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Hand Delivered

The Honourable Justice Darlene Jamieson
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

Justice Jamieson:

Re: In the Matter of the Receivership of Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd. and 9514228 Canada Inc. – Hfx No. 521470

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

We are counsel for Deloitte Restructuring Inc. ("**Deloitte**"), the court-appointed Receiver (in such capacities, the "**Receiver**") of the assets, undertakings and properties of Meridien Atlantic Fishing Ltd. ("**MAF**"), Rocky Coast Seafoods Ltd. ("**RCS**") and 9514228 Canada Inc. ("**951**" and collectively with MAF and RCS, the "**Companies**"), acquired for, or used in relation to a business carried on by the Companies. Gavin MacDonald is counsel for Toronto-Dominion Bank ("**TD**"), the secured lender of the Companies. Tracy Smith is counsel for the Companies.

The Receiver has filed a motion seeking an order:

1. approving the transfer of certain proceeds from the receivership to the bankruptcy estate of RCS (the "**RCS Bankruptcy Estate**");
2. approving the final distribution of proceeds as set out in the Receiver's Seventh Report dated December 4, 2024 (the "**Seventh Report**");
3. approving the activities of Deloitte as Receiver as set out in the Seventh Report;
4. approving and passing the accounts of Deloitte and its counsel; and
5. discharging Deloitte from its duties as Receiver.

4135-1235-9252

Please accept the following as the submissions of Deloitte in support of the motion scheduled for December 12, 2024 at 9:30 a.m.

FACTS

6. Deloitte relies on the following material in support of these submissions:
 - (a) the Seventh report of Deloitte dated December 4, 2024, filed with this motion (the “**Seventh Report**”).

BACKGROUND

7. The Companies were involved in the silver hake industry. The Companies’ assets included real properties and a number of fishing licenses and quota.
8. Deloitte was appointed Receiver of all of the assets, undertakings and properties of the Companies by order dated March 9, 2023 and amended on April 14, 2023, July 4, 2023, and on April 25, 2024 (the “**Receivership Order**”).

Seventh Report, paras 2-3, 5 & 8(iii)
Book of Authorities, Tab 4
9. By order dated April 14, 2023, a sale and investment solicitation process was approved by the Court, and further amended by order dated July 4, 2023.

Seventh Report, para 4
10. On April 25, 2024, the Receiver’s powers were amended to permit the Receiver to assign one or all of the Companies into bankruptcy, if deemed necessary.

Seventh Report, para 8(iii)
Book of Authorities, Tab 5
11. On June 11, 2024, the Court approved the sale of certain residual assets of the Companies (the “**Residual Assets**”).

Seventh Report, para 9(i)
12. By order dated July 27, 2023, the Court had approved the sale of undeveloped real property of RCS located in Church Point, Nova Scotia, identified as PID Nos. 30043939

and 30206874 (the “**Undeveloped Property**”). In its third report dated July 19, 2023, the Receiver advised the Court it would hold the net proceeds of sale of the Undeveloped Property in trust to fund costs of the estate pending an order of the Court approving the distribution of proceeds.

Seventh Report, paras 6 & 19-20

13. Neither the Companies’ main secured creditor, TD, nor any other creditor holds a direct encumbrance on the Undeveloped Property. As such, the Receiver concluded that a bankruptcy of RCS was required in order to distribute the proceeds from the sale of the Undeveloped Property (the “**Undeveloped Property Proceeds**”) to the unsecured creditors of RCS.

Seventh Report, paras 19-23

14. On November 26, 2024, the Receiver filed an assignment in bankruptcy for RCS pursuant to section 49(1) of the BIA. The Receiver is seeking the Court’s approval on this motion to transfer the Undeveloped Property Proceeds from the receivership to the RCS Bankruptcy Estate, following which it will administer a claims process in order to distribute the proceeds.

Seventh Report, paras 24-25

15. The Receiver has completed its liquidation of the assets of the Companies and seeks approval of the proposed final distributions, approval of its accounts and those of its counsel, approval of its activities, and discharge from its duties as court-appointed Receiver.

III. ISSUES

16. The issues to be determined on this motion are whether this Honourable Court should:
 - (a) approve the transfer of the Undeveloped Property Proceeds from the receivership to the RCS Bankruptcy;
 - (b) approve the distribution of funds to TD and for the payment of certain priority claims;

- (c) approve the fees and disbursements of the Receiver and those of its legal counsel;
- (d) approve the activities of the Receiver to date; and
- (e) discharge the Receiver from its court-appointed duties.

III. LAW AND ARGUMENT

Issue 1 – Transfer of Funds to the RCS Bankruptcy

17. Paragraph 31 of the Receivership Order states as follows:

Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

Seventh Report, para 17
Book of Authorities, Tab 4

18. By order dated April 25, 2024, the Receivership Order was amended to include the following paragraph 3(u):

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:

...

- (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.*

Seventh Report, para 18
Book of Authorities, Tab 5

19. The Receiver executed its powers under the Receivership Order by assigning RCS into bankruptcy on November 26, 2024. The assignment was deemed necessary in order for the Undeveloped Property Proceeds (arising from the sale of the Undeveloped Property) to be distributed to unsecured creditors of RCS. As set out above and in the Seventh

Report, neither TD nor any other creditor held a direct encumbrance on the Undeveloped Property.

Seventh Report, paras 19-24

20. The Receiver is seeking approval to transfer the Undeveloped Property Proceeds, currently held in the receivership, into the RCS Bankruptcy Estate so that a claims process can be administered and the Undeveloped Property Proceeds distributed.

Seventh Report, para 25

Issue 2 – Distribution of Funds

21. The Receivership Order permits the Court to make an order with respect to the distribution of funds, as set out at paragraph 15:

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.

[Emphasis added]

Book of Authorities, Tab 4

22. As set out in the Seventh Report, the Receiver is currently holding \$484,700 in receivership funds (the "**Receivership Funds**").

Seventh Report, para 16

23. In addition to the Receivership Funds, the Receiver anticipates the collection of approximately \$90,000 in HST refunds, which would increase the Receivership Funds to approximately \$481,000 (following the transfer of the Undeveloped Property Proceeds to the RCS Bankruptcy Estate and other fees as set out in Appendix “D” of the Seventh Report).

Seventh Report, para 26

24. The Receiver is aware of a number of potential priority and competing claims that require the Receiver to create a reserve against the Receivership Funds (the “**Priority Claims**”), namely:

- (a) two Wage Earner Protection Program claims in the total amount of \$900; and
- (b) a Canada Revenue Agency (“**CRA**”) deemed trust claim against the assets of RCS in the amount of \$3,638.

Seventh Report, paras 27-29

25. As set out in the Seventh Report, the Receiver proposes to hold back \$4,538 from the proposed distribution to TD to account for the Priority Claims.

Seventh Report, para 30

26. As of August 10, 2023, TD was owed \$6,363,366 plus interest and disbursements. Even with the interim disbursements of funds made to TD pursuant to the Interim Distribution Order dated April 25, 2024, the TD indebtedness far exceeds the Receivership Funds.

Seventh Report, para 31

27. Accordingly, the Receiver is proposing to distribute all remaining Receivership Funds to TD following the transfer of the Undeveloped Property Proceeds to the RCS Bankruptcy Estate, the payment of the above-noted priority claims and the payment of the Receiver’s fees and disbursements, including the fees and disbursements of its legal counsel.

Seventh Report, para 32

28. It is submitted that the proposed distribution of proceeds is appropriate and should be distributed as described above and set out in the Seventh Report (paras 32-24).

Issue 3 – Approval of Fees and Disbursements

29. Rules 3 and 6 of the BIA Rules (**Book of Authorities, Tab 3**) state as follows:

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.

...

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, 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.

30. Civil Procedure Rules 73.11(1) and (2) provide as follows:

Passing accounts and discharge

73.11 (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.

31. In *Arnold v. Rockwood*, 1989 CarswellNS 35 (S.C. T.D.) (**Book of Authorities, Tab 1**) at paragraph 2, Davison J. stated the following with respect to the remuneration of a receiver:

The remuneration of the receiver should not be fixed totally on the amount of time spent on the affairs of the debtor. The factors to be considered in fixing the remuneration should also include the result obtained, the responsibility assumed, the quality of service rendered, the nature, extent and value of the assets handled, the complications and difficulties encountered, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, and the responsibilities assumed. The purpose of passing accounts of a receiver is to afford judicial protection to the receiver with respect to the performance of his duties and to permit interested parties to question the activities of the receiver. The court will protect the receiver in pursuit of his remuneration and should pass accounts which are fair and reasonable . . .

32. In *Toronto-Dominion Bank v. Karlsen Shipping Co.*, 2015 NSSC 204 (**Book of Authorities, Tab 2**), McDougall J. adopted the comments of Goodman J. of the Ontario Supreme Court of Justice in *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (Ont. S.C.J.), concerning the remuneration of a receiver:

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.

[...]

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 Realty 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.

[Emphasis added]

33. Accordingly, it is submitted that Deloitte's fees and disbursements and that of its counsel should be approved, unless there is evidence that the activities of Deloitte as Receiver and the associated fees and disbursements were unfair or unreasonable in the circumstances. It is respectfully submitted that there is no evidence that Deloitte acted unfairly or in a commercially unreasonable manner in administering the receivership of the Companies.
34. It is further submitted that the time and disbursements incurred by Deloitte and its counsel in the course of its duties are fair and reasonable in a receivership of the nature described herein, and that the hourly rates charged by Deloitte are consistent with the average hourly rates billed by Deloitte on its other engagements, and consistent with other insolvency firms of comparable size engaged on similar receivership matters.

Seventh Report, para 38

35. It is respectfully submitted that the fees and expenses submitted by Deloitte in its capacity as Receiver and those of its counsel are fair and reasonable, and reflect the work that was done and the quality of the service rendered.

Issue 4 – Approval of the Receiver’s Activities

36. The activities of the Receiver since the last appearance before this Court are set out in the Seventh Report and include the following:
- (a) closing the transaction for the Residual Assets;
 - (b) participating in discussions with representatives of TD regarding the administration of the RCS Bankruptcy Estate;
 - (c) participating in discussions with Ernst & Young Inc. regarding estate administration issues, namely tax related matters;
 - (d) participating in discussions with legal counsel regarding estate administration matters;
 - (e) filing excise tax returns and responding to queries from CRA;
 - (f) filing outstanding corporate tax returns to bring the business accounts of the Companies into compliance with CRA; and
 - (g) maintaining the Receiver’s website and preparing the Seventh Report.

Seventh Report, para 14

37. Should this Court approve the proposed order sought by the Receiver in this motion, the Receiver intends to complete its statutory duties, which include the final reporting to CRA and the Office of the Superintendent of Bankruptcy.

Seventh Report, para 42

38. It is respectfully requested that the activities of the Receiver as set out above and in the Seventh Report are appropriate and should be approved by this Court.

Issue 5 – Discharge of Receiver

39. The Receivership Order provides, in part, that the Receiver shall be discharged with notice to such secured creditors and other parties as the Court directs (at paragraph 38). Proof of service upon creditors receiving notice of prior motions in this proceeding is on file with this Court and the same will be provided following service of the within motion.
40. As set out in the Seventh Report, Deloitte as Receiver has concluded the majority of its administration relating to the receivership of the Companies. The remaining activities for Deloitte to conclude the receivership of the Companies are set out in the Seventh Report and include (the “**Remaining Activities**”):
- (a) filing of corporate tax returns of the Companies to bring the accounts into compliance;
 - (b) filing and collection of excise tax refunds, the proceeds of which will be remitted to TD as part of the proposed final distribution;
 - (c) paying the two Wage Earner Protection Program claims;
 - (d) paying a CRA deemed trust claim against the assets of RCS;
 - (e) paying all outstanding invoices of Deloitte and its legal counsel, Stewart McKelvey;
 - (f) distributing funds pursuant to the proposed final distribution;
 - (g) filing the Receiver’s final report pursuant to section 246(3) of the BIA; and
 - (h) filing the Receiver’s proposed discharge certificate with the Court.
- Seventh Report, para 42
41. It is respectfully submitted that the work of Deloitte as Receiver will be completed upon its completion of the Remaining Activities and as such, the Receiver should be discharged pending confirmation that it has completed such activities (such confirmation to be provided upon Deloitte filing the Receiver’s discharge certificate in the form attached to the proposed order sought by the Receiver in this motion).

IV. RELIEF SOUGHT

42. Deloitte respectfully submits that an order be granted:
- (a) approving the transfer of proceeds from the Undeveloped Property to the RCS Bankruptcy Estate;
 - (b) approving the distribution of funds held by Deloitte as Receiver as set out in the Seventh Report;
 - (c) approving the activities of Deloitte as Court-appointed Receiver;
 - (d) approving and passing the accounts of Deloitte and its counsel and authorizing Deloitte to pay additional fees and disbursements incurred to complete this matter; and
 - (e) discharging Deloitte from its duties as Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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c. Service List