

2023

Hfx No. 521470

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF: THE RECEIVERSHIP OF MERIDIEN ATLANTIC FISHING LTD., ROCKY
COAST SEAFOODS LTD. AND 9514228 CANADA INC.

Between:

THE TORONTO-DOMINION BANK

Applicant

and

**MERIDIEN ATLANTIC FISHING LTD.,
ROCKY COAST SEAFOODS LTD. and 9514228 CANADA INC.**

Respondents

**BOOK OF AUTHORITIES OF
DELOITTE RESTRUCTURING INC.**

Motion Date: Thursday, December 12, 2024 at 9:30 a.m.

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I N D E X

Tab	Authority
1.	<i>Arnold v. Rockwood</i> , 1989 CarswellNS 35
2.	<i>Toronto-Dominion Bank v. Karlsen Shipping Co.</i> , 2015 NSSC 204
	Legislation
3.	<i>Bankruptcy and Insolvency General Rules</i> , CRC, c 368, s. 3 & 6
	Orders
4.	Amended Receivership Order issued April 14, 2023
5.	Order Amending Receiver's Powers issued April 25, 2024

TAB 1

1989 CarswellNS 35
Nova Scotia Supreme Court, Trial Division

Arnold v. Rockwood

1989 CarswellNS 35, [1989] C.L.D. 1238, [1989] N.S.J. No. 307, 16
A.C.W.S. (3d) 428, 242 A.P.R. 14, 75 C.B.R. (N.S.) 316, 93 N.S.R. (2d) 14

ARNOLD et al. v. ROCKWOOD et al.

Davison J. [in Chambers]

Heard: April 5 and 6, 1989

Judgment: August 3, 1989

Docket: Halifax No. 55728

Counsel: *D.I. Pink* and *J.M. Chisholm*, for receiver, Coopers & Lybrand Limited.
M.S. Ryan, Q.C., and *P. Jenkins*, for general partner of Invesco, B & R Holdings Limited.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.8 Remuneration of receiver

VII.8.b Remuneration

VII.8.b.i General principles

Davison J. [in Chambers]:

End of Document

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TAB 2

2015 NSSC 204
Nova Scotia Supreme Court

Toronto-Dominion Bank v. Karlsen Shipping Co.

2015 CarswellNS 597, 2015 NSSC 204, 255 A.C.W.S. (3d) 828, 28 C.B.R. (6th) 83

The Toronto-Dominion Bank v. Karlsen Shipping Company Limited

Glen G. McDougall J.

Heard: September 25, 2014

Judgment: July 13, 2015

Docket: Hfx 348504

Counsel: Stephen Kingston, John D. Stringer, Q.C. for PricewaterhouseCoopers Inc.
Christopher Robinson for 3264741 Nova Scotia Limited

Subject: Civil Practice and Procedure; Corporate and Commercial; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency

[IV Receivers](#)

[IV.2 Fees and expenses](#)

APPLICATION by receiver for approval of fees and disbursements.

Glen G. McDougall J.:

Introduction:

1 PricewaterhouseCoopers Inc. ("PwC") was appointed Receiver of all assets, undertakings and properties of Karlsen Shipping Company Limited ("Karlsen Shipping") by virtue of a Receivership Order granted by the Honourable Justice Arthur J. LeBlanc of this court on the 17th day of May, 2011.

2 PwC acted in its capacity as Receiver for Karlsen Shipping until 14 September, 2012 at which time it was discharged. Grant Thornton Limited ("GTL") was then substituted to assume the role of Receiver in place of PwC.

3 The discharge of PwC and the appointment of GTL was done at the request of 3264741 Nova Scotia Limited ("No. Co.") which acquired the debts and security of the Toronto-Dominion Bank ("T-D Bank") by way of assignment.

Motion / Background:

4 PwC now seeks approval of its fees and disbursements as Receiver along with those of its legal counsel, McInnes Cooper.

5 In support of its motion PwC relies on the affidavit of Mr. Derek Cramm, Senior Vice-President of PwC, sworn to on November 20, 2012 (filed on November 21, 2012) and a subsequent affidavit sworn to on January 17, 2014 (filed on March 7, 2014).

6 PwC further relies on the Fifth Report of Receiver dated August 15, 2012 which was filed with the court on August 16, 2012.

7 A review of the five Reports filed by PwC sets out the work carried out by the Receiver during the period commencing from the date of its appointment on May 71, 2011 until the date of discharge on September 14, 2012 - a period of approximately 16 months.

8 The Fifth Report of the Receiver attaches copies of the accounts rendered by it as Receiver along with the accounts of its counsel. Copies of subsequent accounts are attached as exhibits to Mr. Cramm's affidavit of November 20, 2012.

9 PwC rendered one additional invoice for \$9,262.14 (includes HST) covering a period ending November 27, 2012. There remains an outstanding balance on this invoice of \$8,247.98 according to paragraph 14 of the Cramm affidavit of January 17, 2014. I believe this is incorrect. When one looks at paragraph 14 of the November 20, 2012 affidavit, it reports a remaining trust balance of \$1,017.16. When this amount is applied to the November 28, 2012 invoice it results in an outstanding balance of \$8,244.98. A slight difference, I admit, but a difference nonetheless.

10 PwC's legal advisors, McInnes Cooper, rendered one further invoice after November 21, 2012. It totals \$3,622.32 which includes disbursements and HST. Payment remains outstanding for this amount and for invoices dated May 31, 2012 (\$4,296.80), June 29, 2012 (\$5,152.23), July 31, 2012 (\$2,665.70), August 31, 2012 (8,659.21), and September (\$2,183.16). In total some \$26,579.42 remains unpaid. [Reference para. 17 of the January 17, 2014 affidavit of Derek Cramm].

11 McInnes Cooper has additional unbilled work-in-progress of approximately \$2,000.00 plus taxes and disbursements [See para. 18 of the January 17, 2014 "Cramm" affidavit].

12 PwC reports unbilled work-in-progress of approximately \$1,800.00 plus taxes and disbursements. [See para. 19 of the January 17, 2014 "Cramm" affidavit].

13 The terms of the Order discharging PwC as Receiver included the following provision, at para. 3:

3. PWC is hereby discharged as Receiver and is relieved of its obligations under the Receivership Order, provided that all privileges and protections afforded by the Receivership Order granted to the Receiver shall continue to accrue to the benefit of PWC. [sic] for any and all activities undertaken by PWC prior to its discharge, including but not limited to that charge provided for in section 17 of the Receivership Order over all the assets of the Respondent, charging same with respect to the fees of PWC and its counsel, which shall remain a first charge.

14 Counsel for No. Co. opposes the granting of an order approving the fees of the former Receiver and its' counsel and requests a reduction of the fees claimed. He submits that the fee sought to be approved by PwC "*are excessive, unreasonable, and bear no resemblance to the size of the state and the revenues realized solely through the efforts of the receiver and its counsel.*" [Page 4 of the Respondent's Memorandum of Law filed on September 22, 2014].

15 Counsel further argues that approximately 58% of the total revenues realized (approximately \$910,000.00) were derived from:

Cash in the Bank:	\$652,352.77
Insurance Claim:	\$236,036.15
HST collected:	\$ 21,000.00

16 He suggests that the realization of these funds "*involved little if any effort on the part of PWC or its counsel.*" [Page 4 of Respondent's counsel's Memorandum of Law filed September 22, 2014]. In his memorandum of Law filed on behalf of PwC on March 7, 2014, Mr. Stephen Kingston summarized the activities performed by PwC in fulfilling its assignment "*which included (but were not limited to):*"

1. Meeting with Karlsen's President and making other inquiries to identify and locate Karlsen's property and assets;
2. Taking possession of Karlen's [sic] books and records;
3. Reviewing claims regarding monies held by Karlsen on deposit at the time of the appointment of the Receiver;

4. Securing and maintaining Karlsen's commercial office property at 55 Crane Lake Drive, Halifax Regional Municipality pending sale by the Receiver;
5. Obtaining advice re the valuation of Karlsen's commercial office property, and conducting a sale process to identify interested parties;
6. Concluding the sale of Karlsen's commercial office property, including a Motion to obtain the approval of this Honourable Court;
7. Obtaining advice regarding the valuation of Karlsen's yacht "Polar Sun", and conducting a sale process to identify interested parties;
8. Concluding the sale of the "Polar Sun", including a Motion to obtain the approval of this Honourable Court;
9. Obtaining advice re the valuation of properties owned by Karlsen in Chester and New Harbour, Lunenburg County, and conducting a sale process to identify interested parties;
10. Concluding the sale of Karlsen's property at 3389 North Street, Chester, including a Motion to obtain the approval of this Honourable Court;
11. Obtaining advice regarding various priority claims, including claims pursuant to the *Pensions Benefits Standards Act*, R.S.C. 1985, c. 32;
12. Conducting detailed inquiries regarding Karlsen's motor vessel 'Polar Star', which was situate at a shipyard in the Canary Islands, Spain;
13. Obtaining advice regarding the physical condition and value of the 'Polar Star', possible further repairs, required sea trials and regulatory approval regarding future operation of the vessel;
14. Obtaining advice regarding the Spanish legal process involved in seeking recognition of the Receiver in the Canary Islands;
15. Obtaining advice regarding various maritime lien claims and other *in rem* claims regarding the 'Polar Star' in the Canary Islands and other jurisdictions, including the Spanish shipyard where the vessel was situate;
16. Conducting a sale process seeking to identify interested parties as regards the purchase of the 'Polar Star';
17. Determining whether the 'Polar Star' had any net value which could be realized for the benefit of Karlsen's creditors;
18. Bring a Motion before this Honourable Court to obtain approval for a Partial Distribution of Funds by the Receiver to creditors;
19. Participating in the Motion regarding the discharge of PWC as Receiver, and dealing thereafter with the new Receiver as regards transition arrangements, transfer of trust funds, transfer of documentation and records, etc.

[Pages 2 and 3 of the Memorandum of Law, *supra*]

These activities are described in greater detail both in the Reports of the Receiver as well as in the two affidavits of Mr. Cramm referred to earlier.

17 Counsel for No. Co., in his submissions, acknowledged other receipts in addition to:

- (i) Cash in bank,

(ii) Insurance claim,

(iii) HST referred to earlier

18 The additional revenues are:

- Sale of 55 Crane Lake Drive — \$485,000.00
- Sale of Yacht (Beneteau) — \$140,000.00
- Sale of Land (Chester) — \$42,500.00

Altogether these receipts add up to \$1,576,888.92. This figure does not include two other insurance claims paid directly to two of the original secured creditors one of which was the T-D Bank. No. Co.'s counsel suggests these latter payments should be ignored as these claims were already in progress when the Receivership Order was first made. Counsel contends that very little effort had to be expended by PwC to realize on these claims.

19 No. Co. also questions the efforts required to sell company-owned property in Chester and the Beneteau yacht since, respectively, a real estate agent and a yacht broker were retained to sell these assets.

20 Furthermore, No. Co. challenges the fees incurred by PwC before finally deciding that there was no point in pursuing buyers for the MV Polar Star which had been towed to Las Palmas in the Canary Islands for repairs. PwC determined that there was little chance of generating sale proceeds in excess of the maritime lien claims attached to the vessel. Eventually the MV Polar Star was acquired by No. Co. for approximately \$200,000.00.

21 PwC also had to devote a considerable amount of time and effort to determine if there might be any net realizable value in the company's shares in Karlsen Norway SA. Unfortunately, there was nothing. It could not, however, have been ignored by the Receiver. It is easy to criticize PwC, in hind-sight, for having nothing to show for their efforts. But is it fair? I do not believe it is. If the Receiver had not pursued these assets without first doing their due diligence then, yes, they could be criticized. By doing the prudent and correct thing they should not now be expected to forego remuneration for its *bona fide* efforts in trying to maximize revenues for distribution amongst company creditors.

22 Nor should PwC be criticized for retaining the services of qualified real estate brokers or agents and yacht brokers to sell company assets after having first attempted to solicit offers on their own. This is standard practice. To try to sell these assets without the advice and guidance of industry experts would only open up PwC to legitimate criticism and potential allegations of negligence in carrying out their court-ordered duties.

23 Some of the other complaints and criticisms directed towards PwC and its legal advisors concerned billing for time of more than one individual for in-house discussions involving two or more team members. PwC and McInnes Cooper lawyers had to deal with a number of complex issues including deposits made towards the cost of future travel by customers of Karlsen Shipping, the claims of company employees to pension funds, HST rebates, and tracking company assets in different parts of the world to name a few.

24 McInnes Cooper law firm is of a size and composition that it can offer expert advice in pretty well any area of the law. Likewise, PwC has a stable of qualified business and financial experts such that it does not have to regularly consult outside experts save for legal advice.

25 It is quite common for more than one individual to work on a file of the complexity of the one now before the court. Oftentimes the principal assigned to the task delegates different aspects of the file to other professionals within the organization. Very often the delegated work does not require the same level of intellectual sophistication or expertise as some other work might and so can be produced at a lower cost.

- 26 Sometimes a pooling of resources produces a synergy that might well result in an overall reduction in the ultimate cost.
- 27 It should also be noted that the lawyers at McInnes Cooper who worked on this file agreed to reduce their regular hourly fees in an effort to address a concern raised by the T-D Bank. They did not have to but they did and the savings were passed on for distribution to the creditors.

Law:

- 28 The Motion was brought pursuant to Civil Procedure Rule 73.11 which states:

73.11 - Passing accounts and discharge

- (1) A receiver who completes the tasks for which the receivership order was granted must make a motion for an order passing the receiver's accounts, approving fees and expenses not yet approved, and discharging the receiver.
- (2) A judge who hears a motion for a discharge may do any of the following:
- (a) pass the accounts or order repayment of an expense not approved;
 - (b) approve the receiver's fees and disbursements and allow payment of them or, if advances exceed the amount approved, order repayment;
 - (c) discharge the receiver wholly, or on conditions.
- (3) A judge who is satisfied that a receiver delays in bringing a receivership to conclusion or in making a motion to pass accounts, set remuneration, and be discharged may do any of the following:
- (a) replace the receiver;
 - (b) refuse some or all remuneration;
 - (c) order the receiver to pay expenses caused by the delay.

- 29 Counsel for No. Co. referred the Court to a relatively recent case of the Ontario Superior Court of Justice in *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (Ont. S.C.J.). The Honourable Andrew J. Goodman, at para. 3 of his decision, said this:

3 One of the leading authorities dealing with approval of the fees of a receiver is found in the case of *Re Bakemates International Inc.*, [2002] O.J. No. 3569. In *Re Bakemates*, the Ontario Court of Appeal held that when a receiver asks the court to approve its compensation, there is an onus on the receiver to prove that the compensation for which it seeks the court's approval is fair and reasonable and a court could adjust the fees and charges of the receiver.

- 30 At para. 7, Justice Goodman also referred to a New Brunswick Court of Appeal case in this fashion:

7 In an authoritative case from New Brunswick, the Court of Appeal in *Federal Business Development Bank v. Belyea*, [1983] N.B.J. No. 41, 46 C.B.R. (N.S.) 244 (NB CA), (cited with approval by the Ontario Court of Appeal in *Re Bakemates*), held that the underlying premise for compensation is "usually allowed either as a percentage of receipts or a lump sum based upon time, trouble and degree of responsibility involved". The governing principle is that compensation allowed a receiver should be measured by the fair and reasonable value of his service; and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible.

- 31 Borrowing further from the *Belyea v. Federal Business Development Bank* [1983 CarswellNB 27 (N.B. C.A.)] case, *supra*, Justice Goodman said the following at para. 9:

9 The jurisprudence from *Belyea* advances factors that a court ought to consider in assessing the compensation of a receiver, (albeit the discussion in the case was in the context of *quantum meruit*). They include:

- the nature, extent and value of the assets handled;
- the complications and difficulties encountered;
- the degree of assistance provided by the company, its officers or its employees and the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

32 Before getting into an analysis of the case that was before him, Justice Goodman also cited from a case penned by Justice Farley of the Ontario General Division [Commercial List] at para. 6 of *Belyea*, *supra*:

6 In *BT-PR Reality Holdings Inc. v. Coopers & Lybrand*, [1997] O.J. No. 1097 (Sup. Ct.) Farley J. held at paras. 22 & 23:

The issue on a s. 248(2) hearing is whether the fees charged by the receiver are fair and reasonable in the circumstances as they existed - that with the benefit of the receivership going on, not with the benefit of hindsight. I would also note that it would be an unusual receivership and an unusual receiver where a receiver was able to be up to full speed instantaneously upon its appointment. There is a learning curve for the particular case and probably a suspicion equation to solve. The receiver must demonstrate that it acted in good faith and in the best interests of the creditor as opposed to its own interest or some third party's interests. The receiver must also demonstrate that it exercised the reasonable care, supervision and control that an ordinary man would give to the business if it were his own: see *Re Ursel Investments Ltd.* (1992), 10 C.B.R. (3d) 61 (Sask.C.A.). The receiver is not required to act with perfection but it must demonstrate that it acted with a reasonable degree of confidence: see *Ontario Development Corp. v. I.C. Suatac Construction Ltd.* (1978), 26 C.B.R. (N.S.) 55 (Ont. S.C.).

While sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Reasonably is emphasized. It should not be based on any cut rate procedures or cutting corners and it must relate to the circumstances. It should not be the expensive foreign sports model; but neither should it be the battered used car which keeps its driver worried about whether he will make his destination without a breakdown.

33 In his analysis, Justice Goodman, at para. 18 and 19, commented as follows:

18 As a general principle, the assessment of fees are in the discretion of the court. There is no fixed rate or tariff for determining the amount of compensation to pay a receiver or receiver's counsel. Similar to the approach in assessing costs, in approving a receiver's accounts, a determination should be made as to whether the remuneration and disbursements incurred in carrying out the receivership were fair and reasonable, rather than an amount fixed by the actual costs charged by receiver's counsel. The court must, first and foremost, be fair when exercising its discretion on awarding fees.

19 In my view, in an assessment of fees, there must be practical and reasonable limits to the amounts awarded and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated. It is not necessary for me to have to go through the dockets, hours, the explanations or disbursements, line by line, in order to determine what the appropriate fees are. Nor is the court to second-guess the amount of time claimed unless it is clearly

excessive or overreaching. The appellate courts have directed that judges should consider all the relevant factors, and should award costs (or fees) in a more holistic manner. However, when appropriate and necessary, a court ought to analyze the Bill of Costs or dockets in order to satisfy itself as to the reasonableness of the fees submitted for consideration.

34 I accept what Justice Goodman had to say and adopt what he borrowed from the various other cases cited.

Analysis and Conclusion:

35 I do not propose to repeat all of No. Co.'s various concerns regarding the former Receiver's charges or those of its counsel. I will, however, mention one in particular. That is the manner in which PwC handed the MV Polar Star - a refurbished ice breaker that Karlsen Shipping used for Arctic, Antarctic and Northern Canada expeditions.

36 In the Second Report of Receiver filed on September 27, 2011 the MV Polar Star was reported as being in drydock at the Astican Shipyard in Las Palmas, Canary Islands, Spain. Section 5, starting on page 4 of the Second Report, provides the following explanation of the Receiver's efforts in dealing with what appeared to be Karlsen Shipping's principle asset:

At the date of the receivership, the Receiver determined that the Ship's crew were still on-board and that they had not been paid wages or salaries for almost two months. In addition, supplies on the Ship were running out. Over the next two weeks the Receiver, with the assistance of its office located in Las Palmas, performed the following duties:

- Met with the Captain and crew and advised of the Receivership;
- Acted as a liaison with the Astican shipyard officials;
- Upon receipt of funds advanced by the Toronto-Dominion Bank, arranged for airline tickets, visas and spending money for the crew to complete their repatriation to their home countries, which included Poland, the USA and the Phillipines [sic];
- With the assistance of the Ship's captain, arranged for the disposition to the authorities of the medical drugs and weapons which were on board; and Took possession of critical documentation including Ship's logs, certificates etc..

Since the receivership, the Receiver, with the assistance of Martin Karlsen, has been actively pursuing a purchaser for the Ship. This included placing advertisements in the international trade magazines "The Tradewinds" and "Lloyd's List". As a result of these efforts the Receiver received interest from all over the globe, including Canada, Iceland, Belgium, Germany, UK, Australia, New Zealand, The Netherlands, Norway, Austria, India and Hong Kong. The serious buyers and the results of sales discussions are as follows:

- A Dutch shipowning concern involved in the polar expedition business, conducted two inspections of the Ship in Las Palmas. The Receiver and this party agreed to a sale price of US\$6 million (subject to Court approval), but, in the end, the Receiver was informed that no bank would finance the acquisition on acceptable terms, despite the buyer's willingness to invest 50% equity. The Receiver was advised that the financing difficulties were related to the age of the Ship and the realisation that the Ship's engines would soon have to be replaced.
- Another apparently serious inquiry came forward through a broker representing a Swedish-Bermuda shipowning group. The Receiver and this party also agreed to a sale price of US\$6 million (subject to Court approval), and the offer was not "subject to financing", according to the broker. Negotiations were quite advanced and an inspection was scheduled but never conducted, as the arrangement between the buyer and an ultimate user fell through. In the course of negotiations, the broker noted that all of the vessels presently engaged in the Arctic/Antarctic expedition business would have to be re-powered or replaced by 2014 due to new restrictions on the use of heavy fuels in Arctic and Antarctic waters. The broker also reported that he has also been in touch with certain other shipping companies operating in the Arctic and Antarctic as regards the purchase of the Ship, but nothing concrete has arisen from the broker's efforts to date.

- A Canadian adventure travel firm, also had expressed interest, but continued to reduce their offer price and no deal was struck.
- The Ship was viewed by a scrap buyer, who offered \$332.28 per lightship MT in late July, which amounts to approximately US\$1.5 million.

All potential sales depended on the Receiver being in a position to deliver the ship free from liens and encumbrances and duly certified for passenger operations (except for the scrap offer). This was problematic, and would require substantial funding to bridge the gap between a firm sale agreement and closing. The Ship remains on dry land at the yard in Las Palmas. The shipyard is owed approximately 1,187,768 EUROS (approximately CDN\$1.6 million) as at August 31, 2011.

Several seizure Orders have been issued by the Spanish Court, including the bunker supplier's claim.

The known Orders in addition to the shipyard are as follows:

Claimant	Main/Principal Amount Euros	Additional fees, interest, etc.	Total Amount Claimed
Crew	171,247.85	25,000.00	196,247.85
Bunkering AS	52,916.23	17,000.00	69,916.23
Suisca SLU	31,032.15	9,309.64	40,341.79
Wilhelmsen Ship S.	19,728.76	5,000.00	24,728.76
TOTAL	274,924.99	56,309.64	331,234.63

This represents approximately CDN\$450,000.

In addition to the above, DNV (the Ship's Classification Society) made it clear that it would have to be paid in full before any certifications would be issued. DNV claims to be owed US\$216,548 for prior work. The crew would also have to be paid out of any sale proceeds, since they are entitled to a maritime lien that takes priority over all other claims. Assuming the Ship could be extracted from Las Palmas based on some combination of agreements with the creditors, payments and/or posting security, the plan was to organise a quick judicial sale through the Gibraltar Court. This process would have the benefit of clearing the title to the Ship and by all accounts could be accomplished much more quickly than a judicial sale through the Spanish Court system.

In order to get the ship to Gibraltar (approximately two days steam from Las Palmas), however, additional start-up costs have been estimated at 338,230 EUROS (approximately CDN\$460,000) as summarized in Schedule J.

The total of the above expenses amounts to approximately CDN\$2,510,000. This does not include additional fees payable to DNV to recertify the Ship.

Other relevant considerations include:

- Confirmation from the secured lenders that they are not willing to fund any further protective disbursements or bridge financing to cover any of the above — noted costs;
- The Receivership Order was issued in the Supreme Court of Nova Scotia and no application has been made to have the Order recognized in the Spanish Courts.
- The shipyard has a possessory lien and has indicated that they will be proceeding to a judicial sale in the Spanish Courts.

Based upon the above, the Receiver has concluded that there is little prospect of any significant return to creditors by continuing to actively pursue the sale of the Ship. The net proceeds are unlikely to exceed the amounts owed to the lien holders.

Therefore the Receiver has concluded that the Ship be abandoned to the Astican Shipyard and the Receiver shall assist the shipyard, if required, as regards any local judicial sale of the Ship.

37 PwC was criticized for sending a representative to Las Palmas to assess the situation instead of simply relying on personnel in its off-shore office. I see no reason to find fault with how PwC handled this situation. Indeed, if they had not travelled to Las Palmas to deal with the very important job of repatriating the crew and to liaise with shipyard officials as well as other lien holders they might otherwise have merited some criticism. But they do not, in my opinion, warrant any criticism for doing a good job.

38 It should also be noted that the T-D Bank, as principal secured creditor, did not question the work done by the Receiver. It did challenge some of the legal fees which resulted in an across-the-board reduction in fees charged by legal counsel.

39 I find that the time and effort expended on the Receivership, both by PwC and McInnes Cooper, were necessary and reasonable in the circumstances.

40 Given the complexity of the problems that had to be handled including those connected to the MV Polar Star, the employee pension funds, the shares in Karlsen Norway SA and the sale of the various assets of Karlsen Shipping, I accept and approve the amounts charged for fees and disbursements by both PwC and McInnes Cooper Lawyers. I further approve payment of any amounts billed but not yet paid.

41 I invite counsel for PwC to prepare an order approving the Receiver's Fifth Report along with its', and the Receiver's, final accounts which I will tax and approve if found satisfactory.

Application granted.

TAB 3



CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency General Rules

Règles générales sur la faillite et l'insolvabilité

C.R.C., c. 368

C.R.C., ch. 368

Current to November 11, 2024

À jour au 11 novembre 2024

Last amended on March 25, 2011

Dernière modification le 25 mars 2011

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to November 11, 2024. The last amendments came into force on March 25, 2011. Any amendments that were not in force as of November 11, 2024 are set out at the end of this document under the heading “Amendments Not in Force”.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 11 novembre 2024. Les dernières modifications sont entrées en vigueur le 25 mars 2011. Toutes modifications qui n'étaient pas en vigueur au 11 novembre 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

General

2 Documents that by the Act are to be prescribed must be in the form prescribed, with any modifications that the circumstances require and subject to any deviations permitted by section 32 of the *Interpretation Act*, and must be used in proceedings under the Act.

SOR/92-579, s. 3; SOR/98-240, s. 1; SOR/2007-61, s. 2(E).

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

SOR/98-240, s. 1.

4 If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

SOR/98-240, s. 1; SOR/2007-61, s. 63(E).

5 (1) Subject to subsection (2), a notice or other document that is received by a Division Office outside of its business hours is deemed to have been received

(a) on the next business day of that Division Office, if it was received

(i) between the end of business hours and midnight, local time, on a business day, or

(ii) on a Saturday or holiday; or

(b) at the beginning of business hours of that Division Office, if it was received between midnight and the beginning of business hours, local time, on a business day.

(2) Subsection (1) does not apply to documents related to proceedings under Part III of the Act that are filed by facsimile.

SOR/78-389, s. 1; SOR/92-579, s. 4; SOR/98-240, s. 1; SOR/2005-284, s. 1.

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served,

Dispositions générales

2 Les documents à prescrire au titre de la Loi sont en la forme prescrite, avec les adaptations nécessaires et les différences de présentation permises par l'article 32 de la *Loi d'interprétation*, et sont utilisés dans les procédures engagées sous le régime de la Loi.

DORS/92-579, art. 3; DORS/98-240, art. 1; DORS/2007-61, art. 2(A).

3 Dans les cas non prévus par la Loi ou les présentes règles, les tribunaux appliquent, dans les limites de leur compétence respective, leur procédure ordinaire dans la mesure où elle est compatible avec la Loi et les présentes règles.

DORS/98-240, art. 1.

4 Lorsqu'un délai de moins de six jours est prévu pour accomplir un acte ou tenter une procédure en vertu de la Loi ou des présentes règles, les samedis et les jours fériés n'entrent pas dans le calcul du délai.

DORS/98-240, art. 1; DORS/2007-61, art. 63(A).

5 (1) Sous réserve du paragraphe (2), les avis et autres documents que le bureau de division reçoit en dehors des heures d'ouverture sont réputés reçus :

a) le premier jour ouvrable suivant de ce bureau, s'ils sont reçus :

(i) après les heures d'ouverture et avant minuit, heure locale, un jour ouvrable,

(ii) le samedi ou un jour férié;

b) au début des heures d'ouverture de ce bureau, s'ils sont reçus entre minuit et le début des heures d'ouverture, heure locale, un jour ouvrable.

(2) Le paragraphe (1) ne s'applique pas aux documents concernant les procédures fondées sur la partie III de la Loi qui sont déposés par télécopieur.

DORS/78-389, art. 1; DORS/92-579, art. 4; DORS/98-240, art. 1; DORS/2005-284, art. 1.

6 (1) Sauf disposition contraire de la Loi ou des présentes règles, les avis et autres documents à remettre ou à envoyer sous le régime de la Loi ou des présentes règles sont signifiés, remis en mains propres ou envoyés par courrier, par service de messagerie, par télécopieur ou par transmission électronique.

(2) Sauf disposition contraire des présentes règles, les avis et autres documents à remettre ou à envoyer sous le régime des présentes règles :

a) doivent être reçus par le destinataire au moins quatre jours avant l'événement auquel ils se

delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

SOR/98-240, s. 1; SOR/2007-61, ss. 3(E), 63(E).

7 An assignment, proposal or notice of intention that is respectively offered, lodged or filed pursuant to the Act must be offered, lodged or filed by service, personal delivery, mail, courier, facsimile or electronic transmission.

SOR/78-389, s. 1; SOR/98-240, s. 1.

8 An interim receiver, a trustee, an administrator of a consumer proposal, an official receiver or a representative of the Superintendent is not required to be represented by a barrister or solicitor or, in the Province of Quebec, an advocate when appearing before a registrar on any court proceeding under the Act.

SOR/98-240, s. 1; SOR/2007-61, s. 4(E).

Court Proceedings

9 (1) All proceedings used in court must be dated and entitled in the name of the court in which they are used, together with the words “in Bankruptcy and Insolvency”.

(2) Every document used in the filing of a bankruptcy application or used after the filing of an assignment must be entitled “In the Matter of the Bankruptcy of ...”.

(3) Every document used in the filing of a proposal before bankruptcy must be entitled “In the Matter of the Proposal of ...”.

(4) Every document used in the course of a receivership must be entitled “In the Matter of the Receivership of ...”.

(5) Unless the Chief Justice, Associate Chief Justice or Commissioner, as the case may be, referred to in

rapportent, s'ils sont signifiés, remis en mains propres ou envoyés par télécopieur ou par transmission électronique;

b) doivent être envoyés au destinataire au moins 10 jours avant l'événement auquel ils se rapportent, s'ils sont envoyés par courrier ou par service de messagerie.

(3) Le syndic, le séquestre ou l'administrateur qui remet ou envoie un avis ou tout autre document doit remplir un affidavit ou obtenir une preuve à cet effet, et conserver l'affidavit ou la preuve dans ses dossiers.

(4) Le tribunal peut, sur demande *ex parte*, dispenser toute personne de l'application du paragraphe (2) ou ordonner les modalités d'application qu'il juge indiquées, notamment un délai différent.

DORS/98-240, art. 1; DORS/2007-61, art. 3(A) et 63(A).

7 La cession, la proposition ou l'avis d'intention à présenter ou à déposer sous le régime de la Loi sont soit signifiés, soit remis en mains propres, soit envoyés par courrier, par service de messagerie, par télécopieur ou par transmission électronique.

DORS/78-389, art. 1; DORS/98-240, art. 1.

8 Le séquestre intérimaire, le syndic, l'administrateur d'une proposition de consommateur, le séquestre officiel ou le représentant du surintendant n'ont pas à être représentés par un avocat lorsqu'ils comparaissent devant le registraire au sujet d'une procédure judiciaire engagée sous le régime de la Loi.

DORS/98-240, art. 1; DORS/2007-61, art. 4(A).

Procédure judiciaire

9 (1) Tous les actes de procédure présentés devant le tribunal sont datés et portent en titre le nom du tribunal visé et la mention « En matière de faillite et d'insolvabilité ».

(2) Les documents utilisés lors du dépôt d'une requête en faillite ou après le dépôt d'une cession portent le titre « Dans l'affaire de la faillite de ... ».

(3) Les documents utilisés lors du dépôt d'une proposition antérieure à la faillite portent le titre « Dans l'affaire de la proposition de ... ».

(4) Les documents relatifs à une mise sous séquestre portent le titre « Dans l'affaire de la mise sous séquestre de ... ».

(5) À moins que le juge en chef, le juge en chef adjoint ou le commissaire, selon le cas, visé à l'article 184 de la Loi

TAB 4

2023

SUPREME COURT
OF NOVA SCOTIA

APR 14 2023

HALIFAX, N.S.

Hfx No. 521470

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF: THE RECEIVERSHIP OF MERIDIEN ATLANTIC FISHING LTD. ~~and~~ ROCKY
COAST SEAFOODS LTD. AND 9514228 CANADA INC.

Between:

THE TORONTO-DOMINION BANK

Applicant

and

MERIDIEN ATLANTIC FISHING LTD.;
ROCKY COAST SEAFOODS LTD.; and
9514228 CANADA INC.

Respondents

AMENDED RECEIVERSHIP ORDER

Amended: April 5, 2023



Before the Honourable Justice **Justice Glen G. McDougall** in chambers,

The Applicant started this proceeding for an order under subsection 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") to appoint Deloitte Restructuring Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by the Respondents.

The Receiver satisfies the requirement for appointment without security in Rule 73.07(a).

On motion of the Applicant the following is ordered:

Service

1. The time for service of the notice of application and the supporting materials is hereby abridged and validated so that the application is properly returnable today and further service thereof is hereby dispensed with.

Appointment

2. Pursuant to subsection 243(1) of the BIA, the Receiver is hereby appointed receiver without security, of all of the assets, undertakings, and properties of the Respondents acquired for, or used in relation to a business carried on by the Respondents, including all proceeds thereof (the "Property").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting the generality of the foregoing, the Receiver is hereby 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 proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
 - b. to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;

- c. to manage, operate, and carry on the business of the Respondents, including the powers to enter into any agreements, incur and pay any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondents;
- d. 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 Receiver's powers and duties, including without limitation those conferred by this Order;
- e. to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Respondents, or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- g. to settle, extend, or compromise any indebtedness owing to the Respondents;
- h. 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 Respondents, for any purpose pursuant to this Order;
- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondents;
- j. to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings,

which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- k. to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
- l. 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;
- m. to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - a 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 \$500,00.00; and
 - b 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 section 60 of the *Personal Property Security Act* shall not be required.

- n. to sell the right, title, interest, property, and demand of the Respondents in and to the Property at the time the Respondents granted a security interest or at any

time since, free of all claims including the claims of subsequent encumbrancers bound as named Respondents, bound as parties joined as unnamed Respondents, or bound under Rule 35.12;

- o. 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;
- p. to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- q. 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 Respondents;
- r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents;
- s. to exercise any shareholder, partnership, joint venture, or other rights which the Respondents may have; and
- t. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

Duty to Provide Access and Co-Operation to the Receiver

4. The Respondents, 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 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. 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 Respondents, 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, subject to their right to seek a variation of this Order, 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. 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, subject to their right to seek a variation of this Order, 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, 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. 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 Respondents or the Property

8. No Proceeding against or in respect of the Respondents 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 Respondents or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the Respondents, 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 this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondents to carry on any business which the Respondents is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents 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 and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

Personal Property Lessors

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Respondents is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without

prejudice to the rights or claims of any other Person to the property returned or an interest therein.

No Interference with the Receiver

11. Subject to paragraph 16 of this Order related to the Respondents' employees, 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 Respondents, without written consent of the Receiver or leave of this Court.

Continuation of Services

12. All Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods 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 Respondents 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 the Receiver shall be entitled to the continued use of the Respondents' 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 Respondents 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.

13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf

of the Respondents for the supply of goods 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 Respondents, or any of them, if the Receiver determines that the opening of such accounts is appropriate.

14.No creditor of the Respondents shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the Respondents.

Receiver to Hold Funds

15.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

16.All employees of the Respondents shall remain the employees of the Respondents until such time as the Receiver, on the Respondents' behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-

related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, 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 in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.

17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may 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") as permitted at law. 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. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. 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 Respondents and shall return all other personal information to the Receiver or ensure that all other personal information is destroyed.

Limitation on Environmental Liabilities

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, "Possession") of any of the Property that might, or any part thereof, which may 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 legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* or the *Nova Scotia Environment Act* (collectively, 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.

Limitation on Liability

19. Deloitte Restructuring Inc. and, without limitation, a director, officer, or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer, or employee of the Receiver so long as acting in such capacity, save and except for any negligence, breach of contract, or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$100,000.00 (the "Administrative Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge 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, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.

22. 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, expenses 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.

Receiver's Indemnity Charge

23. The Receiver shall be entitled to and is hereby granted a charge (the "Receiver's Indemnity Charge") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order including the management, operation, and carrying on of all or part of the business of a Respondents, under the

Bankruptcy and Insolvency Act, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.

24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

Allocation of Costs

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid in the following manner:

- a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
- b. Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
- c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

Funding of the Receivership

26. 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 \$250,000.00, 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 making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. 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 Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. 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 on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
29. 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

30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.
32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested 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, and regulatory or 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.

35. Any interested party may make a motion to vary or amend this Order upon such notice required by the *Civil Procedure Rules* or on such notice as this Court may order.

36. Any Person affected by this Order which did not receive notice in advance of the hearing may make a motion to vary or amend this Order within five days of such Person being served with a copy of this Order.

37. In addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.

38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

39. The heading to this proceeding is amended to read as follows:

2023

Hfx No. 521470

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF: THE RECEIVERSHIP OF MERIDIEN ATLANTIC FISHING LTD., ROCKY
COAST SEAFOODS LTD. AND 9514228 CANADA INC.

Between:

THE TORONTO-DOMINION BANK

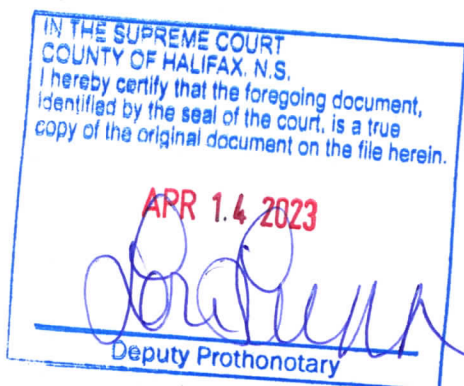
Applicant

and

MERIDIEN ATLANTIC FISHING LTD.;
ROCKY COAST SEAFOODS LTD.; and
9514228 CANADA INC.

Respondents

Issued *April 14th*, 2023



LORRAINE LUNN
Deputy Prothonotary

Prothonotary
LORRAINE LUNN
Deputy Prothonotary

TAB 5

2023



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COAST SEAFOODS LTD. AND 9514228 CANADA INC.

Between:

THE TORONTO-DOMINION BANK

Applicant

and



**MERIDIEN ATLANTIC FISHING LTD.,
ROCKY COAST SEAFOODS LTD. and 9514228 CANADA INC.**

Respondents

ORDER AMENDING RECEIVER'S POWERS

BEFORE THE HONOURABLE JUSTICE Darlene A. Jamieson

IN CHAMBERS:

WHEREAS Deloitte Restructuring Inc. was appointed as receiver (in such capacity, the "Receiver") of all of the assets, undertakings and properties of Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd. and 9514228 Canada Inc. (the "Companies") acquired for, or used in relation to a business carried on by the Companies, pursuant to the order of this Honorable Court issued March 9, 2023, and amended on April 14, 2023 and on July 4, 2023 (together, the "Receivership Order");

AND WHEREAS the Receiver has made a motion seeking an Order, amongst other things, amending the Receiver's powers under the Receivership Order to allow the Receiver to assign any or all of the Companies into bankruptcy, if the Receiver ultimately concludes that an assignment is necessary;


AND UPON reading the Receiver's Fifth Report dated April 11, 2024 and the other materials on file herein;

AND UPON hearing the submissions on behalf of the Receiver and other parties who may wish to be present at the motion;

NOW UPON MOTION IT IS HEREBY ORDERED THAT:

1. the Receiver's Powers as defined in the Receivership Order at paragraph 3 are amended to include:
 - (u) the Receiver shall be authorized, without obligation, to make an assignment in bankruptcy in respect of any or all of the Companies in accordance with the *Bankruptcy and Insolvency Act*.

DATED at Halifax, Nova Scotia, this 23rd day of April, 2024.


Prothonotary

SUSAN SNOW
Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

APR 25 2024



Deputy Prothonotary

SUSAN SNOW
Deputy Prothonotary