

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH
MART INC. (each a "Debtor" and collectively the
"Debtors")**

BETWEEN:

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, AND ARSENAULT'S FISH MART INC.**

RESPONDENTS

**SUPPLEMENTAL TO THE FIRST REPORT OF THE MONITOR,
DELOITTE RESTRUCTURING INC.**

DATED SEPTEMBER 27, 2023

INTRODUCTION

1. On September 21, 2023, Toronto-Dominion Bank (the "**Applicant**") brought an application (the "**Initial Application**") before the Court of King's Bench of New Brunswick Trial Division (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings for the Debtors to allow them to prepare for a going concern sale of the Debtors' business while exploring other restructuring alternatives.

2. On that same day, the Court granted orders (the "**Initial Orders**") in these CCAA proceedings (the "**CCAA Proceedings**") that, among other things:
 - i. appointed Deloitte Restructuring Inc. ("**Deloitte**") as the monitor of the Debtors (the "**Monitor**");
 - ii. appointed David Boyd, a representative of Resolve Advisory Services Ltd. ("**Resolve**") as the chief restructuring officer (the "**CRO**") of the Debtors;
 - iii. ordered a stay of proceedings in favor of the Debtors up to and including October 1, 2023 (the "**Stay Period**");
 - iv. granted an administration charge in the amount of \$250,000 (the "**Administration Charge**") in favour of the Monitor, Monitor's counsel, Applicant's counsel, Debtors' counsel (limited to an aggregate maximum amount of \$25,000), and the CRO;
 - v. granted a directors' charge in favour of the directors and officers of the Debtors in the amount of \$375,000 (the "**Directors' Charge**"); and
 - vi. approved an interim financing facility with a maximum borrowing limit of \$3,000,000 (the "**DIP Facility**") provided by the Applicant and granted a charge in favor of the Applicant (the "**DIP Lender's Charge**").

3. Included in the report of the Proposed Monitor dated September 18, 2023 (the "**Pre-Filing Report**") was the Debtors' 13-week cash flow projection (the "**Cash Flow Statement**").

4. On September 22, 2023, the Service List was provided with the Pre-Filing Report that contained the Cash Flow Statement.

5. On September 25, 2023, the Service List was provided with the First Report of the Monitor along with the proposed amended and restated orders (the "**September 25 Draft ARIOs**") and the proposed SISP Order to be sought at the hearing scheduled for September 28, 2023 (the "**Comeback Hearing**").

PURPOSE

6. The purpose of this supplemental first report (the "**Supplemental Report**") is to provide information to the Court on:
 - i. the Debtors' financial position and available liquidity based on information obtained by the Monitor as part of the Monitoring Procedures (as defined below) subsequent to the filing of the First Report (the "**Material Adverse Change**"); and
 - ii. The Applicant's revised request with respect to the Comeback Hearing and the amended and restated Initial Orders (the "**Revised ARIOs**"), in light of the Material Adverse Change that would, among other things:
 - a) provide the Monitor with further enhanced powers in addition to the enhanced powers proposed in the September 25 Draft ARIOs;
 - b) continue to increase the quantum of the Administration Charge from \$250,000 to \$500,000; and
 - c) extend the Stay Period to October 13, 2023 (the "**Revised Stay Period**").
7. For greater certainty, considering the Material Adverse Change, the Monitor understands the Applicant is no longer seeking approval of the SISP Order or an increase to the borrowing limit under the DIP Facility until a revised cash flow statement (the "**Revised Cash Flow Statement**") has been presented.

TERMS OF REFERENCE AND DISCLAIMER

8. In preparing this Supplemental Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records and financial information prepared by the Debtors, discussions with management of the

Debtors ("**Management**"), discussions with the CRO, and information from other third-party sources (collectively, the "**Information**").

9. Except as described in this Supplemental Report in respect of the Cash Flow Statement:
 - i. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
 - ii. Some of the Information referred to in this Supplemental Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
10. Future oriented financial information referred to in this Supplemental Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
11. Unless otherwise indicated, the Monitor's understanding of the factual matters expressed in this Supplemental Report concerning the Debtors and their businesses is based on the Information and not independent factual determinations made by the Monitor.

12. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
13. Capitalized terms not otherwise defined herein are as defined in the Initial Orders, the Pre-Filing Report, the September 25 Draft ARIOs and the First Report.
14. The Pre-Filing Report described, among other things, certain background information about the Debtors and their Cash Flow Statement. Copies of the Initial Orders, the Pre-Filing Report, the September 25 Draft ARIOs, the First Report and the service list in respect of these CCAA Proceedings are available on the Monitor's website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods> (the "**Monitors Website**").

MATERIAL ADVERSE CHANGE

15. Prior to the granting of the Initial Orders, the Monitor participated in several discussions with Management and the CRO regarding the effect these CCAA Proceedings would have as it related to pre and post filing provision of goods and services to the Debtors. An output of these discussions was an amount contained within the Cash Flow Statement for payment of critical pre-filing suppliers, as determined by Management in consultation with the Monitor.
16. Subsequent to the granting of the Initial Orders, the Monitor provided the CRO and Management with cash flow monitoring procedures (the "**Monitoring Procedures**"). The Monitoring Procedures were based on the reporting requirements required under the Advisory Mandate with necessary adjustments to account for these CCAA Proceedings.
17. On September 25, 2023, after the Monitor filed its First Report with the Court, it became aware of several matters which have affected the Debtors' financial position, as are further described below.

Sales and collection levels

18. During the week of the initial hearing (i.e., the seven-day period preceding the Cash Flow Statement ending September 22, 2023) sales generated by the two main operating entities of

the Debtors were approximately 71% lower than that anticipated by Management. A portion of this variance could be attributable to negative effects of post tropical storm Lee.

19. The negative sales trend has continued during the initial days following the granting of the Initial Orders, with sales currently trending approximately 54% below that contained in the Cash Flow Statement (the sales variance contemplated herein has been adjusted to exclude sales pertaining to the Subject Transactions as defined below).
20. Furthermore, collections during the week of the initial hearing and the days immediately following it have been approximately 66% behind Management's forecast which has further strained the Debtors' liquidity.
21. Based on the funding mechanism as outlined in the DIP Facility Agreement, a slower conversion of inventory to a sale, combined with slower than anticipated collections have negatively impacted the Debtors' available liquidity.

Subject Transactions

22. As part of the Monitoring Procedures, the Monitor has obtained the following information about two recent sales transactions (the "**Subject Transactions**") completed by the Debtors:

Transaction A

- i. On September 23, 2023, BTW entered into a transaction ("**Transaction A**") to sell approximately 38,871 pounds of live product to customer A ("**Customer A**"). Transaction A occurred after issuance of the Initial Orders and was undertaken without the prior knowledge or consent of the Monitor. The CRO has also advised that he was unaware of Transaction A before it occurred. Based on the information provided to the Monitor by Management, BTW provided Customer A with a credit memo (the "**Credit Memo**") for the full value of Transaction A as an offset against pre-filing accounts payable due to Customer A. As at the date of the Initial Application, BTW was indebted to Customer A for an amount exceeding the value of Transaction A.

- ii. In addition to the Credit Memo, the Monitor has determined that Transaction A occurred at a negative gross profit margin while sale transactions to other customers during the same period generated a gross profit margin average of approximately 34%. The Monitor has been advised that approximately half of the product related to tubed lobsters (i.e., generally the stronger lobsters) which were weak in nature, or had perished and thus justifying a reduced selling price. As at the date of this Supplemental Report, the Monitor has not been able to substantiate whether this price reduction was appropriate.
- iii. Management advised the Monitor that the Debtors previously entered into an agreement with Customer A to exchange product and Transaction A was the Debtors settling this agreement with Customer A..
- iv. As part of its due diligence on Transaction A, the Monitor has sought explanations as to why Management honoured a pre-filing obligation. As at the date of this Supplemental Report discussions with Management and the CRO are ongoing. The Monitor will update this Court in its next report.
- v. As at the date of this Supplemental Report, the Monitor estimates that Transaction A has reduced the Debtors' liquidity by approximately \$282,000.

Transaction B

- vi. On September 23, 2023, BTW entered into a transaction ("**Transaction B**") to sell approximately 13,000 pounds of live product to customer B ("**Customer B**"). This transaction occurred after issuance of the Initial Orders and was undertaken without the prior knowledge or consent of the Monitor. The CRO has also advised that he was unaware of Transaction B before it occurred. Based on the information provided to the Monitor, BTW provided Customer B with a credit memo (the "**Credit Memo**") for the full value of Transaction B as an offset against pre-filing accounts payable due to Customer B. As at the date of the Initial Application, BTW was indebted to Customer B for an amount exceeding the value of Transaction B.

- vii. The Monitor has been advised that Transaction B consisted exclusively of tubed lobsters that had similar characteristics as those contained in Transaction A outlined above. As at the date of this Supplemental Report, the Monitor has been unable to substantiate whether the price reduction was appropriate.
 - viii. The Monitor continues discussions with respect to Transaction B with Management and the CRO. As at the date of this Supplemental Report these discussions are ongoing, and the Monitor will update the Court in its next report.
 - ix. As at the date of this Supplemental Report, the Monitor estimates that Transaction B has reduced the Debtors liquidity by approximately \$100,000.
23. The Monitor estimates that the cumulative negative impact to the Debtors' liquidity position as a result of the Subject Transactions to be approximately \$382,000.
24. The Monitor has held preliminary discussions with its counsel regarding possible responses to the Subject Transactions, however a full investigation is required, including consultation with the Applicant, before the Monitor will be able to determine a course of action. In any event, there is no readily available solution to reverse the Subject Transactions and thereby reverse the negative impact to the Debtors' liquidity.

Trade Suppliers

25. As contained within the Cash Flow Statement filed with the Pre-Filing Report, the Debtors had highlighted payment of pre-filing trade accounts payable of approximately \$900,000. In its First Report, the Monitor provided an update to the Court on payments made as at that date.
26. Subsequent to the Initial Orders, trade suppliers have placed increased pressure on the Debtors to either make payments of pre-filing trade payables or provide deposits. As at the date of this Supplemental Report, the Debtors' have limited liquidity available under the DIP Facility, as a result of depressed sales and the Subject Transactions, and the inability to make these requested payments has negatively affected sales and available liquidity further.

27. As at the date of this Supplemental Report, the Monitor, Management and CRO have estimated the Debtors' liquidity requirement to be approximately \$610,000 for September 28, 2023.
28. On September 27, 2023, the Monitor participated in a conference call with the Applicant where it was advised that the Applicant is not prepared to fund amounts under the DIP Facility that would result in an increase to its over-advance position.
29. The Monitor is working diligently with the CRO and Management to create the Revised Cash Flow Statement.

THE APPLICANT'S REQUEST FOR THE REVISED AMENDED AND RESTATED INITIAL ORDERS

30. As discussed above, as at the date of this Supplemental Report, the Debtors' do not appear to have the liquidity necessary to continue operations as contained within the Cash Flow Statement. The Monitor understands the Applicant is no longer prepared to support the extension of the stay of proceedings to November 24, 2023 given the uncertainty of the situation, and further, the Applicant requires an expansion of the Monitor's powers to prevent further erosion of the Applicant's collateral.
31. The Applicant has further advised that it cannot consider the appropriate structure and/or milestones of the SISP or an increase to the DIP Facility until it has been presented with the Revised Cash Flow Statement.
32. As contained in the First Report, the Monitor had held several discussions with Management, the CRO and Debtors' counsel and previously identified four areas where control was previously with the Debtors and will be transferred over to the Monitor.
33. However, considering the Material Adverse Change, the Applicant is requesting that the Monitor's powers be expanded further to effectively provide it with all operational and managerial authority with respect to the Debtors' property and business. The Applicant has advised that it has lost faith in Management and requires that the Monitor take on such enhanced

powers in order to ensure proper controls are in place. If granted, the Monitor will continue to engage with the CRO over the coming weeks before reassessing the requirement for a CRO as part of these CCAA Proceedings.

34. The Monitor wishes to advise the Court that it is prepared to accept and undertake the proposed expanded powers contained within the Revised ARIOs should the Court see fit to grant the requested relief.

Stay of Proceedings

35. The Stay Period contained within the Initial Orders is set to expire on October 1, 2023. As set out in the September 25 Draft ARIOs, the Applicant had originally requested an extension of the Stay Period up to November 24, 2023 to allow the Debtors to complete their participation in the ongoing lobster season and allow the Monitor to complete Phase 1 of the SISP. However, in light of the Material Adverse Change, and the lack of a reliable Cash Flow Statement, the Applicant is requesting an extension of the Stay Period up to and including October 13, 2023. The Monitor believes this is a reasonable amount of time for the Stay Period to remain in place while it works in conjunction with the CRO to create the Revised Cash Flow Statement.
36. With the granting of the enhanced powers, the Monitor plans to and will act in good faith and with due diligence on behalf of the Debtors. The Monitor does not believe any creditor will be materially prejudiced by the Revised Stay Period.
37. The Monitor supports the Revised Stay Period as contained within the Revised ARIOs.

CONCLUSION

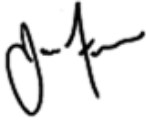
38. Based on the enclosed, the Monitor recommends the Court grant the Revised ARIOs in the form put forward by the Applicant.

All of which is respectfully submitted this 27th day of September 2023.

Deloitte Restructuring Inc.

Acting in its capacity as CCAA Monitor of South Shore Seafoods Ltd., Captain Cooke’s Seafood Inc., By the Water Shellfish (2012) Inc., South Shore Seafoods International Ltd., Can-Am Lobster and Shellfish Ltd., Bridge Lobsters Limited and Arsenault’s Fish Mart Inc., and not in its personal capacity

Per:



James Foran, CPA, CA, CIRP, LIT
Senior Vice-President

Per:



Kurt Macleod, MBA, CIRP, LIT
Vice-President