

TAB G

*dedicated to your success*

March 25, 2015

**DELIVERED BY EMAIL & FACSIMILE**

Emilio Bisceglia  
Bisceglia & Associates  
7941 Jane Street  
Suite 200  
Concord ON L4K 4L6

Dear Mr. Bisceglia:

**RE: Receivership of Crate Marine Sales Ltd. et al  
Commercial List File No.: CV-14-10798-00CL  
Mortgages by Cesaroni Management Limited ("Cesaroni") to 1328559 Ontario Limited  
and Lynn Joanne Marko**

---

I am writing further to the several discussions between you and I and the several e-mails between our offices respecting the security held by, and the indebtedness owing to, Cesaroni in respect of charges registered by Cesaroni against premises currently owned by Lynn Marko bearing PIN No's: 04375-1969, 03475-1908, 03475-1907, and 03475-0155 (collectively, the "**Marko Mortgages**") and against premises owned by 1328559 Ontario Limited bearing PIN No's.: 03475-1972 and 03475-1967 (the "**8559 Mortgage**").

In our earlier discussions, we considered whether the Marko Mortgage and the 8559 Mortgage were in any way cross-collateralized. It is now quite clear that they are; both by their terms and also by virtue of the Notice of Sale under charge and other documents delivered under cover of your letter of February 18, 2015 with respect to the Marko Mortgage.

The request by our client, the Receiver, for all certain information and documentation relating to both the Marko Mortgage and the 8559 Mortgage remains outstanding. Please accordingly forthwith provide the following:

1. A listing of any other security, collateral, or covenants in respect of the 8559 Mortgage and the Marko Mortgage beyond the covenants and collateral granted on the face of those instruments; and
2. A complete statement of all amounts asserted to be owing under both the 8559 Mortgage and the Marko Mortgage as well as the total quantum of all amounts owing to Cesaroni under the cross-collateralized facilities in question (I note that the two mortgages by their terms appear to be limited to a principal balance of \$1,000,000 in each case; the total amount payable to Cesaroni under both cross-collateralized

mortgages, whether or not above one million dollars registered amount, should accordingly be indicated; and

Given the length of time for which this request has been outstanding, if the information and documentation sought is not provided forthwith then the Receiver will be obliged to seek an order from the Court to compel it.

Yours truly,

**GOLDMAN SLOAN NASH & HABER LLP**

Per:

A handwritten signature in black ink, appearing to read "R. B. Bissell", with a stylized flourish at the end.

R. Brendan Bissell

Assistant: Annessa Cenerini

416-597-9922 ext. 126, cenerini@gsnh.com

RBB:ac

C.c.: S. Mitchell – A Farber & Partners Inc.  
M. Rotsztain

**TAB H**

**TENDERS**



**INVITATION FOR OFFERS**

**Crate Marine Sales Limited**  
**F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited,**  
**1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.**  
 (collectively "Crate Marine")

A. Farber & Partners Inc., in its capacity as Court-appointed Receiver (the "Receiver") of Crate Marine, is offering for sale the right, title and interest of Crate Marine in its assets, undertakings and property (the "Assets") under a Sales Process approved by Order of the Ontario Superior Court of Justice. The purpose of this invitation for offers is to obtain offers that are superior to a baseline or "stalking horse" offer submitted to the Receiver for substantially all the Assets.

Crate Marine operated marinas on Lake Simcoe in Keswick, Willow Beach and Lagoon City, Ontario. Crate Marine was also a new and used boat dealer, with sales offices in Keswick, Port Credit and St.Paul-Ile-Aux-Noix (Quebec). The Assets being offered for sale include:

- Land and buildings
- Equipment, docks, vehicles and trailers
- Accounts receivable, boats and parts inventory
- Intellectual properties

**The deadline for submission of offers is 5:00 p.m. (Toronto time) on Wednesday, March 18, 2015.**

If you have an interest in this opportunity, please review the Crate Marine documents found in the Insolvency Engagements section of [www.farberfinancial.com](http://www.farberfinancial.com).

For additional information, please contact Peter Crawley at (416) 496-3507 or by email at [pcrawley@farberfinancial.com](mailto:pcrawley@farberfinancial.com)

**BUSINESS TO BUSINESS**

**AIRCRAFT**

**1990 Challenger 601 3AER** Eng on JSSI, 7,500 AFTT, Cdn, 10 pax \$2.4M USD. J. Spears 416-203-0600, [jaspears.com](http://jaspears.com).

**CESSNA CARAVAN AMPHIBIAN** For sale. Only 175 hours TT. Immed. avail. Ken Wilson 647-227-6996; email: [ken@wilsonaircraft.com](mailto:ken@wilsonaircraft.com)

**Cessna Citation Ultras**, ideal combination of Speed, Range, Load & Short Field Capabilities. Contact John Hopkinson & Associates @ 403-291-9027.

**BUSINESS OPPORTUNITIES**

**FEATURE FILMS - Guaranteed Returns.** Opportunities from \$50k-\$250k. 416-504-3456 or [films@emmeron.ca](mailto:films@emmeron.ca)

**BUSINESS OPPORTUNITIES**

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**CAPITAL WANTED/AVAILABLE**

**PRIVATE LENDER** for construction, development, refinance, acquisition. Range \$2M - \$50M. Fast decisions. 204-334-0409 or [wwcapital@shaw.ca](mailto:wwcapital@shaw.ca)

**INVESTMENT OPPORTUNITIES**

**GTA LAW FIRM** has mortgage investments avail. Yield from 7.0% -15% paid monthly. 905-568-3810 Ext. 203.

**PARTNERSHIPS**

**Patented Forensics Personal DNA Solutions** seeking Equity/Partner. Min. \$250K, HO TO, ready to launch. Lrg mkt. [www.identadna.com](http://www.identadna.com); 866-282-9560.

**Weekly Appointments**

The following appointments have been announced by companies and

All Globe and Mail appointment notices are archived at [www.globeandmail.com/appointments](http://www.globeandmail.com/appointments)



**Jim Bertram**  
to Executive Chair  
Keyera Corp.



**Douglas Haughey**  
to Independent  
Lead Director  
Keyera Corp.



**Antoine Chagnon**  
to President  
and CEO  
Lallemand Inc.



**William (Bill)  
Nankervis**  
to Executive VP  
and COO  
Lallemand Inc.



To make arrangements for a Report on recruitment@[globeandmail.com](http://globeandmail.com)

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**TO SUBSCRIBE CALL 1-866-36**

**THE GLOBE AND MA**

# T A B I



INVITATION  
FOR OFFERS



**Crate Marine Sales Limited**  
**F. S. Crate & Sons Limited, 1330732 Ontario Limited,**  
**1328559 Ontario Limited, 1282648 Ontario Limited,**  
**1382415 Ontario Ltd., and 1382416 Ontario Ltd.**  
(collectively "Crate Marine")

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- Equipment, docks, vehicles and trailers
- Accounts receivable, boats and parts inventory
- Intellectual properties

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For additional information, please contact Peter Crawley at (416) 496-3507 or by email at [pcrawley@farberfinancial.com](mailto:pcrawley@farberfinancial.com)

**TAB J**





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You are here: [Home](#) > [Current News](#) >  
CRATE MARINES SALES DEADLINE FOR OFFERS IS MARCH 18

## CRATE MARINES SALES DEADLINE FOR OFFERS IS MARCH 18



An advertisement by A. Farber & Partners Inc., in the February 26 edition of the Georgina Advocate newspaper lists an invitation for offers on Crate Marines Sales Ltd.

Established in the early 1930s, Crate Marines Sales Limited is certainly one of Canada's largest marina operations. The notice in the newspaper states, "A. Farber & Partners Inc., in its capacity as court-appointed receiver of Crate Marine is offering for sale the right, title and

interest of Crate Marine in its assets, undertakings and property under a sales process approved by order of the Ontario Superior Court of Justice. The purpose of this invitation for officers is to obtain offers that are superior to a baseline or "stalking horse" offer submitted to the receiver for substantially all the assets.

Crate Marine operated marinas on Lake Simcoe in Keswick, Willow Beach and Lagoon City, Ontario. Crate Marine was also a new and used boat dealer with sales offices in Keswick, Port credit and St.Paul-lie-Aux-Noix, Quebec.

The deadline for submission of offers is 5 PM Toronto time on Wednesday, March 18, 2015.

Information is available in the Insolvency Engagement section of [www.farberfinancial.com](http://www.farberfinancial.com). For additional information, please contact Peter Crawley at 416-496-3507 or by email at [pcrawley@farberfinancial.com](mailto:pcrawley@farberfinancial.com)



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[www.bridgeportmarina.ca](http://www.bridgeportmarina.ca)



2015  
**Port Credit BOAT SHOW**  
CREDIT VILLAGE MARINA  
MAY 29TH - 31ST, 2015  
[PORTCREDITSPRINGBOATSHOW.COM](http://PORTCREDITSPRINGBOATSHOW.COM)  
PRODUCED BY SAMADIAN

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**NEW TECHNOLOGY MAKES STABILIZATION A REALITY FOR ...**

Until now, owners of 30'-50' boats put up with a rolling vessel in rough weather, or simply stayed ...

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**PROPANE-POWERED ...**

LEHR, LLC has unveiled its new 25 worldwide press and the boating

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TAB K



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## Classified Ads

### Classified Positions Available

#### Office Assistant

##### Isleton, CA

Willow Berm Marina, located on the "Delta Loop," has an immediate position opening for an Office Assistant.

##### Responsibilities include, but are not limited to, the following:

- Answer phone, distribute messages.
- Answer fuel dock phone, radio for fuel or pump-out.
- Answer questions about berths, berth availability and surrounding area.
- Assist with guest dock reservations.
- Assist with store sales.
- Keep marina forms and spreadsheets up to date and stocked.
- Update tenant and vendor insurance and records.
- Data entry in Marina Program.
- Update and maintain social media and website.

##### Skills/Qualifications:

- Outstanding customer service skills.
- Basic office skills – telephone, computer, verbal and written communication.
- Dependable, punctual, and ability to perform at a professional level.
- Available to work weekends.

##### Desirable Qualifications:

- Knowledge of boating and the Delta.
- Knowledge of Quick books.

32 to 40 hrs. per week, starts at \$11.00 per hr.

Compensation package includes full medical, vacation, paid holidays and bonus.

Send resume to: willowberm@hotmail.com

Posted 10/16/14

## Real Estate

### Waterfront Condo Site for Sale

#### LAUGHLIN BAY MARINA / 487 UNITS

#### DELUXE WATER FRONT CONDO SITE

#### 3 parcels located in Clark County - Nevada

- 264-33-101-003 commercial building on 2.04 acres
- 264-28-402-005 Dock on 6.73 acres
- 264-28-402-004 20.81 acres 19.50 entitled for 487 condo MARINA :
- Three-Lane Launch Ramps, 110 Boat Slips and 48 Jet Ski Slips
- A Five-Story 20,133 Square feet Climate-Controlled Boat Storage Facility
- 2 Story Marina Building (H1 Zoning) 7,280 Square foot Lagoon Views, Retail Shop, Caf  , Full Service Restaurant, Cocktail Bar, Gaming, Admin Offices, Two-Bedroom / Two-Bath Apartment Potentials
- 5,409 Square Feet Clubhouse with Fitness Center, Pool, & Spa (Not currently active)
- Lit Board Walk Area With Gazebos, Sandy Beaches & Recreational Areas

Contact info:

Marie Panes

Enterprise One Inc.

5560 S. Fort Apache Rd. Suite 100  
 Las Vegas, NV 89148  
 702-202-1600  
 marie@enterpriseoneinc.com  
 Posted 2/25/15

## Marinas for Sale

**Crate Marine Sales Limited,  
 F. S. Crate & Sons Limited,  
 1330732 Ontario Limited,  
 1328559 Ontario Limited,  
 1282648 Ontario Limited,  
 1382415 Ontario Ltd.,  
 and 1382416 Ontario Ltd.,  
 (collectively "Crate Marine")**

Crate Marine operated marinas on Lake Simcoe in Keswick, Willow Beach and Lagoon City, Ontario. Crate Marine was also a new and used boat dealer, with sales offices in Keswick, Port Credit and St.Paul-Ile-Aux-Noix (Quebec). The Assets being offered for sale include:

- Land and buildings
- Equipment, docks, vehicles and trailers
- Accounts receivable , boats and parts inventory
- Intellectual properties

A. Farber & Partners Inc., in its capacity as Court-appointed Receiver (the "**Receiver**") of Crate Marine, is offering for sale the right, title and interest of Crate Marine in its assets, undertakings and property (the "Assets") under a Sales Process approved by Order of the Ontario Superior Court of Justice. The purpose of this invitation for offers is to obtain offers that are superior to a baseline or "stalking horse" offer submitted to the Receiver for substantially all the Assets.

**The deadline for submission of offers is 5:00 p.m. (Toronto time) on Wednesday, March 18, 2015.**

If you have an interest in this opportunity, please review the Crate Marine documents found in the Insolvency Engagements section of [www.farberfinancial.com](http://www.farberfinancial.com). For additional information, please contact Peter Crawley at (416) 496-3507 or by email at [pcrawley@farberfinancial.com](mailto:pcrawley@farberfinancial.com).  
 Posted 2/23/15

## Marina and Resort for Sale

**Coolin, ID**

**Blue Diamond Marina and Resort** – located in Priest Lake, Idaho.  
 958 Blue Diamond Road  
 P.O. Box 190  
 Coolin, ID 83821

- Turn-key business with loyal customer base.
- Consistent revenue growth for 20 years.
- Opportunity for future expansion.
- Beautifully maintained assets.

Included in Offering:

- 60 boat moorage slips.
- Boat storage and workshop.
- Fleet of quality rental boats.
- Marina store and rental office.
- Boater showers and restroom.
- Restaurant with recent kitchen upgrades.
- 40 Open Slips.
- 4-bedroom/3-bath home used as residence and guest lodging.
- Exquisite landscaping.

For more information, please visit: <http://www.waterfrontbusinessforsale.blogspot.com>

Or contact: Carolyn Deshler, Owner  
 Blue Diamond Marina and Resort  
 Phone: 208.443.2240  
 Email: [info@bluediamondmarina.com](mailto:info@bluediamondmarina.com)  
 Updated 11/13/13

## Marina for Sale

**Lake Shasta, CA**

Your opportunity to own a Marina Resort on beautiful Shasta Lake. **Sugarloaf Resort** is now being offered for sale at \$995,000.

Included in Offering:

- 40 Open Slips.
- 21 Houseboat Rental Permits.
- Over 3 acres of Waterfront Property with Septic & Leach Field.
- Access Docks, Ramps, & Restrooms.
- Floating Marina Store & Marine Fuel Facility.

For more information, please contact:  
 Dave Smith  
 340 S. Fairmont Ave.  
 Lodi, CA 95240

Ph: 209-333-8500  
Fax: 209-333-1753  
Email: dave@houseboats.com  
Updated 6/7/13

## Marina for Sale

### Big Fork, MT

For Sale: Bayside Park and Marine Center: Montana marina with development and expansion potential for 100+ slips with 515+ feet of protected waterfront on Big Fork Bay at the mouth of the Swan River entering Flathead Lake. The largest natural fresh water lake west of the Mississippi River. Near Glacier National Park and over a dozen golf courses. More information is available at <http://deanandleininger.com/bayside/>.

Posted 2/26/13

## Here are some suggestions for your classified ad ...

**Sample Help Wanted** This is a help wanted position, so include name of position, brief requirements, contact's name and address, email address, and phone number.

**Sample Position Wanted** This is a position wanted, so include name of position, brief qualifications, contact's name and address, email address, and phone number.

**Sample Equipment for Sale** This is a piece of equipment for sale, so include a description, price, seller's name and address, email address, and phone number.

Come back here often to check for marina opportunities and equipment! Members post ads for free. To post an opening or announcement, please send e-mail to Mariann Timms at [mra@marina.org](mailto:mra@marina.org).

---

© 2015 Marina Recreation Association  
915 L Street C-107, Sacramento, CA 95814  
Phone 916.441.1475 | Fax 209.334.6876 | [mra@marina.org](mailto:mra@marina.org)

TABL

150 York Street  
Suite 1600  
Toronto, ON M5H 3S5  
Canada

Office 416.497.0150  
Fax 416.496.3839

[www.farberfinancial.com](http://www.farberfinancial.com)

## TIME SENSITIVE OPPORTUNITY

### INVITATION FOR OFFERS TO PURCHASE THE ASSETS OF

**Crate Marine Sales Limited, F. S. Crate & Sons Limited,  
1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario  
Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.**  
(collectively "Crates")

#### OPPORTUNITY OVERVIEW

**Crates' main operation is as a marina operator from owned lands in Keswick, Ontario. Crate also has other marina and related facilities that operate from leased premises in Ontario and Quebec.**

On December 8, 2014, A. Farber & Partners Inc. was appointed Receiver (the "Receiver") of Crates by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court"). The Receiver's mandate includes selling the business and assets (the "Property") of Crates.

The Receiver has received a stalking horse offer (the "Stalking Horse Offer") for estimated total consideration of \$25,951,784 for Crates' right, title and interest in substantially all of the Property. The Stalking Horse Offer has been approved by Order of the Court (the "Sales Process Order") to serve as the baseline bid and, if it receives final approval from the Court, is scheduled to close by March 31, 2015. As mandated by the Sales Process Order, the Receiver is conducting a Court-approved sales process (the "Sales Process") under sales terms (the "Sales Process Terms") to seek a Superior Bid by the offer deadline of 5 p.m. (Toronto time) on March 18, 2015. To qualify as a Superior Bid under the Sales Process Terms, a competing offer must, among other things, be an all cash offer for consideration at least \$500,000 higher than \$25,951,784; i.e., for cash consideration of at least \$26,451,784.

#### THE BUSINESS

Crate Marine operates marinas in:

- i) Keswick, Ontario
  - a. 500 slips
  - b. 30 acres of waterfront property on Lake Simcoe
- ii) Willow Beach, Ontario 130 slips from leased premises
- iii) Lagoon City (Brechin), Ontario 277 slips from leased premises where the lease expires April 30, 2015

Crate Marine also operated a boat sales and service centre in St. Paul-Ile-aux-Noix, Quebec, near Lake Champlain, and a sales office at the Port Credit Marina in Mississauga, Ontario.

For more information on Crates Marine please visit: [www.crates.com](http://www.crates.com) (all information on this site was prepared and posted by Crates personnel prior to the Receiver's appointment).



## SALES PROCESS

Crates' Property subject to the Sales Process includes, but is not limited to, its right, title and interest in the following:

- Accounts receivable
- Inventory of boats and parts
- Vehicles and trailers
- Intellectual property
- Claims and choses in action
- Land and buildings
- Docks
- Trademark & website
- Customer list

The Sales Process is intended to solicit Superior Bids to the Stalking Horse Offer. As noted above, a Superior Bid would have to be for cash consideration of at least \$26,451,784. In addition, a Superior Bid must satisfy other requirements, as set out in the Sales Process Terms, including that it be substantially in the form of the Stalking Horse Offer.

## BID DEADLINE

Pursuant to the Sales Process Order and Sales Process Terms, all offers for the purchase of Crates' right, title and interest in the Property must be submitted to the Receiver by no later than **5:00 p.m. (Toronto time) on the 18<sup>th</sup> of March, 2015** (the "**Bid Deadline**") at the office of the Receiver.

The Sales Process Terms also require, among other things, that a deposit equal to at least 5% of the aggregate purchase price under the subject bid be paid to the Receiver in trust on or before the Bid Deadline by way of certified cheque, bank draft or wire transfer.

If one or more Superior Bids (as defined in the Sales Process Terms) are received by the Bid Deadline, an auction will be held at 10:00 AM (Toronto time) on March 23<sup>rd</sup>, 2015 at the offices of the Receiver. A Court hearing to seek approval of the winning bid agreement would then be sought by April 1<sup>st</sup>, 2015, with closing to follow by April 8<sup>th</sup>, 2015.

## PURSUING THIS OPPORTUNITY

Parties interested in acquiring Crates' right, title and interest in the Property will be required to sign a confidentiality agreement prior to being granted access to the transaction data room. Enquiries for potential purchaser qualification and receipt of a confidentiality agreement should be made to the Receiver to the attention of:

Peter Crawley, MBA, CPA, CA, CIRP  
Tel: 416-496-3507  
Email: [pcrawley@farberfinancial.com](mailto:pcrawley@farberfinancial.com)

Interested parties may also visit the Receiver's website at [www.farberfinancial.com](http://www.farberfinancial.com) and click on the "Crate Marine Sales Limited et. al." link under "Insolvency Engagements" for information and documents regarding this opportunity, including the Sales Process Order, the Sales Process Terms and the Stalking Horse Offer. Interested parties should continue to liaise with the Receiver to ensure they are familiar with the Sales Process Terms.

This information sheet has been prepared for the convenience of Prospective Bidders, who are referred to the Sales Process Order and Sales Process Terms for the complete terms and conditions governing the Sales Process.

February 18, 2015

TAB M

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

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**FOURTH REPORT OF THE RECEIVER**

**MARCH 6, 2015**

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## **LIST OF APPENDICES**

- “A” Amended Order of Mr. Justice Newbould dated December 8, 2014
- “B” Second Report of the Receiver (without appendices)
- “C” Order of the Honourable Mr. Justice Penny dated December 23, 2014 approving increased borrowing
- “D” Third Report of the Receiver (without appendices)
- “E” Endorsement of the Honourable Mr. Justice Pattillo February 18, 2015
- “F” Receiver’s interim statement of receipts and disbursements as of February 18, 2015
- “G” Fee Affidavit of John Hendriks sworn March 6, 2015
- “H” Fee Affidavit of R. Brendan Bissell sworn March 6, 2015
- “I” Receiver’s cash flow projection from February 18 to March 31, 2015

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

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**FOURTH REPORT OF THE RECEIVER**

**March 6, 2015**

A. FARBER & PARTNERS INC. in its capacity as the Court-appointed Receiver (the “**Receiver**”) of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”) hereby reports to the Court as follows:

**PURPOSE OF THIS REPORT**

1. This is the fourth report of the Receiver (the “**Fourth Report**”). Its purpose is to seek an order:
  - a) approving the fees and expenses of the Receiver and its counsel, Goldman Sloan Nash & Haber LLP (“**GSNH**”) since appointment on December 8, 2014 to February 8, 2015, which was the date of the Third Report; and
  - b) approving an increase in the authorized borrowing power of the Receiver from \$1,000,000 to \$2,000,000.

## INTRODUCTION

2. On November 14, 2014, Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”) each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).

3. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of certain of the Companies and (iii) to substitute A. Farber & Partners Inc. as bankruptcy trustee of certain of the Companies. At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.

4. On November 21, 2014, A. Farber & Partners Inc. was appointed Interim Receiver of certain of the Companies pursuant to section 47.1 of the BIA to preserve and protect the assets, undertakings and properties of those Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Interim Order**”). The Order and accompanying endorsement have not been appended in the interests of economy.

5. On December 8, 2014, the Honourable Mr. Justice Newbould terminated the NOI proceedings of the Companies and appointed A. Farber & Partners Inc. as Receiver and also as trustee in bankruptcy (the “**Trustee**”) of the Companies. The Order granted was amended on December 12, 2014, when the Receiver and Trustee brought a motion to correct a typographical error. The Amended Order dated December 8, 2014 is attached as **Appendix “A”**.

6. The Receiver also brought a motion on December 12, 2014 for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief, which was also granted by the Honourable Justice Newbould. The First Report of the

Receiver and Trustee, as well as the resulting Order in that regard, have not been appended to this Report in the interests of economy.

7. On December 23, 2014, the Receiver and Trustee brought a motion to increase the borrowing power of the Receiver from \$500,000 to \$1,000,000. The Second Report of the Receiver and Trustee in that regard is attached (without appendices) as **Appendix “B”**. On December 23, 2014, the Honourable Justice Penny issued an Order granting that motion, a copy of which is attached as **Appendix “C”**.

8. The Receiver also brought a motion on December 23, 2014 to (i) approve the Second and Third Report of the Interim Receiver and the activities of the Interim Receiver set out therein; (ii) approve the fees of the Interim Receiver and its counsel; (iii) discharge A. Farber & Partners Inc. as Interim Receiver; and (iv) establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. The Honourable Justice Penny also issued Orders granting that relief, but which have not been appended to this Report in the interests of economy.

9. On February 13, 2015, the Receiver brought a motion (i) to approve a stalking horse offer to act as a baseline bid in a stalking horse sales process, and (ii) for approval of the First, Second and Third Reports of the Receiver. A copy of the Third Report of the Receiver is attached (without appendices) as **Appendix “D”**. A copy of the endorsement of Mr. Justice Pattillo dated February 18, 2015 granting the relief sought is attached as **Appendix “E”**. The formal Order has not yet been taken out due to a dispute regarding its terms with one of the parties appearing on that motion.

## **LIMITATION OF REVIEW**

10. A. Farber & Partners Inc. in its capacity as Receiver has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not, except as specifically noted in this Fourth Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially



comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Fourth Report for the sole use of the Court and of the other stakeholders in these proceedings.

#### **A) EXPENDITURE OF FUNDS TO DATE**

11. The interim statement of receipts and disbursements of the Receiver as of February 18, 2015 is attached as **Appendix “F”**.

12. The Receiver has to date borrowed the authorized limit of \$1,000,000.00, which is shown in Appendix “F”. The funds have been advanced by Crawmet under two Receiver’s Borrowing Certificates bearing interest at 12% per annum.

13. Cash receipts have otherwise been minimal, owing to both the dormant state of operations at the marinas over the Winter months, and the uncertainty that may have been present in the minds of marina customers as to whether the marinas would be in operation for the 2015 boating season (such that payment of slip rental and other ongoing services would be appropriate).

#### **B) APPROVAL OF FEES**

14. Attached as **Appendix “G”** is an affidavit of the Receiver setting out its fees and disbursements from December 8, 2014 to February 8, 2015. The Receiver’s detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is \$591,470.45.

15. Attached as **Appendix “H”** is an affidavit of GSNH setting out its fees and disbursements from December 8, 2014 to February 8, 2015. GSNH’s detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is \$392,157.82.

### C) INCREASED BORROWINGS CHARGE

16. The Receiver has prepared a cash flow projection for the period from February 18, 2015 to March 31, 2015, a copy of which is attached as **Appendix “I”**.

17. March 31 has been used as the end of the forecast period in Appendix “I” because that is the anticipated timing of the closing of a sale in the stalking horse bid process if the existing stalking horse offer is the winning bid, pursuant to the sales process described in the Third Report (Appendix “D”) and authorized by the February 18, 2015 endorsement of Justice Pattillo (Appendix “E”). If there is another winning bid, then the anticipated closing would be approximately April 8 under that sales process. The Receiver does not believe that there is any material difference between these two dates for funding purposes.

18. As shown in Appendix “I”, the funds on hand are insufficient to satisfy the ongoing costs of the Receivership to the time of the anticipated closing of a sale of assets, which will substantially reduce the ongoing costs of administration after that time.

19. As of the date of this Report, the Receiver does not have any funds on hand available to pay any expenses.

20. The cash flow projection in Appendix “I” includes provision for the payment of the unpaid amount of the fees of the Receiver and GSNH to February 8, 2015 (for which approval is sought on this motion), but does not include payment of fees for the period after February 8, 2015 to March 31, 2015.

21. It is unlikely that the increased borrowing power sought will be sufficient to pay professional fees from February 8 to March 31, 2015. The Receiver anticipates addressing payment of such fees as part of the closing of the sale to the successful bidder under the stalking horse sales process, because payment of those fees is, among other things, required as part of the purchase price as described in paragraph 74 of the Third Report (note that the projected fees as estimated in the chart in that paragraph are subject to revision, as the fees of the Receiver and GSNH have been and are expected to be higher than had been projected at

that time).

22. Ongoing expenses of the Receiver after closing of an asset sale to the successful bidder are the subject of a portion of the purchase price to be deposited as a form of trust funds with the Receiver for that purpose. Receiver's borrowings are therefore not contemplated to address post-closing professional fees and expenses of the Receiver and GSNH.

#### **D) CONCLUSION**

23. A. Farber & Partners Inc. in its capacities as Receiver accordingly seeks the Order attached as Schedule "A" to its Notice of Motion.

All of which is respectfully submitted this 6<sup>th</sup> day of March, 2015.

**A. FARBER & PARTNERS INC.  
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF CRATE MARINE  
SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.**



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Per: Stuart Mitchell  
Senior Vice President

TAB N

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

Commercial List File No. 14-CV-10798-00CL

**IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Court File No. 31-1932502

**IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

**IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

**FIFTH REPORT OF THE RECEIVER  
AND FOURTH REPORT OF THE TRUSTEE**

**MARCH 9, 2015**

A. Farber & Partners Inc., in its capacities as the Court appointed Receiver (the "Receiver") and as the trustee in bankruptcy (the "Trustee") of the estates of Crate Marine Sales

Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the "Companies") hereby reports to the Court as follows:

## PURPOSE OF THIS REPORT

1. This is the fifth report of the Receiver and fourth report of the Trustee (the "Report"). Its purpose is to report on information and documentation that the Receiver and Trustee has obtained that Steven Crate, Gregory Crate and Lynn Marko appear, based on the records and information available to the Receiver and Trustee, to have deliberately taken steps after the commencement by the Companies of proposal proceedings pursuant to the *Bankruptcy and Insolvency Act* (the "BIA"), to clandestinely convert the proceeds of withdrawals from the cash surrender value of insurance policies held in the names of 1382415 Ontario Ltd. ("415") and 1382416 Ontario Ltd. ("416") of \$354,647.02 for their own benefit and/or for the benefit of other Crate family members. At all material times, these individuals were the directors and officers of 415 and 416. This pattern of behaviour even continued after the date of the receivership and bankruptcy of the Companies

2. The Receiver and Trustee accordingly seeks orders:

- a) without notice that, pending further Order of this Court, Steven Crate, Gregory Crate, Lynn Marko, Jessica Leanne Crate and James Crate and Fahey Crate Professional Corporation, and any other person having knowledge of the Order, preserve, and not deal with in any manner without the express written consent of the Receiver and Trustee, any and all proceeds, including any property into which such proceeds may have been converted (collectively, the "Policies Proceeds"), of the life insurance policies issued by Transamerica Life Canada and held by 415 and 416 on the lives of Steven Crate, Gregory Crate and Lynn Marko (the "Policies") and, without limiting the generality of the foregoing:
  - i) the amount of \$160,000.00 transferred from the bank account of 415 on December 5, 2014 to the trust account of James R. Crate, a lawyer with Fahey Crate Law Professional Corporation; and
  - ii) the amount of \$184,247.02 transferred on December 11, 2014 from the bank accounts of 415 and 416 to the bank account of Jessica Leanne Crate.

- b) with notice:
- i) Declaring that the Policies and the Policies Proceeds are Property of 415 and 416 within the meaning of the Order and Amended Order dated December 8, 2014 by which the Receiver and Trustee was appointed;
  - ii) Directing any and all persons with knowledge of the Order to forthwith remit to the Receiver and Trustee any and all Policies Proceeds within their possession, power or control;
  - iii) Without limiting the generality of paragraph 2(b)(ii), directing the remittance to the Receiver and Trustee of \$160,000.00 transferred from the bank account of 415 on December 5, 2014 to the trust account of James R. Crate, a lawyer with Fahey Crate Law Professional Corporation, and any Policies Proceeds thereof;
  - iv) Without limiting the generality of paragraph 2(b)(ii), directing the remittance to the Receiver and Trustee of \$184,247.02 transferred on December 11, 2014 from the bank accounts of 415 and 416 to the bank account of Jessica Leanne Crate, and any Policies Proceeds thereof;
  - v) Directing that James R. Crate, Jessica Leanne Crate, Steven Crate, Lynn Marko, Gregory Crate, and The Toronto Dominion Bank forthwith disclose to the Receiver and Trustee all records and documents within their knowledge, power, possession or control related to the Policies and/or the Policies Proceeds;
  - vi) Declaring that all transactions in respect of the Policies Proceeds are void as against the Trustee pursuant to section 96 of the BIA;
  - vii) Awarding damages against Jessica Leanne Crate, Steven Crate, Lynn Marko, and Gregory Crate on a joint and several basis pursuant to section 96 of the BIA and at common law for the Policies Proceeds or portions thereof not remitted to the Receiver and Trustee, on the basis that those individuals were parties or privy to the transfer of Policies Proceeds, which were transactions undertaken for no consideration to 415 and 416 and furthermore constituted appropriation of corporate assets;
  - viii) Finding Steven Crate, Gregory Crate and Lynn Marko in contempt of the Order and Amended Order of the Honourable Mr. Justice Newbould dated December 8, 2014 which appointed the Receiver, in that, contrary to paragraphs 5 and 6 of those Orders:
    - A) they failed to notify the Receiver of the Policies and the Policies Proceeds,

- B) they failed to provide the Receiver with Records within the meaning of those Orders pertaining to the Policies and the Policies Proceeds, and
  - C) they appropriated the Policies Proceeds for improper purposes; and
- ix) Authorizing the Trustee to initiate proceedings for the prosecution of offences as described in the Report.

3. The Trustee has not yet sought inspector approval for the motions referred to above, given the urgency in getting the relief set out in paragraph 2(a) and the without notice considerations in that regard, as discussed below. The Trustee will seek such approval following this Report, and if necessary will apply to the Court for approval.

#### **INTRODUCTION TO THE PROCEEDINGS**

4. On November 14, 2014, the Companies each filed a Notice of Intention to Make a Proposal (the “NOI’s”) pursuant to the BIA.

5. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“Crawmet”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s of the Companies (other than 415 or 416) immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of the Companies (other than 415 or 416) and (iii) to substitute A. Farber & Partners Inc. as bankruptcy trustee of the Companies (other than 415 or 416) (the “Crawmet Motion”).

6. At the November 21, 2014 hearing, the Crawmet Motion was adjourned to December 1, 2014. Pending that hearing, A. Farber & Partners Inc. was appointed interim receiver (the “Interim Receiver”) of the Companies other than 415 and 416 (over which Crawmet did not have specific security) pursuant to section 47.1 of the BIA to preserve and protect the assets, undertakings and properties of those companies acquired for, or used in relation to the business that they carried on, including all proceeds thereof (the “Property”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “Interim Receiver Order”). A copy of the Interim Receiver Order is attached at Appendix “A”. A copy of the endorsement dated November 21, 2014 is attached at Appendix “B”.



7. In advance of the December 1, 2014 hearing, the Interim Receiver filed its First Report, a copy of which is attached without appendices as **Appendix "C"**.

8. The Crawmet Motion was argued further on December 1, 2014, at which time the Honourable Mr. Justice Penny further adjourned the motion to December 9, 2014. The endorsement of Mr. Justice Penny of that day is attached as **Appendix "D"**.

9. Following the December 1, 2014 hearing, the Interim Receiver discovered certain facts and matters, which the Interim Receiver believed were of an urgent and material nature such that they required immediate disclosure in advance of the scheduled hearing on December 9, 2014. The Interim Receiver therefore served and filed its Second Report, a copy of which is attached (without appendices) as **Appendix "E"**.

10. The Interim Receiver also filed a Supplementary Report to its Second Report, a copy of which is attached (without appendices) as **Appendix "F"**.

11. On December 4, 2014, the Honourable Mr. Justice Newbould heard a further motion by Crawmet to seek relief under the Crawmet Motion. The relief sought was further adjourned to December 8, 2014. A copy of the endorsement of the Honourable Mr. Justice Newbould dated December 4, 2014 is attached as **Appendix "G"**.

12. For the hearing on December 8, 2014, the Interim Receiver prepared and filed a Third Report, a copy of which is attached as **Appendix "H"**. At that hearing, the Honourable Mr. Justice Newbould terminated the NOI proceedings of the Companies and appointed A. Farber & Partners Inc. as Receiver and Trustee of all the Companies (including 415 and 416). A copy of the Order of that date is attached as **Appendix "I"**, and a copy of the handwritten Endorsement of that date along with an unofficial typed transcription is attached as **Appendix "J"**.

13. Since December 8, 2014, the Receiver and Trustee have taken the following steps and brought the following motions, all of which have been more fully set out in the First, Second and Third Reports of the Receiver and Trustee:

a) On December 12, 2014, the Receiver and Trustee brought a motion to

correct a typographical error in the Order dated December 8, 2014 regarding a misdescription of 1282648 Ontario Limited, and for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief. The Honourable Justice Newbould issued an Amended Order dated December 8, 2014, a copy of which is attached as Appendix "K". Justice Newbould also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief, which is not attached for purposes of economy;

- b) On December 23, 2014, the Receiver and Trustee brought a motion to (i) approve the Second and Third Report of the Interim Receiver and the activities of the Interim Receiver set out therein; (ii) approve the fees of the Interim Receiver and its counsel; (iii) discharge A. Farber & Partners Inc. as Interim Receiver; (iv) increase the borrowing power of the Receiver; and (v) establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. The Honourable Justice Penny issued Orders granting that relief, which are not attached in the interests of economy;
- c) On January 14, 2015, the Receiver and Trustee commenced an application against Steven Crate, Gregory Crate, Lynn Marko, Ryan Crate, and Robin Crate (a.k.a. Robin Price) and sought and obtained a certificate of pending litigation without notice regarding properties held in their name in the vicinity of the lands owned by the Companies in Keswick but for which the Companies appear to have provided all funds for the acquisition and maintenance of those properties;
- d) On January 30, 2015 the Receiver and Trustee commenced a further application against Ryan Crate and sought and obtained a certificate of pending litigation with notice regarding further a property held in his name at 14 Highland Ave. in Belleville, but for which the Companies appear to have provided all funds for the acquisition and maintenance of that property;
- e) On February 13, 2015, the Receiver and Trustee brought motions for approval of a stalking horse sales process. By endorsement released February 18, 2015, the Honourable Mr. Justice Pattillo granted the relief sought, which is not attached in the interests of economy; and
- f) On February 19, 2015 the Receiver commenced applications for bankruptcy orders against Steven Crate, Gregory Crate, Lynn Marko and the estate of Lloyd Crate in connection with amounts owing by them to the Companies. Notices of Dispute have been filed in connection with these applications.

## LIMITATION OF REVIEW

14. A. Farber & Partners Inc. in its capacities as Receiver and Trustee has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not, except as specifically noted in this Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Report for the sole use of the Court and of the other stakeholders in these proceedings.

### A) DEPLETION OF LIFE INSURANCE POLICIES HELD BY 415 AND 416

15. The Receiver and Trustee has recently learned that during the NOI period and after the receivership and bankruptcy of the Companies, the directors and officers of 415 and 416, who are Steven Crate, Gregory Crate and Lynn Marko, took steps to withdraw \$354,647.02 of Policies Proceeds and then distribute it beyond the control of those companies. Part of the funds were paid to James Crate, a lawyer at Fahey Crate Professional Corporation during the NOI proceedings, and part of the funds were paid to Jessica Leanne Crate, the daughter of Gregory Crate, after the appointment of the Receiver and Trustee on December 8, 2014.

#### The Policies

16. In 2001, 415 and 416 took out the Policies on the lives of Steven Crate, Lynn Marko (née Crate), and Gregory Crate, as set out below:

<b>Issue Date</b>	<b>Policy Number</b>	<b>Policy Owner</b>	<b>Policy Beneficiary</b>	<b>Policy Subject</b>
April 28, 2001	080203460	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Steven Crate
April 28, 2001	080203461	Crate Holdings 1382416 Ontario Ltd.	Crate Holdings 1382416 Ontario Ltd.	Steven Crate

June 21, 2001	080203458	Crate Holdings 1382416 Ontario Ltd.	Crate Holdings 1382416 Ontario Ltd.	Lynn Crate
June 21, 2001	080203459	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Lynn Crate
April 28, 2001	080203462	Crate Holdings 1382416 Ontario Ltd.	Crate Holdings 1382416 Ontario Ltd.	Gregory Crate
April 28, 2001	080203463	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Gregory Crate

Collectively attached as **Appendix "L"** are copies of the quarterly statements dated January 29, 2015 for the above-noted life insurance policies issued by Transamerica Life Canada ("**Transamerica**").

17. Premiums on the Policies were paid by the Companies' operating company, Crate Marine Sales Limited ("**CMS**"), and recorded as expenses of CMS on its books and records.

**Discovery of the withdrawn amounts**

18. On January 29, 2015 Transamerica sent quarterly statements regarding the Policies to the Companies, which were collected by the Receiver and Trustee in early February. These statements reproduced all activity during the period from October 28, 2014 to January 27, 2015, and disclosed that the aggregate amount of \$354,647.02 had been withdrawn as follows:

<b>Policy Number</b>	<b>Policy Owner</b>	<b>Policy Beneficiary</b>	<b>Policy Subject</b>	<b>Amounts Withdrawn</b>
080203460	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Steven Crate	\$37,557.39
080203461	Crate Holdings 1382416 Ontario Ltd.	Crate Holdings 1382416 Ontario Ltd.	Steven Crate	\$37,557.39
080203458	Crate Holdings 1382416 Ontario	Crate Holdings 1382416 Ontario	Lynn Crate	\$86,801.27

	Ltd.	Ltd.		
080203459	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Lynn Crate	\$86,801.27
080203462	Crate Holdings 1382416 Ontario Ltd.	Crate Holdings 1382416 Ontario Ltd.	Gregory Crate	\$52,964.85
080203463	F.S. Holdco 1382415 Ontario Ltd.	F.S. Holdco 1382415 Ontario Ltd.	Gregory Crate	\$52,964.85
			<b>Total:</b>	<b>\$354,647.02</b>

19. As the quarterly statements only disclose that \$354,647.02 was withdrawn during the period from October 28, 2014 to January 27, 2015, the Receiver and Trustee contacted Transamerica requesting particulars of when the monies were withdrawn and to whom they were paid. By way of a letter dated February 25, 2015, Transamerica responded that the funds were withdrawn effective November 28, 2014, and paid to "Crate Holdings 1382416 Ontario Ltd." and "F.S. Holdco 1382415 Ontario Ltd.". Attached as **Appendix "M"** is a copy of Transamerica's letter dated February 25, 2015.

20. On February 26, 2015, the Receiver and Trustee wrote further to Transamerica requesting copies of cancelled cheques evidencing the payments. Attached as **Appendix "N"** is a copy of the Receiver and Trustee's letter to Transamerica of that date.

21. On March 3, 2015, Transamerica wrote the Receiver and Trustee enclosing copies of the six cancelled cheques payable to "Crate Holdings 1382416 Ontario Ltd." and "F.S. Holdco 1382415 Ontario Ltd.". These cheques were dated December 1, 2014 and deposited on December 3, 2014 at the Toronto-Dominion Bank branch located at 23532 Woodbine Ave., Keswick, Ontario (the "**TD Bank**"). Attached as **Appendix "O"** is a copy of Transamerica's letter dated March 3, 2015 and enclosures. It should be noted that the Companies' main operating bank account was held at the Bank of Montreal and the

Companies also had accounts with CIBC and the Bank of Nova Scotia. The Receiver was not previously aware of the Companies having any accounts with TD Bank.

22. The Receiver and Trustee then asked Transamerica for the documentation submitted by 415 and 416 to make those payments. Transamerica responded by fax dated March 5, 2015, a copy of which is attached as **Appendix "P"**, to enclose the authorizations received. They were all signed by Steven Crate, Gregory Crate and Lynn Marko and all appear to have been sent on November 28, 2014. They also state that they confirm conversations of November 27, 2014 in which the request to withdraw funds had been made.

23. Since the names "F.S. Holdco 1382415 Ontario Ltd." and "Crate Holdings 1382416 Ontario Ltd." were new to the Receiver and Trustee, its counsel conducted corporate and business name searches for those names and found that no corporations existed under those names. However, the business names searches revealed that on December 3, 2014 – the day the cheques were cashed – the following business names were registered:

<b>Business Name</b>	<b>Corporation Name</b>
Crate Holdings	1382416 Ontario Ltd.
F.S. Holdco	1382415 Ontario Ltd.

Collectively attached as **Appendix "Q"** are copies of the Business Name Reports for Crate Holdings and F.S. Holdco.

24. On March 4, 2015, the Receiver and Trustee wrote to TD Bank to ask that the accounts in the names of 415 and 416 be frozen and to provide copies of all documentation regarding those accounts, a copy of which is attached as **Appendix "R"**.

25. On March 5, 2015, Peter Crawley, a Senior Manager with the Receiver and Trustee, attended at the Keswick Toronto-Dominion branch and spoke with the branch manager, Deb Irvine. Ms. Irvine explained to Mr. Crawley that Steven, Lynn, and Gregory attended at the branch on December 3, 2014 to open accounts and deposit the cheques totaling \$354,647.02. She further told Mr. Crawley that Steven, Lynn, and Gregory told her that the cheques had nothing to do with the insolvency proceedings regarding the Keswick marina.

26. Ms. Irvine then provided Mr. Crawley with account history printouts for these accounts which provide the following information:

- a) Account No.: 5009326 – 2240 – “F.S. Holdco”
  - i) the account was opened on December 3, 2014;
  - ii) there was a deposit of \$177,323.51 on December 3, 2014;
  - iii) there was a transfer of \$160,000.00 out of the account on December 5, 2014;
  - iv) two cheques in the amounts of \$5,000.00 and \$5,400.00, respectively, were drawn on the account; and
  - v) the account was closed on December 11, 2014 with a credit of 6,923.51.
  
- b) Account No.: 5009342 – 2240 – “Crate Holdings”
  - i) the account was opened on December 3, 2014;
  - ii) there was a deposit of \$177,323.51 on December 3, 2014;
  - iii) the account was closed on December 11, 2014 with a credit of \$177,323.51.

Collectively attached as **Appendix “S”** are the account history printouts.

27. Ms. Irvine then showed Mr. Crawley the signed account closing authorizations documents which show that on December 11, 2014, Steven Crate and Gregory Crate authorized the closing of both accounts and transferring the remaining funds in the aggregate amount of \$184,247.02 to another Toronto-Dominion bank account in the Keswick branch: account no. 6096110 – 2240. Collectively attached as **Appendix “T”** are pictures taken by Mr. Crawley of the account closing authorization forms dated December 11, 2014.

28. Of note is that these authorization documents list 415 and 416 as the account holders.

29. After Mr. Crawley’s further inquiries, Ms. Irvine advised that the transfer of \$160,000.00 on December 5, 2014 was delivered to the trust account of James R. Crate, a lawyer with Fahey Crate Law Professional Corporation. In addition, Ms. Irvine advised Mr. Crawley that the account holder of account no. 6096110 – 2240 is Jessica Leanne Crate, the

daughter of Gregory Crate. The Receiver and Trustee notes that the Statement of Affairs sworn by Stephen Crate show the only creditors of 415 and 416 were two notional \$1 entries for Hydro One and a total of \$2,2279,459 owing to one of the other Companies, F.S. Crate & Sons Limited. None of the recipients of the Policies Proceeds (Jessica Crate, James Crate and/or Fahey Crate Law Professional Corporation) are known by the Receiver and Trustee to be creditors of 415 or 416. Further, none of the recipients of the Policies Proceeds were recorded as creditors of any of the Companies on the listing of creditors owed over \$250 filed by the Companies and the Proposal Trustee with the initial NOI filing on November 14, 2014.

**B) LACK OF DISCLOSURE OF THE LIFE INSURANCE POLICIES HELD BY 415 AND 416 AND THE TRANSACTIONS TO WITHDRAW FUNDS**

30. Steven, Lynn, and Gregory Crate have never advised the Receiver and Trustee of the existence:

- a) of the life insurance policies held by 415 and 416;
- b) of these Toronto-Dominion bank accounts into which the \$354,647.02 was deposited; or
- c) of the withdrawal of \$354,647.02 from life insurance policies held by the Companies.

31. The records pertaining to the Policies, which were previously on the premises of CMS, do not appear to be there now.

32. Had the Receiver and Trustee not been sent the quarterly report from Transamerica, it would never have known about the Policies.

33. The Receiver and Trustee is greatly concerned that the Policies and the transactions related to the Policies Proceeds (being (i) the requests for withdrawal on November 27 and 28, (ii) the cheques dated December 1, (iii) the deposits dated December 3 into TD, (iv) the cheque dated December 5 to James Crate, and (v) the transfer dated December 11, 2014 to Jessica Leanne Crate) were not disclosed at any time during the NOI proceedings prior to December 8, 2014 nor in the receivership and bankruptcy proceedings after that time. The following are the instances of non-disclosure by Steven Crate, Gregory Crate and Lynn Marko in that regard:



- a) in the NOI proceedings, the proposal trustee filed its first report on November 21, 2014, which stated at paragraph 6 that 415 and 416 (as well as the Companies other than CMS) were simply holding companies for other companies or land – without any mention of the Transamerica policies with considerable value. A copy of the proposal trustee’s first report is attached (without appendices) as **Appendix “U”**;
- b) Steven Crate swore an affidavit dated November 28, 2014 (the same date as the withdrawal authorizations of 415 and 416 to Transamerica attached as **Appendix “T”**, which he signed), a copy of which is attached (without exhibits) as **Appendix “V”**, in which:
  - i) he asserted at paragraphs 48 and 49 that the Companies were acting in good faith, and
  - ii) he referred in paragraph 56 to the cash flow statement for the Companies, attached as Exhibit “L” to his affidavit and as **Appendix “W”** to this Report, which do not refer to the life insurance policies or the transactions involving the \$354,647.02 that had been requested the day prior to the affidavit,
- c) Steven Crate swore a supplementary affidavit dated November 28, 2014, a copy of which is attached as **Appendix “X”**, in which:
  - i) he stated that the affidavit was in support of a request for interim funding in the amount of USD \$300,000 on the basis that an extended cash flow statement showed that “without additional financing, the Debtors will be unable to continue to fund their business operations as of the week ending December 5, 2014” (paragraph 3), and
  - ii) he attached as Exhibit “A” to that affidavit the extended cash flow statement, which did not refer to the transactions that had already been commenced regarding the \$354,647.02;
- d) Steven Crate swore a further affidavit dated December 5, 2014, a copy of which is attached as **Appendix “Y”**, in which:
  - i) he reiterated the request made on November 28, 2014 for interim funding on the basis that the proposal debtors “are currently without sufficient funding to carry on their business operations through the proposed extension period, and will require further funding in order to continue operations through to the period ending January 26, 2015” (paragraph 29),
  - ii) he stated that F.S. Holdco (defined as 415 in the affidavit) owns the shares of F.S. Crate & Sons Ltd., and Crate Holdco (defined as 416 in the affidavit) owns the shares of the other of the Companies

(paragraph 38), and

- iii) "Neither Crate Holdco nor F.S. Holdco have any other assets." (paragraph 39), without mentioning the life insurance policies or \$354,647.02 deposited at TD on December 3 (with a part paid by cheque to James Crate the same day as the affidavit); and
- e) Steven Crate swore the statements of affairs in bankruptcy for the Companies, including for 415 and 416 (copies attached as **Appendix "Z"**) without any mention of the insurance policies or the withdrawal of and transactions involving the \$354,647.02; and

**C) THE \$354,647.02 IS PROPERTY OF 415 AND 416 AND SHOULD BE PRESERVED**

34. The Policies were issued in the name of 415 and 416.

35. The books and records do not contain any entries that the Receiver and Trustee has been able to find in which the cost for the premiums was in any way allocated to Steven Crate, Gregory Crate and/or Lynn Marko, or that the value in the life insurance policies was recorded as belonging to any of them.

36. The books and records in fact contain entries to suggest the opposite - that the value of the Policies belonged to the Companies. The Receiver and Trustee has reviewed the books and records and has found that there was another withdrawal of cash surrender value amounts in 2009, which was at that time received by CMS and recorded as a dividend to CMS. A copy of the CMS records in that regard is attached as **Appendix "AA"**.

37. The Receiver and Trustee therefore recommends that orders be made to, among other things, compel the last known individuals with possession of the \$354,647.02, namely Jessica Leanne Crate and James Crate and Fahey Crate Professional Corporation, as well as Steven Crate, Gregory Crate and Lynn Marko, to preserve those funds or whatever portions of them are within their possession, power or control, pending further order of the Court.

38. The Receiver and Trustee intends to seek such an Order on a without notice basis. The reason for this request is that the lack of disclosure and clandestine transactions involving the \$354,647.02, as noted above, appear to demonstrate an intention to appropriate the Companies' assets and mislead the Receiver and Trustee, and evade proper obligations in connection with the Companies, the Policies and the Policies Proceeds. The Receiver and

Trustee accordingly is concerned that giving notice before an Order is made preventing (further) dissipation of the Policies Proceeds may allow or encourage those involved to take further such steps.

39. In the interests of full and frank disclosure, as required for a motion without notice, the Receiver and Trustee advises that it has no information that any of the Policies Proceeds are still within the possession of Jessica Leanne Crate and/or James Crate and Fahey Crate Professional Corporation.

40. Following the Receiver and Trustee's request for an Order preserving the \$354,647.02, it will bring a motion on notice for, among other things, disclosure of all records in the possession of anyone associated with the transactions involving the Policies Proceeds, and for the return of the Policies Proceeds from any and all persons who may have possession, power or control of those funds.

#### **D) CONTEMPT OF COURT AND OFFENCES UNDER THE BIA**

41. The Receiver and Trustee is of the view that the events as set out above constitute contempt of Court on the part of all of Steven Crate, Greg Crate and Lynn Marko contrary to this Court's order of December 8, 2014 appointing the Receiver and placing the Companies into bankruptcy (Appendix "I" and "J"). Paragraph 5 of that Order required them, as the current or former directors and officers of, among others, 415 and 416 to "forthwith advise the Receiver of the existence of any" property of those Companies, and to deliver all such property to the Receiver. None of that was done.

42. In addition, the transactions by Gregory Crate and Steven Crate on behalf of 415 and 416 on December 11, 2014 (Appendix "T"), which were after the date of that Order, constitute further contempt of Court.


43. Further, the Receiver and Trustee is of the view that the events as set out above provide grounds to believe that Steven Crate, Gregory Crate and Lynn Marko have caused 415 and 416 to make a fraudulent disposition of their property before and after the date of their bankruptcy, contrary to s. 198(1)(a) of the BIA, for which those individuals are liable pursuant to s. 204 of the BIA.

44. Lastly, the Receiver and Trustee is of the view that the events as set out above provide grounds to believe that Steven Crate has made a false entry or knowingly made a material omission in a statement or accounting in his affidavits, the cash flow statements, and the statements of affairs of 415 and 416 as noted above, contrary to s. 198(1)(c) of the BIA.

45. The Receiver and Trustee accordingly requests leave of the Court pursuant to s. 205(3) of the BIA to initiate proceedings for the prosecution of these offences.

All of which is respectfully submitted this 10<sup>th</sup> day of March, 2015.

**A. FARBER & PARTNERS INC.  
COURT-APPOINTED RECEIVER AND TRUSTEE OF CRATE MARINE SALES  
LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and  
1382416 ONTARIO LTD.**

  
Per: Stuart Mitchell  
Senior Vice President

TAB O

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

Commercial List File No. CV-14-10798-00CL

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**SUPPLEMENTARY REPORT TO THE FIFTH REPORT OF THE RECEIVER**

**AND FOURTH REPORT OF THE TRUSTEE**

**MARCH 19, 2015**



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- “A” Preservation Order and endorsement of Mr. Justice Newbould dated March 10, 2015
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- “D” Business and Banking Services Agreement for 415
- “E” Resolution of the Directors for 415
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- “G” Shareholder’s Resolution dated February 26, 2007 for 415
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- “J” Copy of cheque images for December 2014 cheques to Lesmill Consulting and Steven Crate
- “K” Business and Banking Services Agreement for 416
- “L” Resolution of the Directors for 416
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- “W” Email chain between Robert Drake and James Crate
- “X” Automatic reply from James Crate
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- “AA” Trust agreements dated July 15, 1995
- “BB” GSNH letter to Lesmill Consulting dated March 16, 2015
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- “DD” Financial statements of CMS for the year ending October 31, 2013
- “EE” Financial statements of 415 for the year ending October 31, 2013
- “FF” Financial statements of 416 for the year ending October 31, 2013



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

Commercial List File No. CV-14-10798-00CL

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
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IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**SUPPLEMENTARY REPORT TO THE FIFTH REPORT OF THE RECEIVER**

**AND FOURTH REPORT OF THE TRUSTEE**

**MARCH 19, 2015**

1. A. Farber & Partners Inc., in its capacities as the Court appointed Receiver (the “**Receiver**”) and as the trustee in bankruptcy (the “**Trustee**”) of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario

Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”) hereby reports to the Court as follows:

## **PURPOSE OF THIS REPORT**

2. All capitalized terms have the meaning given to them in the Fifth Report of the Receiver and Fourth Report of the Trustee dated March 10, 2015 (the “**Fifth Report**”).

3. This report (the “**Supplementary Report**”) is to supplement the Fifth Report and for the most part provides an update of certain facts that either occurred or came to the Receiver’s attention after the execution of the Fifth Report on March 10, 2015 and are relevant to the orders sought by the Receiver and Trustee in respect of the Policies and Policies Proceeds, which are summarized in paragraph 2 of the Fifth Report.

4. The additional facts now known by the Receiver and the Trustee, and related documentation obtained, provide further support for what the Receiver and Trustee reported in paragraph 1 of the Fifth Report; namely that Steven Crate, Gregory Crate and Lynn Marko appear, based on the records and information available to the Receiver and Trustee, to have deliberately taken steps after the commencement by the Companies of proposal proceedings pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), to clandestinely convert the proceeds of withdrawals from the cash surrender value of insurance policies held in the names of 1382415 Ontario Ltd. (“**415**”) and 1382416 Ontario Ltd. (“**416**”) of \$354,647.02 for their own benefit and/or for the benefit of other Crate family members. At all material times, these individuals were the directors and officers of 415 and 416. This pattern of behaviour even continued after the date of the receivership and bankruptcy of the Companies.

5. As discussed in this Supplementary Report, the contents of the responding Record of Steven Crate, Gregory Crate and Lynn Marko, including the affidavit of Lynn Marko sworn March 17, 2015 (the “**Marko Affidavit**”), do not have any material impact on what the Receiver has reported in paragraph 1 of the Fifth Report and in paragraph 4 above.

## LIMITATION OF REVIEW

6. A. Farber & Partners Inc. in its capacities as Receiver and Trustee has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not, except as specifically noted in this Supplementary Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Supplementary Report for the sole use of the Court and of the other stakeholders in these proceedings.

## A) PRESERVATION ORDER

7. The Receiver's notice of motion brought without notice for a preservation order in respect of the Policies and Policies Proceeds was heard by the Honourable Mr. Justice Newbould on the morning of March 10, 2015, at which time His Honour granted the preservation order sought (the "**Preservation Order**"); namely, that:

- (a) pending further Order of this Court, Steven Crate, Gregory Crate, Lynn Marko, Jessica Leanne Crate and James Crate and Fahey Crate Professional Corporation, and any other person having knowledge of the Order, preserve, and not deal with in any manner without the express written consent of the Receiver and Trustee, any and all proceeds, including any property into which such proceeds may have been converted (collectively, the "**Policies Proceeds**"), of the life insurance policies issued by Transamerica Life Canada and held by 415 and 416 on the lives of Steven Crate, Gregory Crate and Lynn Marko (the "**Policies**") and, without limiting the generality of the foregoing:
  - (i) the amount of \$160,000.00 transferred from the bank account of 415 on December 5, 2014 to the trust account of James R. Crate, a lawyer with Fahey Crate Law Professional Corporation; and
  - (ii) the amount of \$184,247.02 transferred on December 11, 2014 from the bank accounts of 415 and 416 to the bank account of Jessica Leanne Crate.

Copies of the Preservation Order of Mr. Justice Newbould and of his endorsement of March 10, 2015 are attached as **Appendix “A”**.

**B) SERVICE OF PRESERVATION ORDER AND MOTION MATERIALS**

8. Service of the Preservation Order and motion materials was effected as follows:

<b>Name</b>	<b>Date</b>	<b>How Service was Effected:</b>
Joseph Markin (usual counsel for Steven Crate, Gregory Crate, and Lynn Marko)	March 12, 2015	Personal Service (Hand Delivered)
Gregory J. Crate	March 11, 2015	Personal Service (Hand Delivered)
Jessica Crate	March 12, 2015	As Ms. Crate is a minor, service was effected by leaving a copy with Gregory J. Crate, her father.
Lynn J. Marko	March 11, 2015	Served by leaving a copy with Ms. Marko’s daughter, Stephanie Kellar
Steven Crate	March 13, 2015	Service by e-mail to Mr. Crate’s email account: steven.crate@outlook.com
Steven Crate	March 18, 2015	Personal Service
James Crate and Fahey Crate Law Professional Corporation	March 10, 2015	Personal Service
The TD Bank	March 10, 2015	Personal Service (Hand Delivered to Deb Irvine, Branch Manager)
The Service List	March 10, 2015	Email service of all materials.

Collectively attached as **Appendix “B”** are copies of the affidavits of service evidencing the service of the Preservation Order and motion materials.

## **C) INFORMATION COMING TO RECEIVER'S AND TRUSTEE'S ATTENTION SINCE FIFTH REPORT**

9. As reported in the Fifth Report, the amounts withdrawn by 415 and 416 from the Policies were deposited by them on December 3, 2014 in new accounts opened by them at the TD Bank branch at 23532 Woodbine Avenue, Keswick, Ontario. These were Account No. 5009326-2240 for 415 (the "**415 TD Account**") and Account No. 5009342-2240 for 416 (the "**416 TD Account**"). In the following days, 415 and 416 withdrew all amounts deposited in these accounts, both of which were closed on December 11, 2014.

10. Six Transamerica cheque transmittal letters dated December 2, 2014, copies of which were provided to the Receiver and Trustee after the date of the Fifth Report, are further evidence of the withdrawals by 415 and 416 from the Policies in the aggregate amount of \$354,647.02 described in the Fifth Report, and in particular in paragraphs 18-22 thereof and the Appendices referred to therein. Attached as **Appendix "C"** are copies of such letters.

11. Since 415 and 416 used the TD Bank for deposits and withdrawals relating to the Policies Proceeds, after obtaining the Preservation Order, the Receiver and Trustee served the TD Bank with the Preservation Order and related motion material, and sought additional documentation and information relevant to the motion from the TD Bank. Except where otherwise provided in this section of this Supplementary Report, the documentation and information referred were provided to the Receiver and Trustee by the TD Bank, both by Deb Irvine, the Keswick Branch Manager, and by Michella Murzello, Bankruptcy Officer with Creekside Banking Services of TD Bank, after the date of the Fifth Report, March 10, 2015.

### **(a) Transactions Relating to the 415 TD Account**

12. On December 3, 2014, under the signatures of Gregory Crate, Steven Crate and Lynn Marko, 415 executed a Business and Banking Services Agreement with TD Bank, supported by a Resolution of the Directors of the same date certified by these three individuals and, among other things, authorizing them to be the three signing officers of 415. Attached as **Appendix "D"** and **Appendix "E"** are copies of such Business and Banking Services Agreement and Resolution of the Directors, respectively. A TD Bank signature card dated December 3, 2014 confirms these three individuals to be the signing officers of 415 for the



415 TD Account. Attached as **Appendix “F”** is a copy of such signature card.

13. Also in the TD Bank’s files are copies of a Shareholder’s Resolution of 415 dated February 26, 2007 approving certain financial statements, appointing accountants and appointing Gregory Crate, Steven Crate and Lynn Marko as directors, executed by Gregory Crate, Steven Crate and Lynn Marko as shareholders, and of 415’s Articles of Incorporation, which were effective on November 1, 1999. Attached as **Appendix “G”** and **Appendix “H”** are copies of such Shareholder’s Resolution and Articles of Incorporation, respectively.

14. A TD Bank deposit slip dated December 3, 2014 at 4:18 p.m. bearing illegible signed initials confirms the deposit into the 415 TD Account at that time of three of the Transamerica cheques attached as Appendix O to the Fifth Report; namely cheques in the amounts of \$52,964.85, \$86,801.27 and \$37,557.39 totalling \$177,323.51. The deposit slip does not contain the complete account number, but a partially redacted number: “2240-50\*\*\*26”, as well as 415’s registered business name, “F.S. Holdco”. Attached as **Appendix “I”** is a copy of the deposit slip dated December 3, 2014.

15. A TD Bank withdrawal slip dated December 5, 2014 at 4:07 p.m., which appears not to be signed or initialed, shows a withdrawal at that time from the 415 TD Account (the account number is partially redacted as number “2240-50\*\*\*26” and contains 415’s registered business name, F.S. Holdco) of \$160,000.00 and the transfer of that amount to Account No. “2240-60\*\*\*10” in the name of “J Crate”. The TD Bank has confirmed to the Receiver and the Trustee that the latter account is Account No. 2240-6096110 with the TD Bank in the name of Jessica Crate (the “**Jessica Crate Account**”), who as indicated in paragraph 29 of the Fifth Report is the daughter of Gregory Crate.

16. The Receiver and Trustee notes that the information regarding the transfer of funds into the Jessica Crate Account differs from the information previously provided by the TD Bank to the Receiver and reported in the Fifth Report; namely, that \$160,000.00 transfer was to James R. Crate, a lawyer with Fahey Crate Law Professional Corporation, as described in paragraph 29 of the Fifth Report. However, as discussed below, \$265,263 was later paid out of the Jessica Crate Account to Fahey Crate Law PC in trust at a time when all the monies credited to the Jessica Crate Account had been paid out of the 415 TD Account and the 416

TD Account. The substance of the Receiver and Trustee's earlier report about the movement of funds to Fahey Crate Professional Corporation therefore remains accurate, albeit underreported as to quantum given that the total of the funds that so moved was \$265,263 rather than \$160,000.

17. The TD Bank account transaction history for the Jessica Crate Account covering the period December 1, 2014 to March 13, 2015 (the "**JC Account History**"), provided to the Receiver by the TD Bank and discussed in more detail below, confirms that the \$160,000.00 transfer from the 415 TD Account was credited to the Jessica Crate Account on December 5, 2015.

18. With respect to the two cheques drawn on the 415 TD Account described in paragraph 26(a)(iv) of the Fifth Report, attached as **Appendix "J"** are copies of a cheque image in respect of a \$5,000.00 cheque dated December 3, 2014 in favour of Lesmill Consulting and a cheque image in respect of a \$5,400.00 cheque dated December 6, 2014 in favour of Steven Crate, both drawn on such account.

19. The \$6,923.51 debited against the 415 TD Account when it was closed on December 11, 2014, as described in paragraph 26(a)(v) of the Fifth Report, was credited on that day to the same Jessica Crate Account, as shown in a December 11, 2014 "credit memo" entry in the JC Account History, as well as in the account closing authorization form for the 415 TD Account attached as Appendix T to the Fifth Report.

**(b) Transactions Relating to the 416 TD Account**

20. On December 3, 2014, under the signatures of Gregory Crate, Steven Crate and Lynn Marko, 416 executed a Business and Banking Services Agreement with TD Bank, supported by a Resolution of the Directors of the same date certified by these three individuals and, among other things, authorizing them to be the three signing officers of 416. Attached as **Appendix "K"** and **Appendix "L"** are copies of such Business and Banking Services Agreement and Resolution of the Directors, respectively. A TD Bank signature card dated December 3, 2014 confirms these three individuals to be the signing officers of 416 for the 416 TD Account. Attached as **Appendix "M"** is a copy of such signature card.

21. Also in the TD Bank's files are copies of a Shareholder's Resolution of 416 dated February 26, 2007 approving certain financial statements, appointing accountants and appointing Gregory Crate, Steven Crate and Lynn Marko as directors, executed by Gregory Crate, Steven Crate and Lynn Marko as shareholders, and of 416's Articles of Incorporation, which were effective on November 1, 1999. Attached as **Appendix "N"** and **Appendix "O"** are copies of such Shareholder's Resolution and Articles of Incorporation, respectively.

22. A TD Bank deposit slip dated December 3, 2014 at 4:20 p.m. bearing illegible signed initials confirms the deposit into the 416 TD Account at that time of three of the Transamerica cheques attached as Appendix O to the Fifth Report; namely cheques in the amounts of \$86,801.27, \$37,557.39 and \$52,964.85 totalling \$177,323.51. The deposit slip does not contain the complete account number, but a partially redacted number: "2240-50\*\*\*42", as well as 416's registered business name, truncated, "Crate Holdin". Attached as **Appendix "P"** is a copy of the deposit slip dated December 3, 2014.

23. As discussed in paragraph 27 of the Fifth Report and shown in the account closing authorization form for the 416 TD Account attached as Appendix T to the Fifth Report, such amount of \$177,323.51 was credited to the Jessica Crate Account on December 11, 2014. This credit is confirmed by a December 11, 2014 "credit memo" entry in the JC Account History.

**(c) Information Relating to both the 415 TD Account and the 416 TD Account**

24. The JC Account History was provided to the Receiver and the Trustee by the TD Bank on March 17, 2015. After receiving it, later that day the Receiver and the Trustee sent an email to the TD Bank requesting the support documents for all transactions going in and out of the Jessica Crate Account as shown on the JC Account History, including but not limited to (i) signed cash withdrawal requests for cash withdrawals, (ii) account number and name of account holder, if available, for all payments to credit card companies (Sears, MasterCard, RBC Visa and CIBC Visa), (iii) recipient of each email Interac transfer ("E TFR"), (iv) copies of each bank draft ("CAD DRAFT"), and (v) documents in support of "Georgina TX". The Receiver and the Trustee also asked the TD Bank whether it could advise if anyone attended with Jessica Crate at the TD Bank Branch to open the Jessica Crate Account. To the extent that the TD Bank has responded to these requests, the relevant information and documentation

are provided below. To the extent that the TD Bank has not responded, the Receiver and Trustee are following up with the TD Bank in an attempt to have all the requests satisfied. Attached as **Appendix “Q”** is a copy of the JC Account History.

25. The JC Account History indicates that the Jessica Crate Account was opened at the TD Bank on December 1, 2014 (when Jessica Crate attended at the TD Bank for that purpose, perhaps with, though the TD Bank is not certain, her mother Karen Crate, spouse of Gregory Crate) , the same day as 415 and 416 withdrew the total amount of \$354,647.02 from the Policies by way of six Transamerica cheques dated December 1, 2014, and shortly before 415 and 416 opened the 415 TD Account and the 416 TD Account, respectively, on December 3, 2014 and deposited such amount into such accounts. TD Bank advises that, Jessica Crate, who the Receiver and Trustee understand to be a minor, is the sole signing authority on the Jessica Crate Account, which appears to be a special purpose bank account opened by her to receive the withdrawals from the Policies, although the JC Account History shows that there were some credits to such account from other sources. It seems unusual to the Receiver and the Trustee that a minor would open such a bank account, have signing authority over an account containing funds in the magnitude of those in the Jessica Crate Account and authorize withdrawals of the type represented by the four significant Canadian drafts discussed below. As of March 13, 2015, the balance in the Jessica Crate Account was \$25.07.

26. In addition to showing the credits from the 415 TD Account and the 416 TD Account in the total amount of \$344,247.02, the JC Account History discloses a number of other credits and debits. The other credits are largely for modest amounts, except for a total of \$38,200 of credits described as “TFR-FR” (transfer from) “Chisholm E” during the period December 11, 2014 to March 12, 2015.

27. The debits to the Jessica Crate Account consist of a variety of items, including cash and ATM withdrawals, electronic transfers, credit card payments, payments to restaurants and retailers and Canadian drafts, all of which transactions occurred on or after December 8, 2014, the date on which the Receiver and Trustee were appointed.

28. There are four significant Canadian drafts (including the TD Bank service charges therefor) among the debits: \$95,507.50, which was payable to Fahey Crate Law PC in trust

(December 8, 2015); \$169,755.50, which was also payable to Fahey Crate Law PC in trust (December 11, 2015); \$8,007.50, which was payable to B. J. Whiting (whom the Receiver and Trustee understand is related to Steven Crate, Gregory Crate and Lynn Marko); and \$25,007.50, which was payable to Shanahan Ford (January 2, 2015). Attached as **Appendix “R”** are copies of the four TD Bank Detail Information for Drafts relating to these drafts, each of which is for the relevant amount before the service charge.

29. The Receiver and Trustee have prepared a schedule summarizing the transactions through the Jessica Crate Account to December 16, 2014. During this period, the \$344,247.02 referred to above from the 415 and 416 accounts was credited to such account and the disbursements summarized in such schedule (including the two drafts to Fahey Crate Law PC in trust described above) were debited from the account, leaving a balance of \$500.90 in the Jessica Crate Account on December 16, 2014. After that day, there were several miscellaneous debits, some of which appear to be for personal items, the debit for the \$25,007.50 draft payable to Shanahan Ford and a total of \$37,200 of credits described as “TFR-FR” (transfer from) “Chisholm E”. Attached as **Appendix “S”** is a copy of such schedule.

30. The Receiver and Trustee have also been provided with further information with support documentation from TD Bank regarding the details of certain of the cash withdrawals, bill payments and other debit transactions conducted on the Jessica Crate Account. Attached as **Appendix “T”** is a copy of such further documentation, consisting of a mark-up of the JC Account History, with relevant documents attached for the entries bearing numbers as well as the signing card for the Jessica Crate Account with what appears to be Jessica Crate’s signature on it.

**(d) Contact with Fahey Crate Professional Corporation**

31. Prior to the Receiver’s and the Trustee’s discovering on March 18, 2015 that two large drafts drawn on the Jessica Crate Account were payable to Fahey Crate Law PC in trust, Goldman Sloan Nash & Haber LLP (“**GSNH**”), counsel for the Receiver and the Trustee, had sent letters to James Crate and Fahey Crate Professional Corporation dated March 10 and March 16, 2015, respectively, advising of the Preservation Order and the obligations of

persons having knowledge of such Order, the Amended Receivership Order dated December 8, 2014, the receivership and bankruptcy proceedings and the proceedings in respect of the Policies and the Policies Proceeds, and providing copies of the Motion Record in respect of the latter. In such letters, GSNH have also, in part, requested that James Crate and Fahey Crate Professional Corporation provide any and all information regarding the three trusts, the Policies and the Policies Proceeds and return to the Receiver immediately all books, records and property of the Companies in their possession. . Attached as **Appendices “U”** and **“V”** are copies of the GSNH letters to James Crate and Fahey Crate Law Professional Corporation dated March 10 and March 16, 2015, respectively.

32. James Crate sent an email to Robert Drake of GSNH on March 18, 2015 at 9:03 a.m. confirming receipt of the two GSNH letters to him and advising that Fahey Crate Professional Law Corporation would comply with the Preservation Order. Mr. Drake replied to Mr. Crate the same day at 10:12 a.m. and, in part, asked Mr. Crate whether he or his firm hold any property (e.g. money) in trust, or otherwise to the credit of any of the Companies subject to the December 8, 2014 receivership order and, if so, suggested that they should make arrangements for their return. Mr. Drake went on to write that if Mr. Crate or his firm are not holding any property of those Companies (including, but not limited to, the Policies Proceeds), but are aware of the location of any property (e.g. money was transferred out of trust accounts), they should make arrangements to talk. At 10:59 a.m. that day, Mr. Crate sent an email to Mr. Drake asking that Mr. Drake advise him of the results of the Friday, March 20, 2015 motion, and indicating, in part, that he, Mr. Crate, had not been retained to respond to the motion.

33. After the Receiver and Trustee discovered that the two drafts were payable to Fahey Crate Law PC in trust, on March 18, 2015 at 11:23 a.m. Mr. Drake replied to Mr. Crate’s 10:59 a.m. email by, in part, noting that Mr. Crate had not answered the questions in Mr. Drake’s 10:12 a.m. email and indicating that GSNH’s latest understanding was that Mr. Crate or his firm received two bank drafts from the Jessica Crate Account (\$95,507.50 on December 8, 2014 and \$169,755.50 on December 11, 2014), monies that are the Policies Proceeds which were transferred from the bank accounts of the Companies under receivership to Jessica Crate, and then payable to Mr. Crate or his firm in trust and are the subject of the Preservation Order.

Mr. Drake went on to request that Mr. Crate confirm that (1) he or his firm have these funds in trust, or otherwise, and they will not be dealt with, (2) if he or his firm are not currently holding these funds, when and where they were transferred (with supporting records), and (3) whether Mr. Crate has any other property of the Companies (be it monies or documents), and if so that they will be returned immediately pursuant to the receivership order dated December 8, 2014 (attached to Mr. Drake's email).

34. The only reply that Mr. Drake has received to his March 18, 2015, 11:23 a.m. to Mr. Crate is an automatic reply at 11:28 a.m. advising that Mr. Crate will be out of the office until March 20, 2015, and will reply to any emails at that time, even though Mr. Crate had already sent two emails to Mr. Drake earlier that day and Mr. Drake did not receive such an automatic reply from Mr. Crate to his March 18, 2015, 10:12 a.m. email to Mr. Crate.

35. Attached as **Appendix "W"** is a copy of the email chain between Robert Drake and James Crate referred to in the preceding paragraphs. Attached as **Appendix "X"** is a copy of the automatic reply from Mr. Crate.

36. In view of James Crate's out of office email, and the lack of specific reply from him, on 7 p.m. on March 18, 2015, Mr. Drake sent an email to two other lawyers with Mr. Crate's firm, Carol Crate and Patrick Fahey, containing similar advice and making similar requests as in Mr. Drake's earlier email that day to James Crate. Mr. Drake has not received a response to this email.

#### **(e) Contact with David Sacks**

37. The TD Bank has provided the Receiver and Trustee with other material that may be relevant to the Policies and Policies Proceeds, as discussed in the following five paragraphs.

38. The TD Bank is in possession of two emails which appear to have been sent by David Sacks on the evening of December 17, 2014. An internet search conducted by the Receiver and Trustee indicates that a David Sacks who does business as a consultant has an office at 23 Lesmill Road, North York. For example, attached as **Appendix "Y"** is a copy of the page from Canada Business Directory at [http://www.calooks.com/business/Sacks-David-Consultant\\_5hHX.html](http://www.calooks.com/business/Sacks-David-Consultant_5hHX.html).

39. The first December 17, 2014 email is from David Sacks to Carol Crate and James Crate at “faheycratelaw.ca”. In part, this email encloses copies of three trust agreements and advises that (i) Steven is a trustee of all three trusts and therefore the addressees can take instructions from him, and (ii) Stephen will instruct the addressees as to the “check [sic.]” to be made to Mr. Sacks’ company, Lesmill Consulting. As indicated in paragraph 18 above, 415 wrote a \$5,000.00 cheque dated December 3, 2014 in favour of Lesmill Consulting drawn on the 415 TD Account.

40. The second December 17, 2014 email is from David Sacks to Lynn (Crate) Marko and Steven Crate. In part, this email asks the addressees to “...copy the Trusts to give to the bank so that they will open the Trust accounts...”, and advises that Mr. Sacks is billing the amount of \$16,385 (including HST), which, net of \$5,000 received, leaves a balance to be remitted of \$11,385. The Receiver and the Trustee assume that the \$5,000.00 received was paid to Lesmill Consulting by the \$5,000 cheque drawn on the 415 TD Account referred in the preceding paragraph. Attached as **Appendix “Z”** are copies of these two David Sacks emails dated December 17, 2014.

41. The TD Bank has also provided the Receiver and the Trustee with copies of three trust agreements, which the Receiver and the Trustee assume to be the trust agreements referred to in the two David Sacks emails. The three trust agreements provided by the TD Bank are in the same form. Each appears to be dated July 15, 1995 and the settlor under each is Lloyd Crate, the deceased father of Gregory Crate, Steven Crate and Lynn Marko. One trust agreement establishes the “Simcoe Trust”, with Steven Lloyd Crate and Gregory John Crate as the trustees, and Steven Lloyd Crate and his spouse, his children and any other issue and their spouses and his grandchildren as the beneficiaries; another trust agreement establishes the “Georgian Trust”, with Gregory John Crate and Steven Lloyd Crate as the trustees, and Gregory John Crate and his spouse, his children and any other issue and their spouses and his grandchildren as the beneficiaries; and the third trust agreement establishes the “Severn Trust”, with Lynn Joanne Crate and Steven John Crate as the trustees, and Lynn Joanne Crate and her spouse, her children and any other issue and their spouses and her grandchildren as the beneficiaries. Attached collectively as **Appendix “AA”** are copies of the three trust agreements dated July 15, 1995.



42. The TD Bank has advised the Receiver and Trustee that the Trusts have not opened accounts at its Keswick branch, where the other TD Bank accounts discussed in the Fifth Report and this Supplementary Report were opened. The Receiver and the Trustee are not aware of the reason why Steven Crate and Lynn Marko were apparently contemplating opening trust accounts for the three trusts described in the preceding paragraph over nineteen years after the trusts were established. In view of the date of David Sack's December 17, 2014 emails discussing the trust accounts and trust agreements being (i) less than one week after December 11, 2014, the day on which 415 and 416 closed TD Bank Account No. 5009326-2240 and Account No. 5009342-2240, respectively, and completed the withdrawal of all the funds therein, and (ii) being 9 days and 6 days, respectively, after the dates of the two large Canadian drafts payable to Fahey Crate Law PC, discussed above, the Receiver and the Trustee are concerned that the some or all of the funds paid to Fahey Crate Law PC may be transferred to a bank account or accounts opened by one or more of the three trusts at another TD Bank branch or at another financial institution. This is especially the case where Fahey Crate Law PC has not provided a response to Mr. Drake's email of March 18, 2015, 11:23 a.m.

43. Mr. Drake of GSNH sent a letter to Lesmill Consulting, to the attention of David Sacks, dated March 16, 2015 advising of the Preservation Order and the obligations of persons having knowledge of such Order, the Amended Receivership Order dated December 8, 2014, the receivership and bankruptcy proceedings and the proceedings in respect of the Policies and the Policies Proceeds, and providing copies of the Motion Record in respect of the latter. In such letter, GSNH have also, in part, requested that Lesmill Consulting provide any and all information regarding the three trusts, the Policies and the Policies Proceeds and return to the Receiver immediately all books, records and property of the Companies in their possession. GSNH has not received a reply to such letter. Attached as **Appendix "BB"** is a copy of the GSNH letter to Lesmill Consulting dated March 16, 2015.

44. Mr. Sacks left a voicemail message with Mr. Drake at 11:07 a.m. on March 18, 2015 asking Mr. Drake to call him back. Mr. Drake did so later that day and in their telephone conversation Mr. Sacks advised Mr. Drake, in part, that (i) his emails of December 17, 2014 were intended to secure payment of the balance of his fees from James Crate, who required

authorization of from the trustees under the trusts to pay those fees, (ii) he did get paid in full from James Crate's trust account, but could not recall whether he was paid directly by James Crate or by the Crates and Lynn Marko; (iii) he acted only for the Crates and Lynn Marko in their personal capacity, not for any of the Companies and that Lloyd Crate had been his client, he only worked for the three children after Lloyd died and he otherwise declined to provide any details on the basis that his work was for the Crates personally; (iv) he drafted the three trusts in 1995 on behalf of Lloyd and set up trusts to protect the three children; and (v) he is consulting on the receivership proceedings with Joseph Markin (who has filed the responding Motion Record to the Receiver's and the Trustee's motion) and the Crates and Lynn Marko.

**D) RESPONSE TO THE AFFIDAVIT OF LYNN MARKO SWORN MARCH 17, 2015 AND THE MOTION OF STEVEN CRATE, GREGORY CRATE AND LYNN CRATE RETURNABLE MARCH 20, 2015**

45. The Receiver and Trustee have received and reviewed the Marko Affidavit. As described at paragraph 5 above, the Marko Affidavit does not alter the view of the Receiver and Trustee. It does, however, contain evidence and information that is markedly different than, and in several instances at odds with, the information and documentation of which the Receiver and Trustee are aware as reported in the Fifth Report and this Supplementary Report. A summary of the key differences is set out below.

46. Insofar as the Marko Affidavit states that “[m]y brothers and I are not lawyers and have done the best we can in the circumstances presented to us to achieve the results we have intended”, the Receiver and Trustee have unfortunately had a different experience in dealing with these individuals. Instead, the Receiver and Trustee have repeatedly observed conduct, and in particular from Steven Crate, which has contravened provisions of the BIA or Orders of the Court. In response, the Receiver and Trustee have been compelled to have GSNH on four occasions warn Steven Crate to refrain from certain unauthorized activities: (i) GSNH's letter of January 22, 2015; (ii) GSNH's letter of February 2, 2015 (addressed to Joseph Markin); (iii) GSNH's letter of February 25, 2015; and (iv) GSNH's letter of March 16, 2015. Attached as **Appendix “CC”** are copies of the four GSNH letters referred to in this paragraph.

47. In addition, the conduct of Steven Crate, Gregory Crate and Lynn Marko, both in their

own capacities and as the prior management of CMS, has given the Receiver and Trustee concern about their willingness to abide by business principles and Court Orders. Some of these concerns were identified in the reports filed in the Receiver and Trustee's prior capacity as the interim receiver of CMS, and some have arisen since our appointment as Receiver and Trustee, as follows:

- a) boats in the possession of CMS appear to have been sold without discharging loans against them owing by prior owners when sold to CMS, or by CMS (acting as broker or intermediary) to third parties (see paragraphs 42(a), (f) and (g) of the Interim Receiver's First Report, Appendix "C" to the Fifth Report);
- b) boats in the possession of CMS were apparently financed by third parties, or pledged as security for amounts owing by CMS to third parties, on the basis of the third parties holding title documentation to those boats, yet those boats appear to have been nonetheless further sold by CMS in several instances (see paragraphs 33-35 and 42(a) of the Interim Receiver's First Report and paragraph 26(a) of the Interim Receiver's Third Report, Appendix "H" to the Fifth Report);
- c) CMS sold at least one boat on behalf of a third party with \$145,000 in payments from the purchaser being directed \$103,000 to CMS and \$42,000 to "S. Crate" (see paragraph 26(b) of the Interim Receiver's Third Report, Appendix "H" to the Fifth Report);
- d) CMS disbursed funds without the interim receiver's approval in contravention of the interim receivership orders of this Court (see paragraphs 7-11 of the Interim Receiver's Second Report, Appendix "E" to the Fifth Report); and
- e) Greg Crate returned a vehicle owned by CMS when demanded to do so by the Receiver, but filled it with garbage.

48. Insofar as the Marko Affidavit attaches as Exhibit "A" a document purportedly dated

September 15, 2013 (by which Steven Crate, Lynn Marko and Gregory Crate instructed James Davis at the Executive Wealth Management Group to change the beneficiaries and “beneficial ownership” of the Policies), this document is not in the books and records of the Companies and the Receiver and Trustee have no information as to its authenticity or accuracy.

49. Based on the facts reported below, this document at best expresses the purported intention of the individual signatories that does not appear to have been implemented in any steps by James Davis or Transamerica (who has assured that it is unaware of the document) in respect of the Policies. Moreover, on its face, the document only shows intent on the part of Steven Crate, Gregory Crate and Lynn Marko in their personal capacities only, not on behalf of the rightful owners and beneficiaries of the Policies, 415 and 416. The document is accordingly incapable of providing the basis for the change purportedly sought.

50. The Receiver and Trustee are, however, aware that Transamerica’s files do not show any change in the beneficiary or owner (legal, beneficial or otherwise) of the Policies. As of the date of the NOI proceedings and the Appointment Order, the Policies remained in the names and in favour of 415 and 416 and recorded those companies as beneficiaries. Appendices “L” and “M” to the Fifth Report reflect that.

51. The records of Transamerica also therefore required that any payout of the Policies Proceeds, as directed by the Respondents to the Receiver and Trustee’s motion, be in the names of 415 and 416, which is what happened. Appendix “O” to the Fifth Report reflects that.

52. The TD Bank records of the handling of the Policies Proceeds similarly reflect that all transactions in the Policies Proceeds up to the transfers into the name of Jessica Crate were in the names of 415 and 416 as the owners of the funds in question, as described in paragraphs 12 to 23, above.

53. Accordingly despite this document relied upon by the Respondents to this motion, at all relevant times the withdrawals by them from the Policies and banking transactions with TD Bank were effected entirely on behalf of 415 and 416, and without the knowledge or consent of the Receiver and Trustee.

54. The Receiver and Trustee are unaware of any change in the accounting treatment on the books and records of the Companies to reflect the asserted intent of Appendix “A” to the Marko Affidavit, namely that the trusts for Steven Crate, Gregory Crate and Lynn Marko be the owners and beneficiaries of the Policies. In particular, CMS paid all premiums for the Policies, both before and after September 15, 2013, and no amounts so paid were at any time recorded as being for the benefit of Steven Crate, Gregory Crate and/or Lynn Marko, which had been done for different payments by CMS on their behalf that were recorded as loans to shareholders. All payments for premiums for the Policies appear to have been expensed by CMS against before-tax dollars.

55. Further, even if Exhibit “A” to the Marko Affidavit had been implemented at the time that it was purportedly dated, which does not appear to be the case, the Receiver and Trustee are unaware of any consideration given to 415, 416 or any others of the Companies for the asserted transfer of the beneficial ownership and beneficiary designations on the Policies. The face amount of the Policies (as indicated in Appendix “L” to the Fifth Report) is \$4,500,000, and the Policies also generated Policies Proceeds of \$354,647.02, which were withdrawn and dealt with by Steven Crate, Gregory Crate and Lynn Marko as described in the Fifth Report. A transaction of those amounts is materially significant in this matter given that the projected realizations from the sales process for all the assets of the Companies is not expected to exceed \$26,000,000 (as disclosed in paragraph 74 of the Third Report of the Receiver respecting the stalking horse sales process).

56. The Marko Affidavit does not disclose any consideration for the transaction contemplated in Exhibit “A” to that affidavit either.

57. In addition, the statement in the Marko Affidavit that “[t]hese changes took place well before any of the Corporations [sic] had any financial problems and there was no contemplation that these corporations would have financial problems” is at odds with the information available to the Receiver and Trustee. In that regard, the Receiver and Trustee report as follows:

- a) the November 28, 2014 affidavit of Steven Crate sworn in the NOI proceedings (attached as Appendix “V” to the Fifth Report) attested at paragraph 47 under the

heading “Financial Difficulties” that CMS had generated losses in the aggregate amount of approximately \$19.7 million in the fiscal years ending Oct. 31, 2011 to 2014, and lost a further \$4.4 million in the year ending Oct. 31, 2014; and

- b) the financial statements of CMS for the year ending Oct. 31, 2013 (which were part of Exhibit “K” to the Affidavit of Steven Crate sworn November 28, 2014, attached as Appendix “V” to the Fifth Report) show losses of \$6,121,541 and a corresponding increase of shareholder deficiency of \$22,626,176 as against \$16,553,635 in 2012, a copy of which is attached as **Appendix “DD”**; and
- c) the financial statements of 415 and 416 for the year ending Oct. 31, 2013 show minimal financial activity in those companies and also disclose as assets loans to shareholders that Steven Crate, Gregory Crate and Lynn Marko now dispute are owing due to events that took place before that time (which, if true, would therefore render those companies insolvent as well). Copies of the financial statements for 415 and 416 for the fiscal year ending Oct. 31, 2013 are respectively attached as **Appendices “EE”** and **“FF”**.

## **E) CONCLUSION**

58. The Receiver and Trustee accordingly seeks an Order:

- a) granting the relief sought in its Notice of Motion (with notice) and described in paragraph 2(b) of the Fifth Report, with necessary changes to reflect the updated information regarding the flow of funds in respect of the Policies Proceeds as noted above;
- b) dismissing the motion returnable by Steven Crate, Gregory Crate and Lynn Crate on March 20, 2015; and
- c) awarding costs of this motion and the without notice motion against Steven Crate, Gregory Crate and Lynn Marko.

All of which is respectfully submitted this 19 day of March, 2015.

**A. FARBER & PARTNERS INC.  
COURT-APPOINTED RECEIVER AND TRUSTEE OF CRATE MARINE SALES  
LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and  
1382416 ONTARIO LTD.**

A handwritten signature in black ink that reads "Stuart Mitchell". The signature is written in a cursive, flowing style with a horizontal line crossing through the middle of the name.

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Per: Stuart Mitchell  
Senior Vice President

**IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Commercial List File No. CV-14-10798-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at  
Toronto**

**MOTION RECORD OF THE RECEIVER  
(Motion Returnable March 31, 2015 )**

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appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons  
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Ontario Ltd.