

2011

Hfx No. 348504

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

KARLSEN SHIPPING COMPANY LIMITED

Respondent

THIRD REPORT OF RECEIVER

PRICEWATERHOUSECOOPERS INC.

October 27, 2011

1. APPOINTMENT

- 1.1 PricewaterhouseCoopers Inc. (the "Receiver") was appointed as Receiver of all of the property, assets and undertaking of Karlsen Shipping Company Limited (the "Company") by Order of this Honourable Court dated May 17, 2011 (the "Receivership Order").
- 1.2 The appointment of the Receiver was made pursuant to 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.

2. PURPOSE OF THIS REPORT

- 2.1 The purpose of this Report is to provide information to assist this Honourable Court in considering the Receiver's Motion seeking Court approval for the disbursement of certain funds held by the Receiver pursuant to the Receivership Order. The Receiver will also provide an update on its actions since the Second Report of the Receiver dated September 27, 2011.

3. BACKGROUND

- 3.1 On October 7, 2011 this Honourable Court issued an Order approving the sale by the Receiver of the Company's property at 55 Crane Lake Drive, Halifax Regional Municipality, Nova Scotia (the "Property"), a copy of which is attached as Exhibit I. The closing for the sale of the Property occurred on October 18, 2011. Attached as Exhibit II is a copy of the Statement of Adjustments and Statement of Trust Funds.
- 3.2 A copy of the Parcel Register and a Title Summary for the Property as of September 23, 2011 appeared as Exhibits "B" and "C" to the Affidavit of Stephen Kingston filed herein on September 27, 2011. The Title Summary identifies a Mortgage granted by the Company to the Toronto-Dominion Bank ("TD Bank") dated January 11, 2011 and recorded January 12, 2011 as Document No. 97567276 (the "Mortgage") as being a first charge as against the Property. The Mortgage by its terms secures a principal debt of \$450,000.00 against the Property, and a copy of the Mortgage appears as Exhibit "D" to the Affidavit of Kenneth Malcolm filed herein on May 12, 2011 (the "Malcolm Affidavit").
- 3.3 The Company's yacht, the "Polar Sun", was sold by the Receiver pursuant to Order of this Honourable Court dated August 11, 2011, and such sale yielded a net return of \$126,000.00 to the Receiver.
- 3.4 Exhibit "A" to the Malcolm Affidavit is a copy of a General Security Agreement ("GSA") granted by the Company to the TD Bank dated January 11, 2011, a financing statement for which was recorded under the *Personal Property Security Act* as No. 17599309. The Receiver is advised by counsel that the GSA was a first charge as against the "Polar Sun" as of the date of sale.

- 3.5 A copy of the Receiver's Statement of Receipts and Disbursements for the period from May 17, 2011 (the date of our appointment) to October 24, 2011 is attached as Exhibit III.
- 3.6 The Receipts consist of proceeds from the sale of the "Polar Sun", proceeds from the sale of the Property, insurance proceeds, monies held by the Company at the date of our appointment, and other miscellaneous receipts.
- 3.7 The security granted by the Company to the TD Bank is as follows:
- The Mortgage on the Property (as described above);
 - The GSA (as described above);
 - Mortgage on the M/V "Polar Star" dated January 11, 2011.
- 3.8 The Receiver obtained an independent legal opinion dated June 14, 2011 as regards the status of funds deposited under various agreements to book cruises on the M/V "Polar Star". The opinion concluded that the various parties who entered into contracts to book trips on the "Polar Star" are unsecured creditors of the Company, and that deposits paid by such parties formed part of the property of the Company. The Receiver is advised by counsel that such deposits are encumbered by the GSA as a first charge.
- 3.9 The Receiver has received payment of certain insurance proceeds relating to the M/V "Polar Star". The Receiver is advised by counsel that such proceeds are encumbered by the GSA as a first charge.
- 3.10 The Receiver has confirmed that the outstanding principal debt and interest owed by the Company to TD Bank totalled \$3,457,372.93 as of October 27, 2011.

4. CURRENT RECEIVER ACTIVITY

- 4.1 **Land located at New Harbour, NS.** The Receiver advertised an Invitation For Offers as regards 6 lots owned by the Company and located at New Harbour, Lunenburg County, Nova Scotia with a deadline of October 21, 2011. No acceptable offers were received, and the Receiver intends to list the properties for sale with a real estate agent.
- 4.2 **Chester land and building.** The Receiver advertised for offers regarding this property in the same advertisement as regards the New Harbour properties. No acceptable offers were received, and the Receiver intends to negotiate further with the highest offerors or, alternatively, list the property for sale with a real estate agent.
- 4.3 **Shares in Karlsen Shipping Norway Limited.** The Receiver continues to gather information pertaining to these shares in order to make a recommendation in regards to the disposition of this asset. As noted in our Second Report, the Company has significant tax problems with the Norwegian tax authorities, which remain unresolved.

- 4.4 **The Polar Star.** The M/V "Polar Star" remains at the Astican Shipyard in Las Palmas, Spain as reported in our Second Report. All interested parties are being directed by the Receiver to the solicitor representing the shipyard.
- 4.5 **Intellectual Property.** The Company possesses a significant client list and other market intelligence which may have some value to other companies operating similar businesses. The Receiver is reviewing the potential for recovery of this asset.

5. RECOMMENDATION

- 5.1 The Receiver respectfully recommends that this Honourable Court approve payment of \$784,099 by the Receiver to TD Bank, which consists of the following:


Insurance Proceeds	\$236,036
Net Proceeds (Sale of Polar Sun)	126,000
Net Proceeds (Sale of Property)	<u>422,063</u>
Total	<u>\$784,099</u>

DATED at Halifax, Nova Scotia, this 27th day of October, 2011.

PricewaterhouseCoopers Inc.

In its capacity as Court Appointed Receiver
of Karlsen Shipping Company Limited

Per:



Derek Cramm, FCMA, FCIRP

Exhibit I

2011

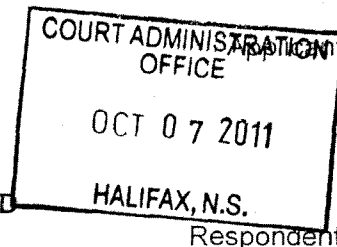
Hfx No. 348504

SUPREME COURT OF NOVA SCOTIA

THE TORONTO-DOMINION BANK

and

KARLSEN SHIPPING COMPANY LIMITED



Respondent



APPROVAL AND VESTING ORDER (October 4, 2011)

CRC, J. BEFORE THE HONOURABLE JUSTICE JUSTICE C. RICHARD COUGHLAN CHAMBERS:

THIS MOTION is made by PricewaterhouseCoopers Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Karlsen Shipping Company Limited (the "Debtor") for an Order approving the sale transaction (the "Transaction") contemplated by the Agreement of Purchase and Sale (the "Sale Agreement") executed by the Receiver and 324435 Nova Scotia Limited (the "Purchaser") on September 13, 2011 and vesting in the Purchaser, or the Purchaser's assignee, as the case may be, the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia.

ON READING the evidence filed on the Motion and on hearing the submissions of counsel for the Receiver:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion herein be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction

and for the conveyance of the Purchased Assets to the Purchaser, or to the Purchaser's assignee, as the case may be.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser, or the Purchaser's assignee, as the case may be, substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement (and listed on Schedule B hereto) shall vest absolutely in the Purchaser, or the Purchaser's assignee, as the case may be, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Honourable Court dated May 17, 2011; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Nova Scotia) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registration Office for Halifax County of a Deed duly executed by the Receiver, the Registrar is hereby directed to enter the Purchaser, or the Purchaser's assignee, as the case may be, as the owner of the subject real property identified in Schedule B hereto (the "Real Property"), and is hereby directed to discharge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor; the vesting of the Purchased Assets in the Purchaser, or the Purchaser's assignee, as the case may be, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

DATED AT Halifax, Nova Scotia this 7 day of October, 2011.

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 7 day of October A.D., 2011

JS-2832
(11597215_3.DOC)

Deputy Prothonotary

Manon Haché
Deputy Prothonotary

Manon Haché
Prothonotary

PROTHONOTARY

SCHEDULE A

2011

Hfx No. 348504

SUPREME COURT OF NOVA SCOTIA

THE TORONTO-DOMINION BANK

Applicant

and

KARLSEN SHIPPING COMPANY LIMITED

Respondent

RECEIVER'S CERTIFICATE

RECITALS:

A. **PURSUANT TO** an Order of the Supreme Court of Nova Scotia (the "Court") dated May 17, 2011, PricewaterhouseCoopers Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Karlsen Shipping Company Limited (the "Debtor").

B. **PURSUANT TO** an Order of the Court dated October 4, 2011, the Court approved the Agreement of Purchase and Sale between the Receiver and 3244351 Nova Scotia Limited (the "Purchaser") dated September 13, 2011 (the "Sale Agreement") and provided for the vesting in the Purchaser or the Purchaser's assignee, as the case may be, of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser, or the Purchaser's assignee, as the case may be, of a certificate confirming (i) the payment by the Purchaser, or the Purchaser's assignee, as the case may be, of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser, or the Purchaser's assignee, as the case may be, has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [TIME] on _____ [DATE].

**PricewaterhouseCoopers Inc. in its capacity
as Court-appointed Receiver of the
undertaking, property and assets of karlsen
Shipping Company Limited and not in its
personal capacity**

Per: _____

Derek Cramm

SCHEDULE "B"

PURCHASED ASSETS

1. **ALL** those lands and premises known as PID No. 40513483, being Civic No. 55 Crane Lake Drive, Halifax Regional Municipality, Nova Scotia **SUBJECT TO** certain Restrictive Covenants as listed in the document recorded as Document No. 26071 at the Land Registration Office for Halifax County on May 26, 1989.
2. **ALL** of the chattels listed below:

Description	Quantity
Master Craft Tool Box With Tools	1
5 drawer Metal & Veneer Desk	1
Leather Managers Chair	1
Lap Top PC With Docking Charger	1
Wood Veneer Credenza	4
Leather Office Chair On Casters	3
Floor Carpet 10ft x 7ft	1
L Shaped Wood Desk	1
4ft x 3ft Rear Wood Storage Cabinet	1
Mahogany Wood Table With Folding Sides	1
Board Room Vinyl Chair	10
Board Room 8ft Mahogany Table	1
Dark Walnut Veneer Circular End Table	2
Dark Walnut Veneer table With 4ft Marble Top	1
Leather & Wood Couch & Chair	1
Wood & Metal Credenza	1
3ft x 4ft Pamphlet Storage Shelf	1
Globe With Stand	1
30in x 15in Storage Shelf	2

4 Drawer Wood Desk (old)	1
Computer Stand on Casters	1
Veneer Book Shelf 5ft x 2ft	1
Epson Perfection V500 Scanner	1
GBGC Docu Seal 125	1
HP Color Laser Jet CP2025 Printer	1
2 Room Work Area Complete with 2 Separate Work Stations	1
L Shaped Glass Desk With Glass Computer Stand	1
Hp Desk Jet 5150 Printer	1
Toshiba Laptop Computer	1
Dark oak Veneer Coffee Table	1
4ft Wood Veneer Storage Shelf	1
Small Wood Veneer Cabinet	1
Corner Computer Desk Oak Veneer"	1
4ft Oak Plywood Desk	1
Credenza/Hutch teak Storage Area	1
Hp Laser Jet 1200 Printer	1
Boston 2655 Paper Cutter	1
GBC P100 Docu Bind.	1
Light Oak Veneer Table	1
Trade Show Display Booth	1
Drafting Table	1
Melamine Plan Holder Cabinet	1
PC With CTR Monitor	1
HP Photo Smart 8050 Printer	1
Wood End Table	1
Melamine Bookshelf 4ft x 2ft	1
5 Drawer Metal Lateral File Cabinet	3
2 Drawer Metal Lateral File Cabinet	4

2 Drawer Metal Legal File Cabinet	4
Brother Intellifax 2820	1
6ft x 4ft Book Shelf	1
Mahogany Veneer Storage Cabinet with Door	1
Richo Aficio 2045E Photo Copier (Leased)	1
3 Drawer Pedestal Cabinet	1
PC with 17in LCD Monitor	9
Office Chair on Casters	7
Laser Jet 6 Hp Printer	1
Desk Lamp	2
40in Round Veneer Table	1
Lunch Chairs	4
Water Cooler	2
Samsung Microwave Oven	1
Panasonic Microwave Oven	1
12 Cu Ft Frost Free Refrigerator	1
Nortel Phone System With 12 Handsets	1
Coffee Thermos	1
Bunn Single Pour Coffee Machine	1
Steno Chair	1
Dishes, Mugs, Cutlery, Etc. in Lots	1
4 Drawer Metal Legal File Cabinet	11
5 Drawer Metal Legal file Cabinet	3
6 ft Melamine Book-shelf	1
Reception Chair	11
Wood Coat Tree	3
4 Drawer Metal Lateral file Cabinet	1
Metal Cart On Casters	1
Dark Wood Veneer 5ft 4 Drawe rDesk	3

Br-other HL 1230 Laser Pinter	1
3ft x 2ft Cork Board	3
Fire Proof Safe	1
8ft Folding Table	1
12ft Reynolds Fiberglass Step Ladder	1
Frost Free Fridge 16 cu. ft.	2
Cart Dollie	1
Heavy Duty Warehouse Shelving in Lots	1
Plastic Shelf Unit	4
Aluminum 20ft Extension Ladder	1
Bench Vise	1
Plywood Stained Book Shelf 4ft x 6ft	1
Wood Veneer 4ft x 3ft Storage Cabinet	1
Desk Fans	2
Wall Coverings in Lots	1

SCHEDULE "C"

**CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE
TO REAL PROPERTY (PID 40513483)**

1. **Mortgage** granted by Karlsen Shipping Company Limited to The Toronto-Dominion Bank dated January 11, 2011 and registered at the Land Registration Office in Halifax on January 12, 2011 as Document No. 97567276.



STATEMENT OF ADJUSTMENTS

PROPERTY TRANSFER AT: 55 Crane Lake Drive, Halifax
 VENDOR: PricewaterhouseCoopers Inc.
 PURCHASER: 3244351 Nova Scotia Limited
 OUR FILE NO.: JS-2833
 DATE: October 17, 2011

CREDIT:	Purchaser	Vendor
PURCHASE PRICE:		\$ 485,000.00
Taxes Paid in Advance		\$0.00
HOW PAID:		
INITIAL DEPOSIT	\$ 20,000.00	
Tax Adjustment		
\$ 14,625.17 /366 x 200	\$ 7,991.90	
Tax Arrears	\$ 6,505.03	
Interest on Arrears	\$ 1,418.54	
Credit re: Roof Repairs	\$ 7,500.00	
BALANCE DUE ON FINAL CLOSING	\$ 441,584.53	
	\$ 485,000.00	\$ 485,000.00



Statement of Trust Funds

PROPERTY TRANSFER AT:	55 Crane Lake Drive, Halifax
VENDOR:	PricewaterhouseCoopers Inc.
PURCHASER:	3244351 Nova Scotia Limited
OUR FILE NO.:	JS-2833
DATE:	October 17, 2011

RECEIVED FROM:

Wolfson Schelew Zatzman (Balance of Purchase Price)	\$	441,584.53
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DISBURSED TO:

Red Door Realty (Real Estate Commission)	\$	19,521.25
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PricewaterhouseCoopers Inc. (Net Sale Proceeds)	\$	422,063.28
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TOTAL	\$	441,584.53	\$	441,584.53
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Interim Statement of Receipts and Disbursements

For the Period May 17, 2011 to October 24, 2011

A. Receipts	
Cash in Bank	652,352.77
Sale of 55 Crane Lake Drive	485,000.00
Insurance Refund	236,036.15
Sale of Yacht	140,000.00
HST Collected	21,000.00
Dividend	116.20
Petty Cash	15.27
Motor Vehicle Refund	65.64
Total Receipts	1,534,586.03
B. Disbursements	
Insurance	127,767.60
Legal Fees	106,781.83
Receiver Fees	157,962.00
HST Paid - ITC	59,885.32
Casual Labour	41,914.86
PwC Las Palmas	34,887.49
Ship Inspection	32,856.18
Property Taxes	15,915.47
Real Estate Commission	16,975.00
Commission on Sale of Yacht	14,000.00
Repairs and Maintenance	13,253.91
Appraisal Fees	6,607.00
Roof Repairs	7,500.00
Administrative Fee	9,951.17
Telephone	2,998.69
Tender Advertising	11,792.33
Utilities	972.23
Property Management	950.00
Change Locks	270.35
Travel	256.85
Bank Charges	180.95
Water Taxes	146.29
Mail Redirection	135.00
Registration of Receivership	70.00
Payroll Services	68.85
Total Disbursements	664,099.37
C. Excess of Receipts over Disbursements	870,486.66

PricewaterhouseCoopers Inc.
Court Appointed Receiver of
Karlsen Shipping Company Limited

