

2011

Hfx No. 348504

SUPREME COURT OF NOVA SCOTIA

THE TORONTO-DOMINION BANK

Applicant

-and-

KARLSEN SHIPPING COMPANY LIMITED



Sgd.
A.J.L., J.

A handwritten signature in blue ink, appearing to be "A.J.L.", written over a red circular stamp.

RECEIVERSHIP ORDER

BEFORE THE HONOURABLE JUSTICE ARTHUR J. LEBLANC, IN CHAMBERS:

A red circular seal with the text "SUPREME COURT OF NOVA SCOTIA" around the perimeter and "FORIS ARMA DOMINI CONSILIIUM" in the center. A red signature is written across the seal.

UPON the Motion of The Toronto-Dominion Bank ("TD"), a secured creditor of Karlsen Shipping Company Limited ("Karlsen"), for an Order appointing PricewaterhouseCoopers Inc. as Receiver of all of the assets, property and undertaking of Karlsen pursuant to the provisions of s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as am. and s. 43(9) of the *Judicature Act* R.S.N.S. 1989 c. 240.

AND UPON READING the Affidavit of Kenneth J. Malcolm sworn on May 11, 2011, the Affidavit of John Stringer Q.C. sworn on May 12, 2011, and all other material on file herein;

AND UPON IT APPEARING that PricewaterhouseCoopers Inc. has consented to act as Receiver of Karlsen;

AND UPON HEARING John Stringer Q.C. on behalf of TD, Thomas Hart on behalf of Sparebank 1 SMN ("Sparebank"), and such others who appeared on the Motion;

NOW UPON MOTION IT IS HEREBY ORDERED THAT:

TIME AND SERVICE

1. The time for any required service or notice of the Motion herein be and it is hereby abridged and validated such that the Motion is properly returnable today, and further that any requirement for service of the Motion Documents therein upon any interested party is hereby dispensed with, except for service on the counsel representing Karlsen and Sparebank.

APPOINTMENT

2. **PricewaterhouseCoopers Inc.** is hereby appointed Receiver, without security, of all of the present and future assets, undertakings and properties of every nature and kind whatsoever, including without limitation any shares in any corporation and wherever situate and including all proceeds thereof (the "Property") of Karlsen.

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 in any way limiting the generality of the foregoing, the Receiver is hereby expressly 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 and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) 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 powers and duties conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to Karlsen and to exercise all remedies of Karlsen in collecting such monies, including, without limitation, to enforce any security held by Karlsen;
- (e) to settle, extend or compromise any indebtedness owing to Karlsen;
- (f) 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 Karlsen, for any purpose pursuant to this Order;
- (g) to undertake environmental or workers' health and safety assessments of the Property and operations of Karlsen;
- (h) to initiate, prosecute and continue the prosecution of any proceedings and to defend all proceedings now pending or hereafter instituted with respect to Karlsen, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) 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;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

- (ii) 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 Nova Scotia *Personal Property Security Act*, shall not be required;

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) 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;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) 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 Karlsen;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of Karlsen, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by Karlsen;
- (p) to exercise any shareholder, partnership, joint venture or other rights which Karlsen may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) Karlsen, (ii) 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 (iii) 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 Karlsen, 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 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 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 or 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 KARLSEN OR THE PROPERTY

8. No Proceeding against or in respect of Karlsen 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 Karlsen 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 against Karlsen, 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 nothing in this paragraph shall (i) empower the Receiver or Karlsen to carry on any business which Karlsen is not lawfully entitled to carry on, (ii) exempt the Receiver or Karlsen 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.

NO INTERFERENCE WITH THE RECEIVER

10. 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 Karlsen, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with Karlsen 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 Karlsen 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 that the Receiver shall be entitled to the continued use of Karlsen's 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 Karlsen 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.

RECEIVER TO HOLD FUNDS

12. 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

13. All employees of Karlsen shall remain the employees of Karlsen until such time as the Receiver, on Karlsen's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including 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 such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall 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"). 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. 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 Karlsen, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might 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 law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act* and the *Nova Scotia Environment Act* and regulations thereunder (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. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. Any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, to the extent permitted by law (the "Receiver's Charge").

18. The Receiver and its legal counsel shall pass its accounts from time to time, before this Court.

19. 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 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.

FUNDING OF THE RECEIVERSHIP

20. 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 (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 funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. 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, which to the extent permitted by law shall have priority over all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

21. 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.

GENERAL

22. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

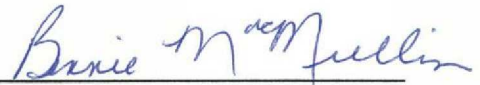
24. This Court hereby requests the aid and recognition of any domestic or foreign court, tribunal, regulatory or administrative body to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies 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 or to assist the Receiver and its agents in carrying out the terms of this Order.

25. The Receiver be at liberty and 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.

26. The appointment of the Receiver herein shall continue from the date hereof until terminated by a further Order of this Court.

27. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ISSUED this 17th day of May, 2011.



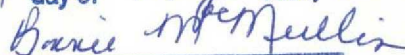
Prothonotary

BONNIE MACMULLIN
Deputy Prothonotary

IN THE SUPREME COURT OF NOVA SCOTIA

I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.

Dated the 17 day of May A.D., 2011



Deputy Prothonotary
BONNIE MACMULLIN
Deputy Prothonotary