel: (416) 367-6266  
Fax: (416) 361-7067  
LSUC No. 43275C

Lawyers for Marquis Yachts LLC