

GOURT OF KING'S BENCH
SAINT JOHN, N.B.
FILED / REGISTERED
SEP 18 2023
COUR DU BANC DU ROI
SAINT JOHN, N.-B.
DÉPOSÉ / ENREGISTRÉ

Court File No.: SJM/____/2023

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

**AFFIDAVIT OF ANDREA JAMNISEK
(sworn September 18, 2023)**

I, Andrea Jamnisek, of the City of Toronto in the Province of Ontario, **MAKE OATH AND
SAY AS FOLLOWS:**

1. I am a Director of the Financial Restructuring Group of The Toronto-Dominion Bank (the "Applicant"). As such, I have personal knowledge of the matters to which I hereinafter

depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This affidavit is sworn in support of the application by the Applicant for an initial order pursuant to the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") in respect of South Shore Seafoods Ltd. ("**SSSL**"), Captain Cooke's Seafood Inc. ("**CCSI**"), By the Water Shellfish (2012) Inc. ("**BTW**"), Can-Am Lobster & Shellfish Ltd. ("**Can-Am**"), South Shore Seafoods International Ltd. ("**SSSI**"), Bridge Lobsters Limited ("**Bridge**") and Arsenault's Fish Mart Inc. ("**AFM**" and collectively, the "**Debtors**").

BACKGROUND

3. As set out in more detail below, the Debtors have outstanding secured loan and guarantee obligations owing to the Applicant in the principal amount of approximately \$26 million (not including interest and fees).
4. As discussed in more detail below, the Borrowers (defined below) have consistently been in default of a number of their obligations under the Credit Agreement (defined below) since June 2022 including numerous reporting and covenant defaults and, starting in February 2023, borrowing in excess of allowable availability under the Borrowing Base (defined below), resulting in an Overadvance (defined below).
5. The Applicant is not prepared to continue to fund the Debtors outside of a formal insolvency proceeding. Although it would be open to the Applicant to seek the appointment of a receiver and manager in respect of the Debtors' assets, the Applicant believes that through a CCAA process, the market can be thoroughly canvassed for the best chances of preserving a going concern, maximizing recovery and providing the most positive outcome for as many stakeholders as possible.
6. The Debtors have consented to both the enforcement by the Applicant of its security as well as the filing by the Applicant of an application pursuant to the CCAA.

THE PARTIES

7. The Applicant is a federally regulated Canadian bank with its principal place of business in Toronto, Ontario.
8. The Debtors consist of the following companies:

- (a) SSSL: SSSL is a corporation amalgamated pursuant to the laws of the Province of Prince Edward Island ("PEI"). Its registered office is listed as 6 Foy Road, Rosebank, PEI. SSSL operates two processing plants in Alberton, PEI, both of which process raw lobster tails and cooked lobster. SSSL is the 100% shareholder of AFM.
- (b) CCSI: CCSI is a corporation amalgamated under the laws of Canada. Its registered office is listed as 6 Foy Road, Rosebank, PEI. CCSI processes whole cooked lobster for the European market and has one retail location in Borden, PEI.
- (c) BTW: BTW is a corporation amalgamated pursuant to the laws of the Province of PEI. Its registered office is listed as 6 Foy Road, Rosebank, PEI. BTW participates in the live lobster market. BTW is the 100% shareholder of Bridge.
- (d) Can-Am: Cam-Am is a corporation incorporated under the laws of the State of Maine. Can-Am is currently inactive.
- (e) SSSI: SSSI is a corporation amalgamated pursuant to the laws of the Province of New Brunswick. Its registered office is listed as 2661 Acadie Road, Unit D, Cap-Pele, New Brunswick. SSSI is primarily a holding company that has no independent operations. SSSI is the 100% shareholder of Can-Am.
- (f) Bridge: Bridge is a corporation incorporated pursuant to the laws of the Province of Nova Scotia. Its registered office is listed as 99 Wyse Road, Suite 600, Dartmouth, Nova Scotia. Bridge has been inactive since the 2022 season.
- (g) AFM: AFM is a corporation incorporated under the laws of the Province of PEI. Its registered office is listed as 6 Foy Road, Rosebank, PEI. AFM acts primarily as a buying agent for other Debtors.

Attached as Exhibit "A" hereto are a corporate chart and corporate profiles for each of the Debtors. Attached as Exhibits "B" to "H" are copies of each of the Debtors' most recent financial statements, which have been provided by the Debtors.

9. The Debtors are owned (directly or indirectly) by two shareholders: Timothy Williston and Michel Jacob. Based on the corporate profiles, Mr. Williston and Mr. Jacob are also the sole directors of each of the Debtors.

10. The Debtors' management office is located in Cap-Pelé, New Brunswick. Mr. Williston and Mr. Jacob both reside and work in the Province of New Brunswick. The Debtors' chief financial officer also resides in New Brunswick.

THE BUSINESS

11. The Debtors are a group of privately-held companies carrying on business as buyers, processors and wholesalers of live and cooked lobster in Atlantic Canada. According to their website, SSSL was established in 1996 as one of the first Canadian lobster processors in PEI. The shareholder registers of the Debtors provided to the Applicant indicate that the current shareholders, Mr. Williston and Mr. Jacob, acquired the Debtors through several transactions between 2019 and 2021.
12. I am aware that the Debtors own the following real properties, which are subject to collateral mortgages by the Applicant:
 - (a) 6 & 24 Foy Road, Rosebank, PEI, owned by SSSL;
 - (b) 75 Griffin Drive, Bloomfield, PEI, owned by SSSL;
 - (c) 23675 Trans Canada Highway, Borden Carleton, PEI, owned by CCSI and BTW;
 - (d) 4 Borden Avenue, Borden Carleton, PEI, owned by BTW; and
 - (e) 1788 Highway 308 Sluice Point, Yarmouth County, Nova Scotia, owned by Bridge.
13. The Debtors also own two properties, which are subject to mortgages by BDC (defined and discussed below), located at (a) 181 Milton Avenue, Summerside, PEI; and (b) 1368 Route 112, Searletown, PEI.
14. SSSL also owns certain temporary foreign worker housing located on Buchanan Road, Mount Royal, PEI (the "**Buchanan Road Properties**"). Further discussion about the Buchanan Road Properties is set out below.
15. In addition to the above, the Debtors lease a management office at 2661-D Acadie Road, Cap-Pelé, NB as well as various other locations and store inventory at locations in the Atlantic Provinces.

16. The lobster processing business is highly seasonal. The Debtors employ approximately 300 individuals, with approximately 270 such workers being part-time or seasonal employees. I understand that further information about the Debtors' employees will be included in the Pre-Filing Report (defined below).

THE TD BANK FACILITIES

The Credit Agreement

17. As set out above, SSSL, CCSI, BTW and Can-Am (collectively, the "**Borrowers**"), SSSI, Bridge and AFM (collectively, the "**Guarantors**") entered into a Credit Agreement dated as of May 19, 2022 with the Applicant (the "**Original Credit Agreement**"). SSSL and certain other Debtors were pre-existing customers of the Applicant pursuant to an existing commercial offer of financing dated December 17, 2020. The Original Credit Agreement was subsequently amended by a first amendment to credit agreement dated as of June 29, 2022 (the "**First Amendment**"), a second amendment to credit agreement dated as of April 12, 2023 (the "**Second Amendment**"), a forbearance and third amendment to credit agreement dated as of May 2, 2023 (the "**Original Forbearance Agreement**"), as amended by a first amendment to forbearance agreement and third amendment to credit agreement dated as of June 2, 2023 (the "**1st Amendment to Forbearance Agreement**") and by a second amendment to forbearance agreement and third amendment to credit agreement dated as of August 31, 2023 (the "**2nd Amendment to Forbearance Agreement**").

The Original Forbearance Agreement together with the 1st Amendment to Forbearance Agreement and 2nd Amendment to Forbearance Agreement are collectively referred to as the "**Forbearance Agreement**".

The Original Credit Agreement, together with the First Amendment, the Second Amendment and the Forbearance Agreement and any other amendments are collectively referred to as the "**Credit Agreement**".

Copies of the Original Credit Agreement, the First Amendment, the Second Amendment, the Original Forbearance Agreement, the 1st Amendment to Forbearance Agreement and the 2nd Amendment to Forbearance Agreement are attached as Exhibits "I" to "N" hereto.

18. Under the Credit Agreement, the following facilities are available to the Borrowers:

- (a) Term Loan of up to a maximum principal amount of \$13 million; and
 - (b) Revolving Loans up to a maximum principal amount of \$20 million (the maximum amount has been further reduced under the DIP Facility Agreement, defined and discussed below).
19. The loans are variable rate loans bearing interest at Prime Rate or US Base Rate plus 1%.
20. As of the date hereof, the Borrowers are indebted to the Applicant in the following principal amounts:
- (a) \$12,725,516.67 in respect of Revolving Loans (including a \$2.5 million Overadvance but excluding interest and fees);
 - (b) \$13 million in respect of the Term Loan; and
 - (c) \$28,081.04 in respect of the VISA facility.

The Guarantees and Security Documents

21. The Applicant holds senior secured blanket security over all of the property, assets and undertaking of the Debtors, subject only to certain limited security held by BDC (defined and discussed below). A detailed description of the Applicant's security is as follows (the "**Guarantee and Security Documents**"):
- (a) Guarantee dated as of May 19, 2022 executed by each of the Debtors pursuant to which each of the Debtors irrevocably and unconditionally guaranteed all of the outstanding obligations of the Borrowers to the Applicant;
 - (b) General Security Agreement dated as of May 19, 2022 given by each of the Debtors in favour of the Applicant pursuant to which each of the Debtors granted security to the Applicant over all of its now owned or future acquired property, assets and undertakings to secure all present and future obligations of the Debtors to the Applicant;
 - (c) U.S. Security Agreement dated as of May 19, 2022 given by SSSL and Can-Am in favour of the Applicant pursuant to which each of SSSL and Can-Am granted a security interest in all of its now owned or future acquired property, assets and

undertaking to secure all present and future obligations of SSSL and Can-Am to the Applicant under the Credit Agreement;

- (d) Limited recourse guarantee dated as of May 19, 2022 (the "**102446 Limited Recourse Guarantee**") given by 102446 P.E.I. Inc. ("**102446**") to the Applicant pursuant to which 102446 guaranteed all of the outstanding obligations owing by the Borrowers to the Applicant, which recourse under the guarantee is limited to the securities pledged pursuant to the 102446 Pledge Agreement (defined below);
- (e) Share pledge agreement dated as of May 19, 2022 (the "**102446 Pledge Agreement**") by and among 102446, certain of the Debtors and the Applicant in respect of certain securities held by 102446 in the capital of SSSL, CCSI and BTW (the "**102446 Pledged Securities**") pursuant to which 102446 pledged the 102446 Pledged Securities to secure its obligations under the 102446 Limited Recourse Guarantee;
- (f) Limited recourse guarantee dated as of May 19, 2022 given by 102447 P.E.I. Inc. ("**102447**") to the Applicant pursuant to which 102447 guaranteed all of the outstanding obligations owing by the Borrowers to the Applicant, which recourse under the guarantee is limited to the securities pledged pursuant to the 102447 Pledge Agreement (defined below);
- (g) Share pledge agreement dated as of May 19, 2022 (the "**102447 Pledge Agreement**") by and among 102447, certain of the Debtors and the Applicant in respect of certain securities held by 102447 in the capital of SSSL, CCSI and BTW (the "**102447 Pledged Securities**") pursuant to which 102447 pledged the 102447 Pledged Securities to secure its obligations under the 102447 Limited Recourse Guarantee;
- (h) Under the following collateral mortgages, the applicable grantor granted a collateral mortgage in the named property thereunder to secure all outstanding obligations owing by that grantor to the Applicant:
 - (i) Collateral mortgage dated as of March 19, 2019 in the principal amount of \$1,270,000 given by SSSL to the Applicant in respect of certain real property owned by SSSL and located at 6 & 24 Foy Road, Rosebank, PEI, C0B 1E0;

- (ii) Collateral mortgage dated as of March 19, 2019 in the principal amount of \$950,000 given by SSSL to the Applicant in respect of certain real property owned by SSSL and located at 75 Griffin Drive, Bloomfield, PEI, C0B 1B0, as amended by a mortgage amending agreement dated as of April 22, 2022;
- (iii) Collateral mortgage dated December 21, 2020 in the principal amount of \$1,515,000 given by CCSI to the Applicant in respect of certain real property owned by SSSL and located at 23675 Trans Canada Highway, Borden Carleton, PEI, C0B 1X0;
- (iv) Collateral mortgage dated as of December 21, 2020 in the principal amount of \$620,000 given by Bridge to the Applicant in respect of certain real property owned by SSSL and located at 1788 Highway 308 Sluice Point, Yarmouth County, Nova Scotia;
- (v) Collateral mortgage dated as of December 21, 2020 in the principal amount of \$2,380,000 given by BTW in favour of the Applicant in respect of certain real property owned by SSSL and located at 4 Borden Avenue, Borden Carleton, PEI, C0B 1X0;
- (vi) Bank Act Security documents all dated as of May 19, 2022 given by the Borrowers to the Applicant pursuant to Section 427 of the *Bank Act*;

Copies of the Guarantee and Security Documents are attached hereto as Exhibits "O" through "AA".

22. As a result of the Guarantee and Security Documents, the Applicant has valid and enforceable security from all of the Debtors securing all obligations owing under the Credit Agreement from each of the Debtors.

OTHER LENDERS

BDC

23. Certain of the Debtors have outstanding secured obligations owing to Business Development Bank of Canada ("**BDC**") and BDC Capital Inc. ("**BDC Capital**"):

- (a) BDC Equipment Loans: Obligations in respect of certain equipment financing

owing to BDC pursuant to (i) a letter offer dated as of July 3, 2020 by BDC to SSSL in the maximum principal amount of \$2 million; and (ii) a letter offer dated December 18, 2020 by BDC to CCSI and BTW, as borrowers, and Can-Am, Bridge, SSSL and SSSI, as guarantors, in the maximum principal amount of \$1 million (collectively, the "**BDC Equipment Loans**"). Pursuant to a priority agreement dated as of May 19, 2022 (the "**BDC Equipment Loan Priority Agreement**") by and among BDC, the Debtors and the Applicant, the security granted to BDC in respect of the BDC Equipment Loans has priority over the Applicant in respect of equipment specified in the BDC Equipment Loan Priority Agreement (the "**BDC Priority Equipment Collateral**") and the Applicant has priority in respect of all other property, assets and undertaking of the Debtors.

The terms of the BDC Equipment Loan Priority Agreement also provide that the Applicant may use the BDC Priority Equipment Collateral for a period of up to 90 days during an enforcement action subject to payment of a "user fee" equal to per diem interest for the actual period the equipment is used (the "**BDC Equipment User Fee**").

- (b) BDC Mortgage Loan: Obligations owing to BDC pursuant to a loan arrangement based on a term sheet dated as of April 21, 2022 (the "**BDC Mortgage Loan**" and together with the BDC Equipment Loans, the "**BDC Priority Loans**") given by BDC to CCSI and BTW, in the maximum principal amount of \$863,000. The properties secured by the mortgages granted to secure the BDC Mortgage Loan are (i) 181 Milton Ave., Summerside, PEI; and (ii) 1368 Route 112, Searletown, PEI (together with the BDC Priority Equipment Collateral, the "**BDC Priority Collateral**").
- (c) BDC Capital Loan: Obligations owing to BDC Capital pursuant to a letter offer dated as of January 6, 2021 in the maximum principal amount of \$3 million (the "**BDC Capital Loan**"). The obligations owing to BDC Capital in respect of the BDC Capital Loan are postponed and subordinated to the Applicant pursuant to the terms of a Priorities and Standstill Agreement dated as of May 19, 2022 (the "**BDC Term Loan Priority Agreement**") by and among BDC Capital, the Debtors and the Applicant.

Copies of the BDC Equipment Loan Priority Agreement and BDC Term Loan Priority Agreement are attached as Exhibits "BB" and "CC" hereto.

Additional Loan Obligations

24. In addition to BDC, I am aware of the below outstanding loan obligations of certain of the Debtors, all of which obligations are either unsecured or postponed and subordinated to the obligations owing by the Debtors to the Applicant:
- (a) Subordinated obligations owing by SSSL and AFM to Robert Arsenault in respect of a \$3.5 million promissory note, which amounts are subordinated and postponed in all aspects to the obligations owing to the Applicant pursuant to a priority agreement dated as of May 19, 2022 (the "**Arsenault VTB Priority Agreement**"). A copy of the Arsenault VTB Priority Agreement is attached as Exhibit "DD" hereto.
 - (b) Subordinated obligations owing by CCSI, BTW and SSSI to Dewis Cooke, Randy Cooke, Murphy's Limited Liability Company and BTW Holdings Inc. in respect of a \$3 million vendor take-back note (the "**VTB Note**"), which amounts are subordinated and postponed in all aspects to the obligations owing to the Applicant pursuant to a priority agreement dated as of May 19, 2022 (the "**VTB Priority Agreement**"). A copy of the VTB Priority Agreement is attached as Exhibit "EE" hereto.
 - (c) Unsecured obligations owing to Atlantic Canada Opportunities Agency by: (i) SSSL in the original principal amounts of \$585,000 and \$500,000; and (ii) CCSI in the amount of \$225,000.
25. On or about September 9, 2023, the Debtors advised the Applicant's financial advisor, Deloitte Restructuring Inc. ("**Deloitte**"), that they had received a demand notice (the "**Buchanan Road Demand Notice**") from Thunder Cove Investments Inc. and Maplewood Trust, by its trustee, in respect of a mortgage loan in the amount of \$375,000 relating to the Buchanan Road Properties. A copy of the Buchanan Road Demand Notice is attached as Exhibit "FF" hereto.
26. In addition to the above, based on personal property registry searches conducted in the Provinces of PEI, Nova Scotia and New Brunswick, the below additional parties have outstanding registrations in respect of one or more of the Debtors, all of which relate to various vehicle equipment loans:
- (a) Toyota Industries Commercial Finance Canada Inc.;

- (b) De Lage Landen Financial Services Canada Inc.; and
- (c) The Bank of Nova Scotia.

A copy of PPSA summaries in respect of the Debtors from New Brunswick, PEI and Nova Scotia is attached as Exhibit "GG" hereto.

Other Potential Priority Liabilities

- 27. The Debtors use the payroll processor, Payworks, to process their payroll. Based on the financial reporting provided by the Debtors, the Debtors do not owe any arrears in respect of source deductions other than certain obligations of, primarily, AFM in respect of fisherman remittances. The Debtors do not maintain any registered pension plans.
- 28. The Debtors are not generally required to collect HST in respect of sales of inventory.
- 29. The Debtors have not disclosed any other potential priority liabilities to the Applicant.

DEFAULTS AND EVENTS LEADING UP TO THIS APPLICATION

- 30. The Debtors have been in default of their obligations under the Credit Agreement from almost immediately after the time the Original Credit Agreement was entered into. On November 7, 2022, the Applicant sent a notice of default to the Debtors, notifying them of certain outstanding events of default under the Credit Agreement including a failure to deliver annual audited financial statements and failure to comply with the financial covenant set out in Section 12(o)(ii) of the Credit Agreement since the month of June 2022 (the "**November 2022 Default Notice**").
- 31. In January 2023, the Debtors retained Bonfire Capital Advisors ("**Bonfire**") to assist with assessing their financial situation and operations. As part of its mandate, Bonfire engaged in a brief marketing effort to determine whether it could attract new financing or investment, which efforts did not result in any successful transaction.
- 32. In late February or early March 2023, the Debtors notified the Applicant that their inventory was significantly overstated. The Pre-filing Report estimates this overstatement to be approximately \$2.7 million. The overstatement led to a significant overadvance under the Credit Agreement ("**Overadvance**").

33. Around the same time, the Applicant received a copy of a default notice in respect of the VTB Note obligations, which default resulted in an additional default under the Credit Agreement. In addition to the event of default arising from the Overadvance, the Debtors remained in default in respect of those defaults set out in the November 2022 Default Notice as well as certain other additional defaults including the VTB Note cross-default. As a result, on March 24, 2023, the Applicant sent a further notice of default and reservation of rights letter.
34. Over the following weeks, the Applicant worked with the Borrowers and Bonfire to assess their overall situation and to develop a go-forward strategy in conjunction with Deloitte, who the Applicant had retained as its financial advisor in mid-March 2023.
35. On May 2, 2023, the Debtors and the Applicant entered into the Original Forbearance Agreement. At the time of the Original Forbearance Agreement, the Overadvance had increased to almost \$3 million and was projected to increase in May and June before it was expected that the Debtors would receive certain tax refunds which, along with a projected improvement in operations, would be used to reduce the Overadvance in the following months.
36. Coincident with the entering into of the Original Forbearance Agreement, the Applicant sent a demand letter dated May 2, 2023 to the Debtors, demanding repayment of all obligations and liabilities under the Credit Agreement, and a notice of intention to enforce security under Section 244 of the *Bankruptcy and Insolvency Act* ("**244 Notice**"). Also on May 2, 2023, each of the Debtors consented to the immediate enforcement by the Applicant of its security. The Debtors also signed an additional consent to the appointment of a receiver to be held in escrow and used in the event of the termination, expiration or non-commencement of the forbearance period. Copies of the demand letter, 244 Notice and the consents are attached as Exhibit "HH" hereto.
37. Under the Original Forbearance Agreement, the Debtors were given until August 31, 2023 (the "**Original Forbearance Period**"). The purpose of the Original Forbearance Period was to allow the Debtors to get through their then current lobster season to focus on operations and reduce the Overadvance to \$0 by the expiration of the Original Forbearance Period.
38. Unfortunately, over the summer months, the Debtors' financial performance did not improve and the Overadvance was never materially reduced.

39. The Original Forbearance Period expired on August 31, 2023 and the Debtors requested further time to try and consummate a transaction or investment. The Applicant indicated that it was not prepared to provide an extension absent the additional collateral from parties related to the Debtors. The Applicant and the Debtors entered into the 2nd Amendment to Forbearance Agreement, which provided for a short extension of the forbearance period to September 15, 2023 while such related parties conducted diligence. Under the 2nd Amendment to Forbearance Agreement, the Debtors also consented to and agreed to cooperate in these CCAA proceedings.
40. The forbearance period under the Forbearance Agreement expired on September 15, 2023 with no new collateral being pledged, leaving the debt obligations owing to the Applicant due and owing, absent further arrangements put in place.

FINANCIAL POSITION OF THE DEBTORS

41. The Pre-Filing Report of Deloitte provides a detailed overview of the financial position of the Debtors including current debt balances and trade payables.
42. The Debtors' financial position has been deteriorating since at least late October 2021. As set out above, in May 2022, the Debtors' then commercial credit facilities were converted to an asset-based loan which was intended to provide additional available credit to the Debtors. However, the Debtors were almost immediately in breach under the Credit Agreement and by the fall of 2022, had very limited liquidity.

NEED FOR INSOLVENCY PROCEEDINGS

43. The Applicant has spent several months continuing to support the Debtors while they have attempted to improve operations and meet the financial milestones set out in the Original Forbearance Agreement. Despite the accommodations provided by the Applicant to the Debtors, the Debtors' financial position continues to deteriorate with no possible solution in sight. The Applicant is no longer willing to provide the Debtors with financing with no clear process or timeline for resolution.
44. The Debtors are insolvent. Through a CCAA process, the Applicant will continue to provide liquidity to the Debtors for working capital purposes and to fund the restructuring process.

45. Deloitte has worked with the Debtors and the Applicant to develop a proposed cash flow (the "**Approved Cash Flow**") which will be attached to its Pre-Filing Report.

REQUESTED RELIEF – INITIAL ORDER

46. The Applicant is requesting an initial order, a charging order (the "**Charging Order**") and sealing order (the "**Sealing Order**" and collectively, the "**Initial Orders**") for the below described relief.

Stay of Proceedings

47. The Applicant is requesting a stay of proceedings in respect of the Debtors and their property up to and including a date that is not more than 10 days from the date of the Initial Orders.

Appointment of CRO

48. The Debtors have retained David Boyd, a representative of Resolve Advisory Services Ltd., as a chief restructuring officer ("**CRO**") to assist them through the restructuring period. I am advised by James Foran of Deloitte that Mr. Boyd is an experienced restructuring professional in the Atlantic Provinces with extensive experience in the seafood and other industries. The Applicant has agreed to support the Debtors' request for the retention of the CRO. A copy of the CRO engagement letter is attached as Exhibit "II" hereto.

Appointment of Monitor

49. Deloitte has consented to act as the Court-appointed Monitor of the Debtors, subject to Court approval. As discussed above, Deloitte was originally retained as the financial advisor to the Applicant in March 2023 (the "**Deloitte Engagement Letter**"). Pursuant to the terms of the Deloitte Engagement Letter, the Debtors and Deloitte expressly agreed that nothing in the engagement of Deloitte as financial advisor to the Applicant would prevent it from acting as a court officer in an insolvency proceeding of the Debtors. As set out above, pursuant to the Forbearance Agreement, the Debtors have also consented to Deloitte to act as Monitor.
50. Deloitte is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in Section 11.7(2) of the CCAA.

51. I am advised by Mr. Foran that Deloitte will be filing a pre-filing report (the "**Pre-Filing Report**") that will set out additional information regarding the proposed proceeding and their qualifications including confirmation that Deloitte is not restricted from acting as Monitor as a result of Section 11.7(2) of the CCAA.

Directors and Officers

52. During the restructuring process, the Applicant anticipates that the assistance of the directors and officers of the Debtors will continue to be required. I am advised by Mr. Foran that the directors and officers have indicated to him that they require the protection of a directors' indemnity to be secured by a charge (the "**Directors' Charge**") for obligations to them for acting in such capacity that arise post-filing. I am advised by Mr. Foran that in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities.
53. As at the current date, wages, vacation pay and statutory employee deductions are accruing in the ordinary course with no arrears due and unpaid as at the date hereof.
54. The proposed Charging Order contemplates the establishment of the Directors' Charge in the amount of \$375,000 to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Debtors after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the directors' or officers' gross negligence or wilful misconduct. The Directors' Charge was calculated by reference to (a) the payroll and withholding obligations of the Debtors; and (b) vacation pay.
55. I am advised by Mr. Foran that the Debtors have indicated that they do not maintain directors' and officers' insurance.
56. The Debtors are unlikely to have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities.
57. I am advised by Mr. Foran that the proposed Monitor has worked with the Debtors in determining the proposed quantum of the Directors' Charge and believes the Directors' Charge is reasonable in the circumstances.

DIP Funding

58. The Applicant has agreed to provide debtor-in-possession funding ("**DIP Financing**") to the Debtors to finance operations and the restructuring proceedings during the pendency of the CCAA proceedings. The proposed DIP Financing will be made available to the Debtors under the existing Credit Agreement, as amended by the Second Forbearance and Fourth Amendment to the Credit Agreement (the "**DIP Facility Agreement**"). A copy of the DIP Facility Agreement is attached as Exhibit "JJ" hereto.
59. The DIP Facility Agreement provides the terms on which the Applicant will continue to support the Debtors and their operations during the proposed CCAA Forbearance Period (defined below). The key terms of the DIP Facility Agreement include the following:¹
- (a) Parties: (i) The Borrowers, as borrowers; (ii) the Guarantors, as guarantors; and (iii) the Applicant, as Lender;
 - (b) CCAA Forbearance Period: The Applicant agrees to forbear against the Debtors until the earlier of (i) February 2, 2024; and (ii) the occurrence of a Terminating Event (defined in the DIP Facility Agreement);
 - (c) Maximum Borrowing Limit: Upon granting of the Initial Orders, \$3 million to be increased to \$10 million upon the granting of the Comeback Orders (defined below);
 - (d) Interest: Advances will accrue interest at Prime Rate or US Base Rate plus 1%;
 - (e) Use of Funds: To be used in accordance with the Approved Cash Flow and which provides for, among other things, payment of the BDC Equipment User Fee and interest on the BDC Mortgage Loan. For greater certainty, the Borrowers will not use funds to repay any pre-filing indebtedness owing to the Applicant under the Credit Agreement;
 - (f) Maturity: The earlier of (i) February 2, 2024; and (ii) the occurrence of a Terminating Event;

¹ Capitalized terms used in this paragraph and not otherwise defined have the meaning given to them in the DIP Facility Agreement.

- (g) Terminating Events: The Lender may terminate the Forbearance Period upon the occurrence of a Terminating Event. Certain of the key Terminating Events include (i) if any cash flow projection or forecast provided to the Applicant is not acceptable to the Applicant, acting reasonably; (ii) if the proposed Initial Orders are not granted on or before September 21, 2023; (iii) if the Comeback Orders, including approval of the SISP (defined below), are not granted on or before September 28, 2023; or (iv) if any of the SISP Milestones are not met and achieved.
- (h) Security: Obligations under the DIP Facility Agreement will be secured by a super-priority DIP Charge (defined below), which charge shall have the priority set out below.

60. The DIP Facility Agreement provides that the existing cash management system will continue to be used during the course of the CCAA proceedings. As a result, given the nature of the asset-based Revolving Loans, as receivables are collected, they will be swept by the Applicant and applied to existing obligations owing under the Revolving Loans. The Debtors will then borrow funds under the DIP Facility Agreement, which advances will be made to fund working capital and restructuring costs but will not be used to repay existing obligations under the Credit Agreement.

Critical Suppliers

- 61. I understand that the Pre-Filing Report will outline certain recommendations in respect of the ability of the Monitor to make certain pre-filing vendor payments to "critical vendors" up to a maximum amount of \$900,000.
- 62. Any pre-filing payments would only be advanced with the consent of the Monitor.
- 63. I am advised by Mr. Foran that particularly given the nature of this business, it is crucial to the preservation of the going concern to have this limited flexibility to make such payments.

Proposed Charges

- 64. The Applicant is proposing that the following charges be granted pursuant to the proposed Charging Order:
 - (a) First, an Administration Charge up to a maximum of \$250,000 to secure payment

of the fees and expenses of the Monitor, its counsel, the CRO (excluding any success fee), the Debtors' counsel (up to a maximum of \$25,000) and the Applicant's counsel (the "**Administration Charge**");

- (b) Second, the Directors' Charge in the maximum amount of \$375,000; and
 - (c) Third, a DIP Charge to secure obligations owing under the DIP Facility Agreement (the "**DIP Charge**" and together with the Administration Charge and the Directors' Charge, the "**Charges**").
65. The proposed Charges shall constitute super-priority charges ranking in priority to all other existing liens, encumbrances, charges or security interests on any of the assets, property or undertaking of the Debtors other than, for the purposes of the initial application, the DIP Charge, which will not rank in priority to BDC in respect of the BDC Priority Collateral or any Crown priority claim which cannot be reversed in bankruptcy.
66. In the event that the Applicant intends to request changes to the proposed priority of any or all of the Charges, such request will be made on the comeback and in compliance with the notice provisions contemplated by the CCAA.

Sealing

67. I am advised by Mr. Foran that the Debtors have requested that the Approved Cash Flow (and certain related portions of the Pre-Filing Report) be sealed. The Approved Cash Flow sets out certain financial information as to the Debtors' operations, public disclosure of which the Debtors have advised may jeopardize their commercial operations particularly given the nature of the industry and the Debtors' proportionately large position within it.
68. The Applicant has had an opportunity to review the Approved Cash Flow. I am further advised by Mr. Foran that the Approved Cash Flow has been provided to BDC and the Court.
69. The Applicant is seeking an interim sealing order of the unredacted Pre-Filing Report pending the Comeback Hearing (defined below).


Anticipated Relief on Comeback

70. If the Initial Orders are granted, the Applicants propose to return to this Court for a hearing for a comeback motion (the "**Comeback Hearing**") on or before September 28, 2023.
71. At the Comeback Hearing, the Applicant intends to seek the Court's approval of, among other things, an amended and restated initial order and charging order (the "**Comeback Orders**") which may include, among other things:
- (a) An extension of the stay to December 15, 2023;
 - (b) An increase in the Administration Charge to \$500,000;
 - (c) An increase in the maximum post-filing amount that can be borrowed under the DIP Facility Agreement to \$10 million;
 - (d) An increase in the Monitor's powers and authorizations;
 - (e) Approval of a sales investment and solicitation process ("**SISP**"); and
 - (f) An extension of the sealing order.

CONCLUSION

72. For the reasons set out above, I believe that the granting of the Initial Orders is in the best interest of the Debtors and their stakeholders generally. The commencement of a proceeding under the CCAA provides the best opportunity to maximize value and preserve a going concern.
73. I swear this affidavit in support of this Application and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on September 18, 2023.



Commissioner for Taking Affidavits



ANDREA JAMNISEK

Ge Shi, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 15, 2025.