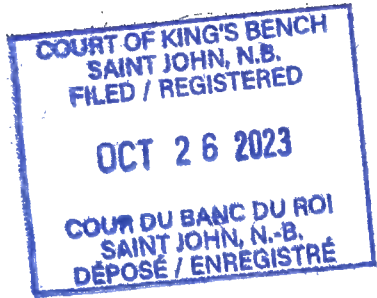


IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN



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

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

BETWEEN :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

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

RESPONDENTS\*

**SECOND AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day in person at the City of Saint John, Province of New Brunswick.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 (the "**Jamnisek Affidavit**") and the Exhibits thereto, the report of Deloitte Restructuring Inc. dated September 18, 2023 (the "**Pre-Filing Report**"), in the capacity of proposed Monitor of the Companies, and the report of Deloitte Restructuring Inc. ("**Deloitte**") dated September 25, 2023 (the "**First Report**"), in the capacity of Monitor of the Companies and the Supplemental to the First Report dated

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September 27, 2023 (the “**Supplemental Report**”) and the Fourth Report of the Monitor dated October 23, 2023 (the “**Fourth Report**”);

AND UPON IT APPEARING from the affidavits of service of Katie Parent sworn September 18, 2023, September 25, 2023 and October 24, 2023 (the “**Affidavits of Service**”) that the following persons received notice of this Application:

- a) The Companies;
- b) Canada Revenue Agency;
- c) BDC Capital Inc.;
- d) Business Development Bank of Canada;
- e) Robert Arsenault;
- f) Thunder Cove Investments Inc.;
- g) Maplewood Trust, by its trustee, Warren Ellis;
- h) Dewis Cooke;
- i) Randy Cooke;
- j) Murphy’s Limited Liability Company; and
- k) BTW Holdings Inc.

AND ON READING the consent of Deloitte Restructuring Inc. to act as the Monitor, and hearing the submissions of counsel for the Applicant, the proposed Monitor, the Companies and those other parties present, and no one appearing for any other party although duly served as appears from the Affidavits of Service;

**IT IS ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Notice of Application, the Application Record and the Pre-Filing Report and the Notice of Motion, the Record on Motion, the First Report, the Supplemental Report and the Fourth Report, as set out in the Affidavits of Service, is hereby deemed adequate so that this Application is properly returnable today.

**APPLICATION**

2. The Companies are affiliated debtor companies within the meaning of the CCAA to which the CCAA applies.

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## POSSESSION OF PROPERTY AND OPERATIONS

3. The Companies shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Companies shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property.

4. The Companies shall be entitled to continue to utilize the central cash management system currently in place as described in the Pre-Filing Report or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under a plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. The Companies may pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to

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deliver the existing Group Benefits.

6. With the consent of the Monitor, the Companies may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies to be necessary for the ongoing operation of the Companies or preservation of the Property, up to an aggregate limit of \$900,000.

7. Except as otherwise provided to the contrary herein, the Companies may pay all reasonable expenses incurred by the Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b. payment for goods or services actually supplied to the Companies following the date of this Order.

8. The Companies shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Companies and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Companies in connection with the sale of goods and services by the Companies, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- c. any amount payable to the Crown in right of Canada or of any Province or any



regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Companies; and iii) payable in respect of the period commencing on or after the date of this Order.

9. Until such time as any Company who is a tenant under a lease, disclaims a real property lease in accordance with the CCAA, such Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

10. Except as specifically permitted herein or by further Order of this Court, the Companies are hereby directed, until further Order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Companies to any of their creditors as of the date of this Order without prior written consent of the Monitor; ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

#### **APPOINTMENT OF CRO**

11. David Boyd, as a representative of Resolve Advisory Services Ltd. ("**Resolve**"), is hereby appointed Chief Restructuring Officer (the "**CRO**") over the Companies and shall, subject to the Orders of the Court that have been and may be granted from time to time in these proceedings, have the powers to perform the services set out in the engagement letter dated September 13, 2023 in the form attached as Exhibit "II" to the Jamnisek Affidavit (the "**CRO Agreement**"), provided that all such services are to be performed in conjunction with the Monitor and the Applicant.

12. The CRO Agreement is approved and the Companies are authorized to perform all of

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their obligations pursuant to the CRO Agreement.

13. Neither the CRO nor any employee or agent of the CRO shall be deemed to be a director or trustee of any of the Companies.

14. Neither the CRO nor any officer, director, employee or agent of the CRO, including without limitation, David Boyd, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

15. The fees and expenses payable to Resolve pursuant to the CRO Agreement are entitled to the benefit of the Administration Charge, as defined in the companion Second Amended and Restated Charging Order dated September 21, 2023.

#### **RESTRUCTURING**

16. The Companies shall, with the consent of the Monitor and the DIP Lender and in consultation with the CRO, have the right to:

- a. permanently or temporarily cease, downsize or shut down any of its business or operations, or
- b. in accordance with its ordinary course of business, dispose of redundant or non-material assets not exceeding \$100,000 in value in the aggregate.

#### **NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY**

17. Until and including January 31, 2024 or such later date as this Court may order (the "**Stay Period**"), no claim, grievance, application, action, suit, right or remedy, proceeding or enforcement process in any court, tribunal or arbitration association (each, a "**Proceeding**") shall be commenced, continued or enforced against or in respect of the Companies, the CRO or the Monitor, or affect the Business or the Property, except with the written consent of the Companies, the CRO, the Monitor and the Applicant, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. On or before December 20, 2023, the Monitor shall provide a report to this Court as to the results of Phase 1

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of the SISP and circulate a copy of same to the Service List.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

18. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing collectively being "**Persons**" and each being a "**Person**") against or in respect of the Companies or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Companies, the Monitor and the Applicant, or leave of this Court, provided that nothing in this Order shall: i) empower the Companies to carry on any business which the Companies are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; iii) exempt the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) 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 Companies shall not be required to file a defence during the stay period.

#### **NO INTERFERENCE WITH RIGHTS**

19. During the Stay Period, 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 Companies, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Companies and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

20. During the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/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 Business or the Companies, 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 Companies, and the Companies shall be entitled to the continued use of their current premises, 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 Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and each of the Companies and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

21. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the Companies or this Court, or these proceedings are dismissed by final Order of this Court or with leave of this Court.

#### **APPOINTMENT OF MONITOR**

23. Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Companies, the Property and the Companies' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Companies and their shareholders, officers, directors and employees shall advise the Monitor of all material steps taken by the Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. approve all of the Companies' receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Approved Cash Flow, the Property, the Business, the activities of the Companies and such other matters as may be relevant to the proceedings herein; have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents, relating to the Business and Property of the Companies, to the extent that is necessary to adequately assess the Companies' Business and financial affairs or to perform its duties arising under this Order;
- c. engage independent legal counsel or such other Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of or Person related to the Monitor;
- d. develop a claims process to ascertain the quantum of the claims of all creditors;
- e. investigate the Subject Transactions (as defined in the Supplemental Report) and any other transactions deemed appropriate for investigation by the Monitor;
- f. oversee and have access to all elements of the management and operation of the business of the Companies and, without limitation, be shall provided advance details of all proposed sale transactions, including estimated production and transportation cost, price and payment terms;
- g. develop and conduct a sales and investment solicitation process ("SISP") for some or all of the Property and bring one or more motions seeking approval of transactions resulting from the SISP;
- h. execute, assign, issue and endorse agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on behalf of each of the Companies as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Companies;

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- i. retain or hire employees or other assistants on behalf of the Companies and take any other steps in respect of the Companies' employees it deems appropriate including awarding non-material discretionary bonuses and terminating the employment of the Companies' employees or temporarily laying off such of the Companies' employees as the Monitor deems appropriate;
- j. take steps to cause the Companies to disclaim any agreements to which any of the Companies are party in accordance with the CCAA, provided, however, that the Monitor shall consult with the Applicant with respect to any such disclaimer and that any such disclaimer shall be subject to the prior consent of the Applicant;
- k. report to, meet with, discuss and share information with such Persons as the Monitor deems appropriate, subject to such terms as to confidentiality as the Monitor deems advisable;
- l. cause the Companies to administer the Business or the Property as the Monitor deems necessary or desirable for the purposes of completing any transaction involving the Business or the Property or for purposes of facilitating distributions to creditors of the Companies;
- m. cause the Companies to engage assistants or advisors as the Monitor deems necessary or desirable and to provide instructions and directions to any current advisors of the Companies; and
- n. perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. Deloitte, including, without limitation, any director, officer or employee of the Monitor, shall incur no liability or obligation as a result of its appointment as the Monitor 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 Monitor so long as acting in such capacity, save and except for any gross negligence, breach of contract or actionable misconduct on the part of such party. Nothing herein

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contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

27. The Monitor shall provide any creditor of the Companies or a potential debtor-in-possession lender (“**DIP Lender**”) with information provided by the Companies in response to reasonable requests for information made in writing by such creditor or DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Companies is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Companies may agree.

28. The Monitor, counsel to the Monitor, counsel to the Applicant and all counsel to the Companies shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and counsel for the Companies immediately upon receipt of an invoice.

29. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to the Clerk of the Court of King’s Bench in New Brunswick, in accordance with the Rules of Court, or a Justice of the Court of King’s Bench in New Brunswick.

## **SERVICE AND NOTICE**

30. The Monitor shall: i) without delay, publish in Saltwire/Telegraph a notice containing the information prescribed under the CCAA; and ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Companies of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

31. The Monitor and the Applicant shall be at liberty to serve this Order, any other materials

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and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. The Applicant and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods>.

33. A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days' before the date on which the motion is to be heard (the "**Return Date**").

34. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the "**Objection Deadline**"). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a "**Notice of Objection**").

35. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

36. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the "**Presiding Judge**") and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the "**Hearing Details**"). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

*JFS*

## GENERAL

37. The Applicant, the Companies or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee or a trustee in bankruptcy of the Companies, the Business or the Property.

39. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is requested to give effect to this Order and to assist the Companies, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Companies and the Monitor and their respective agents in carrying out the terms of this Order.

40. Each of the Companies and the Monitor is hereby authorized and empowered to apply to any court, tribunal, 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 Monitor is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard/Daylight Time on the 21<sup>st</sup> day of September, 2023.

Dated at Saint John, New Brunswick, this 21<sup>st</sup> day of September, 2023.

*25<sup>th</sup> October*  
*855*  
  
Justice of the Court of King's Bench  
of New Brunswick