

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
FIBRATECH MANUFACTURING INC.**

NOTICE OF MOTION
(returnable June 13, 2008)

Credit Union Central of Ontario Limited ("**Central**") will make a motion to the Court on the 13th day, June, 2008, at 9:30 a.m. or as soon after that time as the motion can be heard, at the Superior Court of Justice located at 277 Camelot Street, Thunder Bay, Ontario.

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

THE MOTION IS FOR:

- (a) an order, pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "**BIA**"), substantially in the form attached as Tab "4" (the "**Draft Order**");
 - (i) authorizing Central to commence and prosecute proceedings in its own name and at its own expense and risk in connection with any and all preferences received by Carrell & Partners LLP ("**C&P**") from Fibrattech Manufacturing Inc. and to recover all such preferences; and

- (ii) authorizing and directing Grant Thornton Limited, the trustee in bankruptcy of Fibratex Manufacturing Inc. (the "**Trustee**"), to execute an assignment in substantially the form attached as Schedule "B" to the Draft Order; and
- (b) such other grounds as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. by letters dated March 9 and September 23, 2005 and April 11, 2007 (collectively, the "**Commitment Letters**"), Central, among others (collectively, the "**Lenders**"), agreed to provide financing to Fibratex;
2. Fibratex defaulted in its obligations to the Lenders and Central under the terms of the Commitment Letters;
3. by letter dated October 4, 2007 (the "**Fibratex Demand**"), Central demanded repayment of the outstanding indebtedness by October 15, 2007 and notified Fibratex of its intention to enforce its security as required by section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**");
4. on October 9, 2007, Fibratex filed a notice of intention to make a proposal under the BIA (the "**NOI**") and named Grant Thornton Limited as Proposal Trustee;
5. on or about October 22, 2007, Central learned that Fibratex paid \$118,900 to its solicitors, C&P, coincidental with the Fibratex Demand;

6. on or about October 25, 2007, C&P agreed to return \$55,000 to Grant Thornton Limited with the balance of the payment (i.e. \$63,900) to "be used to the extent required to provide continuing service to" Fibrtech;
7. Fibrtech was deemed to have made an assignment in bankruptcy on November 9, 2007 and Grant Thornton Limited was appointed Trustee in Bankruptcy;
8. the Trustee sent to Central a copy of the accounts rendered by C&P to Fibrtech totalling \$70,753.78, and the billing reports referable thereto (collectively, the ("**Accounts**");
9. the Accounts reveal:
 - a. C&P charged a fee premium totalling \$22,243.50, exclusive of G.S.T.;
 - b. very few of the docket entries correspond to the time period immediately prior to the NOI and ending with the Bankruptcy;
 - c. very few of the docket entries relate to the NOI and the development of a proposal; and
 - d. the amount referable to "continuing service" to Fibrtech is far less than \$63,9000;
10. at the first Meeting of Inspectors on March 7, 2008, the inspectors of Fibrtech passed a resolution authorizing the Trustee to release the cause of action against C&P (the "**Trustee's Claim**") to Central;
11. Central seeks authorization to pursue the Trustee's Claim;
12. the Trustee consents to such authorization;

13. sections 38, 95, 96 and 192(1) of the BIA, section 4 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33 and Rule 38 of the Rules of Civil Procedure; and
14. such further and other grounds as counsel may advise and this Honourable Court permit.

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

1. the affidavit of Suzanne Fisher sworn May 16, 2008 and the exhibits thereto; and
2. such further and other materials as counsel may advise and this Honourable Court permit.

June 12, 2008

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto, ON M5X 1G5

Heath P.L. Whiteley (LSUC No. 38528P)
Tel: (416) 862-4400
Fax: (416) 862-7661

Solicitors for Credit Union Central of Ontario
Limited

TO: **GRANT THORNTON LIMITED**
979 Alloy Drive
Thunder Bay, ON P7B 5Z8

Russ Leroux
Tel: (807) 343-5415

Fax: (807) 345-0032

Trustee in Bankruptcy of
Fibratech Manufacturing Inc.

TOR_LAW\6871647\1