

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

MOTION RECORD
(Motion returnable August 13, 2009)

August 7, 2009

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COMERICA BANK

- and -

MTB INDUSTRIES INC.

Applicant

Respondent

**NOTICE OF MOTION
(Returnable August 13, 2009)**

ALVAREZ & MARSAL CANADA ULC ("A&M") in its capacity as court appointed receiver (the **"Receiver"**) of the assets, properties and undertakings of MTB Industries Inc. (the **"Debtor"**) will make a motion to a Judge presiding over the Commercial List on Thursday, the 13th day of August, 2009 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order in the form attached as Schedule "A" hereto, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record herein, and dispensing with further service thereof;
 - (b) approving the second report to Court of the Receiver dated August 7, 2009 (the **"Second Report"**) and the activities of the Receiver as set out therein;

- (c) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor in accordance with the *Bankruptcy and Insolvency Act*; and
- (d) such further and other relief as counsel may advise and to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. On May 4, 2009, upon application of Comerica Bank, Justice Campbell granted an order appointing A&M as Receiver (the “**Appointment Order**”);
2. Prior to the granting of the Appointment Order, the operations of the Debtor ceased. The Debtor had manufactured metal stampings, primarily for tier-one suppliers to the North American automotive sector;
3. A&M conducted a marketing process, as described in the first report to Court of the Receiver dated June 16, 2009, in respect of the liquidation of the assets of the Debtor. As a result of the marketing process the Receiver negotiated an auction services agreement between 1416088 Ontario Limited c.o.b Danbury Industrial (“**Danbury**”) and the Receiver dated June 15, 2009 (the “**Auction Agreement**”);
4. The Auction Agreement was approved by the court on July 2, 2009 and the auction contemplated by the Auction Agreement was held on July 9, 2009. The Receiver is continuing to work with Danbury to complete the transactions contemplated by the Auction Agreement;
5. The bankruptcy of the Debtor will bring necessary certainty to the process in respect of potential priority amounts and creditor claims;
6. The facts as set out in the Second Report;
7. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and

8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Second Report; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

August 7, 2009

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in its capacity as court appointed receiver of MTB
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TO: SERVICE LIST

IN THE MATTER OF THE RECEIVERSHIP OF MTB INDUSTRIES INC.

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, AS AMENDED.

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(Returnable August 13, 2009)

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TAB "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE <>) THURSDAY, THE 13TH DAY OF
JUSTICE <>) AUGUST, 2009

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC (“A&M”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of MTB Industries Inc. (the “**Debtor**”) for an order in the form attached as schedule “A” to the notice of motion of the Receiver dated August 7, 2009 (the “**Notice of Motion**”) *inter alia*: (i) abridging and validating the timing and method of service of this Motion Record so that this Motion is properly returnable; (ii) approving the second report to Court of the Receiver dated August 7, 2009 (the “**Second Report**”) and the activities of the Receiver as set out therein; and (iii) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and Comerica Bank, no one else appearing and making submissions although duly served as appears from the affidavit of service of Stephanie Waugh sworn August 7, 2009;

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

Approval of Receiver's Activities

2. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver as set out therein, be and are hereby approved.

Authority of Receiver

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to file an assignment into bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, in the name of and on behalf of the Debtor and that nothing in these proceedings restricts any entity affiliated with A&M from acting as trustee in bankruptcy of the Debtor.
-

Court File No: 09-CL-8163
MTB INDUSTRIES INC.
Respondent

-and -

COMERICA BANK
Applicant

ONTARIO

SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER
(August 13, 2009)

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TAB 2

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

B E T W E E N :

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

**SECOND REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA ULC.**

INTRODUCTION

1. This second report is filed by Alvarez & Marsal Canada ULC ("**A&M**") in its capacity as Court-appointed receiver (the "**Receiver**") of MTB Industries Inc. ("**MTB**" or the "**Company**"). Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") dated May 4, 2009 (the "**Appointment Order**"), A&M was appointed Receiver of MTB's assets, property, and undertaking (the "**Property**") but was specifically not empowered to carry on the business or operations of MTB. A copy of the Appointment Order is attached as **Appendix A**.
2. The first report of the Receiver dated June 16, 2009 (the "**First Report**"), was filed, among other things, in support of a request by the Receiver to (i) approve an Auction Services Agreement dated June 15, 2009 between the Receiver and 1416088 Ontario Limited (c.o.b Danbury Industrial) ("**Danbury**") relating to the sale of MTB's plant machinery and equipment (the "**Auction Agreement**"); and (ii) provide the Receiver with the power to file an assignment into bankruptcy on behalf of the Company in

accordance with the *Bankruptcy and Insolvency Act* (“BIA”). A copy of the First Report, without appendices is attached as **Appendix B**.

3. On July 2, 2009, by Order of the Honourable Madame Justice Pepall, the Auction Agreement was approved (the “**Auction Approval Order**”). A copy of the Auction Approval Order and the corresponding endorsement of Justice Peppal are attached hereto as **Appendices C and D** respectively.
4. The motion by the Receiver regarding the power to file an assignment into bankruptcy on behalf of the Company in accordance with the BIA was adjourned by the Court and, among other things is the subject matter of this second report.

PURPOSE OF THIS REPORT

5. This second report is filed by the Receiver:
 - (a) to provide an update to the Court on the Receiver’s activities since date of the First Report, including the results of the transactions contemplated by the Auction Agreement; and
 - (b) in support of the Receiver’s motion seeking, an order from this Honourable Court, *inter alia*:
 - (i) approving the activities of the Receiver as set out herein;
 - (ii) providing the Receiver with the power to file an assignment into bankruptcy on behalf of the Company in accordance with the *Bankruptcy and Insolvency Act*.

BACKGROUND

6. MTB was incorporated and carried on business pursuant to the laws of the Province of Ontario. The Company was a supplier to Automotive OEM and Tier I companies. Prior

to ceasing its operations on or about May 1, 2009, the Company employed approximately 90 non-unionized employees.

7. Prior to the appointment of the Receiver, the Company's major customer, Multimatic Inc., advised MTB that they were removing their work from the Company and would no longer support the Company. Without the business of Multimatic Inc., the Company was unable to sustain its operations. Accordingly, the Company ceased operations and terminated all of its employees on May 1, 2009.
8. Also, around that time, certain other customers of the Company advised the Company that they did not intend to continue business relations with the Company and would be removing their tooling. As a result, the Company was no longer able carry on and operate the business and as such ceased all operations and terminated its employees effective May 1, 2009.
9. As the Company was in default under its loan facilities with its primary secured lender, Comerica Bank ("**Comerica**"), Comerica applied for the appointment of the Receiver and the Appointment Order was granted on May 4, 2009.

THE RECEIVER'S ACTIVITIES TO DATE

10. On May 4, 2009, the Receiver took control of the Property and the premises at 20 Barnes Court, Concord, Ontario (the "**Debtor's Premises**"). Pursuant to the terms of the Appointment Order, the Receiver was not empowered, and did not, operate the business of the Company.
11. The activities of the Receiver prior to the date of the First Report are summarized in the First Report.
12. Since the date of the First Report, the Receiver's activities have included:
 - (a) discussions with GPM Real Property 10 Ltd. and GPM (1) GP Inc. (collectively the "**Landlord**") to come to terms of understanding regarding the Debtor's

Premises (the “**Terms of Understanding**”). The Terms of Understanding were incorporated into Justice Peppal’s endorsement of July 2, 2009;

- (b) working with Danbury regarding the transactions contemplated by the Auction Agreement, which included the public auction held on July 9, 2009;
 - (c) reconciling of final customer accounts receivable and inventory sales and coordinating the return of customer deposits;
 - (d) arranging for the return of additional leased equipment to secured lenders with verified security, including GE Equipment Finance G.P.;
 - (e) coordinating and working with the appropriate government agencies to administer employee *Wage Earner Protection Program Act* (“**WEPPA**”) claims; and
 - (f) responding to creditor, employee and other enquiries.
13. The Receiver, with the assistance of legal counsel, has also continued to assess priority claims to the assets of MTB. Following the completion of the transactions contemplated by the Auction Agreement, including the removal of the MTB assets from the Debtor’s Premises, which is expected to occur no later than the end of August, 2009, the Receiver intends to bring a motion seeking a distribution of the funds it holds. The status of these claims is discussed below.

STATUS OF AUCTION AGREEMENT TRANSACTIONS

14. The auction contemplated by the Auction Agreement was held on July 9, 2009. Danbury is in the process of working with the purchasers to remove the purchased assets from the Debtor’s Premises in accordance with the terms of the Auction Agreement.
15. Following the auction date, Danbury, in accordance with the Auction Agreement, has continued to arrange for the sale of MTB assets which were not purchased at auction, such that as of the date of this report, the only asset of MTB which remains unsold is one large stamping press. The Receiver is working with Danbury to effect a sale of this asset.

16. Danbury has advised the Receiver that it is on schedule to vacate the premises in accordance with the Auction Agreement and the Terms of Understanding prior to August 31, 2009.

SECURED AND PRIORITY CLAIMS

17. From a review of the books and records of MTB as well as discussions with various stakeholders, the following is a summary of the various secured and priority claims which the Receiver understands exist as against the assets of MTB.

Employee Amounts

18. Following the appointment of the Receiver, the Receiver in performing its duties and obligations under the WEPPA, notified employees of the existence of the WEPPA, gathered and assembled required information, filed the required information electronically with Human Resources and Skills Development Canada (“**HRSDC**”), and addressed employee enquiries related to WEPPA.
19. The Receiver understands that 87 employees have filed claims with WEPPA, and HRSDC has notified the Receiver that to date it has not accepted any MTB employee claims under WEPPA.
20. Under section 81.4 of the BIA, employees have priority claim of up to \$2,000 for unpaid wages, including vacation pay, but not including severance or termination pay, for services rendered in the six months prior to the date of the receivership. Based on the books and records of MTB the Receiver estimates these section 81.4 claims to be in the approximate amount of \$114,000.
21. Certain employees are also owed vacation pay in excess of the \$2,000 limit provided priority under section 81.4 of the BIA (the “**Excess Vacation Pay**”). Outside of a bankruptcy, this Excess Vacation Pay, which is estimated to be approximately \$57,000 in total, would be deemed to be held in trust by MTB. However, the Receiver understands

that should MTB become bankrupt, the Excess Vacation Pay would become an unsecured claim.

22. Should MTB become bankrupt, the Receiver understands that section 81.3 of the BIA provides a priority similar to that under section 81.4 of the BIA (which is effective in a receivership), for up to \$2,000 per employee for wages earned but not paid in the six months prior to the date of the initial bankruptcy event. The Receiver does not believe, based on the circumstances, that there would be a difference between the calculation of the section 81.3 and 81.4 priorities in these circumstances.

Pension Plan Contributions

23. The Receiver learned that MTB maintained a defined contribution pension plan for certain of its employees. According to the books and records of the Company, the Company was approximately 3 months in arrears in the required pension plan contributions (owing approximately \$39,235) prior to the date of the Appointment Order.
24. Under section 81.6 of the BIA (and under section 81.5 of the BIA which would become applicable should MTB become bankrupt), the Receiver understands that the unpaid pension contributions would have a priority charge over other creditors of MTB.

Government Remittances

25. Canada Revenue Agency ("CRA") has advised that the amount of approximately \$36,000 related to source deduction remittances appears to be outstanding, however, an audit has not yet been conducted by the CRA. The Receiver is in the process of arranging an audit with CRA. These source deduction amounts would have priority over secured creditors of MTB should MTB become bankrupt.
26. According to a June assessment received from the CRA it is estimated that the amount of approximately \$34,000 may be owing by the Company to the CRA in respect of GST which was not paid prior to the appointment of the Receiver. Should the Company become bankrupt, the Receiver understands that the outstanding amount for GST would rank as an unsecured claim.

27. As well, according to the books and records of the Company the amount of approximately \$350 is owing to the WSIB. The Receiver has not seen any records which indicate that amounts are owing by the Company in respect of Retail Sales Tax or Employer Health Tax, however the Company's records are not complete. The Receiver understands, however, that should MTB become bankrupt, these amounts would rank as unsecured claims.

Claims registered under the Personal Property Security Act

28. Comerica was owed \$7,785,380.24 immediately prior to the Appointment Order. The Company, in support of the loans being made by Comerica, granted to Comerica a general security agreement dated July 8, 2005 (the "**Comerica Security Agreement**").
29. In addition to the Comerica Security Agreement, Export Development Canada ("**EDC**") executed guarantees each dated July 3, 2008 whereby EDC guaranteed payment to Comerica with respect to certain of the loan facilities.
30. Fraser Milner Casgrain LLP ("**FMC**"), counsel to the Receiver, has provided an opinion to the Receiver that, subject to customary assumptions and qualifications, the Comerica Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB. A copy of the security opinion (the "**FMC Opinion**"), which also addresses certain potential priority claims including prior registrations in favour of Bank of Nova Scotia as well as potential purchase money security interests is attached hereto as **Appendix E**.
31. As set out in the FMC Opinion, and based on information which has been provided to the Receiver and FMC, below is a summary of the status of the secured party claims, other than that of Comerica, against the Company's assets. The particulars of the applicable PPSA registrations can be found in the summary attached to the FMC Opinion.

	Secured Party	Collateral	Comments
A. Secured Party claims to be addressed on a subsequent motion			
1.	The Bank of Nova Scotia	1000 ton Verson, Bed size 108" x 72", 12" Stroke, Dallas uncoiler with coil car, Dallas straightener and Dallas feeder	<p>Collateral sold at auction for the amount of \$27,500.</p> <p>Amount owing to the Secured Party under the applicable lease as of April 24, 2009 is \$50,805.63.</p> <p>The Receiver has no reason to suspect that this not a validly perfected secured claim. As this claim is registered prior in time to Comerica's registration it will need to be addressed on a subsequent distribution motion.</p>
2.	The Bank of Nova Scotia	Versa Fork-Lift 60/80 with Riggers Power Boom Attachment with stand, serial number 02260	<p>Collateral sold at auction for amount of \$236,000.</p> <p>Amount owing to the Secured Party under the applicable lease as of April 24, 2009 is \$127,980.39.</p> <p>The PPSA registrations at issue do not indicate 'motor vehicle included'. The effect which this may have upon the validity of the security registration as against the fork lift collateral, and corresponding proceeds, will most likely need to be addressed in a subsequent motion.</p>
3.	General Electric Canada Equipment Finance G.P.:	Refurbished 2000 model S120XLS lift truck SIN 150D SS 002 S3894	<p>Collateral sold at auction for amount of \$7,000.</p> <p>Amount owing to the Secured Party under the applicable lease as of April 24, 2009 is \$32,569.91.</p> <p>The PPSA registration at issue does not indicate 'motor vehicle included'. The effect which this may have upon the validity of the security registration as against the fork lift collateral, and corresponding proceeds, will most likely need to be addressed in a subsequent motion.</p>

	Secured Party	Collateral	Comments
4.	Ready Machinery & Equipment (Canada) Inc.	1600ton Danly Press. serial number 71300701	<p>Collateral sold at auction for amount of \$30,000.</p> <p>The Secured Party claims a repair and storage lien in the amount of \$13,523.00 against the collateral. The Receiver has no reason to suspect that this not a validly perfected claim under the <i>Repair and Storage Lien Act</i>, which will need to be addressed in a subsequent distribution motion.</p>
B. Secured Party Claims which do not appear to have priority over Comerica's security interest			
5.	CNC Associates Inc.	Haas Vertical Machining Center (see FMC Opinion for full description)	<p>Collateral sold at auction for amount of \$50,000.</p> <p>The Secured Party does not take issue with the Receiver's assessment that the registration of the financing statement as against MTB was made outside of the time limits required to obtain PMSI priority under the PPSA.</p> <p>Consequently the Secured Party does not claim priority in the proceeds from the sale of this collateral.</p>
6.	GE VFS Canada Limited Partnership	1994 Hyster S120XLS Refurbished Forklift S/N: D004V08633R	<p>Collateral sold at auction for amount of \$1,750.</p> <p>The Secured Party does not take issue with the Receiver's assessment that the registration of the financing statement was made outside of the time limits required to obtain PMSI priority under the PPSA.</p> <p>Consequently the Secured Party does not claim priority in the proceeds from the sale of this collateral.</p>

	Secured Party	Collateral	Comments
C. Secured Party Claims where collateral has been returned to the Secured Party			
7.	Nissan Canada Inc.	2007 Nissan Murano	Returned to the Secured Party as described in the First Report.
8.	De Lage Landen Financial Services Canada Inc.	2007 American Lincoln 7750-LP Sweeper,	Returned to the Secured Party as described in the First Report.
9.	Ford Credit Canada Leasing, a Div of Canadian Road Leasing Co.	2006 Ford Expedition	Returned to the Secured Party as described in the First Report.
10.	GE Canada Equipment Finance G.P.	DEMO Sodick Wire EDM Maching (sic), etc.	Returned to the Secured Party based on valid PMSI claim.

POWER TO BANKRUPT THE COMPANY

32. As the Company has ceased operations, the Receiver is of the view that a bankruptcy will bring necessary certainty to the process in respect of potential priority amounts and creditor claims.
33. As such, the Receiver is requesting that it be granted the power to assign MTB into bankruptcy in accordance with the *BIA*. If such power is granted, it is the intention of the Receiver to file an assignment and name McIntosh & Morawetz Inc., an entity related to the Receiver, as trustee in bankruptcy of MTB.
34. The effect which a bankruptcy will have upon the various secured and priority claims is addressed above.

35. As well, on August 4, 2009, the Receiver sent a letter the former employees of MTB advising the employees that the Receiver intended to bring a motion seeking, among other things, the power to bankrupt the Company, on August 13, 2009 and that such motion may effect their rights. Employees were also directed to the Receiver's website www.alvarezandmarsal.com/MTB for further information, including a copy of this report. A copy of the form of such letter is attached as **Appendix F** hereto.
36. On August 5, 2009, an email was also sent to the service list advising of the proposed motion and that materials for the motion, including this second report of the Receiver would follow.

RECEIVER'S RECEIPTS AND DISBURSEMENTS

37. A summary of the Receiver's receipts and disbursements from the Date of Appointment to August 5, 2009 is attached hereto as **Appendix G**.

RECOMMENDATIONS

38. Based on the foregoing, the Receiver respectfully recommends that the Court grant the relief set out in paragraph 5(b) above.

All of which is respectfully submitted this 7th day of August, 2009.

**Alvarez & Marsal Canada ULC, solely in its capacity as
Court-Appointed Receiver and of
MTB Industries Inc.**

A handwritten signature in cursive script, appearing to read "John J. Walker", followed by a period.

Per: John J. Walker

TAB "A"

Court File No. 09-CL-8163

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE Mr)

MONDAY, THE 4TH DAY

JUSTICE CL Campbell)

OF MAY, 2009

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

ORDER

THIS MOTION, made by the Applicant for an Order pursuant to section 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") appointing ALVAREZ & MARSAL CANADA ULC as interim receiver and receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of MTB INDUSTRIES INC. (the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Laura L. Benson sworn May 1, 2009 and the Exhibits thereto and on hearing the submissions of counsel for the ~~Plaintiff~~ ^{Applicant} and ~~Defendant~~ ^{Respondent} and on reading the consent of Alvarez & Marsal Canada ULC to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section ^{243(2) USCC} ~~47(1)~~ of the BIA and section 101 of the CJA, Alvarez & Marsal Canada ULC is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

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

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order provided the Receiver shall not manage, operate and carry on the business of the Debtor;

- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any

registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS AND DECLARES that all employees of the Debtor are hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

Canadian Environmental Protection Act, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

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

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and

charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

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

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

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

GENERAL

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

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

26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

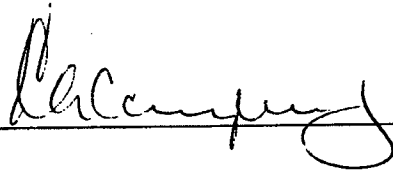
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 04 2009

PER / PAR: TV



A handwritten signature, likely of the Receiver, is written over a horizontal line.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada ULC the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of MTB Industries Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 4th day of May, 2009 (the "Order") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 2009.

Alvarez & Marsal Canada ULC, solely in its
capacity
as Receiver of the Property (as defined in the
Order), and not in its personal capacity

Per: _____
Name:
Title:

COMERICA BANK - AND - MTB INDUSTRIES INC.

Court File No. 08-CL-8163

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

ORDER

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Lawyers for Comerica Bank

TAB "B"

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

BETWEEN:

COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

**FIRST REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA ULC.**

INTRODUCTION

1. This first report is filed by Alvarez & Marsal Canada ULC ("A&M") in its capacity as Court-appointed receiver (the "Receiver") of MTB Industries Inc. ("MTB" or the "Company"). Pursuant to an order of the Ontario Superior Court of Justice (the "Court") dated May 4, 2009 (the "Appointment Order"), A&M was appointed Receiver of MTB's assets, property, and undertaking (the "Property") but was specifically not empowered to carry on the business or operations of MTB. A copy of the Appointment Order is attached as **Appendix A**.

PURPOSE OF THIS REPORT

2. This first report is filed by the Receiver:
 - (a) to provide an update to the Court on the Receiver's activities since granting of the Appointment Order; and
 - (b) in support of the Receiver's motion seeking, an order from this Honourable Court, *inter alia*:

- (i) approving the activities of the Receiver from May 4, 2009 to the date of this Report;
- (ii) approving the Auction Services Agreement dated June 15, 2009 between the Receiver and 1416088 Ontario Limited (c.o.b Danbury Industrial) ("**Danbury**") relating to the sale of MTB's plant machinery and equipment (the "**Auction Agreement**");
- (iii) temporarily sealing an unredacted version of the Auction Agreement and a comparison of the terms of the Auction Agreement as against other auction proposals received by the Receiver (collectively, the "**Confidential Appendices**") until the completion of the auction or further order of the Court; and
- (iv) providing the Receiver with the power to file an assignment into bankruptcy on behalf of the Company in accordance with the *Bankruptcy and Insolvency Act*.

BACKGROUND

- 3. MTB was incorporated and carried on business pursuant to the laws of the Province of Ontario. The Company was a supplier to most Automotive OEM and Tier I companies. Prior to ceasing its operations on or about May 1, 2009, the Company employed approximately 90 non-unionized employees.
- 4. MTB borrowed certain funds from Comerica Bank ("**Comerica**") under a number of loan facilities to the Company including a Revolving Demand Loan, Reducing Term Loan, Revolving Reducing Term Loan, and Reducing Term Loan (for Capex Financing) (all as defined by the affidavit of Laura L. Benson sworn May 1, 2009 (The "**Comerica Affidavit**"). The Comerica Affidavit was filed by Comerica in support of the Appointment Order, and a copy of the body of which, without Exhibits, is attached as **Appendix B** hereto.

5. According to the Comerica Affidavit as of April 30, 2009, the total amount of the indebtedness owed by the Company to Comerica pursuant to the Loan Facilities was \$7,785,380.24, broken down as follows:

	<u>Loan Facility</u>	<u>Principal Amount</u>	<u>Interest</u>
(a)	Revolving Demand Loan	\$ 890,002.37	\$ 1,963.14
(b)	Reducing Term Loan	\$ 1,330,000.00	\$ 5,748.15
(c)	Revolving Reducing Term Loan	\$ 3,535,714.29	\$ 15,281.06
(d)	Reducing Term Loan	\$ 2,000,000.00	\$ 6,671.23

6. The Company, in support of the loans being made by Comerica, granted to Comerica a general security agreement dated July 8, 2005 (the "Comerica Security Agreement").
7. Fraser Milner Casgrain LLP, counsel to the Receiver, has provided an opinion to the Receiver that, subject to customary assumptions and qualifications, the Comerica Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB. A copy of the security opinion, which also addresses certain potential priority claims including prior registrations in favour of Bank of Nova Scotia as well as potential purchase money security interests is attached hereto as **Appendix C**.
8. In addition to the Comerica Security Agreement, Export Development Canada ("EDC") executed guarantees each dated July 3, 2008 whereby EDC guaranteed payment to Comerica with respect to a Revolving Demand Loan and Reducing Term Loan plus interest and costs with respect to the said Loan Facilities.
9. In or about December 2008, the Company began to default on its payment obligations to Comerica with respect to the Loan Facilities. By letters dated March 17, 2009, Comerica made demands in full against the Company and delivered Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 as amended.
10. In the period that followed, the Company and its financial advisors attempted to restructure the Company's affairs informally with Comerica and others. However, on

Thursday, April 30, 2009 the Company's major customer, Multimatic Inc., advised MTB that they were removing their work from the Company and would no longer support the Company. Accordingly, the Company ceased operations and terminated all of its employees on May 1, 2009. Without the business of Multimatic Inc., the Company was unable to sustain its operations.

11. Also, around that time, certain other customers of the Company advised the Company that they did not intend to continue business relations with the Company and would be pulling their tooling. As a result, the Company was no longer able carry on and operate the business and as such ceased all operations and terminated its employees effective May 1, 2009. As the Company was in default under its Loan Facilities, Comerica, applied for the appointment of the Receiver and the Appointment Order was granted on May 4, 2009.

THE RECEIVER'S ACTIVITIES TO DATE

12. On May 4, 2009, the Receiver took control of the Property and the premises at 20 Barnes Court, Concord, Ontario (the "**Debtor's Premises**"). Pursuant to the terms of the Appointment Order, the Receiver was not empowered, and did not, operate the business of the Company.
13. The Receiver's activities since its appointment included, *inter alia*, the following:
 - (a) securing the Property, including arranging for security patrols and a safety inspection of the Debtor's Premises;
 - (b) engaging a limited number of the Company's former employees on a term and task basis to assist in the safeguarding and asset realization;
 - (c) attending at the Debtor's Premises on a regular basis to, *inter alia*, address various matters related to the closure of MTB's business and cessation of its operations;
 - (d) freezing the Company's existing bank accounts and opening new bank accounts under the name of the Receiver;

- (e) engaging in regular discussions with stakeholders including, Comerica Bank, equipment lessors, the landlord of the Debtor's Premises and various others regarding the status of the receivership proceedings;
- (f) performing the Receiver's duties and obligations under the *Wage Earner Protection Program Act* ("WEPPA"), including notifying employees of the existence of the WEPPA, gathering and assembling required information, filing the required information electronically with Service Canada, and addressing employee enquiries related to the WEPPA;
- (g) arranging for the preparation of and distributing records of employment to former employees and addressing general employee enquiries;
- (h) contacting various utility and service providers to ensure continuation of essential services during the receivership period and to cancel those services that were not essential;
- (i) arranging for proposals on the auction or sale of MTB's fixed assets from credible auctioneers and other parties considered to be potential purchasers of the assets;
- (j) notifying the Company's creditors and customers to advise of the receivership and to provide general information in respect of the proceedings;
- (k) liaising with former MTB officers and the Company's insurance broker to determine the extent of coverage available to the Receiver under MTB's existing insurance policies and to arrange continued coverage for the Property;
- (l) collecting accounts receivable and following up on outstanding balances;
- (m) coordinating the return of customer owned tooling;
- (n) arranging for the removal of oils and coolants from the Company's premises, as considered necessary to ensure no environmental issues result during the Receivership;

- (o) arranging for the Company's accounting records to be updated through the date of the Receiver's appointment in order to obtain a complete record of the Company's accounts receivable, inventory and accounts payable;
- (p) arranging for the review of various equipment lease agreements to assess validity and priority;
- (q) arranging for the return of the leased equipment to De Lage Landen Financial Services Canada Inc., Nissan Canada Inc. and Ford Credit Canada Leasing Company;
- (r) reviewing the status of priority claims and deemed trusts; and
- (s) responding to creditor and other enquiries.

PENSION PLAN

- 14. The Receiver learned that MTB maintained a defined contribution pension plan for certain of its employees. According to the books and records of the Company, the Company was approximately 3 months in arrears in the required pension plan contributions (owing approximately \$39,000) prior to the date of the Appointment Order.
- 15. The Receiver wrote letters to both the Financial Services Commission of Ontario and the Canada Revenue Agency advising of the Appointment Order and of the fact that the Receiver is unwilling to assume any role or responsibility regarding the administration of MTB's pension plan. Further the Receiver advised that MTB no longer had the resources to administer the pension plan.

DISCUSSIONS WITH LANDLORD

- 16. GPM Real Property 10 Ltd. and GPM (1) GP Inc. (collectively the "**Landlord**") has been in discussions with the Receiver. The Receiver has paid occupation rent to the Landlord since the date of the Appointment Order at the rates as set out in the applicable leases.

17. The Landlord has raised concerns regarding the sale of certain items from the Debtor's Premises which it claims are fixtures and the Receiver continues to discuss such with the Landlord.
18. Further the Landlord has provided the Receiver with a copy of a memorandum of agreement between the Landlord, Comerica Bank and MTB dated August 3, 2005 (the "Pit Restoration Agreement"). In accordance with the Pit Restoration Agreement, MTB paid approximately \$120,000 (the "Escrow Funds") to be held by an escrow agent (which the Receiver now understands is the Landlord's counsel, McCarthy Tetrault).
19. Although, the Receiver continues to consider the terms of the Pit Restoration Agreement, it appears to provide that the Escrow Funds are to be used to restore certain 'pits' in which equipment is located on the Debtor's Premises, should Comerica take possession of the Debtor's Premises and sell the Assets. A copy of the Pit Restoration Agreement is attached as **Appendix D**.

PROPOSED SALE AUCTION PROPOSALS

20. The Receiver solicited liquidation proposals and cash offers for MTB's capital assets from the following parties:
 - Maynard's Industries Ltd. ("Maynards")
 - Danbury
 - Great American Group
 - Platinum Asset Management
 - Hilco Asset Sales Canada ("Hilco")
 - Corporate Assets Inc.
21. Overall, it was apparent that the market for the MTB assets, given the ongoing restructuring and consolidation of the North American auto industry, is severely depressed. The above parties expressed a high degree of uncertainty as to the marketability of these and similar assets in the current environment and a general unwillingness to assume the risk of purchasing the assets outright or providing an auction net minimum guarantee.

22. Potential auctioneers were provided approximately two weeks to submit auction proposals. Proposals were only received from Maynards, Danbury and Hilco, the remainder choosing not to submit a bid. A comparison of the bids received is attached as **Appendix E**. The Receiver is asking that such comparison be sealed as the Receiver is of the view such information is commercially sensitive and could effect realizations should it become public.
23. The Auction Agreement, received from Danbury represented the highest certain recovery for the MTB estate based on a combination of auction period, net minimum guarantee and potential upside sharing. A redacted version of the Auction Agreement is attached as **Appendix F**. The only portions redacted are the references to the net minimum guarantee, potential upside sharing as well as the estimated values of the Assets as agreed to between Danbury and the Receiver for purposes of adjusting the net minimum guarantee amount. The Receiver has been advised by Comerica that it supports the approval of the Auction Agreement.
24. A unredacted version of the Auction Agreement is attached as **Appendix G**. The Receiver will ask the Court to seal the unredacted version of the Auction Agreement pending completion of the auction or further order of the Court as the Receiver believes that the redacted information is commercially sensitive and should it become public realizations will likely be effected.

POWER TO BANKRUPT THE COMPANY

25. As the Company has previously ceased operations, the Receiver is of the view that a bankruptcy will bring necessary certainty to the process in respect of potential priority amounts and creditor claims.
26. As such, the Receiver is requesting that it be granted the power to assign MTB into bankruptcy in accordance with the *Bankruptcy and Insolvency Act*.

RECEIVER'S RECEIPTS AND DISBURSEMENTS

27. A summary of the Receiver's receipts and disbursements from the Date of Appointment to June 15, 2009 is attached hereto as **Appendix H**. The receipts and disbursements do

not include any disbursements related to pre-filing wages or vacation pay as such amounts were paid current as at the Receiver's appointment.

RECOMMENDATIONS

28. Based on the foregoing, the Receiver respectfully recommends that the Court grant an the relief set out in paragraph 2(b) above.

All of which is respectfully submitted this 16th day of June, 2009.

**Alvarez & Marsal Canada ULC, solely in its capacity as
Court-Appointed Receiver and of
MTB Industries Inc.**

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

Per: John R. Walker

TAB "C"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) THURSDAY, THE 2ND DAY OF
JUSTICE PEPALL) JULY, 2009



COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC ("A&M") in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of MTB Industries Inc. (the "Debtor") for an order in the form attached as schedule "A" to the notice of motion of the Receiver dated June 16, 2009 (the "Notice of Motion") *inter alia*: (i) abridging and validating the timing and method of service of this Motion Record so that this Motion is properly returnable; (ii) approving the first report to Court of the Receiver dated June 16, 2009 (the "First Report") and the activities of the Receiver as set out therein; (iii) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor; and (v) approving the auction services agreement between 1416088 Ontario Limited c.o.b Danbury Industrial ("Danbury") and the Receiver dated June 15, 2009 (the "Auction Agreement") in the

form attached to the First Report, in respect of the Assets (as defined in the Auction Agreement) and vesting the Assets in the respective Purchasers free and clear of any and all claims, encumbrances and security interests; and (v) sealing and treating as confidential the unredacted version of the Auction Agreement and the offer comparison attached as confidential appendices to the First Report (the "Confidential Appendices") pending completion of the auction or further Court order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and Comerica Bank, no one else appearing and making submissions although duly served as appears from the affidavit of service of Laura Bowles-Dove sworn June 16, 2009;

and on counsel of Comerica Bank + the Service landlord in light of the terms of understanding, -

GPM Real Property (10) Ltd. and GPM (10) GP Inc. (the landlord) JRP.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

Approval of Receiver's Activities

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as set out therein, be and are hereby approved.

Approval of Auction Agreement

3. **THIS COURT ORDERS** that the Auction Agreement and the transactions contemplated therein (the "Transactions") be and are hereby approved.
4. **THIS COURT ORDERS** that the execution of the Auction Agreement by the Receiver is hereby authorized and approved and the Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions or otherwise in accordance with the Auction Agreement.
5. **THIS COURT ORDERS** that upon delivery of a bill of sale from Danbury to a purchaser of Assets (a "Purchaser"), a Purchaser takes such Assets set out on such

bill of sales, free and clear of and from any and all claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, conditional sales contracts or title retention agreements, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, orders, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise and whether created by or pursuant to the orders made in these proceedings or other proceedings (collectively, the "**Claims**") including, without limiting the generality of the foregoing all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to such Assets are hereby expunged and discharged as against such Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the applicable bill of sale all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtor;

the approval of the Auction Agreement and the vesting of the Assets in each Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that any Transactions contemplated by Auction Agreement ^{are} ~~is~~ exempt from the application of the *Bulk Sales Act* (Ontario). SRP

Sealing

9. **THIS COURT ORDERS** that the Confidential Appendices to the First Report shall be and are hereby sealed and treated as confidential pending completion of the auction or further order of this Court.

SRP

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 02 2009

PER / PAR: SRP

COMERICA BANK

Applicant

-and -

Court File No: 09-CL-8163
MTB INDUSTRIES INC.

Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER
(July 2, 2009)

FRASER MILNER CASGRAIN LLP
1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

Lawyer: R. Shayne Kukulowicz / Jane Dietrich
LSUC: 30729S / 49302U
Email: shayne.kukulowicz@fmc-law.com /
jane.dietrich@fmc-law.com
Telephone: 416 863-4740 / 416-863-4467
Facsimile: 416 863-4592

*Lawyers for the Receiver, Alvarez &
Marsal Canada ULC*

TAB "D"

COMERICA BANK

- and -

MTB INDUSTRIES INC.

Applicant

Respondent

Ms. Dietrich for the Receiver

Mr. Reale for Comerica.

Adjourned to a 9:30 on June 24, 2009 to permit discussions w/ landlord.

Tabs E & G to be sealed pending return of motion.

cleared by G
(Hox)

July 2/09

The Receiver applies for various relief including removal of an direction serves agreement with 141608's ordering limited ("Sashbury"). The Receiver is a true two auto parts supplier & its employees were all terminated & operations ceased prior to the appointment of the Receiver. The first secured creditor, Comerica Bank, is the applicant & is owed in excess of 7 million. The Receiver met with Comerica & certain of the debtor's customers to consider alternatives & a list of the information received

June 19, 2009

Court File No: 09-CJ-1163

2 July 2005

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Returnable June 19, 2009)

FRASER MILNER CASGRAIN LLP

1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

Lawyer:

LSUC:

Email:

R. Shayne Kukulowicz / Jane Dietrich
307295 / 49302U

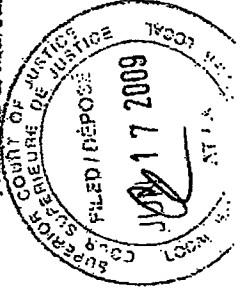
shayne.kukulowicz@fmc-law.com /

jane.dietrich@fmc-law.com

Telephone: 416 863-4740 / 416-863-4467

Facsimile: 416 863-4592

Lawyers for the Receiver, Alvarez & Marsal
Canada ULC



the significant extent of comenca's exposure relative to asset or firm value, the Recover restricted its sales process to soliciting 6 liquidation proposals. No one has attended today to oppose the relief requested. Based on a comparison of the bids received by the Recover, I draw the inference that the economic interest in liquidation resides with comenca who will ultimately experience a significant shortfall. In these circumstances, I am prepared to grant the order requested.

I am also sealing ~~with~~ Appendices E + G which contain commercially sensitive information the release of which would negatively affect the integrity of the process + the stakeholders. See SCC decision - Overseas Club

Lastly, the Recover, the landlord + comenca have agreed on terms of understanding relating to the premises + the Recover's + debtor's relationship with the landlord. I am attaching those terms as schedule A to this endorsement. The order requested is granted.

Forpall,)

Terms of Understanding

1. Alvarez & Marsal Canada ULC in its capacity as court appointed receiver (the "Receiver") of the assets, undertakings and property of MTB Industries Inc. ("MTB") and GPM Real Property (10) Ltd. and GPM (10) GP Inc. (collectively, the "Landlord") agree that the overhead cranes and all of their supporting structures (the "Cranes") will be removed from the auction list. As well, the Receiver agrees to transfer any interest it may have, if any, in and to the Cranes to the Landlord on an as is where is basis with no representation or warranty being made as to the condition of the Cranes (subject to the repair obligations in paragraph 3 hereof);
2. MTB's assets, including the assets listed on the schedule to the Auction Services Agreement as well as the substructures under the presses which include the steel frames at floor surface level around the presses, steel tanks, steelwork for vibration pads, intermediary electrical equipment and distribution boards providing supply to the assets (but not including any steel beams embedded into the concrete which are entirely below floor surface level), unless otherwise agreed to by the Landlord and the Receiver, shall be removed from the Premises by the Receiver. The Premises will be returned as provided for hererin, with all MTB assets removed with the exception of the Cranes. If any substantial work is required to the Premises to remove any of MTB's assets, for example opening holes in the walls or roof, reasonable advance notice will be provided of such to the Landlord by 1416088 Ontario Limited c.o.b. Danbury Industrial ("Danbury") on the Receiver's behalf and arrangement's for such work made in consultation with the Landlord;
3. The Premises will be returned in a clean and broom-swept condition. Any oil released from the assets since May 4, 2009, including during removal, will be removed by the Receiver. The Receiver will clean the floors with Absorbal and then with a mechanical floor sweeper. All garbage will be removed from inside and outside the Premises. All compressed air lines and steel barriers will be removed from the Premises. All electrical supply, cables and conduits will be removed or terminated back to secondary distribution boards on the building walls as identified previously by the Landlord and Danbury. All damages to the Premises, including to the roof and the Cranes, since May 4, 2009, and in particular resulting from the removal of any of the assets, will be repaired by the Receiver.
4. The Receiver will have the current annual inspection certificate with respect to the sprinkler system issued prior to the Receiver vacating the Premises.
5. The monies currently held by McCarthy Tétrault LLP as escrow agent will be retained in full by the Landlord for use in fixing the concrete pits at the Premises, after the Premises have been returned in the condition outlined above.
6. The Receiver will vacate the smaller of the units (which is a part of the Premises currently occupied by it, which measures approximately 13,800 sf and which houses no cranes/cement pits) in the condition outlined above by July 2, 2009. Thereafter, no rent (which is currently payable at \$11,173 monthly) will be payable for that unit.

7. The Landlord will provide a total rent reduction in the amount of \$75,000 in respect of rent for July and August, 2009 for the units which continue to be occupied by the Receiver, provided that if the Receiver shall vacate the Premises in the condition outlined above prior to August 31, 2009, the rebate shall be pro rated accordingly.
8. Comerica Bank ("Comerica") will not have any obligation to contribute \$50,000 towards pit restoration as pursuant to the Pit Restoration Agreement attached to the First Report of the Receiver dated June 16, 2009.
9. The Landlord shall be entitled upon reasonable notice to the Receiver or Danbury to attend at the Premises while the Receiver continues its occupation, provided that the Landlord does not interfere with the Auction.
10. Any and all claims of any nature whatsoever by or against the Landlord on one hand and Danbury, Comerica and/or the Receiver on the other shall be hereby released and discharged, other than those claims specifically arising from the terms of these Terms of Understanding.

TAB "E"



FRASER MILNER CASGRAIN LLP

June 16, 2009

Alvarez & Marsal Canada ULC
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2000
Toronto, ON M5J 2J1

Attention: John Walker

Dear Sirs:

Re: MTB Industries Inc. – Ontario Security Review

You have asked us in your capacity as court appointed receiver (the "Receiver") of MTB Industries Inc. ("MTB") pursuant to the Order of the Honourable Justice Campbell of the Ontario Superior Court of Justice dated May 4, 2009, to review certain loan and security documentation relating to the obligations of MTB to Comerica Bank Canada Branch ("Comerica"). The scope of our review is limited to the security and related documentation provided by Miller, Canfield, Paddock and Stone LLP on behalf of Comerica and those obtained from public records, as set out in Schedule "A" (collectively, the "Documents").

Summary

By way of overview, our conclusions are as follows, (defined terms used in this summary are defined below):

Personal Property Security – The Security Agreement held by Comerica appears to have been properly executed and delivered by MTB and grants security interest in the property charged thereunder in favour of Comerica. A *Personal Property Security Act* (Ontario) (the "PPSA") financing statement was properly filed by Comerica against MTB in Ontario to perfect security interests in the applicable personal property charged by the Security Agreements. Our searches indicate that there are two registrations in favour of The Bank of Nova Scotia – Scotia Plaza and one registration in favour of The Bank of Nova Scotia/Scotia Plaza Branch which predate the Comerica registration (collectively, the "BNS Registrations"). The BNS Registrations are each against 'equipment' and 'other' assets of MTB. The Receiver has been provided with copies of a

lease between MTB and The Bank of Nova Scotia ("BNS") dated May 27, 2008 (unsigned by MTB) which relates to a 1000 ton Verson, bed size 108" x 72", 12" stroke, SPM 20-60, SN 25919, Dallas 50,000 lb uncoiler with coil car, SN 12958, Dallas Straightener, 125 @ 78" wide SN 1290 and Dallas Feeder, 125 @ 78" wide, SN 52963, which appears to be restating a fully executed lease dated September 23, 2002 in respect of the same equipment. The Receiver has not provided us with any documentation indicating that the security interest in this equipment of BNS is subordinate to that of Comerica.

The Receiver has also been provided with a copy of a fully executed lease between MTB and The Bank of Nova Scotia dated November 25, 2004 in respect of a New Versa Fork-lift 60/80 with Riggers powerboom attachment with stand. Section 3(i)(g) of the Minister's Order made under the PPSA (the "Minister's Order") provides that where a motor vehicle is included in the collateral a financing statement shall set out an indication that a motor vehicle is included. None of the BNS Registrations includes an indication that a motor vehicle is included.

Other than the BNS Registrations there are no PPSA registrations which are currently on the PPSA register filed against MTB which date to a time prior to the registration in favour of Comerica. There are, however, registrations made after the date of the Comerica registration in favour of each of GE Canada Equipment Financing G.P. ("GE Canada"), Ford Credit Canada Leasing ("Ford"), Nissan Canada Inc. ("Nissan") and De Lage Landen Financial Services Canada Inc. ("De Lage"), CNC Associates, Inc. ("CNC") and GE VFS Canada Limited Partnership ("GE VFS").

Our searches revealed two registrations in favour of GE Canada. One of these registrations was made on April 19, 2007 listing "inventory", "equipment", "accounts" and "other" as the collateral classifications. The second registration was made on June 5, 2008 (the "June 5 Registration") listing "equipment" as the collateral classification. The Receiver has also been provided with a lease agreement dated April 19, 2007 between GE Canada (signature missing) and MTB in respect of a New DEMO Sodick Wire EDM Machine and related items and accessories and a copy of an estoppel letter addressed to Torkin Manes Cohen and Arbus LLP, Comerica and MTB which represents in favour of those parties that the registration only relates to a "New Demo Sodick Wire EDM Machine" with accessories, attachments, accessions, spare parts, replacements, substitutions, exchanges, trade-ins, intangibles and proceeds relating thereto. GE Canada has claimed a PMSI over this equipment and we see no reason for the Receiver to dispute this claim.

The Receiver has also been provided with a copy of a lease agreement dated June 3, 2008 between MTB and GE Canada in respect of a lift truck. GE Canada has claimed a PMSI in the lift truck subject to that lease, however the relevant PPSA registration has been filed only against "equipment" without also checking the "motor vehicles included" collateral classification. In addition the Receiver has been provided with an executed Certificate of Completion and Acceptance as well as an Acknowledgement of Delivery Date each signed by MTB which identify April 28, 2008 as the delivery date of the subject lift truck with the result that the June 5 Registration was not done within the time period required for GE Canada to perfect a PMSI in the subject lift truck. GE Canada has indicated that it has evidence that the lift truck was in fact

delivered on a later date, however we understand that this evidence has not yet been provided to the Receiver.

Our searches also revealed one registration in favour of GE VFS Canada Limited Partnership. This registration was effected January 28, 2008 and is against the "equipment" and "other" assets of MTB. The Receiver has been provided with a copy of a lease with GE VFS dated December 7, 2007 in respect of a refurbished fork lift. GE VFS did not file its financing statement within the prescribed time to perfect a PMSI in this fork lift. GE VFS has advised the Receiver's counsel that it does not dispute that its registration was not filed in a timely fashion. In addition, although this lease is in respect of a fork lift, GE VFS did not check off the "motor vehicle included" box in the collateral classifications which raises the issue discussed above in respect of compliance with the Minister's Order.

Our searches also reveal registrations in favour of each of Ford, Nissan and De Lage. The Receiver was provided with copies of lease agreements with Ford in respect of a 2006 Ford Expedition, with Nissan in respect of a 2007 Nissan Murano and with De Lage in respect of a 2007 American Lincoln Sweeper. Each of these motor vehicles has been returned to the applicable creditor as (i) in the case of Ford and Nissan the lease agreements were determined to be true leases and registered under the PPSA and (ii) in the case of De Lage, the steps necessary to obtain a PMSI had been completed within the prescribed period.

With respect to the registration in favour of CNC in respect of certain equipment, this registration was not filed against MTB within the prescribed time period for CNC to claim a valid PMSI.

Finally there is a PPSA registration in favour of Return on Innovation Capital Ltd., as Agent. As discussed below the Receiver was provided with a copy of an intercreditor agreement in respect of this registration subordinating ROI's indebtedness to that of Comerica.

Our searches also revealed a registration in respect of a *Repair and Storage Liens Act* (Ontario) claim by Ready Machinery & Equipment (Canada) Inc. ("Ready Machinery"). We understand that the Receiver has been advised that MTB disputes that any amount is owing to Ready Machinery. We understand that the Receiver has requested additional information and documentation in this regard but that this information and documentation has not yet been received.

Other than as set out above you have not made us aware of any evidence, indicating that these subsequent registrations may relate to a claim which could have priority to that of Comerica either by way of a valid PMSI, or upon some other basis such as a postponement, and you have further advised that, other than as indicated above, you are not aware that any such party has claimed priority based upon such security or the registration of such security.

Validity and Enforceability: -- As more particularly discussed in the "Opinion" section below, and subject to the assumptions and qualifications contained in the "Assumptions and Qualifications" section below, in our opinion, the Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB, and is a security interest which is registered first in point of time (except as noted above) with respect to the named collateral classes

(inventory, equipment, accounts, other and motor vehicle included), in accordance with the terms of the Security Agreement, subject to any other interests in the same collateral not discussed above of which, as noted above, the Receiver is not aware.

Our detailed comments regarding the security review conducted are set out below.

Loan Agreements

On July 28, 2008, Comerica Bank issued a letter loan agreement to MTB which was accepted and agreed to by MTB providing for

- (a) a revolving demand loan facility in the maximum principal amount of \$1,000,000,
- (b) a reducing term loan facility in the maximum principal amount of \$2,052,000 as at the date of the letter loan agreement,
- (c) a revolving reducing term loan facility in the maximum amount of \$4,282,142.86 as at the date of the letter loan agreement, and
- (d) a reducing term loan facility in the maximum principal amount of the lesser of \$2,000,000 and 80% of the hard cost of a new stamping press.

The Loan Agreement provides that each loan advance or other extension of credit made by Comerica to MTB is to be evidenced by a promissory note or other agreement or evidence of indebtedness acceptable to Comerica. Four promissory notes evidencing the indebtedness have been provided in the original principal amounts of \$1,000,000; \$2,000,000; \$2,052,000 and \$4,282,142.88.

Security Agreement

A security agreement was delivered by MTB to Comerica dated July 8, 2005 (the "Security Agreement") pursuant to which MTB granted Comerica a security interest in all of its personal, present and after-acquired property and undertaking as a continuing security interest and lien to secure payment of all existing and future indebtedness of MTB to Comerica.

Intercreditor Agreement

We have been provided by Miller, Canfield, Paddock and Stone, LLP with a copy of an intercreditor agreement entered into between Return on Innovation Advisors Ltd. ("ROI Advisors") as agent for Return on Innovation Fund Inc. ("ROI Fund") and ROI Sceptre Monthly Income Fund ("ROI Sceptre"), MTB and Comerica dated October 17, 2007 whereby ROI agrees, among other things to subordinate its indebtedness to and in favour of Comerica together with a letter notifying MTB, Comerica, Torkin Manes Cohen Arbus LLP, GPM Real Property (10) Ltd. and GPM (10) GP Inc. of an agency assignment, participation and security sharing agreement resulting in Return on Innovation Capital Ltd. acting as agent for ROI Fund, ROI Sceptre, ROI High Yield Private Placement Fund and ROI Global Pension Fund.

SEARCH RESULTS

Corporate, Personal Property and Security Searches

Corporate and security searches were conducted against MTB. A summary of the results of searches conducted against MTB are attached hereto as Schedule "B".

The security search results confirm that Comerica filed a financing statement against MTB with Registration No. 20050628 1125 1862 1497 and Reference File No. 616462848 against Inventory, Equipment, Accounts, Other, and Motor Vehicle Included (the "Comerica Registration"), as renewed for a 5 year period by Registration No. 20080506 1440 1862 0588 expiring on February 1, 2010.

The only registrations which are prior in time, are the BNS Registrations. The BNS Registrations bear Registration No. 20020617 1052 1529 6638 and Reference File No. 884410716, Registration No. 20031212 1947 1531 3111 Reference File No. 601790715 and Registration No. 20041124 1453 1530 0407 Reference File No. 610838091.

ASSUMPTIONS AND QUALIFICATIONS

1. We have not received or reviewed any opinions that may have been delivered by counsel with respect to the corporate status of MTB, its corporate power and capacity to deliver the various documents and perform their obligations thereunder, or the authorization, execution, delivery and enforceability of the various documents. We have not received or reviewed any officer's certificates which may have been delivered in connection with the various documents.
2. In delivering our opinion below, we are not expressing any opinion with respect to any right, title or interest of MTB in or to any property or the ranking or priority of any of the security interests created by the Security Agreements, or any other security, other than as expressly stated in this opinion. We have assumed that the indebtedness owing by MTB is due and owing by MTB to Comerica.
3. We have assumed, as at the time of delivery of the Documents by MTB, (a) the corporate existence of MTB, (b) that MTB had the corporate power and capacity to enter into the Documents and perform their obligations thereunder, (c) that MTB took all necessary action to authorize the execution, delivery and performance of its obligations to Comerica and under any loan and security documentation related thereto and (d) that MTB executed and delivered the Security Agreements and all loan and security documentations related thereto.
4. Our opinion is limited to Ontario law.
5. Our opinion does not extend to any personal property of MTB located outside Ontario or to any real property.

6. We have assumed the currency, completeness, truth and accuracy of all facts set forth in the official public records, certificates and documents provided by public officials, or otherwise delivered to us.
7. We have assumed that value was given sufficient for purposes of attachment under the PPSA at the time of the execution of the Security Agreement and that Comerica did not agree to postpone the time for attachment of any security interest created by the Security Agreement.
8. We have assumed with respect to all documents examined by us, the genuineness of all signatures, the legal capacity of individuals signing such documents, the authenticity of all certificates and other documents submitted to us as originals, and the conformity to originals of all documents submitted to us as certified or notarial copies or as telecopied or otherwise electronically transmitted or reproduced.
9. The enforceability of the Security Agreement and the rights and remedies set out therein or any judgment arising out of or in connection therewith may be limited by any applicable bankruptcy, insolvency, winding-up, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights generally, including without limitation, laws relating to fraudulent preferences and conveyances.
10. The enforceability of the Security Agreement and the rights and remedies set out therein may be limited by general principles of equity and the obligation to act in a reasonable manner, and no opinion is given as to any specific remedy that may be granted, imposed or rendered (including without limitation equitable remedies of specific performance and injunction).
11. The enforcement of the Security Agreement is subject to the discretion of an Ontario Court to impose restrictions on the rights of creditors to enforce immediate payment of amounts stated to be payable on demand.
12. The validity and enforceability of provisions of the Security Agreements that purport to sever from the Security Agreement any provision that is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the provisions of the Security Agreement would be determined only in the discretion of an Ontario Court.
13. Provisions of the Security Agreement which purport to exculpate the secured party from liability for its acts or which purport to confirm the continuance of obligations notwithstanding any act or omission or other matter are subject to the discretion of an Ontario Court.
14. No opinion is expressed as to the enforceability of any provisions in the Security Agreement which suggests that modifications, amendments, consents or waivers of or with respect to the Security Agreement that are not in writing will be ineffective.

15. Wherever any matter or thing is to be determined or done in the discretion of the secured party, such discretion may be required to be exercised in a commercially reasonable manner and in good faith.
16. An Ontario Court may decline to enforce the rights of indemnity and contribution under the Security Agreement to the extent that they are found to be contrary to equitable principles or public policy.
17. An Ontario Court may decline to enforce those provisions of the Security Agreement which purport to allow a determination, calculation or certificate of a party thereto as to any manner provided for therein to be final, conclusive and binding upon any other party thereto if such determination is found to be inaccurate on its face or to have reached or made on an arbitrary or fraudulent basis.
18. We express no opinion on the enforceability of any provisions of the Security Agreement (i) dealing with the waiving of legal, statutory or equitable rights or doctrines, (ii) purporting to relieve any party from any duty or the consequence of its own negligence, or (iii) that provide, or have the effect of providing, for the payment of rates and/or fees which may exceed the "criminal interest rate" provisions of the Criminal Code (Canada) or that may be characterized as an unenforceable penalty.
19. The enforceability of the Security Agreement is subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether an Ontario Court may find that any provision of the Security Agreement will be unenforceable as an attempt to vary or exclude a limitation period under that Act.
20. With respect to intangibles such as accounts receivable of MTB, no opinion is expressed under the terms of this opinion with respect to the laws of any jurisdiction (other than Ontario) to the extent that such laws may govern the validity, perfection, effect of perfection or non-perfection of the security interests created by the Security Agreement as a result of the application of Ontario conflict of law rules.
21. No opinion is expressed as to the enforceability against any person (other than MTB) of the charges or security interests granted by the Security Agreement that, upon the occurrence of an event of default, attach or extend to real or personal property of MTB in respect of which a consent of a third party is required and has not, at such time, been obtained.
22. With respect to the charge of, or transfer or pledge or assignment of, or the granting of a security interest in, any account or like personal property pursuant to the Security Agreements, notice may have to be given to the obligor thereunder and Comerica may be subject to the equities between the obligor and the grantor of the security interest in the event that it wishes to enforce any such account or like personal property as against the obligor under such account or like personal property.
23. No opinion is expressed as to the creation, validity or enforceability of any charge of, assignment or transfer of or security interest in, or as to the enforceability of the Security

Agreement insofar as it relates to, any of the following property or any interest of MTB therein: (i) any policy of insurance or contract of annuity; (ii) any permits, quotas, licenses and other property which is not personal property; and (iii) any property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, the "Special Property") to the extent that the terms of the Special Property or any applicable law prohibits its assignment or requires as a condition of its assignability, a consent, approval, notice or other authorization or registration which has not been made or given.

24. No opinion is being delivered with respect to any personal property to which the PPSA does not apply.
25. We express no opinion as to any security interest created by the Security Agreement with respect to any property of MTB that is transformed in such a way that it is not identifiable or traceable or any proceeds of property of MTB that are not identifiable or traceable.
26. We did not investigate whether, any steps were taken in connection with the registration of the Security Agreement or of any of the interests created thereunder: (i) under the *Patent Act* (Canada), the *Trademarks Act* (Canada), the *Industrial Designs Act* (Canada), the *Integrated Circuit Topography Act* (Canada), the *Copyright Act* (Canada) or the *Plant Breeders' Rights Act* (Canada); (ii) in respect of any vessel which is registered or recorded under the *Canada Shipping Act*; (iii) in respect of any rolling stock to which the provisions of the *Canada Transportation Act* (Canada) or the *Railways Act* (Ontario) may apply; or (iv) under the *Financial Administration Act* (Canada).
27. We express no opinion as to the priority of the security interest created by the Security Agreement as against any statutory liens, charges, deemed trusts or other priorities.

OPINION

Based on and subject to the foregoing, our opinion is as follows:

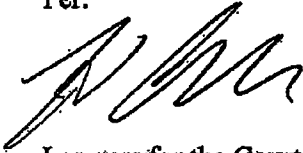
1. The Security Agreement appears to have been properly executed and delivered by Comerica and satisfactory to grant security interests in the property charged thereunder in favour of Comerica in Ontario.
2. The Security Agreement is valid and would be enforceable against a trustee in bankruptcy of MTB.
3. A PPSA financing statement was properly filed by Comerica against MTB in Ontario to perfect security interests in applicable personal property charged by the Security Agreement.
4. The registration of the security interests granted under the Security Agreement is first in point of time with respect to the named collateral classes (inventory, equipment, accounts, other and motor vehicle included), with the exception of the BNS Registrations which are first in point of time with respect to the "equipment" and "other" collateral classes, in accordance with the terms of the Security Agreement, but the security interests

granted under the Security Agreement may be subject to the claims of subsequently registered parties, such as those claiming valid PMSIs in the same collateral or claiming priority upon some other basis, neither of which the Receiver has investigated other than in respect of GE VFS, GE Canada, Ford, Nissan, CNC and De Lage.

We would be pleased to discuss any questions you might have in connection with this report at your convenience.

FRASER MILNER CASGRAIN LLP

Per:

A handwritten signature in black ink, appearing to be 'A. Marsal', is written over the printed name of the law firm.

Lawyers for the Court Appointed Receiver
Alvaraz and Marsal

SCHEDULE "A"

DOCUMENTS REVIEWED

1. Commitment Letter issued by Comerica Bank to MTB Research Limited dated as of July 28, 2008.
2. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$2,052,000.
3. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$4,282,142.88.
4. Variable Rate-Installment Note dated July 28, 2009 by MTB in favour of Comerica in the original principal amount of CDN \$2,000,000.
5. Master Revolving Note dated July 8, 2005 by MTB in favour of Comerica in the original principal amount of CDN \$1,000,000.
6. General Security Agreement granted by MTB in favour of Comerica dated July 8, 2005.
7. Intercreditor Agreement among ROI, MTB and Comerica dated October 17, 2006.

SCHEDULE "B"
ONTARIO SEARCH SUMMARY
MTB INDUSTRIES LTD.

Corporate History

MTB Industries Inc. was incorporated on October 3, 2001 pursuant to the laws of the Province of Ontario.

MTB Industries Inc.'s head office is located in Concord, Ontario and does not operate under any business styles.

Registered Office

20 Barnes Court
Concord, Ontario L4K 4L4

Officers and Directors

Guy Cavallini
462 Silken Laumann Drive
Newmarket, Ontario L3X 2H9

Director, General Manager

David Copeland
178 Beech Avenue
Toronto, Ontario M4E 3H9

Director

John C. London
RR#4
Aurora, Ontario L7J 2M1

Director

David Myers
451 Silken Laumann Drive
Newmarket, Ontario L3X 2H9

Director, President, Secretary,
Chief Executive Officer

Ants Tuulus
20 Barnes Court
Concord, Ontario L4K 4L4

Comptroller

Security Search Results**I. *Personal Property Security Act***

File currency: May 27, 2009

1.

File No:	884416716
Registration No:	20020617 1052 1529 6638
Debtor:	MTB Industries Inc.
Debtor Address:	20 Barnes Court, Concord, ON, L4K 4L4
Secured Party:	The Bank of Nova Scotia – Scotia Plaza
Secured Party Address:	44 King St. W., Toronto, ON, M5H 1H1
Collateral Classification:	Equipment, Other
Collateral Description:	None
Registration Date:	June 17, 2002
Registration Period:	6 years
Expiry Date:	June 17, 2008
Amended by:	20080520 1456 1530 7595
Reason:	Renewal for 6 years

2.

File No:	601790715
Registration No:	20031212 1947 1531 3111
Debtor:	MTB Industries Inc.
Debtor Address:	20 Barnes Court, Concord, ON, L4K 4L4
Secured Party:	The Bank of Nova Scotia – Scotia Plaza
Secured Party Address:	44 King St. W., Toronto, ON, M5H 1H1
Collateral Classification:	Equipment, Other
Collateral Description:	None
Registration Date:	December 12, 2003
Registration Period:	6 years
Expiry Date:	December 12, 2009

3.

File No:	610838091
Registration No:	20041124 1453 1530 0407
Debtor:	MTB Industries Inc.
Debtor Address:	20 Barnes Court, Unit A, B & C, Concord, ON, L4K 4L4
Secured Party:	The Bank of Nova Scotia/Scotia Plaza Branch
Secured Party Address:	44 King St. W., Toronto, ON, M5H 1H1
Collateral Classification:	Equipment, Other
Collateral Description:	None
Registration Date:	November 24, 2004
Registration Period:	6 years
Expiry Date:	November 24, 2010

4. **File No:** 616462848
Registration No: 20050628 1125 1862 1497
Debtor: MTB Industries Inc.
Debtor Address: 20 Barnes Court, Concord, ON, L4K 4L4
Secured Party: Comerica Bank
Secured Party Address: 2485 Oullette Avenue, Unit 101, Windsor, ON, N8X 1L5
Collateral Classification: Inventory, Equipment, Accounts, Other, Motor Vehicle Included
Collateral Description: None
Motor Vehicle Description: None
Registration Date: June 28, 2005
Registration Period: 10 years
Expiry Date: June 28, 2015
Amended by: 20080506 1440 1862 0588
Reason: Renewal for 5 years
5. **File No:** 629244531
Registration No: 20060926 1655 1590 2643
Debtor: MTB Industries Inc.
Debtor Address: 20 Barnes Court, Concord, ON, L4K 4L4
Secured Party: Return on Innovation Advisors Ltd., as Agent
Secured Party Address: 43 Colborne Street, Suite 300, Toronto, ON, M5E 1E3
Collateral Classification: Inventory, Equipment, Accounts, Other, Motor Vehicle Included
Collateral Description: None
Motor Vehicle Description: None
Registration Date: September 26, 2006
Registration Period: 10 years
Expiry Date: September 26, 2016
Amended by: 20070328 1531 1590 2088
Reason: Assignment to Return on Innovation Capital Ltd., as Agent
6. **File No:** 634164885
Registration No: 20070410 1038 1531 9560
Debtor: MTB Industries Inc.
Debtor Address: 20 Barnes Crt, Concord, ON, L4K 4L4
Secured Party: Nissan Canada Inc.
Secured Party Address: 5290 Orbitor Drive, Mississauga, ON, L4W 4Z5
Collateral Classification: Equipment, Motor Vehicle Included
Collateral Description: None
Motor Vehicle Description:

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>V.I.N.</u>
2007	Nissan	Murano	JN8AZ08W27W638233

Registration Date: April 10, 2007
Registration Period: 4 years
Expiry Date: April 10, 2011

7. **File No:** 634432041
Registration No: 20070417 1944 1531 8610
Debtor: MTB Industries Inc
Debtor Address: 20 Barnes Court, Concord, ON, L4K 4L4
Secured Party: De Lage Landen Financial Services Canada Inc.
Secured Party Address: 100-1235 North Service Road W, Oakville, ON, L6M 2W2
Collateral Classification: Equipment, Other, Motor Vehicle Included
Collateral Description: None
Motor Vehicle Description: Year Make Model V.I.N.
2007 American Lincoln 7750-LP Sweeper 683185
- Registration Date:** April 17, 2007
Registration Period: 4 years
Expiry Date: April 17, 2011
8. **File No:** 634505769
Registration No: 20070419 1122 6093 7746
Debtor: MTB Industries Inc.
Debtor Address: 20 Barnes Crt, Unit A, B, C, Vaughan, ON, L4K 4L4
Secured Party: GE Canada Equipment Financing G.P.
Secured Party Address: 2300 Meadowvale Blvd., Suite 100, Mississauga, ON, L5N 5P9
Collateral Classification: Inventory, Equipment, Accounts, Other
Collateral Description: None
Registration Date: April 19, 2007
Registration Period: 6 years
Expiry Date: April 19, 2013
9. **File No:** 638556912
Registration No: 20070828 1253 1902 7512
Debtor: Gaetano Cavallini
Date of Birth: September 28, 1966
Debtor Address: 462 Silken Laumann Dr., Newmarket, ON, L3X 2H9
Debtor: Gaetano Cavallini
Date of Birth: September 28, 1966
Debtor Address: 462 Silken Laumann Dr., Newmarket, ON, L3X 2H9
Secured Party: CNC Associates, Inc.
Secured Party Address: 2900 Challenger Place, Oxnard, CA, 93030
Collateral Classification: Equipment, Other

Collateral Description:

The following is collateral information for this Lease: Schedule 'A' Equipment Schedule This schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF - 5/50 including: (1) 3 Phase Isolation Transformer(1) Table Spacer(1) High Intensity Lighting (1) 4th Axis Drive and Wiring(1) Visual Quick Code Probing System(1) 24 Pull Studs, CT50(1) Tooling Certificate

Registration Date:

August 28, 2007

Registration Period:

5 years

Expiry Date:

August 28, 2012

Amended by:

20090206 1705 1901 6611

Reason:

Change Debtor from Gaetano Cavallini 462 Silken Laumann Dr., Newmarket, ON, L3X2H9 (DOB: 28 Sep 1966) to MTB Industries Inc. A, B, C-20 Barnes Court, Concord, ON, L4K 4L4. Change Debtor from Gaetano Cavallini 462 Silken Laumann Dr. Newmarket, ON, L3X2H9 (DOB: 28 Sep 1966) to David A Myers 451 Silken Laumann Dr. Newmarket, ON, L3X2H9 (DOB: 14 Dec 1961) change general collateral from the following is collateral information for this lease: Schedule 'A' Equipment Schedule This schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF - 5/50 including: (1) 3 Phase Isolation Transformer(1) Table Spacer(1) High Intensity Lighting (1) 4th Axis Drive and Wiring(1) Visual Quick Code Probing System(1) 24 Pull Studs, CT50(1) Tooling Certificate. Collateral Classes: Equipment, to the following is Collateral Information for this Lease: Schedule 'A' Equipment Schedule This Schedule is attached to and made part of a certain conditional sales agreement, number 24584001, between Haas Automation, Inc., as Seller, and MTB Industries Inc., as buyer. Quantity Equipment description serial number (1) Haas Vertical Machining Center, Model VF-5/50 including: (1) 3 Phase Isolation Transformer (1) Table Spacer (1) High Intensity Lighting (1) 4th Axis Drive and Wiring (1) Visual Quick Code Probing System (1) 24 Pull Studs, CT50 (1) Tooling Certificate

10.

File No:

642312288

Registration No:

20080128 0923 4043 7812

Debtor:

MTB Industries Inc.

Debtor Address:

20 Barnes Crt, Vaughan, ON, L4K 4L4

Secured Party:

GE VPS Canada Limited Partnership

Secured Party Address:

2300 Meadowvale Blvd., Suite 200, Mississauga, ON, L5N 5P9

Collateral Classification:

Equipment, Other

- Collateral Description: None
 Registration Date: January 28, 2008
 Registration Period: 6 years
 Expiry Date: January 28, 2014
11. File No: 645829497
 Registration No: 20080605 1602 5064 5059
 Debtor: MTB Industries Inc.
 Debtor Address: 20 Barnes Court, Unit A, B, C, Vaughan, ON, L4K 4L4
 Secured Party: General Electric Canada Equipment Finance G.P.
 Secured Party Address: 5500 North Service Road, 8th Floor, Burlington, ON, L7L 6W6
 Collateral Classification: Equipment
 Collateral Description: None
 Registration Date: June 5, 2008
 Registration Period: 4 years
 Expiry Date: June 5, 2012
12. File No: 653416515
 Registration No: 20090513 1125 5059 0351
 Debtor: MTB Industries Inc.
 Debtor Address: 20 Barnes Court, Concord, ONT, L4K 4L4
 Secured Party: Ready Machinery & Equipment (Canada) Inc.
 Secured Party Address: 8080 Lawson Road, R.R. #4, Milton, ONT, L9T 5C4
 Collateral Classification: Not listed
 Collateral Description: None
 Registration Date: May 13, 2009
 Registration Period: 2 years
 Expiry Date: May 13, 2011
13. File No: 653549733
 Registration No: 20090520 1451 1530 2564
 Debtor: MTB Industries Inc.
 Debtor Address: 20 Barnes CRT, Concord, ONT, L4K 4L4
 Secured Party: Ford Credit Canada Leasing, a Div/of Canadian Road Leasing Co
 Secured Party Address: PO Box 2400, Edmonton, AB, T5J 5C7
 Collateral Classification: Equipment, Other, Motor Vehicle Included
 Collateral Description: None
 Motor Vehicle Description:

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>V.I.N.</u>
2006	Ford	Expedition	1FMPU16576LA12905

 Registration Date: May 20, 2009
 Registration Period: 1 year
 Expiry Date: May 20, 2010

II. Execution Search Results (Toronto, Newmarket)

Date of Search: April 21, 2009

File currency: April 21, 2009

CLEAR

III. Bank Act Search Results (Ontario)

Date of Search: April 21, 2009

File currency: April 21, 2009

CLEAR

IV. Official Receiver Search Results (Canada)

Date of Search: April 21, 2009

File currency: April 16, 2009

CLEAR

V. Petitions

Date of Search: April 21, 2009

File currency: April 20, 2009

CLEAR

TAB “F”



Royal Bank Plaza, South Tower
200 Bay Street, Suite 2000, P.O. Box 22
Toronto, ON M5J 2J1
Phone: (416) 847-5200 Fax: (416) 847-5201
www.alvarezandmarsal.com

August 4, 2009

TO: Former Employees of MTB Industries Inc. ("MTB")

**Subject: Motion by Alvarez & Marsal Canada ULC, court appointed receiver of MTB
(the "Receiver") returnable August 13, 2009.
Court File No.: 09-CL-8163**

On August 13, 2009, the Receiver will be bringing a motion to the Ontario Superior Court of Justice, which may affect your rights.

Among other things, the Receiver will be seeking the authority to file an assignment into bankruptcy on behalf of MTB. The motion material, including a report to the Court by the Receiver will be posted on the Receiver's website at www.alvarezandmarsal.com/mtb on or before August 10, 2009.

Should you require further information please contact Michael Pizzorno of Alvarez & Marsal Canada ULC at 416-847-5161 or mpizzorno@alvarezandmarsal.com.

Yours truly,

Alvarez & Marsal Canada ULC
As Receiver for MTB Industries

TAB "G"

APPENDIX G

IN THE MATTER OF THE RECEIVERSHIP OF MTB INDUSTRIES INC. STATEMENT OF RECEIPTS AND DISBURSEMENTS MAY 4, 2009 TO AUGUST 5, 2009

Receipts

Accounts Receivable Collections	\$ 743,533
Less: Customer Deposits Returned	<u>(115,024)</u>
Net Customer Collections	628,509
Auction Proceeds - Net Minimum Guarantee Payment	771,900
Miscellaneous	<u>11,440</u>
Total Receipts	\$1,411,849

Disbursements

Employee costs	\$ (41,068)
Environmental waste management costs	(63,386)
Occupancy costs (rent, property taxes) - paid through July 20, 2009	(226,524)
Insurance	(18,327)
Professional fees (Receiver/legal)	(347,784)
Misc. (Security, Utilities, Asset safekeeping, other SG&A)	<u>(19,526)</u>
Total Disbursements	<u>(716,615)</u>
Net Cash Flow from May 4 to August 5, 2009 (current bank balance)	<u>\$ 695,234</u>

COMERICA BANK - and - MTB INDUSTRIES INC.

Applicant

Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Returnable August 13, 2009)

FRASER MILNER CASGRAIN LLP
1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

Lawyer: R. Shayne Kukulowicz / Jane Dietrich
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jane.dietrich@fmc-law.com
Telephone: 416 863-4740 / 416-863-4467
Facsimile: 416 863-4592

Lawyers for the Receiver, Alvarez & Marsal
Canada ULC