Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED O/A LORETTA FLOUR, 2131413 ONTARIO LIMITED O/A LORETTA FOODS,787755 ONTARIO LIMITED O/A NEW DURHAM TRADING, AND O/A NDT FOOD SERVICE AND O/A SKYWAY WHOLESALE AND TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

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FIFTH REPORT TO THE COURT OF ERNST & YOUNG INC., AS RECEIVER

18 May 2012

I. BACKGROUND AND THE CONTEXT OF THIS REPORT

1. The particular purposes of this report are set out in the next section (Section II) of this report to the Court. The purpose of this section is to provide background and to frame the balance of this report.

2. Ernst & Young Inc. ("**EYI**") was appointed interim receiver (the "**Interim Receiver**") of the Loretta Group (as defined below) (the "**Interim Receivership Proceedings**") by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated 10 November 2010 (the "**Interim Receivership Order**"). The Interim Receivership Order was made pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 101 of the *Courts of Justice Act*. As such, the powers of the Interim Receiver

were somewhat limited. Attached as **Appendix "A"** is a copy of the Interim Receivership Order.

3. The application for the appointment of the Interim Receiver was made by Bank of Montreal ("**BMO**"), the senior secured creditor of the Loretta Group. At the time of the application for the Interim Receiver, BMO was owed approximately $17.6 million on account of secured loans made to the Loretta Group.

4. A few weeks after the appointment of the Interim Receiver, BMO applied for and obtained an Order from the Court dated 26 November 2010 (the "**Receivership Order**") appointing EYI as receiver, and receiver and manager, (the "**Receiver**") of the Loretta Group (the "**Receivership Proceedings**"). The Receivership Order was made pursuant to section 243 of the BIA and gave the Receiver broader powers, including the power to sell the businesses. A copy of the Receivership Order is attached as **Appendix "B".**

5. The Loretta Group consists of the following four businesses:

   (a) the "Loretta Flour Division", operated by 2110458 Ontario Limited o/a Loretta Flour ("**211**"), which produced various types of hard wheat flour that was sold to retail, food service and industrial customers (the "**Flour Business**");

   (b) the "Loretta Spice Division", operated by 2131413 Ontario Limited o/a Loretta Foods ("**213**"), which sourced spices and food mixes for redistribution, as well as blending and repackaging spices for use in various packs and sizes for sale to retail and institutional customers (the "**Spice Business**");

   (c) the "Food Service and Catering Division", operated by 787755 Ontario Limited o/a New Durham Trading and o/a NDT Food Service and o/a Skyway Wholesale ("**787**"), which prepared, on a daily basis, fresh food items such as sandwiches, grab and go meals, soups, fresh salads, desserts and pastries for sale by or in mobile caterers, vending machines, contract caterers and convenience stores (the "**Food Services Business**"). 787 also carried on a business trading bulk sugar, flour, spices and other items under the registered trade names "New Durham Trading" and/or "Skyway Wholesale" (the "**Trading Business**"). The Trading Business was directed by Mr. Giuseppe Gatti, the individual responsible for overall direction of the Loretta Group; and

(d) Tarbrac Holdings Inc. ("**Tarbrac**", and together with 211, 213 and 787, the "**Debtors**" or the "**Loretta Group**"), which is a holding company that holds investments in 211, 213 and North Dakota Holdings Ltd. (a related company), all of which are wholly-owned subsidiaries of Tarbrac.

6. As part of the Receiver's mandate under the Receivership Order and certain other Orders of the Court, the Receiver conducted separate marketing and sales processes for the Flour, Spice and Food Businesses of the Loretta Group and sold them with the approval of the Court. However, the Receiver did not attempt to operate the Trading Business nor market it for sale since 787 ceased to carry on the Trading Business prior to the Interim Receivership Proceedings (although certain of the related accounts receivable remained on its balance sheet).

7. Despite the Receiver's efforts, recoveries from sales of the businesses and assets of the Loretta Group have been limited. Realizations have not been sufficient to see the Receiver's borrowings from BMO repaid in full or to make distributions to any of the Loretta Group's secured creditors, including BMO, or any of the Loretta Group's unsecured creditors.

8. The reasons for the level of recoveries are set out in previous reports to the Court. In summary, the values of the Loretta Group's assets appear to have been significantly over stated, the assets did not exist or could not be located. The most significant of these kinds of issues are described in the Receiver's report to the Court dated 4 February 2011 which is attached to this report as **Appendix "C".**

9. The Receiver has completed its work and seeks approval of its fees and expenses and those of its counsel, and its discharge, subject to limited ongoing responsibilities related to the Loretta Group's books and records.

II. PURPOSE OF REPORT

10. The purpose of the fifth report of the Receiver (the "**Fifth Report**") is to:

(a) report to the Court on the bankruptcy proceedings of 787;

(b) report to the Court on the status of the realizations of the remaining assets of the Spice Business and the Food Services Business;

(c) report to the Court on certain matters in connection with the Chapter 7 filing of Quality Food Brands, Inc. ("**Quality**" or "**Quality Foods**"), a debtor of the Loretta Group and a subsidiary of Synergy Brands, Inc. ("**Synergy**"), another debtor of the Loretta Group;

(d) report to the Court on the final receipts and disbursements in the Receivership Proceedings ("**Final R&D**");

(e) request that the Court grant an Order:

(i) approving the Fifth Report and the activities of the Receiver as described therein;

(ii) approving the fees and disbursements of the Receiver, the Receiver's Canadian counsel, Borden Ladner Gervais LLP ("**BLG**"), and Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**"), and the Receiver's U.S. counsel, Honigman Miller Schwartz and Cohn LLP ("**Honigman**");

(iii) approving the Receiver's Final R&D;

(iv) approving the payment of any monies remaining in the hands of the Receiver together with all further monies received in relation to the

Debtors and the Debtors' property, assets and undertaking to BMO on account of the loans made by BMO to the Receiver;

(v) authorizing continued access (the "**Continued Access**") by BMO and Signature Bank ("**Signature**"), at their own cost and expense, to the books, records, documents and other information of the Debtors' in the possession or control of the Receiver (the "**Books and Records**"), until the expiry of the Retention Period (as defined below);

(vi) authorizing the Receiver, for the duration of the Retention Period (as defined below), to grant access to U.S. authorities including the United States Attorney's Office for the Eastern District of New York and Canadian authorities including the Royal Canadian Mounted Police, and their respective legal advisors to the Books and Records, and to permit them to make, retain and take away copies of the Books and Records at their own cost and expense provided that such access is in respect of possible investigation or litigation of the affairs of the Debtors;

(vii) authorizing the Receiver to destroy or dispose of the Books and Records without further notice to any party on or after the expiry of the Retention Period (as defined below);

(viii) discharging EYI as Receiver, provided however that notwithstanding its discharge, the Receiver shall retain the Books and Records for a period of four years (the "**Retention Period**") from the date of the Order in order to allow Continued Access; and

(ix) releasing EYI from any and all liabilities.

11. The Interim Receiver will also be bringing a companion motion for an Order, among other things, approving its activities as set out in the First Report of the Interim Receiver dated 25 November 2010 and in the Second Report of the Interim Receiver dated 18 May 2012, and authorizing its discharge as Interim Receiver of the Loretta Group.

III. TERMS OF REFERENCE

12. In preparing this Fifth Report, the Receiver has relied upon the books and records of the Debtors, conversations with operating management and employees of the Debtors, and other information from various sources. The Receiver has assumed that the information with which it has been provided is accurate and complete. The Receiver has not audited, reviewed or otherwise verified such information.

13. The activities of the Interim Receiver and Receiver covering the period from 10 November 2010 to 31 October 2011 have been detailed in the following reports previously filed with the Court:

Report	**Date**	**Period**
First Report – Interim Receiver	25 November 2010	10 November – 26 November 2010
First Report – Receiver	10 January 2011	26 November 2010 – 10 January 2011
First Confidential Report - Receiver	4 February 2011	26 November 2010 – 4 February 2011
Second Report - Receiver	9 February 2011	10 January – 9 February 2011
Third Report – Receiver	9 May 2011	9 February– 9 May 2011
Supplement to the Third Report - Receiver	12 May 2011	9 May– 12 May 2011
Fourth Report - Receiver	14 July 2011	12 May– 14 July 2011
Second Confidential Report - Receiver	31 October 2011	4 February – 31 October 2011

14. All documents relating to the Interim Receivership Proceedings and the Receivership Proceedings, including reports to Court by the Interim Receiver and Receiver, can be found on the Receiver's website at www.ey.com/ca/Loretta.

IV. BANKRUPTCY PROCEEDINGS OF 787

15. On 30 November 2010, immediately following the granting of the Receivership Order, BMO filed applications for bankruptcy orders in respect of each of the Debtors. The Receivership Order permitted the commencement of bankruptcy applications against the members of the Loretta Group but prohibited further steps in respect of such applications without leave of the court.

16. On 19 December 2011, BMO applied for an order to lift the stay of proceedings under the Receivership Order so that it could proceed with its bankruptcy application against 787. BMO chose not to apply for a bankruptcy order in respect of any of the other Debtors. The 787 bankruptcy application was uncontested and a bankruptcy order (the "**Bankruptcy Order**") was made by the Court. EYI was appointed trustee in bankruptcy of the estate of 787. A copy of the Bankruptcy Order is attached as **Appendix "D"**.

V. REALIZATION OF REMAINING SPICE AND FOOD SERVICES ASSETS

Food Services Business

17. The sale of the Food Services Business excluded certain past-due Food Services Business accounts receivable (the "**Excluded Food Services Receivables**") so that the Receiver could attempt to collect these accounts itself.

18. The Excluded Food Services Receivables consisted of four accounts with a combined balance of approximately $660,000. The Receiver retained KRMC, a law firm specializing in collection actions, to assist in pursuing these accounts. KRMC commenced four actions against four separate account debtors.

19. In the first action, KRMC, on behalf of the Receiver, served a Statement of Claim and the account debtor filed a statement of defence. No further steps were taken in these proceedings as it was not cost effective to do so.

20. In the second action, the account debtor made an assignment in bankruptcy. No further steps were taken in these proceedings.

21. KRMC, on behalf of the Receiver, obtained default judgments against the remaining two account debtors and steps were taken to enforce those judgments. Following KRMC's investigations however, it did not appear that the two judgment debtors are in operation and accordingly, the collection of the amounts owing by the judgment debtors is unlikely.

22. As a result, based on the recommendation of KRMC, the Receiver concluded that it would not be cost effective to continue its efforts to collect the Excluded Food Services Receivables. The Receiver will not take any further steps to pursue the collection of the Excluded Food Services Receivables.

Spice Business

23. Of the $209,000 of the outstanding accounts receivable of the Spice Business, the Receiver has collected approximately $130,000. The balance (the "**Remaining Spice Receivables**") of these accounts (approximately $79,000) consists of account debtors who are claiming set-off for various reasons, including damage to their ongoing operations due to cessation of ongoing supply and amounts owing to the account debtor by another member of the Loretta Group.

24. The Receiver retained a collection agency to collect the Remaining Spice Receivables on a success-fee basis. Any amounts recovered by the collection agency will be paid over to BMO as repayment of the borrowings of the Receiver under the Receiver's Certificates, which form a charge on the assets of the Loretta Group pursuant to the Receivership Order.

VI. DEVELOPMENTS IN THE QUALITY BANKRUPTCY PROCEEDINGS

25. The Loretta Group had significant business dealings with the Synergy Group of Companies (as defined below) located in the U.S. The Synergy Group of Companies includes the following companies:

(a) Synergy Brands, Inc. ("**Synergy**");

(b) PHS Group, Inc. ("**PHS**"), a subsidiary of Synergy; and

(c) Quality Food Brands Inc. ("**Quality**"), a subsidiary of Synergy.

26. Synergy and PHS filed voluntary petitions for bankruptcy under Chapter 7 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York. PHS filed an involuntary petition for liquidation under Chapter 7 against Quality in the U.S. Bankruptcy Court for the Eastern District of New York. The involuntary petition was approved by the Court (collectively, the "**Synergy Group Bankruptcy Proceedings**").

27. On April 12, 2012, the United States Attorney in the Eastern District of New York filed a grand jury indictment (the "**Indictment**") against Mair Faibish, the former Chief Executive Officer of Synergy. The Indictment included allegations that Mr. Faibish conspired to commit securities and bank fraud and issued false reports to the Securities and Exchange Commission, among other allegations.

28. The Receiver has monitored the Synergy Group Bankruptcy Proceedings and has participated in a limited way in order to determine whether there might be any recovery for the Loretta Group. The Receiver has concluded that there is unlikely to be any recovery for the Loretta Group.

VII. FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS

29. The Receiver has prepared a statement of the Final R&D (rounded to the nearest dollar) dealing with the period of the Receivership Proceedings. A copy of the Final R&D is attached as **Appendix "E"** and is summarized below:

Bank balances on Nov 26/10	$324,745
Net realizations from Food Services Business	(47,405)
Net realizations from Spice Business	775,510
Net realizations from Flour Business	333,138
Head office and miscellaneous disbursements	(390,755)
Receivership administration disbursements	(1,654,640)
Receiver's certificate borrowings from BMO	695,407
Net cash receipts	0

30. Brief explanations of certain of the line items above are as follows:

(a) Net realizations from the Food Services Business represent the proceeds from the sale of the Food Services Business to Rosedale, net of the negative cash flow from the interim operation of the Food Services Business while it was marketed and sold. As indicated in previous reports of the Receiver, the Mississauga premises of the Debtors (the "**Davand Premises**") included both the Food Services Business and the Loretta Group head office premises. For administrative convenience, however, all rent and utilities paid in respect of the Davand Premises were treated as operating disbursements of the Food Services Business rather than attempting to allocate a portion to head office disbursements;

(b) Net realizations from the Spice Business represent the net positive cash flow from the interim operation of the Spice Business during the Receiver's sale process and the wind-down of the Spice Business, plus the net proceeds of the auction of the Spice Business assets;

(c) Net realizations from the Flour Business represent the proceeds from the sale of the Flour Business to JEF, less the negative cash flow incurred to maintain and protect the assets of the Flour Business while it was marketed and sold;

(d) Head office and miscellaneous disbursements represent disbursements for salaries and benefits of head office staff, amounts paid to retain key personnel at head office and all three operating businesses, insurance costs for the Loretta Group in its entirety, and other miscellaneous amounts. For administrative convenience, the Receiver has not attempted to allocate amounts such as insurance costs and retention payments to the operating businesses; and

(e) Receivership administration disbursements represent fees of the Interim Receiver, the Receiver and their counsels, amounts paid to the contract controller engaged by the Receiver and to other professionals in respect of the expenses incurred in establishing the various sales processes by the Receiver, and interest paid to date on borrowings under Receiver's certificates.

31. As previously reported by the Receiver in the Fourth Report, net receipts in the Loretta Group receivership have been substantially less than the Receiver had originally anticipated based on the internal financial statements of the Loretta Group (which indicated consolidated assets and year-to-date net income of $64.7 million and $2.8 million, respectively, at 30 September 2010) and on oral statements made by the Loretta Group's management concerning the level of unsolicited interest in the businesses from third parties and with respect to the appraised values of certain assets.

VIII. COMPLETION OF RECEIVERSHIP PROCEEDINNGS

32. The Receiver has substantially completed the administration of the Receivership Proceedings of the Loretta Group other than collection of any amounts in respect of the Remaining Spice Receivables and the payment of such amounts to BMO.

33. All the realizable assets of the Debtors other than the Remaining Spice Receivables and the Excluded Food Service Receivables have either been sold or collected. All proceeds received have been distributed to BMO in partial repayment of the loan advances from BMO to the Receiver under the Receiver's Certificates. The Receiver's Certificate advances currently total $695,407. The remaining amount owing to BMO pursuant to the Receiver's Certificates or under its secured loan to the Loretta Group will not be repaid.

IX. RECORDS RETENTION

34. The Receiver has possession and control of the Books and Records of the Debtors, which consist of 356 boxes of documents and certain computer equipment and electronic records.

35. Pursuant to the Order of the Court dated 10 February 2011 (a copy of which is attached as **Appendix "F"**), BMO, Signature, and their respective legal and financial advisors,

were authorized to make, retain and take away copies of the books and records of the Debtors in the possession of the Receiver, at their own cost (including the fees and expenses incurred by the Receiver in connection therewith) to assist with BMO's and Signature's litigation proceedings against the principals of the Debtors and their associates.

36. As at the date of this Report, the proceedings commenced by BMO against certain members of the Loretta Group are ongoing. While Signature has not yet commenced any proceedings, it has reserved its rights in respect of the activities of the Loretta Group and/or certain of its officers, employees and business affiliates. Accordingly, BMO and Signature may require future continued access to the Books and Records of the Debtors.

37. Further, the Receiver may need to provide future access to the Books and Records to the United States Attorney's Office for the Eastern District of New York (the "**U.S. Attorney**") or the Royal Canadian Mounted Police ("**RCMP**"). According to certain motion materials filed in the PHS ("**PHS**") and Synergy Group Bankruptcy Proceedings (together with PHS and Quality, the "**Synergy Entities**") by certain secured creditors of PHS, it was stated that the U.S. Attorney initiated an investigation of certain entities in the Synergy Group of Companies in early 2010 which included executing a search warrant of the Synergy Entities offices of those entities, seizing certain documents and serving a grand jury subpoena on those entities for additional documents with regards to a federal grand jury investigation of the Synergy Entities (the "**Grand Jury Investigation**"). The Receiver understands that the Indictment was the result of the Grand Jury Investigation. To date, the Receiver has not been contacted by the U.S. Attorney's office or the Royal Canadian Mounted Police in respect of the Grand Jury Investigation or Indictment.

38. Accordingly, in order to make the Books and Records of the Debtors available to BMO, Signature and the U.S. Attorney and the RCMP, if required, the Receiver recommends that an Order be made:

(a) authorizing the Receiver to retain the Books and Records notwithstanding its discharge for a period of four years (the "**Retention Period**") from the date of the Order and to continue to provide access to BMO and Signature, and their respective counsel, to the Books and Records during the Retention Period;

(b) authorizing the Receiver to grant access, for the duration of the Retention Period, to the U.S. Attorney or other U.S. authorities and the RCMP or other Canadian authorities to the Books and Records, and to permit them to make, retain and take away copies of the Books and Records at their own cost and expense provided that such access is in respect of possible investigation or litigation of the affairs of the Debtors; and

(c) authorizing the Receiver to destroy or dispose of the Books and Records without further notice to any party on or after the expiry of the Retention Period.

X. PROFESSIONAL FEES AND DISBURSEMENTS

39. During the Receivership Proceedings, for the period 26 November 2010 to the completion of the Receivership Proceedings, the Receiver's accounts amounted to $900,382.80 in fees, $81,395.48 in disbursements and $127,631.18 in HST for a total amount of $1,109,409.46. The Receiver has rendered a final account for its activities to complete the administration of the Receivership Proceedings. The final account is based on an estimate of its fees and disbursements for a total of $17,243.80, consisting of $14,000.00 in fees, $1,260.00 in disbursements and $1,983.80 in HST. In respect of such fees and disbursements, the Affidavit of Mike P. Dean sworn May 18, 2012 is attached hereto as **Appendix "G"** and copies of the accounts rendered by the Receiver.

40. During the Receivership Proceedings, for the period 27 November 2010 to 16 May 2012, BLG rendered legal services to the Receiver for a total of $324,785.69, comprising of $271,792.84 in fees, $15,802.88 in taxable and non-taxable disbursements and $37,189.97 in HST. Barring unforeseen circumstances, the fees and disbursements of BLG for the period 17 May 2012 to completion of all work relating to the Receivership Proceedings will not exceed $15,000. In respect of such fees and disbursements, the

Affidavit of Roger Jaipargas sworn 18 May 2012 is attached hereto as **Appendix "H"** and includes copies of the accounts rendered by BLG.

41. During the Receivership Proceedings, for the period 15 March 2011 to 3 February 2012, KRMC rendered legal services to the Receiver for a total of $17,886.39, comprising of $12,635.00 in fees, $3,354.63 in disbursements and $1,896.76 in HST. In respect of such fees and disbursements, the Affidavit of Mark Liebrman sworn February 3, 2012 is attached as **Appendix "I"** and includes copies of the accounts rendered by KRMC.

42. During the Receivership Proceedings, for the period November 10, 2010 to February 18, 2012, Honigman rendered legal services to the Receiver for a total of USD $36,496.10, comprising of USD $35,597.50 in fees, USD$898.60 in disbursements. In respect of such fees and disbursements, Affidavit of Tricia A. Sherick sworn 28 February 2012 is attached as **Appendix "J"** and includes copies of the accounts rendered by Honigman.

43. The fees and disbursements of the Receiver and its counsel are reasonable in the circumstances. The Receiver seeks the approval of the Court of the fees and disbursements of the Receiver and its counsel.

XI. RELIEF SOUGHT BY THE RECEIVER

44. The Receiver respectfully requests that this Court grant an Order:

(a) approving the Fifth Report and the activities of the Receiver as described therein;

(b) approving the fees and disbursements of the Receiver, the Receiver's Canadian legal counsel, BLG and KRMC, and the Receiver's U.S. counsel, Honigman;

(c) approving the Receiver's Final R&D;

(d) approving the payment of monies remaining in the hands of the Receiver, including all further monies received in relation to the Debtors and the Debtors' property, assets and undertaking to BMO;

(e) authorizing Continued Access by BMO and Signature to the Books and Records;

(f) authorizing the Receiver to grant access to U.S. authorities including the U.S. Attorney and Canadian authorities including the RCMP, and their respective legal advisors to the Books and Records, and to permit them to make, retain and take away copies of the Books and Records at their own cost and expense, provided that such access is in respect of possible investigation or litigation of the affairs of the Debtors for the duration of the Retention Period;

(g) authorizing the Receiver to destroy or dispose of the Books and Records upon the expiry of the Retention Period;

(h) discharging EYI as Receiver, provided however that notwithstanding its discharge, the Receiver shall retain the Books and Records for the Retention Period in order to allow Continued Access; and

(i) releasing EYI from any and all liability.

All of which is respectfully submitted this 18th day of May 2012.

ERNST & YOUNG INC., in its capacity as Receiver
and Receiver and Manager of 2110458 Ontario Limited
o/a Loretta Flour, 2131413 Ontario Limited o/a Loretta Foods,
787755 Ontario Limited o/a New Durham Trading and
o/a NDT Food Service and o/a Skyway Wholesale
and Tarbrac Holdings Inc. and not in its personal
or corporate capacity.

Per: ______________________
Mike P. Dean, CA•CIRP
Senior Vice-President

Per: ______________________
Rahn Dodick, CA•CIRP
Vice-President

Court File No. CV-10-8991-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 2110458 ONTARIO LIMITED o/a LORETTA FLOUR, 2131413 ONTARIO LIMITED o/a LORETTA FOODS, 787755 ONTARIO LIMITED o/a NEW DURHAM TRADING, and o/a NDT FOOD SERVICE and o/a SKYWAY WHOLESALE and TARBRAC HOLDINGS INC.

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

FIFTH REPORT TO THE COURT OF ERNST & YOUNG INC., AS RECEIVER

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