

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**APPLICATION UNDER SECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

B E T W E E N

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY
LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II
(US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN
BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)**

Applicant

v.

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC.,
TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I,
TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS
CANADA CORPORATION**

Respondents

FACTUM OF THE RECEIVER, FTI CONSULTING CANADA INC.
(Receiver's Settlement Approval Motion, Returnable January 16, 2025)

January 14, 2025

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Canada Inc.

TO: **THE SERVICE LIST**

I. OVERVIEW¹

1. This factum is filed by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver and manager (the “**Receiver**”), without security, of substantially all of the assets, undertakings and properties owned by Trade X Group of Companies Inc. (“**Trade X Parent**”) and the other respondents in this proceeding (collectively, the “**Debtors**”), as set forth in further detail in the Receivership Order.

2. The Receiver seeks an Order (the “**Settlement Approval Order**”), *inter alia*, approving a settlement agreement (the “**Settlement Agreement**”) between the Receiver, on behalf of the Debtors, and KPMG Inc., in its capacity as court-appointed monitor (the “**Wholesale Express Monitor**”) of the Remaining Wholesale Express Debtors (as defined below) (and formerly of Wholesale Express (as defined below)).

3. The Wholesale Express Monitor had moved to set aside the assignment of a potentially valuable litigation claim (“**Groupe Grégor Claim**”) that had been made by Wholesale Express to Trade X Parent approximately two months prior to the commencement of insolvency proceedings in respect of each of Wholesale Express and the Debtors, respectively, as a transfer under value and/or a preference within the meaning of the *Bankruptcy and Insolvency Act*. The Receiver had objected to the Wholesale Express Monitor’s motion.

4. The Receiver and the Wholesale Express Monitor entered into the Settlement Agreement on December 6, 2024. At a high level, and subject to the terms of the Settlement Agreement, the

¹ Unless otherwise stated herein, capitalized terms used and not otherwise defined herein shall have the meaning given to such terms in the Eighth Report of the Receiver dated December 16, 2024 (the “**Eighth Report**”).

Receiver and the Wholesale Express Monitor agreed to share the costs of, and any proceeds from, the Groupe Grégor Claim. The Wholesale Express Monitor will fund 70% of the litigation costs and receive 70% of the litigation proceeds. The Receiver will fund 30% of the litigation costs and receive 30% of the litigation proceeds. The Settlement Agreement has been approved by the Quebec court that is supervising the Wholesale Express CCAA Proceedings (as defined below) and remains subject to approval by this Court.

5. The Receiver respectfully submits that the Settlement Agreement should be approved. The Receiver entered into the Settlement Agreement after a careful analysis of its options, and the cost and litigation risk that would be addressed by the Settlement Agreement.

6. The Settlement Agreement is supported by the Applicant in these proceedings, who is the senior secured creditor and fulcrum creditor in these proceedings.² It is not opposed by any party.

7. The Receiver respectfully submits that the Settlement Agreement represents a fair and reasonable compromise that should be approved by this Court.

II. FACTS

B. Wholesale Express CCAA Proceedings

8. 13517985 Canada Inc. (“**Wholesale Express**”) was a subsidiary of Trade X Parent, but is not one of the Debtors subject to the Receivership. Separate proceedings under the *Companies' Creditors Arrangement Act* were commenced in respect of Wholesale Express in Quebec (the “**Wholesale Express CCAA Proceedings**”) in December 2023.³

² [Second Report of the Receiver dated March 27, 2024 at para. 14.](#)

³ Eighth Report at para. 23, Motion Record of the Receiver dated January 7, 2025 (“**MR**”), Tab 3, p. 28.

9. Pursuant to the Wholesale Express CCAA Proceedings, Wholesale Express completed a reverse vesting sale transaction, resulting in 15695724 Canada Inc. (“**ResidualCo 1**”) and 15695651 Canada Inc. (“**ResidualCo 2**”, and together with ResidualCo 1, the “**Remaining Wholesale Express Debtors**”) being the remaining debtor companies in the Wholesale Express CCAA Proceedings to which, among other things, the remaining claims not assumed pursuant to the sale transaction were transferred.⁴

C. The Groupe Grégor Claim Application

10. Wholesale Express and Trade X Parent entered into the Groupe Grégor Claim Assignment on October 24, 2023.⁵ Wholesale Express commenced the Wholesale Express CCAA Proceedings on December 20, 2023 and the Receiver was appointed over the Debtors on December 22, 2023.

11. On February 15, 2024, the Wholesale Express Monitor served the Groupe Grégor Claim Application seeking:

- (a) an order declaring that the Groupe Grégor Claim Assignment is null and void and may not be set up against the Wholesale Express Monitor on the basis that it constituted a transfer at undervalue; and
- (b) advice and directions from the Court in the form of an order declaring that any right or claim held by the Wholesale Express against Groupe Grégor, including the claim

⁴ Eighth Report at para. 24, MR, Tab 3, p. 28.

⁵ Eighth Report at para. 25, MR, Tab 3, p. 28.

in the Groupe Grégor Claim referred to in the Groupe Grégor Claim Assignment, is the property of ResidualCo 2.⁶

12. After completing an analysis of the underlying facts, the Receiver opposed the Groupe Grégor Claim Application.⁷

13. The Groupe Grégor Claim Application was heard before the Quebec Superior Court of Justice (the “**Quebec Court**”) in the Wholesale Express CCAA Proceedings on July 16, 2024. Following submissions by the parties in respect of the Groupe Grégor Claim Application, the Quebec Court determined to adjourn the application until the December 10, 2024, and directed the Wholesale Express Monitor to amend its application and Monitor’s report in respect thereof to also address the question of whether the Groupe Grégor Claim Assignment was a preferential payment, in addition to whether it was a transfer at undervalue. Such amended application and Wholesale Express Monitor’s report were filed on September 3, 2024.⁸

14. On October 31, 2024, the Receiver filed an amended contestation to the Wholesale Express Monitor’s amended application⁹, and filed supporting affidavits on November 11, 2024 and on November 22, 2024.¹⁰

D. The Groupe Grégor Settlement

15. The Receiver and the Wholesale Express Monitor ultimately agreed to the Groupe Grégor

⁶ Eighth Report at para. 26, MR, Tab 3, p. 28.

⁷ Eighth Report at para. 27, MR, Tab 3, p. 29.

⁸ Eighth Report at para. 28, MR, Tab 3, p. 29.

⁹ The Receiver also filed on the same date a reamended contestation incorporating minor corrections to the amended contestation.

¹⁰ Eighth Report at para. 29, MR, Tab 3, p. 29.

Settlement on the terms and conditions set out in the Settlement Agreement. The key terms of the Groupe Grégor Settlement include:

- (a) the Receiver agreed to withdraw its contestation of the Groupe Grégor Claim Application;
- (b) the Wholesale Express Monitor shall have carriage of pursuing the Groupe Grégor Claim against Groupe Grégor (the “**Groupe Grégor Proceedings**”) and shall consult with the Receiver on a regular basis with respect to decisions in the context of the Groupe Grégor Proceedings;
- (c) the Groupe Grégor Proceedings will be funded as follows:
 - (i) the Wholesale Express Monitor (in its capacity as Monitor and not in its personal or corporate capacity) will fund, from the funds currently held in trust by the Wholesale Express Monitor, 70% of the litigation costs (fees and disbursements); and
 - (ii) the Receiver (in its capacity as Receiver and not in its personal or corporate capacity) will fund, from the Debtors’ estate, 30% of the litigation costs (fees and disbursements);
- (d) in the event that funds are received by the Wholesale Express Monitor (in its capacity as Monitor and not in its personal capacity) in the context of the Groupe Grégor Proceedings, whether by way of a settlement, judgment, cost award or otherwise, such funds will be distributed as follows:

- (i) first, to repay the litigation costs funded by each of the Wholesale Express Monitor and the Receiver, on a pro rata basis; and
 - (ii) second, as a distribution, 70% of the proceeds to the Wholesale Express Monitor (in its capacity as Monitor and not in its personal or corporate capacity) and 30% of the proceeds to the Receiver (in its capacity as Receiver and not in its personal or corporate capacity); and
- (e) either the Wholesale Express Monitor or the Receiver (in this context, the “**Withdrawing Party**”) shall have the right to withdraw from the Settlement Agreement in the event that either it is discharged from its mandate, funds are not available to fund its obligations under the Settlement Agreement or it determines that continuing to fund the Groupe Grégor Proceedings in accordance with the terms of the Settlement Agreement is not in the best interest of the relevant stakeholders. In the event that a party becomes a Withdrawing Party, it will be entitled to the return of its funded amounts pursuant to the Settlement Agreement (for clarity, upon such funds, if any, becoming available pursuant to the Settlement Agreement), but, for greater certainty, it will not be entitled to a distribution pursuant to the Settlement Agreement. In the event the Wholesale Express Monitor becomes a Withdrawing Party, the Receiver shall immediately thereafter have carriage of the Groupe Grégor Proceedings, and the Wholesale Express Monitor shall cooperate with the Receiver, and take all such reasonable steps and actions and execute all such documents as may be reasonably requested by the Receiver,

in order to enable the Receiver to pursue the Groupe Grégor Claim and the Groupe Grégor Proceedings.¹¹

16. The Receiver consulted with MBL Administrative Agent LLC, the senior secured creditor of the Debtors and the applicant in these proceedings, in connection with the Groupe Grégor Settlement, and the Groupe Grégor Settlement is supported by the Applicant.¹²

17. The Groupe Grégor Settlement was approved by Order of the Quebec Court on December 10, 2024 (the “**Quebec Approval Order**”).¹³

18. The Groupe Grégor Settlement remains subject to the approval of this Court pursuant to the terms of the Settlement Agreement and the Quebec Approval Order.

III. ISSUES AND LAW

A. The Settlement Should be Approved

(i) The Receiver is authorized to enter into the Settlement Agreement

19. Paragraphs 3(h) and (j) of the Receivership Order grant the Receiver the power to settle any indebtedness owing to the Debtors and to settle or compromise any proceeding:¹⁴

THIS COURT ORDERS that 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:

[...]

¹¹ Eighth Report at para. 30 and Appendix A, MR, Tab 3, p. 29-31, and Tab 3(A), p. 36.

¹² Eighth Report at para.32, MR, Tab 3, p. 31.

¹³ Eighth Report at para.33 and Appendix B, MR, Tab 3, p. 31 and Tab 3(B), p. 48.

¹⁴ [Receivership Order dated December 22, 2023.](#)

(h) **to settle, extend or compromise any indebtedness** owing to the Debtors

[...]

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, 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; [Emphasis added]

20. The Receiver agreed to the Groupe Grégor Settlement pursuant to the above-noted powers granted to it under the Receivership Order. The Receiver has provided notice of the Groupe Grégor Settlement to all parties on the Service List and is seeking Court approval of the Groupe Grégor Settlement.

(ii) The test for settlement approval is met

21. In the context of an insolvency proceeding, the Court will consider the following key factors in assessing whether to approve a settlement agreement:

- (a) whether the settlement is fair and reasonable;
- (b) whether it provides substantial benefits to other stakeholders; and
- (c) whether it is consistent with the purpose and spirit of the relevant insolvency legislation.¹⁵

22. In the context of a receivership proceeding, Courts will also often take into consideration the factors set out by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.* for the

¹⁵ [Maple Bank GmbH, Re](#), 2016 ONSC 7218 (“*Maple Bank*”) at [para. 8](#); See also [Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.](#), 2013 ONSC 1078 at [para. 49](#) and [Robertson v. ProQuest Information & Learning Co.](#), 2011 ONSC 1647 at [para. 22](#).

approval of sale transactions:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been unfairness in the working out of the process.¹⁶

23. The Court has held that in connection with a settlement, a receiver must consider the available information and use its expertise to determine how to maximize the value of the rights subject to the settlement, and that in seeking to settle a claim, the receiver can meet its obligations where the proposed compromise is commercially reasonable.¹⁷

24. It is also appropriate for Courts to take into account the business judgment of the court officer that was involved in the negotiation of the settlement where that settlement raises complex issues or where the receiver is otherwise in a better position to evaluate the merits of the settlement.¹⁸ That is, with respect, the case here. The Receiver managed the litigation against the Wholesale Express Monitor for several months, and had the benefit of experienced counsel in

¹⁶ [Royal Bank of Canada v. Soundair Corp.](#), 1991 CanLII 2727 (ON CA) (“*Soundair*”). Examples of this Court applying the *Soundair* factors in settlement approval motions brought in receivership proceedings include [Bakemates International Inc., Re](#), 2003 CanLII 41385 (ON SC) at [paras. 13-19](#), affirmed [2004] O.J. No. 2463 (C.A.) (“*Bakemates*”) and [IWHL Inc., Re](#), 2011 ONSC 5672 (Commercial List) (“*IWHL*”) at [paras. 4-5](#).

¹⁷ *IWHL* at [para. 6](#).

¹⁸ [Maple Bank](#) at [para. 9](#); [Nortel Networks Corp., Re](#), 2010 ONSC 1096 (Commercial List) at [paras. 34-35](#). See also [Crown Trust Co. et al. v Rosenberg et al.](#), 1986 CanLII 2760 (ON SC) at [paras. 83-85](#) addressing the importance of the Receiver’s role and business judgment in the context of a sale approval motion.

Quebec (Woods LLP) and its counsel in these proceedings (Goodmans LLP). The Receiver was in a good position to assess the Settlement Agreement and its judgment should carry significant weight.

25. The Receiver respectfully submits that the criteria set out in *Maple Bank* and *Soundair* are satisfied for the following reasons:

- (a) **Sufficient effort was made to obtain the best price:** The Groupe Grégor Settlement is the product of extensive effort by the Receiver to advance its position in the Groupe Grégor Claim Assignment. As described above, the Groupe Grégor Claim Assignment was first heard before the Quebec Court in the Wholesale Express CCAA Proceedings on July 16, 2024, and subsequently adjourned until the December 10, 2024, to allow the parties to file additional evidence and argument.

Following the adjournment, the Wholesale Express Monitor and the Receiver both filed additional evidence. In parallel, the Wholesale Express Monitor and the Receiver attempted to negotiate a mutually agreeable settlement of the Groupe Grégor Claim Assignment that would divide both the litigation costs and potential recovery relating to the underlying Groupe Grégor Proceedings.

In the Receiver's view, the 70/30 distribution agreed upon in the Groupe Grégor Settlement reflects a fair assessment of the Receiver's view of the underlying potential litigation risk in connection with the further litigation of the Groupe Grégor Claim Application. The potential recovery in the Groupe Grégor Proceedings (amounting to 30% of \$7,920,118, plus interest) is significant, and

would represent a favourable result for the benefit of the Debtors and their stakeholders if successfully recovered.

The Receiver believes that further negotiations would not have produced a better outcome.

- (b) **The interests of all parties have been considered:** The Receiver consulted with the Applicant, the senior secured creditor of the Debtors. The Settlement Agreement has the potential to result in significant realizations for the Debtors' estate for the benefit of the Debtors' creditors. No other creditors will be affected by the Settlement Agreement.
- (c) **The settlement negotiations were conducted with integrity:** The settlement negotiations were conducted with integrity and due diligence and in good faith. There is no suggestion that they were not. The Receiver has not received any objections or concerns regarding the Settlement Agreement.
- (d) **There was no unfairness:** In the Receiver's view, there has been no unfairness in the conduct of the settlement negotiations. The negotiations were robust and achieved favourable results for the benefit of the Debtors and their stakeholders, and achieved a consensual resolution to Groupe Grégor Claim Application.

26. The Receiver respectfully recommends that this Court approve the Groupe Grégor Settlement for the following reasons:

- (a) the 70/30 cost and recovery distribution agreed upon in the Groupe Grégor Settlement reflects a fair assessment of the Receiver's view of the underlying

potential litigation risk in connection with the further litigation of the Groupe Grégor Claim Application;

- (b) the Groupe Grégor Settlement eliminates further time and legal costs being expended in defending against the Groupe Grégor Claim Application (and any potential appeals thereof); and
- (c) the Groupe Grégor Settlement provides for potential significant recovery to the Debtors' estate from the Groupe Grégor Proceedings (30% of up to \$7,920,118, plus interest if the Group Grégor Claim is successfully recovered).

27. The Receiver believes that the Groupe Grégor Settlement is in the best interests of the Debtors and their stakeholders. It provides for the resolution of the dispute among the Receiver and the Wholesale Express Monitor on terms and conditions that the Receiver believes are fair and reasonable in the circumstances, including taking into account the potential litigation risks in connection with the further litigation of the Groupe Grégor Claim Application.

IV. ORDER SOUGHT

28. The Receiver respectfully submits that it is appropriate for this Court to approve the Groupe Grégor Settlement pursuant to the proposed Settlement Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF January, 2025.

Per:



GOODMANS LLP
Lawyers for the Receiver,
FTI Consulting Canada Inc.

SCHEDULE A**LIST OF AUTHORITIES**

1. [*Bakemates International Inc., Re*](#), 2003 CanLII 41385 (ON SC); aff'd [[2004 O.J. No. 2463](#)]
[\(C.A.\)](#)
2. [*Crown Trust Co. et al. v Rosenberg et al.*](#), 1986 CanLII 2760 (ON SC)
3. [*IWHL Inc., Re*](#), 2011 ONSC 5672 (Commercial List)
4. [*Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*](#), 2013
ONSC 1078 (Commercial List)
5. [*Maple Bank GmbH, Re*](#), 2016 ONSC 7218
6. [*Nortel Networks Corp., Re*](#), 2010 ONSC 1096 (Commercial List)
7. [*Robertson v. ProQuest Information & Learning Co.*](#), 2011 ONSC 1647 (Commercial List)
8. [*Royal Bank of Canada v. Soundair Corp.*](#), 1991 CanLII 2727 (ON CA)

SCHEDULE B
STATUTORY REFERENCES

N/A

MBL ADMINISTRATIVE AGENT II -and-
LLC

TRADE X GROUP OF COMPANIES
INC. et al

Court File No. CV-23-00710413-00CL

Applicant

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