

**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

and

**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

**FOURTH REPORT OF THE RECEIVER,
FTI CONSULTING CANADA INC.**

June 18, 2024

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

**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**

**FOURTH INTERIM REPORT OF FTI CONSULTING CANADA INC., AS
COURT-APPOINTED RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)**

June 18, 2024

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

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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
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**FOURTH INTERIM REPORT OF FTI CONSULTING CANADA INC., AS
COURT-APPOINTED RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)**

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A. INTRODUCTION AND PURPOSE

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 22, 2023 (the “**Receivership Order**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the following property (collectively the “**Property**”) of Trade X Group of Companies Inc. (“**Trade X Parent**”), 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. (“**Techlantic**”) and TX Ops Canada Corporation (“**TX Canada**”) (collectively, “**Trade X**” or the “**Debtors**”):
 - (a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;
 - (b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc. (“**Wholesale Express**”)) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and
 - (c) certain assets, undertakings and properties of TX Canada defined as the “TX Canada Collateral” in the Affidavit of Westin Lovy sworn December 4, 2023.

2. The application was brought by MBL Administrative Agent II LLC (the “**Agent**” or the “**Applicant**”) 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) (together, the “**Lenders**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended, and shall be referred to herein as the “**Receivership**”.

3. This report is the Fourth Interim Report of the Receiver (the “**Fourth Report**”) prepared pursuant to section 246(2) of the BIA for the period from December 22, 2023 (the

“**Receivership Date**”) to June 18, 2024. The purpose of this Fourth Report is to provide information the Court on the following:

- (a) the activities of the Receiver since the Receivership Date;
- (b) the receipts and disbursements of the Receiver for the period from December 22, 2023 to May 31, 2024; and
- (c) information about the anticipated next steps and activities of the Receiver in connection with the Receivership.

B. TERMS OF REFERENCE

4. In preparing this Fourth Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, the Debtors’ books and records, and discussions with certain employees and former employees of the Debtors (collectively, the “**Information**”). Future oriented financial information relied upon in the Fourth Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.
5. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would, wholly or partially, comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
6. The Receiver has prepared this Fourth Report solely for the use of the Court and the stakeholders in these proceedings and will make a copy of the Fourth Report, and related documents, available on the Receiver’s website at <http://cfcanada.fticonsulting.com/TradeX/>.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

8. Unless otherwise stated herein, capitalized terms not defined in this Fourth Report have the meaning ascribed to them in the Receivership Order.

C. SUMMARY OF THE RECEIVER’S ACTIVITIES SINCE THE RECEIVERSHIP DATE

Control of and Realization on the Property

9. From and after the Receivership Date, the Receiver took steps to secure possession and control over the Property, including the proceeds, receipts and disbursements arising out of or from the Property. These steps included, but were not limited to, the following:
- (a) Transfer of Funds to the Receiver’s Accounts: The Receiver worked closely with the Royal Bank of Canada (“RBC”) on the transfer of funds from the Debtors’ bank accounts at RBC (the “RBC Accounts”) to the Receiver’s trust account established in respect of the Debtors (the “Receiver’s Trust Account”). The Receiver requested closure of the RBC Accounts on or about April 17, 2024. The Receiver is also continuing to work with TX OPS Indiana Limited (a U.S. non-Debtor subsidiary of Trade-X) and Tradexpress Auto Nigeria Ltd. (a Nigerian non-Debtor subsidiary of Trade X) to recover funds in accounts at Zenith Bank in Nigeria, which funds the Receiver understands are proceeds of the Debtors’ Property, and thus form part of the Property.
 - (b) Collection of Accounts Receivable: The Receiver issued notices to domestic and foreign receivable parties for the collection of outstanding amounts owing to the Debtors, based on the books and records of the Debtors. The Receiver has collected funds from one party and deposited such amounts in the Receiver’s Trust Account.
 - (c) Sale of Inventory: The Receiver managed the sale of two vehicles in Canada and coordinated the sale of 12 vehicles in foreign jurisdictions to customers. The Receiver collected the proceeds from such inventory sales and deposited such proceeds into the Receiver’s Trust Account. In addition, at the commencement of the Receivership, the books and records of the Debtors indicated there were 40 vehicles among the Debtors’ inventory. The Receiver reviewed and traced

payments in respect of each of such vehicles, confirming such vehicles had been sold and paid for prior to the Receivership.

- (d) Return of Deposits: The Receiver issued notices to parties that, based on the books and records of the Debtors, appear to be holding various deposit amounts previously funded by the Debtors. Certain of these deposits were returned by the applicable parties to the Receiver, and the Receiver deposited such funds into the Receiver's Trust Account.
- (e) Tax Refunds: The Receiver has actively worked with the Canada Revenue Agency (the "CRA") on the filing of HST returns, identification of priority tax claims, and the reconciliation of HST tax refunds. The Receiver is awaiting the release of approximately \$200,000 of HST tax refunds by the CRA after completion of the audit.
- (f) Books and Records: The Receiver secured an electronic backup of the books and records of the Debtors.
- (g) Operating Costs: The Receiver has continued to pay, on behalf of the Debtors, for certain operating costs relating to the Debtors for services that are required to wind down the estate. These services include insurance renewal costs, technology and cloud hosting services, storage fees for vehicles and certain other assets, commissions paid to brokers to assist in the sale of vehicles, and certain other costs.
- (h) Closure of Vendor Accounts: The Receiver has reached out to various vendors of the Debtors, based on the books and records of the Debtors, to close any open accounts relating to the Debtors.
- (i) Sale of Business and Assets: The Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024, soliciting interest in the assets and business of Trade X and Techlantic. The Receiver also reached out to a potential interested party to solicit interest in the sale of Trade X's technology platform and intellectual property, which party had previously expressed an interest in acquiring the technology platform prior to the

Receivership. The Receiver received limited interest or inquiries to its notices, none of which have resulted in any viable offers for any assets or the businesses of the Debtors.

- (j) Office Equipment/Furniture: The Receiver is aware of two separate storage spaces that hold office equipment and furniture of the Debtors. The Receiver has access to one of the two facilities and is working to dispose of certain IT equipment while maintaining the books and records at the storage site. The proceeds from the sale of such equipment are not expected to be material. The Receiver is also aware that certain of the Debtors' office furniture and equipment were transferred to a second storage facility (under the personal account of the Debtors' founder, Ryan Davidson) when the head office location was vacated on or around December 1, 2023, prior to the Receivership. The Receiver is advancing its efforts to access to this facility. The estimated realizable value of the furniture and equipment is not expected to be material.

Employee Matters

10. At the Receivership Date, the Debtors employed 16 individuals. The employment of 14 individuals has been terminated since the Receivership Date (two terminations on December 29, 2023; two terminations on January 12, 2024; one termination on January 19, 2024; one termination on January 26, 2024; two terminations on February 9, 2024; three terminations on March 1, 2024 and three terminations on April 19, 2024). As at the date of this Fourth Report, there are two active employees of TX Canada remaining.
11. The Receiver assisted in the resumption of ADP payroll processing, which had been ceased by the Debtors prior to the Receivership Date (with the last pre-Receivership payroll having been processed on or about October 6, 2023). The Receiver has continued to make regular bi-weekly payroll payments to active employees.
12. The Receiver has made the required filings under the *Wage Earner Protection Program Act* (“**WEPPA**”). As at the date of this Fourth Report, the Receiver has provided WEPPA

packages to 37 former employees, and has received 36 proof of claims that have been submitted to Service Canada for processing.

Notice to Creditors

13. On or before January 2, 2024, the Receiver caused to be sent to the Superintendent of Bankruptcy and the known creditors of each of the Debtors as at the Receivership Date:
 - (a) a notice of the Receiver’s appointment in the prescribed form in accordance with section 245(1)(b) of the BIA; and
 - (b) a copy of the Receiver’s statement prepared pursuant to Section 246 of the BIA.

Website and Receiver Contacts

14. The Receiver has established a website at <http://cfcanada.fticonsulting.com/TradeX/> at which the Receiver posts copies of court orders, motion materials and reports filed in the Receivership. In addition, the Receiver has created a dedicated email address, TradeX@fticonsulting.com, and dedicated telephone numbers, 416-649-8060 and 1-833-656-3978, at which the Receiver can be contacted.

Stakeholder Inquiries and Communications

15. The Receiver has and continues to respond to various stakeholder inquiries in connection with the Receivership. The Receiver has, among other things, received numerous queries from parties that claim to be investors of Trade X and/or related entities in various capacities. As of the date of this Fourth Report, the Receiver has gathered certain information relating to 34 parties who appear to have invested in Trade X or Trade X related entities. The Receiver continues to review such matters.
16. The Receiver has also continued regular communications with the Applicant in connection with matters relating to the Receivership.

Receiver's Investigations, Forensic Review, and Litigation Matters

17. The investigations, forensic review and litigation matters that have been advanced by the Receiver since the commencement of the Receivership are discussed in detail in the First Report of the Receiver dated February 1, 2024 (the "**First Report**"), the First Supplemental Report to the First Report of the Receiver dated April 3, 2024 (the "**Supplement to the First Report**"), the Second Report of the Receiver dated March 27, 2024 (the "**Second Report**"), and the Third Report of the Receiver dated May 17, 2024 (the "**Third Report**"). Copies of the First Report, the Supplement to the First Report, the Second Report and the Third Report (collectively, the "**Prior Reports**") are attached hereto, without appendices, as Appendix "A", "B", "C" and "D", respectively. Certain of such activities are briefly set out below and otherwise the activities of the Receiver described in the Prior Reports are not repeated herein. This section of the Fourth Report should be read in conjunction with the Prior Reports.
18. The Receiver is continuing to advance its work relating to the various investigations, forensic review and litigation matters and will provide further updates in due course, as appropriate, in future reports of the Receiver.

Motions Regarding the Techlantic Funds

19. As discussed in the First Report, on or about January 3, 2024, the Receiver learned that 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together with 130 Ontario, the "**Van Essen Companies**") received proceeds from the sale of Property totaling approximately \$1.7 million (the "**Techlantic Funds**") and purported to apply those proceeds to repay an alleged debt owed by Techlantic to the Van Essen Companies (the "**Purported Set-Off**"). At the time of the First Report, the Receiver was not, at that stage, in a position to reach a conclusion with respect to entitlement to the Techlantic Funds, which assessment required further review of evidence. The Receiver's primary concern, at that time, was to preserve the Techlantic Funds so that they could ultimately be paid to the appropriate party. Given the Van Essen Companies' refusal to pay the Techlantic Funds to the Receiver (without prejudice to their claims), the Receiver sought to bring a motion for an Order directing the Van Essen Companies to pay the

Techlantic Funds to the Receiver (as subsequently amended, the “**First Motion**”). The Receiver was of the view that, among other things, the Purported Set-Off was prohibited by the interim Order granted by the Court in these proceedings on December 11, 2023 (the “**Interim Order**”).

20. As discussed in the Supplement to the First Report, the Van Essen Companies served a cross-motion (the “**Van Essen Cross-Motion**”) seeking a final determination that the Van Essen Companies are entitled to the Techlantic Funds and that the Purported Set-Off was a valid transaction. The Supplement to the First Report sets out information relevant to the First Motion and the Van Essen Cross-Motion that was discovered by the Receiver after the First Report was served, including the basis for the Receiver’s conclusion that Techlantic and the Van Essen Companies were not dealing at arm’s length and that the Purported Set-Off effected a preference.
21. As also discussed in the Supplement to the First Report, based on the continued investigation of the Receiver, the Receiver amended the First Motion to seek (a) a final determination with respect to entitlement to the Techlantic Funds, as opposed to preliminary relief to deliver the Techlantic Funds to the Receiver pending a final determination as initially sought in the First Motion; and (b) a declaration that the Purported Set-Off is void as against the Receiver because it was a preference prohibited by section 95 of the BIA.
22. The First Motion and the Van Essen Cross-Motion were initially scheduled by the Court to be heard on April 3, 2024. The parties subsequently agreed to adjourn the motions, with a new date to be set by the Court. On April 3, 2024, the Court rescheduled the First Motion and the Van Essen Cross-Motion for June 26, 2024. On May 16, 2024, the First Motion and the Van Essen Cross-Motion were further adjourned, at the request of the Van Essen Companies. The First Motion and the Van Essen Cross-Motion were rescheduled for July 26, 2024, to allow for sufficient time between the Van Essen Stay Motion (as defined below) and the First Motion and the Van Essen Cross-Motion.

Motion Regarding Expanded Investigative Powers

23. As discussed in the Second Report, the Receiver encountered a number of challenges in connection with the state of the Debtors' books and records, including:
- (a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;
 - (b) the Debtors' books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver;
 - (c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and
 - (d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.
24. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.
25. The Receiver has also tried to obtain information from third parties (including potential related parties) that engaged in transactions with the Debtors in order to understand those transactions. The Receiver received incomplete responses and, in some cases, no response at all.

26. In light of the foregoing, the Receiver determined that it required expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. On April 3, 2024, the Receiver sought and obtained from the Court an order (the "**Investigative Powers Order**") which, among other things, enhanced the Receiver's investigative powers, including granting it the right to examine certain specified persons under oath and compel the production of relevant documents. The Investigative Powers Order also authorized (but does not require) the Receiver to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate.

Van Essen Companies' Stay Motion

27. As discussed in the Third Report, for the first time on April 5, 2024, the Van Essen Companies asserted that the Receiver reviewed allegedly privileged documents of the Van Essen Companies (the "**Allegedly Privileged Documents**"). On April 16, 2024, the Van Essen Companies served a motion (the "**Van Essen Stay Motion**") seeking, among other things, (a) an Order striking out all evidence submitted by the Receiver in the First Motion and Van Essen Cross-Motion, (b) an Order granting judgment in the First Motion and Van Essen Cross-Motion in favour of the Van Essen Companies, and (c) an Order staying the rights and claims of the Receiver and Applicant and any related parties, without prejudice to the rights of the Van Essen Companies and Wouter Van Essen. The claims alleged by the Van Essen Companies and the requested relief are set out in further detail in the materials filed by the Van Essen Companies in respect of the Van Essen Stay Motion and are not further summarized herein.
28. The Third Report provided the Receiver's response to the Van Essen Stay Motion. As discussed in the Third Report, since the Van Essen Companies initially raised their concerns about privilege, the Receiver tried to work with the Van Essen Companies to address any legitimate concerns relating to the Allegedly Privileged Documents in the Database (as defined in the Third Report). The Receiver does not believe that the Van Essen Companies should benefit from any inadvertent review of privileged documents that may have occurred, particularly given the Van Essen Companies' use of the Techlantic

Server (as defined in the Third Report) without the Receiver's permission, their delay in raising their privilege concerns, and the fact that the Receiver has not reviewed any privileged documents. As discussed in the Third Report, the Receiver believes that the relief sought by the Van Essen Companies pursuant to the Van Essen Stay Motion is not appropriate, and should not be granted. The Receiver's response to the Van Essen Stay Motion is further supplemented in additional materials filed in response to the Van Essen Stay Motion and not further summarized herein.

29. The Van Essen Stay Motion was initially scheduled for June 11, 2024, and, at the request of the Van Essen Companies, subsequently adjourned by the Court to June 17, 2024. The matter was heard by Justice Cavanagh on June 17, 2024, and is currently under reserve.
30. Based on the concerns raised by the Van Essen Companies regarding Allegedly Privileged Documents being contained in the Database, access to the Database was ceased in full during the period of approximately April 5, 2024 to approximately June 3, 2024. Certain parts of the Database were made available again on or around June 3, 2024 pursuant to an interim agreement with the Van Essen Companies. The Receiver is trying to work with the Van Essen Companies to remove all of the Allegedly Privileged Documents so that the complete Database can be accessed by the Receiver. To date, the Van Essen Companies and the Receiver have not been able to agree to a protocol for removing Allegedly Privileged Documents from the Database and this issue will need to be addressed.

Wholesale Express CCAA Proceedings

31. Wholesale Express is a subsidiary of Trade X, but is not one of the Debtors subject to the Receivership. Separate proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") were commenced in respect of Wholesale Express in Quebec (the "**Wholesale Express CCAA Proceedings**").
32. The Receiver understands that, 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.

Wholesale Express Claims Process

33. The Receiver, on behalf of the Debtors, filed on March 25, 2024, a proof of claim in the Wholesale Express CCAA Proceedings in respect of intercompany claims against Wholesale Express based on the books and records of the Debtors (the “**Trade X Claim**”). On May 30, 2024, the Court-appointed monitor in the Wholesale Express CCAA Proceedings (the “**Wholesale Express Monitor**”) issued a Notice of Disallowance in respect of the Trade X Claim (the “**Notice of Disallowance**”). Based on various discussions and exchange of additional information with the Wholesale Express Monitor, and the review of the Notice of Disallowance, the Receiver determined not to dispute the Notice of Disallowance.

Groupe Grégor Claim

34. The Receiver understands that, based on the books and records of the Debtors, on October 24, 2023, Wholesale Express and Trade X Parent entered into an Assignment of Credit (the “**Groupe Grégor Claim Assignment**”), pursuant to which Wholesale Express assigned to Trade X Parent all of Wholesale Express’ right, title, interest and property into the amount of \$7,920,118, plus interest, owing by Groupe Grégor Inc. (“**Groupe Grégor**”) to Wholesale Express (the “**Groupe Grégor Claim**”).
35. On February 15, 2024, the Wholesale Express Monitor served an application (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; 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 in the Groupe Grégor Claim referred to in the Groupe Grégor Claim Assignment, is the property of ResidualCo 2.

36. The Receiver is continuing to review the books and records of the Debtors to determine its position on the Groupe Grégor Claim Application. This review had been delayed as a result of matters relating to the Van Essen Stay Motion; more particularly due to the interruption and delay to the Receiver's access to the Receiver's Database (as discussed above), and the resulting delay in the Receiver's ability to review potentially relevant documentation contained therein.
37. The Groupe Grégor Claim Application was scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. The Receiver has advised counsel to the Monitor that it has been unable to appropriately respond to the motion as a result of the lack of access to the Database for an extended period of time. The Receiver and the Wholesale Express Monitor agreed to adjourn the hearing date to July 16, 2024, to permit time for the Receiver to review relevant information and respond on the Groupe Grégor Claim Application.

Security Review

38. The current indebtedness owing by the Debtors to the Agent and the Lenders is approximately \$18 million (equivalent of approximately US\$13 million), excluding accrued interest.
39. At the request of the Receiver, Goodmans LLP, counsel to the Receiver (the "**Receiver's Counsel**"), conducted a review of the security granted by the Debtors to the Agent and the Lenders (the "**Secured Parties**"), and issued a written opinion to the Receiver regarding the validity and perfection of the security held by the Agent for the Lenders in respect of the Lenders (the "**Security Opinion**").
40. The Security Opinion concludes that, subject to customary qualifications and assumptions set out therein:
- (a) the Security Agreements (as defined in the Security Opinion) create valid security interests in favour of the Secured Parties in the Collateral¹ specified therein to

¹ "**Collateral**" means all of the property purported to be charged under any Security Agreement and to which the *Personal Property Security Act* (Ontario) (the "**Ontario PPSA**") applies.

which the Ontario PPSA applies and in which each Obligor² has rights to secure the payment and performance of the obligations described therein as being secured thereby; and

- (b) registration has been made in all public offices provided for under Ontario Law where such registration is necessary to perfect the security interest created by the Security Agreements in the Collateral to which the Ontario PPSA applies and in which each Obligor has rights.

D. RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO May 31, 2024

41. The Receiver's receipts and disbursements for the period from December 22, 2023 (the Receivership Date) to May 31, 2024 are summarized in the table below (and further discussed in Section C above):

Category	Total
Receipts	\$ 4,507,421
10000 - Cash in bank	2,512,212
11000 - Sale of assets - other	900
12125 - Accounts receivable	39,716
13350 - Sale of inventory	1,606,625
14157 - HST Refund	237,882
33160 - Bank interest	33,996
48526 - Deposit Refund	48,536
48547 - Return of Payment	27,555
Disbursements	(2,628,139)
60200 - Filing fees paid to Official Receiver	(75)
64080 - Receiver's fees and costs	(1,436,739)
65127 - Legal fees/disbursements	(401,886)
68870 - HST Paid	(261,920)
80650 - Employee Related Costs	(353,422)
81155 - Operating Expense	(174,097)
FX Differences - Internal transfers	(34,203)
Net Cash Flows	\$ 1,845,080
Opening Cash	-
Ending Cash	1,845,080

² "Obligors" mean, collectively, 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.

42. Professional fees include the payment of the fees and disbursements incurred by the Receiver in the course of performing its duties in the Receivership, which includes the fees incurred for the services provided by the forensics team at FTI Consulting as part of the Receiver's investigations, and the fees and disbursements of the Receivers' counsel incurred in assisting the Receiver with performing its duties in the Receivership.

E. ONGOING ACTIVITIES IN THE RECEIVERSHIP

43. The Receiver is continuing to advance its mandate pursuant to the Receivership Order. Remaining outstanding matters in the Receivership include:
- (a) realization on remaining Property, including the collection of remaining funds, receivables, deposits and tax refunds, and sale of sundry assets, and further exploring potential interest in the sale of Trade X's technology platform and intellectual property;
 - (b) finalizing the wind-down of the Debtors, including the termination of remaining employees at the appropriate time;
 - (c) addressing certain remaining tax matters with the CRA;
 - (d) advancing and/or responding to the currently outstanding motions in these proceedings, including the First Motion, the Van Essen Cross-Motion and the Groupe Grégor Claim Application;
 - (e) continuing to advance the Receiver's ongoing investigation and forensic review efforts, including the examination of certain key parties pursuant to the Investigative Powers Order; and
 - (f) based on the results of the Receiver's ongoing investigation and forensic review, assessing whether any additional claims ought to be advanced by the Receiver on behalf of the Debtors for the benefit of stakeholders.

44. The Receiver respectfully submits this Fourth Report to the Court.

FTI Consulting Canada Inc.,
solely in its capacity as Court-appointed Receiver of certain
property of 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, and not
in its personal or corporate capacity



Paul Bishop
Senior Managing Director

1412-1977-8060



Kamran Hamidi
Managing Director

A

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

**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**

**FIRST REPORT OF FTI CONSULTING CANADA INC., AS COURT-
APPOINTED RECEIVER**

February 1, 2024

**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

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A. INTRODUCTION AND PURPOSE

1. This is the First Report of FTI Consulting Canada Inc. (“**FTI Consulting**”) in its capacity as receiver and manager (the “**Receiver**”), without security, of the following property (collectively the “**Property**”) of 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. (“**Techlantic**”) and TX Ops Canada Corporation (collectively, “**Trade X**” or the “**Debtors**”):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. (“**Trade X Parent**”) and TX OPS Canada Corporation (“**TX Canada**”)) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the “TX Canada Collateral” in the Lovy Affidavit (as defined below).

2. By Order dated December 22, 2023 (the “**Receivership Order**”) the Receiver was appointed and authorized to (among other things) preserve the Property and any proceeds thereof, including Property belonging to Techlantic, one of the Debtors.

3. The Receiver learned that third parties, 1309767 Ontario Ltd. (“**130 Ontario**”) and 2601658 Ontario Ltd. (“**260 Ontario**”, and together with 130 Ontario, the “**Van Essen Companies**”) received proceeds from the sale of Property totaling approximately \$1.7 million (the “**Techlantic Funds**”) and purported to apply those proceeds to repay a debt owed by Techlantic to the Van Essen Companies.

4. The Receiver engaged with the Van Essen Companies and the Debtors to understand the transactions at issue, and it has formed the preliminary view that the Techlantic Funds are

Property within the meaning of the Receivership Order. The Van Essen Companies do not agree, and they have articulated various claims to the Techlantic Funds.

5. The Receiver is not, at this stage, in a position to reach a final conclusion with respect to entitlement to the Techlantic Funds. Assessing the claims asserted by the Van Essen Companies will require further time, and more evidence.
6. The Receiver's primary concern, at this stage, is to preserve the Techlantic Funds so that they can ultimately be paid to the appropriate party. The Receiver asked the Van Essen Companies to pay the Techlantic Funds to it, without prejudice to their claims. The Van Essen Companies refused. As a result, the Receiver has brought a motion for an Order directing the Van Essen Companies to pay the Techlantic Funds to the Receiver. The Receiver can then preserve the funds while it determines who is entitled to them.
7. This First Report sets out information relevant to the Receiver's motion, and the basis for the Receiver's recommendation that the Van Essen Companies be ordered to pay the Techlantic Funds to the Receiver.

B. TERMS OF REFERENCE

8. In preparing this Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, the Debtors' books and records, and discussions with certain employees and former employees of the Debtors (collectively, the "**Information**"). Future oriented financial information relied upon in the Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.
9. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would, wholly or partially, comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

10. The Receiver has prepared this Report solely for the use of this Court and the stakeholders in these proceedings and will make a copy of the Report, and related documents, available on the Receiver's website at <http://cfcanada.fticonsulting.com/TradeX/>.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
12. Capitalized terms not defined in this Report have the meaning ascribed to them in the Receivership Order.

C. **BACKGROUND AND OVERVIEW**

13. The Debtors are primarily involved in operating a business-to-business vehicle-trading platform for car dealerships to purchase inventory from or sell inventory to Canada and overseas markets. Their operations are carried out by a number of entities, including Techlantic.
14. Techlantic, and certain other Debtors, entered into a senior secured revolving credit agreement dated February 5, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). A copy of the Global Facility is attached hereto as **Appendix "A"**.
15. The Debtors' corporate structure and lending arrangements are complex. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Global Facility, as it relates to this motion, is summarized at a very high level below:
 - (a) Techlantic acquired vehicles for sale;
 - (b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");
 - (c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**"); and

- (d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the “**Collection Accounts**”).
16. The operation of the Global Facility, and some background relating to the dealings between the parties, are set out in the Affidavit of Westin Lovy sworn December 4, 2023 (the “**Lovy Affidavit**”), a copy of which is attached hereto (without exhibits) as **Appendix “B”**. The Receiver has not confirmed that all of the information set out in the Lovy Affidavit is accurate, although that information was not challenged by cross-examination or contradicted by other evidence at (or in advance of) the Receivership application.

D. THE RECEIVERSHIP

17. On December 4, 2023, MBL brought an application (the “**Receivership Application**”) to appoint FTI Consulting as the Receiver of the Property pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended.
18. The Receivership Application was originally returnable on December 11, 2023. By Order of Justice Penny dated December 11, 2024 (the “**Interim Order**”), a copy of which is attached hereto as **Appendix “C”**, the hearing of the Receivership Application was postponed to December 22, 2023 (the “**Postponed Hearing**”). FTI Consulting was also appointed Information Officer in respect of the Debtors.
19. The adjournment was granted to provide the Debtors additional time to complete a sale transaction involving a party related to the Debtors that is not subject to these proceedings. The Interim Order sought to otherwise preserve the *status quo* in respect of the Debtors.
20. The Interim Order imposed a stay of proceedings that prevented any person from exercising any right or remedy against the Debtors from the date of the Interim Order until the Postponed Hearing, except with leave of the Court.

4. **THIS COURT ORDERS that during the Stay Period**, and subject to, *inter alia*, section 101 of the CJA, **all rights and remedies** of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing,

collectively being “Persons” and each being a “Person”) **against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.** [emphasis added]

- 21. The Receivership Application was heard on December 22, 2023, and this Court issued the Receivership Order, among other things, appointing FTI Consulting as the Receiver. A copy of the Receivership Order is attached hereto as **Appendix “D”**.
- 22. The Receivership Order authorized the Receiver to, among other things, take possession of and exercise control over the Property, including (among other things) the Debtor’s assets, undertakings and properties acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and any and all proceeds, receipts and disbursements arising out of it.

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:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- 23. The Receiver is also entitled to receive, preserve and protect the Property, and to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligation.

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:

[...]

- (b) to receive, preserve, and protect 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;

[...]

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

E. THE RECEIVER'S MOTION*(a) The relevant parties*

24. This motion concerns one of the Debtors, Techlantic. Techlantic is one of the entities that purchased and sold vehicles as part of the Debtors' business. The Receiver understands that Techlantic was previously owned and operated by Wouter Van Essen ("**Wouter**") before being sold to Trade X.
25. Wouter's son, Eric Van Essen ("**Eric**"), is an employee and former director of Techlantic. The Receiver understands that Eric was primarily responsible for the transactions that are described below, on behalf of Techlantic. By e-mail dated February 10, 2023, Eric advised the Lenders that he had accepted the position at Trade X that "will oversee the internal processes related to funding". A copy of this email is attached hereto as **Appendix "E"**.
26. Wouter is the principal of each of the Van Essen Companies. The Van Essen Companies have, in the past, sold vehicles to Techlantic.
27. In 2022, the Van Essen Companies sold to Techlantic 38 vehicles (the "**2022 Vehicles**"). Invoices provided by the Van Essen Companies in respect of the 2022 Vehicles are attached hereto as **Appendix "F"**.
28. According to the Debtors' accounting records, ownership of the 2022 Vehicles was transferred from Techlantic to another member of the Trade X group, TX OPS Indiana Limited ("**TX Indiana**"). TX Indiana sold the 2022 Vehicles to end users. However, TX Indiana did not pay Techlantic and Techlantic did not pay the Van Essen Companies for the 2022 Vehicles. The Receiver does not, at this stage, know why TX Indiana and Techlantic did not pay the Van Essen Companies for the 2022 Vehicles or what happened to the proceeds that TX Indiana received from the sale of the 2022 Vehicles.
29. According to Techlantic's accounting records, it owes \$1,462,443.74 to 130 Ontario and \$450,144.54 to 260 Ontario, for a total of \$1,912,588.28. This figure amounts to the payable for the 2022 Vehicles.

30. On January 30, 2023, two parties related to Techlantic, 13517985 Canada Inc. o/a Wholesale Express (“**Wholesale Express**”) and the Trade X Parent executed an irrevocable letter of direction to the Debtors’ counsel at Dentons Canada LLP (“**Dentons**”) directing Dentons to pay proceeds from the sale of Wholesale Express totalling \$2,048,583.78 to the Van Essen Companies. The Receiver understands that this sale transaction was not completed and no funds were paid pursuant to the letter of direction.
31. The Receiver understands that Wholesale Express is currently subject to separate proceedings pursuant to the *Companies’ Creditors Arrangement Act*. Pursuant to an Order dated January 12, 2024, the Superior Court of Quebec approved a purchase and sale transaction with respect to Wholesale Express. The transaction closed on January 23, 2024. To be clear, the CCAA transaction is separate from the transaction that was the subject of the letter of direction.

(b) The 2023 Techlantic Vehicles

32. The Receiver’s motion relates to 14 vehicles (the “**2023 Techlantic Vehicles**”) that Techlantic purchased from the Van Essen Companies in 2023. Techlantic sold the 2023 Techlantic Vehicles to a customer named Stephen Zhou for \$1,723,495 (as defined above, the “**Techlantic Funds**”).
33. According to Techlantic’s invoices, these sales occurred between September 2023 and December 2023. Copies of these invoices are attached hereto as **Appendix “G”**.
34. Techlantic sold other vehicles to Mr. Zhou in 2023, and the proceeds from these transactions were deposited into Techlantic’s bank accounts.
35. The Receiver understands that Mr. Zhou is a longstanding customer of both Techlantic and the Van Essen Companies. Mr. Zhou apparently purchases vehicles from Techlantic and sells them to end users in China.
36. Techlantic listed the 2023 Techlantic Vehicles on the Borrowing Base, and received Advances under the Global Facility in respect of each 2023 Techlantic Vehicle. Excerpts from the Borrowing Base listing the 2023 Techlantic Vehicles (which the Receiver has

filtered and highlighted, so only the relevant cars appear) are attached hereto as **Appendix “H”**.

37. According to Techlantic’s accounting records, Techlantic paid the Van Essen Companies in full for the 2023 Techlantic Vehicles. Accordingly, as of the December 22, 2023 receivership date, the only payable outstanding from Techlantic to the Van Essen Companies is \$1,912,588.28, which is equal to the amounts due to the Van Essen Companies for the purchase of the 2022 Vehicles.

(c) The Purported Set-Off

38. Between November 28, 2023 and December 22, 2023, Mr. Zhou paid the amounts owed in respect of the 2023 Techlantic Vehicles. Mr. Zhou did not, however, pay the amounts owed to Techlantic. He paid the Techlantic Funds to the Van Essen Companies.
39. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to advise that the Van Essen Companies had received the Techlantic Funds from Mr. Zhou. Wouter specifically acknowledged that the Techlantic Funds represented “a payment due to Techlantic Ltd. of \$1,723,495”. A copy of this letter is attached hereto as **Appendix “P”**.
40. Wouter claimed to have applied the Techlantic Funds against a debt allegedly owed by Techlantic to the Van Essen Companies on December 20, 2023 (the “**Purported Set-Off**”). To be clear, this debt allegedly owed by Techlantic to the Van Essen Companies is not related to the 2023 Techlantic Vehicles. It is related to the 2022 Vehicles.

(b) Conflicting explanations relating to the 2023 Techlantic Vehicles

41. The Receiver asked Eric why 130 Ontario received proceeds from the sale of vehicles owned by Techlantic. Eric provided the following explanation to the Receiver in the e-mail dated January 16, 2024, a copy of which is attached hereto as **Appendix “J”**.
- (a) Techlantic purchased the 2023 Techlantic Vehicles from 130 Ontario, and listed them on the Borrowing Base;

- (b) The 2023 Techlantic Vehicles were sold to Mr. Zhou's clients in China but listed under Mr. Zhou's name because he "helps with collections";
 - (c) The receivables were paid by Mr. Zhou to 130 Ontario as "part of the historical flow of business" and because 130 Ontario is an "intercompany account"; and
 - (d) 130 Ontario then typically paid the receivable to Techlantic.
42. The Receiver also contacted Mr. Zhou, and asked him to pay the purchase price for the 2023 Techlantic Vehicles to Techlantic since the invoices for the 2023 Techlantic Vehicles required payment to Techlantic. Based on the invoices, payment to the Van Essen Companies did not satisfy Mr. Zhou's obligations. A copy of the Receiver's letter to Mr. Zhou is attached hereto as **Appendix "K"**.
43. Mr. Zhou responded to the Receiver by e-mail dated January 10, 2024. He claimed that he sold the 2023 Techlantic Vehicles to 130 Ontario for export to China and that he did not know that Techlantic had any involvement in the transaction. A copy of Mr. Zhou's email is attached hereto as **Appendix "L"**.
44. Mr. Zhou's explanation is not consistent with the explanations provided by Wouter and Eric, since Mr. Zhou claims he was the *seller* of the vehicles and not the *purchaser*. He also seems to assert that Techlantic did not really own the 2023 Techlantic Vehicles.
45. As noted, Eric advised the Receiver that Techlantic did not send the invoices for the 2023 Techlantic Vehicles to Mr. Zhou and that the invoices were generated for unspecified internal purposes.

(c) The Receiver's Efforts to Recover the Techlantic Funds

46. As noted above, the Interim Order specifically prohibited any exercise of any right or remedy by any person against Techlantic (and the other Debtors). The Purported Set-Off occurred nine days after the Interim Order was issued and only two days before the Receivership Order was issued.

47. By way of letter dated January 4, 2024, counsel to the Receiver (Goodmans LLP) advised counsel to the Van Essen Companies (Rosemount Law) that the Techlantic Funds are Property (as defined in the Receivership Order) of Techlantic and demanded immediate payment of the Techlantic Funds. A copy of that letter is attached hereto as **Appendix “M”**.
48. The Receiver engaged in further correspondence with the Van Essen Companies, through counsel. Correspondence between counsel is attached hereto as **Appendix “N”**.
49. The Van Essen Companies refused to return the Techlantic Funds. They asserted that the Techlantic Funds are not Property, because the Purported Set-Off transaction occurred before the Receivership Order. The Receiver does not agree, because (among other reasons) the Purported Set-Off transaction was prohibited by the Interim Order.
50. The Van Essen Companies also claim that they have a proprietary right to the Techlantic Funds because they sold the 2023 Techlantic Vehicles to Techlantic, their invoices to Techlantic state that title did not transfer to Techlantic until Techlantic made payment in full and Techlantic never made payment in full. However, based on the material reviewed by the Receiver, Techlantic *did* pay for the 2023 Techlantic Vehicles. It failed to pay for different vehicles, the 2022 Vehicles. This distinction is potentially relevant to the proprietary rights asserted by the Van Essen Companies.
51. In addition, the Receiver has received different information about the 2023 Techlantic Vehicles from Mr. Zhou, Eric and Wouter. The Receiver will need to conduct a further investigation to determine the facts relating to these transactions and whether those facts support the claims asserted by the Van Essen Companies.
52. The Receiver’s motion does not seek a final determination with respect to the Van Essen Companies’ entitlement to the Techlantic Funds. At this stage, it seeks only to preserve the Techlantic Funds in accordance with the terms of the Receivership Order so that any competing claims to the Techlantic Funds can be addressed in an orderly manner.
53. Furthermore, and for clarity, this motion does not seek to address other potential matters among the Van Essen Companies and the Debtors at this stage. The Receiver notes that it

is reviewing additional information and further investigating matters relating to other transactions relating to the Van Essen Companies and the Debtors.

F. CONCLUSION AND RECOMMENDATION

54. For the reasons stated in this First Report, the Receiver respectfully requests and recommends that the Court grant the requested Order requiring the Van Essen Companies to transfer the Techlantic Funds to the Receiver.

The Receiver respectfully submits this, the First Report, to the Court.

Dated this 1st day of February, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradeexpress 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, and not in its personal or corporate capacity



Paul Bishop
Senior Managing Director



Kamran Hamidi
Managing Director

MBL ADMINISTRATIVE AGENT II -and-
LLC

TRADE X GROUP OF COMPANIES
INC. et al

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
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FIRST REPORT OF THE RECIEVER

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

**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**

**FIRST SUPPLEMENTAL REPORT TO THE FIRST REPORT OF FTI
CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER**

April 3, 2024

**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

A. INTRODUCTION AND PROCEDURAL BACKGROUND

1. This is the First Supplemental Report (the “**First Supplemental Report**”) to the First Report of the Receiver dated February 1, 2024 (the “**First Report**”). Capitalized terms not otherwise defined herein have the meaning ascribed to them in the First Report.
2. The Receiver served its Notice of Motion (the “**Motion**”) and First Report on February 1, 2024, after learning that the Van Essen Companies received the Techlantic Funds, which were proceeds from the sale of the Techlantic Vehicles totaling approximately \$1.7 million, and purported to apply those proceeds to repay a debt allegedly owed by Techlantic to the Van Essen Companies as part of the Purported Set Off. The Receiver determined that the Purported Set Off was the exercise of a right against Techlantic that was prohibited by the terms of the Interim Order issue on December 11, 2023 and that the Techlantic Funds were Property within the meaning of the Receivership Order.
3. The Receiver’s Motion initially sought to preserve the Techlantic Funds so that they could ultimately be paid to the appropriate party. The Van Essen Companies served a cross-motion (the “**Cross-Motion**”) seeking a final determination that they are entitled to the Techlantic Funds and that the Purported Set-Off was a valid transaction. By Endorsement dated February 9, 2024, Justice Cavanagh scheduled the Motion and the Cross-Motion for a hearing on April 3, 2024. The parties subsequently agreed to adjourn this motion and a new date will be set by the Court.
4. Since the Motion and Cross-Motion were scheduled, the Receiver has continued its investigation into the matters raised in the Motion and Cross-Motion. Based on those investigations, it has amended the Motion. The amendments make two substantive changes to the relief sought by the Receiver:
 - (a) the Receiver seeks a final determination with respect to entitlement to the Techlantic Funds, as opposed to preliminary relief to deliver the Techlantic Funds to the Receiver pending a final determination as initially sought in the Motion; and

(b) the Receiver seeks a declaration that the Purported Set-Off is void as against the Receiver because it was a preference prohibited by section 95 of the *Bankruptcy and Insolvency Act* (the “**BIA**”).

5. This First Supplemental Report sets out information relevant to the Motion and the Cross-Motion that was discovered since the First Report was served. Specifically, it sets out the basis for the Receiver’s conclusion that Techlantic and the Van Essen Companies were not dealing at arm’s length and that the Purported Set-Off effected a preference.

B. SUMMARY OF THE RECEIVER’S CONCLUSIONS

6. Based on its review of Techlantic’s records, as described below, the Receiver has reached the following conclusions:

(a) Techlantic agreed in the Global Facility that its only business would be purchasing Financed Vehicles (i.e., vehicles funded pursuant to the Global Facility), and that all proceeds from the sale of Financed Vehicles would be held in trust for the Lenders and deposited into certain specified “Collection Accounts”;

(b) Techlantic entered into a parallel arrangement with the Van Essen Companies whereby the Van Essen Companies funded the purchase of vehicles that were sold by Techlantic. The Van Essen Companies have called this arrangement the “**Liquidity Support Agreement**”. By entering into the Liquidity Support Agreement, Techlantic breached the restrictions in the Global Facility, as set out above;

(c) The Van Essen Companies and Techlantic operated as a single integrated business. Eric and Wouter Van Essen directed the operation of Techlantic and the Van Essen Companies. Techlantic and the Van Essen Companies had the same staff and office space. Vehicles, debts and funds shifted continuously between Techlantic and the Van Essen Companies for reasons that are not entirely clear to the Receiver;

(d) In 2022, the Van Essen Companies sold certain vehicles, the 2022 Vehicles, to Techlantic and Techlantic sold those vehicles to other Debtors (referred to collectively as “**Trade X**”). Proceeds from the sale of the 2022 Vehicles were deposited into Trade X bank accounts and co-mingled with other funds;

- (e) The Van Essen Companies complained about non-payment for the 2022 Vehicles, but ultimately agreed to be paid when the sale of one of the Debtors' subsidiaries (Wholesale Express) closed. This closing did not occur, and the alleged debt relating to the 2022 Vehicles was not repaid;
- (f) The vehicles that are the subject of this motion, the Techlantic Vehicles, were Financed Vehicles within the meaning of the Global Facility. The Lenders advanced funds to purchase these vehicles in 2023, and Techlantic was obliged to hold proceeds from the sale of the Techlantic Vehicles in trust for the Lenders; and
- (g) The Techlantic Vehicles were sold to a Techlantic customer named Stephen Zhou. Mr. Zhou paid the funds owing in respect of the Techlantic Vehicles to 130 Ontario instead of the Debtors. 130 Ontario then purported to apply the proceeds from the sale of the Techlantic Vehicles to offset the alleged debt owed in connection with the 2022 Vehicles. This set-off transaction is defined in the First Report as the Purported Set-Off.

7. Based on the foregoing conclusions, as set out further below, the Receiver has concluded that the Purported Set-Off effected a preference in favor of the Van Essen Companies contrary to the BIA.

C. TERMS OF REFERENCE

- 8. In preparing this First Supplemental Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, the Debtors' books and records, and discussions with certain employees and former employees of the Debtors (collectively, the "**Information**"). Future oriented financial information relied upon in the Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.
- 9. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would, wholly or partially, comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada

Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

10. The Receiver has prepared this First Supplemental Report solely for the use of this Court and the stakeholders in these proceedings and will make a copy of the Report, and related documents, available on the Receiver's website at <http://cfcanada.fticonsulting.com/TradeX/>.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

D. THE RECEIVER'S REVIEW OF TECHLANTIC'S RECORDS

12. In order to gain a further understanding of the dealings between Techlantic and 130 Ontario, the Receiver uploaded Techlantic's electronic records, including e-mails sent and received by certain identified custodians, into document review software and conducted a review of certain documents with the assistance of its counsel.
13. The Debtors' electronic records obtained by the Receiver include nearly one million documents. In order to assess the issues described below, the Receiver reviewed e-mails sent or received by Wouter Van Essen ("**Wouter**") from his Techlantic e-mail address during the period from 2021-2024. The Receiver also reviewed e-mails sent and received by other individuals based on certain targeted keyword searches.
14. On February 15, 2024, the Receiver asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver and said the exchange of information would be governed by the *Rules of Civil Procedure*.
15. The Receiver has also asked to meet with Eric Van Essen ("**Eric**") and two additional longtime Techlantic employees, Michelle Ralph and June Da Costa. Those meetings were scheduled to take place on March 6, 2024 and initially accepted by Eric, Michelle and June. These employees subsequently required, as a condition of their appearance, that the Receiver pay for them to hire counsel. The Receiver was not willing to agree to these terms,

and, on the morning of March 6, 2024, the three employees informed the Receiver that they would not be attending the meeting.

E. THE RECEIVER’S CONCLUSION THAT THE PURPORTED SET-OFF EFFECTED A PREFERENCE THAT IS VOID AGAINST THE RECEIVER

16. Following the Receiver’s review of the relevant documents, the Receiver has concluded that the Purported Set-Off and the transactions leading up to it effected a preference that is void as against the Receiver.

17. Section 95 of the BIA establishes the law applicable to preferences and transfer at undervalue:

Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm’s length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm’s length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.¹

18. Pursuant to section 95(2), where a transaction has the effect of giving the creditor a preference, it is presumed to have been made with a view to giving the creditor a preference absent evidence to the contrary:

Preference presumed

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a

¹ Section 95(1), BIA.

view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.²

19. The Receiver understands that the Lenders hold a first ranking security interest over the Techlantic Vehicles, and any proceeds earned from the sale of the Techlantic Vehicles.³ The Lenders have not been repaid all of the amounts owed to them.
20. By executing the Purported Set-Off, the Van Essen Companies effectively paid their own claim against Techlantic before Techlantic's secured creditors were paid in full. In the Receiver's view, this transaction has had the effect of a preference, as it caused the Van Essen Companies to be paid ahead of other creditors, including the Lenders.
21. As discussed below, based on the Receiver's investigation, the Receiver has determined that Techlantic and the Van Essen Companies were not acting at arm's length, and therefore the Purported Set-Off falls within the purview of Section 95(1)(b) of the BIA. And in any event, pursuant to Section 95(2), given the Purported Set-Off has had the effect of a preference in favour of the Van Essen Companies ahead of other creditors, including the Lenders, it is accordingly presumed to have been made with a view to giving the Van Essen Companies a preference pursuant to Section 95(1)(a) of the BIA.
22. The documents relied upon by the Receiver in respect of these conclusions are explained in greater detail below.

F. THE RECEIVER'S CONCLUSION THAT 130 ONTARIO DID NOT DEAL WITH TECHLANTIC AT ARM'S LENGTH

(a) Overview of the relationship between Techlantic and the Van Essen Companies

23. The Receiver has reviewed the assertion at paragraphs 37-40 of the Cross-Motion that Techlantic and the Van Essen Companies dealt with each other at arm's length. It has concluded that they did not. The Receiver's review of contemporaneous documents supports the following conclusions:

² Section 95(2), BIA.

³ Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

- (a) Techlantic and the Van Essen Companies had the same staff and management. Eric and Wouter made decisions for Techlantic and the Van Essen Companies. Techlantic/Van Essen Company staff executed those decisions on behalf of both Techlantic and the Van Essen Companies. The Van Essen Companies did not have their own staff, and Techlantic staff acted as if they were also employed by the Van Essen Companies;
 - (b) Eric was the president and a shareholder of the Van Essen Companies' parent company;
 - (c) Eric, Wouter and other family members were the ultimate source of funds advanced by the Van Essen Companies to Techlantic;
 - (d) In the fall of 2023, Eric told Techlantic staff to shift business from Techlantic to 130 Ontario. Vehicle transactions that would previously have resulted in payment to Techlantic appear to have resulted in payments to 130 Ontario; and
 - (e) There is no evidence of any negotiations between Techlantic and 130 Ontario with respect to any of the transactions at issue.
24. A more detailed description of Techlantic, the Van Essen Companies and the transactions at issue on this motion is set out below.

(b) *Techlantic's founding*

25. According to its website, Techlantic was founded in 1983 by Wouter. Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.
26. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.
27. In August 2019, Wouter's son Eric became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it

confirmed that “Tom and Wouter are still actively involved and likely will be for many years”.

28. Relevant excerpts from Techlantic’s website are attached as Appendix “1”.

(c) Wouter was actively involved in Techlantic’s business

29. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic’s Managing Director and had overall responsibility for Techlantic’s business operations. Trade X does not appear to have exercised control over Techlantic’s day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.
30. During the relevant period, Wouter described himself as a consultant to Techlantic. As described below, the Receiver’s review of Techlantic’s records showed that Wouter remained very heavily involved in Techlantic’s business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic’s finance team, and its founder, on the Techlantic website.
31. Throughout the period reviewed by the Receiver, being January 2021 to December 2023, Wouter had a Techlantic e-mail and sent, received or was copied on most important correspondence relating to Techlantic and its business. Wouter also appears to have had signing authority over Techlantic’s primary bank account at RBC, as indicated in an email attached as Appendix “2”.
32. Wouter also routinely gave instructions to Techlantic’s finance staff. He was highly involved in Techlantic’s finance decisions, including what funds should be paid to 130 Ontario and what funds should be paid to the Lenders. Wouter also participated in correspondence, meetings and negotiations with the Lenders on behalf of Techlantic. This is discussed further below.

(d) Techlantic borrowed funds under the Global Facility – beginning December 30, 2021

33. Before it was acquired by Trade X, Techlantic had a \$12 million line of credit from Royal Bank of Canada (the “**RBC Line**”). Pursuant to Amendment No. 1 and Joinder to the Senior Secured Revolving Credit Agreement as of December 30, 2021 (the “**Joinder**”)

with the Lenders, Techlantic borrowed funds under the Global Facility to repay the RBC Line. The Joinder is attached as Appendix “3”. Pursuant to the Joinder, Techlantic became a “Borrower” under the Global Facility.

34. Wouter reviewed and commented on the Joinder before it was signed. His e-mail exchange relating to the Joinder is attached as Appendix “4”.
- (e) ***Techlantic agreed to limit its business to buying Financed Vehicles and forego any other debt***
35. Pursuant to section 5.16 of the Global Facility, each of the Borrowers (including Techlantic, after the Joinder) agreed that it would not:
- (a) engage in any business other than buying and selling Financed Vehicles;
 - (b) own material assets other than the Financed Vehicles and incidental personal property; or
 - (c) incur any debt to any party other than the Lenders.
36. The Global Facility also imposed strict controls on the use of “Collections” obtained from selling Financed Vehicles. Specifically, Section 8.01(b) required that all Collections be deposited promptly into a “Collection Account”. The Lenders, through their Administrative Agent, had the right to withdraw funds from the Collection Account at specified times to repay the debt advanced by the Lenders.
37. As is summarized in First Report, the Global Facility contemplated a closed system, whereby, in very simple terms: funds were advanced to purchase Financed Vehicles; the Financed Vehicles were sold to customers; and the proceeds from the Financed Vehicles were deposited into Collection Accounts and used to repay the advances.
- (f) ***The Van Essens owned and operated the Van Essen Companies***
38. The Van Essen Companies do not appear to have had their own staff or management. Eric and Wouter directed the operation of the Van Essen Companies, and Techlantic staff implemented their instructions.

39. 130 Ontario appears to have been indirectly owned and primarily funded by various members of the Van Essen family, including Eric.
40. According to an e-mail sent by Eric on September 5, 2023 and attached as Appendix “5”, 130 Ontario is a wholly owned subsidiary of Techlantic Consulting Ltd. (“**Techlantic Consulting**”). Eric has been the president of Techlantic Consulting since August 2018, according to a Corporate Profile Report for Techlantic Consulting, which is attached as Appendix “6”.
41. Eric said that the funds advanced by 130 Ontario were borrowed from Eric, Wouter, Tom and other family members:
- Techlantic currently only borrows from the parent company and Post Road Group (which is main credit line). **Our personal company (1309767 Ontario Limited) which we are using to support Techlantic commonly borrows from its parent company Techlantic Consulting Ltd. which commonly borrows from family members such as myself, Wouter** or my cousin’s company. We adjust loans 4-6 times per year based on working capital requirements and it does not seem like something OMVIC needs to be made aware of.
42. In an e-mail from Wouter to RBC relating to his personal accounts, Wouter indicated that his children (ie., Eric and his siblings) together with Tom’s children owned Techlantic Consulting and (indirectly) 130 Ontario but that Wouter and Tom still had signing authority over their bank accounts “in case of emergencies”. A copy of this email is attached as Appendix “7”.
43. The directors of 130 Ontario are Bartelt Van Essen and Wouter. The directors of 260 Ontario are Wouter and June Da Costa, a long-time Techlantic employee. Corporate Profile Reports for 260 Ontario and 130 Ontario are attached as Appendices “8” and “9”, respectively.
44. In June 2023, Eric Gosselin, Trade X’s Chief Operating Officer, e-mailed Eric to advise that Trade X had a third party investor prepared to lend funds to the Van Essen Companies. Eric responded that he and Wouter were hesitant to accept these loans because arrangements between 130 Ontario were “very informal and based on trust and relationship.” A copy of this e-mail is attached as Appendix “10”.

45. In addition to the funding from Eric, Wouter and other members of the Van Essen family, 130 Ontario also borrowed funds from Trade X's CEO, Ryan Davidson in March 2023. A copy of this e-mail is attached as Appendix "11".

The Liquidity Support Agreement

46. 130 Ontario appears to have provided funding for some of Techlantic's vehicle purchases after the Joinder was executed and Techlantic became indebted to the Lenders. According to the Cross-Motion filed by the Van Essen Companies, this funding was provided pursuant to a "Liquidity Support Agreement".
47. The Liquidity Support Agreement described in the Cross-Motion appears to contravene the restrictions in the Global Facility. Moreover, because of the arrangements with the Van Essen Companies, the closed system contemplated by the Global Facility broke down. As described below, sales proceeds were sometimes paid to 130 Ontario and sometimes paid to the Lenders based on directions from Wouter.

(ii) Techlantic's purchasing process

48. As part of the operations of Techlantic, Techlantic staff e-mailed Eric asking for permission before purchasing vehicles. If the proposed purchase was acceptable, Eric would reply to approve it. Wouter also occasionally approved vehicle purchases.
49. Under the terms of the Global Facility, all of Techlantic's purchases were to be funded by advances from the Lenders. This is not what happened.
50. After 130 Ontario began funding some of Techlantic's vehicle purchases, Eric would reply to certain purchase e-mails to indicate that the purchase was approved and should be paid by 130 Ontario. Examples of this practice are attached as Appendix "12".
51. Based on the documents reviewed, Eric would determine whether 130 Ontario should advance funds on behalf of Techlantic or whether purchases should be funded by the Global Facility. By way of example, on February 8, 2023, Eric responded to a request to approve a \$2.8 million purchase as follows:

Approved to pay 1.425M USD from 130 Ontario. Michelle will request [Lender] funding to hopefully get that back quickly and pay the other half.

52. This practice appears to have created confusion about whether Techlantic or the Van Essen Companies owned a particular vehicle, and who was entitled to repayment when the vehicles were sold.
53. According to an e-mail sent by Wouter, and attached as Appendix “13”, 130 Ontario and the Lenders seem to have financed the same vehicle on at least one occasion:
 2. Further we do expect the HST refund on July 22, 2022 and plan using it to reduce debt for vehicles “double financed” by our purchasing company (ie our purchasing company still finances 400K of vehicles, for which Techlantic has already been paid by [the Lenders] and or client).
54. On September 15, 2023, Wouter e-mailed to suggest that, going forward, Techlantic only fund vehicles to be sold to Trade X using the Global Facility and that all other transactions be funded through 130 Ontario so that Techlantic could “establish certainty who owns which vehicle”.
55. Eric responded that vehicles that are “very much in [Techlantic’s] control” should be funded using the Global Facility to “ensure purchasing companies are paid for vehicles that may possibly be less in our control.” These e-mails are attached as Appendix “14”.
56. Based on the Receiver’s review, including the e-mails reviewed above, Techlantic’s dealings with the Van Essen Companies appears to have created uncertainty within Techlantic about the ownership of certain vehicles.
57. On November 6, 2023, Eric wrote Techlantic staff to say that Wouter “should be doing approvals for 130 for time being.” This e-mail is attached as Appendix “15”.

G. *The 2022 Vehicles*

58. As noted in the First Report, the Van Essen Companies sold to Techlantic 38 vehicles (defined in the First Report as the “2022 Vehicles”) in 2022. The Van Essen Companies now allege that the 2022 Vehicles were “misappropriated” by Trade X in 2022, and seek various relief as a result of that alleged misappropriation.

59. The Receiver's review indicates that Wouter and Eric, on behalf of the Van Essen Companies, raised this issue with Trade X's management in early 2023 and that the issue was resolved (at least temporarily) by Trade X's promise to pay for the 2022 Vehicles when it sold one of its subsidiaries, Wholesale Express.
60. According to the Debtors' books and records, the 2022 Vehicles were transferred by Techlantic to other Debtors and then sold by those Debtors to end users. An analysis of these transactions is attached as Appendix "16".
61. The Van Essen Companies asked the Receiver to trace how the proceeds from the 2022 Vehicles were used in order to investigate their proprietary claim. The Receiver advised the Van Essen Companies that it had significant concerns about the cost of such an exercise. In order to assess whether a tracing was possible, the Receiver reviewed the Debtors' accounting records relating to 11 of the 2022 Vehicles.
62. Two of the 2022 Vehicles reviewed by the Receiver were involved in a complicated series of transactions between the Debtors and the Van Essen Companies that can be summarized as follows:
 - (a) TX OPS Canada Corporation ("**TX Canada**") purchased each vehicle;
 - (b) TX Ops Canada sold the vehicle to TX Ops Indiana Limited ("**TX Indiana**");
 - (c) TX Indiana agreed to sell the vehicle to a third party, but the transaction was not completed;
 - (d) the Debtors' records do not indicate how TX Indiana disposed of the vehicle;
 - (e) Techlantic later purchased the same vehicle from 130 Ontario. It is not clear how 130 Ontario acquired the vehicle, or what it paid for the vehicle;
 - (f) TX Indiana purchased the vehicle from Techlantic;
 - (g) TX Indiana sold the vehicle to Tradexpress Auto, Inc. ("**Tradexpress**");

- (h) Tradexpress sold the vehicle to a customer through an auction company, Manheim Auction.
63. The purpose of these transactions, and whether they give rise to any debt owed by Techlantic to 130 Ontario, is unclear based on the information currently available to the Receiver.
 64. The other nine vehicles reviewed by the Receiver followed a simpler pattern, which is summarized below:
 - (a) Techlantic purchased the vehicle from 130 Ontario;
 - (b) Techlantic sold the vehicle to TX Indiana;
 - (c) TX Indiana sold the vehicle to Tradexpress; and,
 - (d) Tradexpress sold the vehicle to a customer through Manheim Auction.
 65. In each case reviewed by the Receiver, the funds received from selling the relevant vehicle were deposited into a bank account and co-mingled with other funds. Because of this co-mingling, it is not possible to know with certainty how Tradexpress used the proceeds from these sales.
 66. The documents relating to these transactions that are available to the Receiver will be provided to the Debtors.

H. *Correspondence relating to the 2022 Vehicles*

67. The Receiver has reviewed the correspondence between Eric and Wouter (on behalf of 130 Ontario and Techlantic) and executives of the other Debtors with respect to the 2022 Vehicles. Wouter and Eric complained about TX Canada's failure to pay Techlantic for the 2022 Vehicles but the issue was apparently resolved after Trade X agreed to pay the debt owed for the 2022 Vehicles once one of its subsidiaries (Wholesale Express) was sold.
68. By e-mail dated October 1, 2022, attached as Appendix "17", Wouter e-mailed Ryan Davidson (Trade X's founder and CEO) to address Trade X's failure to pay Techlantic for

the 2022 Vehicles. On January 6, 2023, Eric followed up with an e-mail to Mr. Gosselin. Eric referred to 130 Ontario as “our purchasing company” and indicated that non-payment was the result of a “breakdown in process a few months ago”. Eric discussed a potential “loan secured against” potential sale proceeds of Wholesale Express to resolve this issue. A copy of this email is attached hereto as Appendix “18”.

69. On or around January 30, 2023, Trade X Group of Companies Inc. and 13517985 Canada Inc. o/a Wholesale Express executed an Irrevocable Letter of Direction (the “ILD”) directing Trade X’s lawyers at Dentons Canada LLP (“Dentons”) to pay approximately \$2 million of proceeds from the sale of Wholesale Express to the Van Essen Companies. The ILD is attached as Appendix “19”.
70. On February 6, 2023, Eric wrote to Dentons seeking confirmation that the Van Essen Companies “are now secure”. Trade X’s CEO, Luciano Butera, wrote to assure Wouter that proceeds from the sale of Wholesale Express “will be enough” based on his assessment of the value of Wholesale Express. This e-mail is attached as Appendix “20”.
71. The Van Essen Companies seem to have been satisfied with this information. The Van Essen Companies appear to have paused funding to Techlantic while the issue was being resolved, but Eric approved a further purchase by Techlantic using funds from 130 Ontario later on February 6, 2023. This e-mail is attached as Appendix “21”.

I. THE RECEIVER’S CONCLUSION THAT WOUTER AND ERIC JOINTLY DIRECTED THE TRANSACTIONS LEADING TO THE PURPORTED SET-OFF

(a) Wouter directed Techlantic staff to pay the Lenders or the Van Essen Companies

72. As noted, the Global Facility imposed strict controls on proceeds from Financed Vehicles. All such proceeds were to be deposited into specified “Collection Accounts” and repaid to the Lenders. Techlantic did not have discretion under the Global Facility to decide where funds should be deposited. Despite these restrictions, Wouter appears to have controlled the how sales proceeds were used.
73. Wouter appears to have directed Techlantic staff to divide funds between the Lenders (which he sometimes referred to as “Man” or “PRG”) and what funds should be paid to

130. Examples of this correspondence are attached as Appendix “22”. On other occasions, he directed Techlantic staff to make payments to the Lenders. Examples of this are attached as Appendix “23”.
74. Wouter acted with the authority to direct repayments from Techlantic to 130 Ontario. On September 6, 2023, and attached as Appendix “24”, he wrote “I decided to pay [130] \$197,750” and that he had completed a currency swap in Techlantic’s e-mail account.
75. On another occasion, attached as Appendix “25”, Wouter consulted Eric about how much should be paid by Techlantic to 130 Ontario and the Lenders. On September 7, 2023, Wouter asked Eric whether funds should be paid to PRG or 130 Ontario. Eric responded that 130 Ontario should be paid for a particular vehicle, and that the remaining funds should be paid to the Lenders.
76. In at least one case, payment to 130 Ontario apparently came directly from funds advanced by the Lenders, in contravention of the Global Facility. Wouter instructed Techlantic’s accounting staff to make this payment. This e-mail is attached as Appendix “26”. In another case, Wouter told Techlantic accounting staff that there were “no funds to spare” for the Lenders, because Techlantic needed funds to buy vehicles. This e-mail is attached as Appendix “27”.
- (b) *Eric and Wouter knew that Techlantic and the other Debtors faced significant difficulties by October 2023*
77. By October 2023, Techlantic was facing significant issues with the Lenders. On October 12, 2023, Eric e-mailed Westin Lovy (the representative of the Lenders) to advise that (according to Techlantic’s calculations) Techlantic owed \$2.1 million to the Lenders at that moment. Eric said that Techlantic had about \$1 million worth of “highly liquid assets” and suggested that “we can work together to find a solution without dissolving Techlantic”. This e-mail is attached as Appendix “28”.

(c) *Techlantic diverted payments 130 Ontario because of its financial problems*

78. On October 26, 2023, Eric instructed staff that it was “mission critical” that payment for certain vehicles be “collected” in 130 Ontario. This appears to mean that funds were paid to 130 Ontario, and not to Techlantic. This e-mail is attached as Appendix “29”.
79. On October 30, 2023, Eric wrote to inform Trade X’s senior leadership team to advise that Techlantic clients would enter into transactions directly with 130 Ontario but that it would pay a “commission” to Techlantic on those transactions:

I just wanted to formally inform you that to maintain clients and to try to generate some revenue to contribute to overhead while TRADE X sorts things out with PRG, **we have decided to do transactions with several clients directly with 1309767 Ontario Limited.** This is a new way to transact, so I don’t have formulas setup yet, but **the plan is to calculate and track a commission payment due to Techlantic where the net result on margin distribution is similar to current/previous operations.** We hope to shift everything back to Techlantic once there is stability. [emphasis added]

80. Around the same time, documents relating to vehicles worth approximately \$462,170 that had previously been ordered by Techlantic were changed so that the ordering company was 130 Ontario. These e-mails are attached as Appendix “30”.

(d) *Eric and Wouter Shift Vehicles Owned by Techlantic to 130 Ontario*

81. The Techlantic Vehicles, and the Purported Set Off, relate to vehicles that Techlantic sold to Stephen Zhou. The Receiver understands from its discussions with Techlantic personnel that Techlantic had a longstanding business relationship with Stephen Zhou relating to the export of vehicles to China.
82. On March 22, 2023, Wouter e-mailed Eric with a “crazy thought” that Techlantic could get funding from the Lenders for Mr. Zhou’s vehicles. This plan seems to have been implemented, as various vehicles sold to Mr. Zhou – including the Techlantic Vehicles – were funded by the Global Facility. This email is attached as Appendix “31”.
83. In the fall of 2023, Techlantic and the Van Essen Companies seem to have shifted funds from, and vehicles sold to, Mr. Zhou between the two companies.

84. On October 23, 2023, Mr. Zhou e-mailed to advise that he would pay \$562,533 in respect of certain vehicles. Bill Ralph, a Techlantic employee, said that ideally Mr. Zhou should wire funds to Techlantic but if he wanted to send a bank draft it should be made out to 130 Ontario. Tom later e-mailed Eric and Wouter to say that Mr. Zhou had paid with a bank draft to 130 Ontario. These e-mails are attached as Appendix “32”.
85. Towards the end of October, Wouter and Eric seem to have been concerned that proceeds from the Wholesale Express sale might not be sufficient to repay all of Trade X’s creditors. Wouter and Eric began to discuss with Ryan Davidson and Eric Gosselin the possibility that the ILD in favour of the Van Essen Companies might not be paid. These e-mails are attached as Appendix “33”.
86. On October 30, 2023, Tom took notes from a call with Mr. Zhou indicating that “we will move business to [130 Ontario]”. This e-mail is attached as Appendix “34”.
87. On November 3, 2023, Eric, Wouter and Tom decided to transfer nine vehicles owned by Techlantic to 130 Ontario. Some or all of these vehicles had been sold to Mr. Zhou. Eric, Wouter and Tom also agreed to backdate the invoice. One of Techlantic’s finance employees indicated that two of these vehicles were funded by the Lenders. These e-mails are attached as Appendix “35”.
88. On December 1, 2023, Wouter wrote to Eric to say that upon receipt of funds paid by Mr. Zhou in respect of vehicles funded by Techlantic, Techlantic should pay the borrowing base amount (ie., the amount funded by the Lenders) to the Lenders and pay the rest of the funds to 130 Ontario. This e-mail is attached as Appendix “36”.
89. The Global Facility requires that all proceeds from Financed Vehicles be deposited into Collection Accounts and used to pay the Lenders, not only the amount actually funded by the lenders. On December 1, 2023, Techlantic owed significant funds to the Lenders.
90. Wouter later wrote that 130 Ontario was entitled to repayment of funds it advanced to cover payroll, in priority to the Lenders. This e-mail is attached as Appendix “37”.

91. On December 7, 2023, Wouter, Tom and Eric met to “discuss 130 year end adjustment.” This e-mail is attached as Appendix “38”. This occurred immediately before Mr. Zhou began making the payments that were ultimately the subject of the Purported Set Off.

92. In addition, on December 7, 2023, Bill Ralph from Techlantic e-mailed Mr. Zhou to say that he owed an outstanding balance of \$2.3 million. Wouter subsequently e-mailed that the outstanding payments from Mr. Zhou related to vehicles (including the Techlantic Vehicles) had been “financed by [the Lenders]”. This e-mail is attached as Appendix “39”.

J. THERE IS NO EVIDENCE THAT THE PURPORTED SET-OFF WAS NEGOTIATED AT ARM’S LENGTH

93. As noted in the First Report, Wouter claims to have executed the Purported Set-Off on December 20, 2023. This was two days before the Receiver was appointed. The Receiver was unable to locate in Techlantic’s records any negotiation between the Van Essen Companies or Techlantic with respect to the Purported Set-Off or any document from December 20, 2023 effecting the Purported Set-Off.

94. The Receiver also understands that December 20, 2023, the same day that the Purported Set-Off is alleged to have occurred, Wholesale Express was granted protection pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”). This filing likely created significant doubt (which still remains) about whether the Van Essen Companies would recover any amount pursuant to the ILD.

95. In addition, the Receivership Application in this proceeding had been adjourned to allow additional time for the sale of the Wholesale Express to be completed. The Debtors, including Techlantic, ultimately did not oppose the appointment of the Receiver.

K. CONCLUSION AND RECOMMENDATION

96. For the reasons stated in the this First Supplemental Report, the Receiver respectfully requests and recommends that the Court grant the requested Order, among other things:

- (a) requiring the Van Essen Companies to transfer the Techlantic Funds to the Receiver;

- (b) declaring that the Techlantic Funds are “Property” within the meaning of the Receivership Order;
- (c) declaring that the Purported Set-Off is a preference prohibited by section 95 of the *BIA*.

solely in its capacity as Court-appointed Receiver of certain property of 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, and not in its personal or corporate capacity



Paul Bishop
Senior Managing Director



Kamran Hamidi
Managing Director

MBL ADMINISTRATIVE AGENT II -and-
LLC

TRADE X GROUP OF COMPANIES
INC. et al

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

**FIRST SUPPLEMENTAL REPORT TO THE FIRST
REPORT OF THE RECIEVER**

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

**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**

**SECOND REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED
RECEIVER**

March 27, 2024

**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

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A. PURPOSE

1. This is the Second Report of FTI Consulting Canada Inc. (“**FTI Consulting**”) in its capacity as receiver and manager (the “**Receiver**”), without security, of the following property (collectively the “**Property**”) of 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. (“**Techlantic**”) and TX Ops Canada Corporation (collectively, “**Trade X**” or the “**Debtors**”):

- (a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. (“**Trade X Parent**”) and TX OPS Canada Corporation (“**TX Canada**”)) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;
- (b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and
- (c) certain assets, undertakings and properties of TX Canada defined as the “TX Canada Collateral” in the Affidavit of Westin Lovy sworn December 4, 2023 (the “**Lovy Affidavit**”).

2. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.

3. By Order dated December 22, 2023 (the “**Receivership Order**”), the Receiver was appointed and authorized to, among other things, receive and preserve the Property and any proceeds thereof, operate and carry on the business of the Debtors, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

4. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors’ remaining vehicle assets and collect amounts owed to the Debtors. That process is substantially complete.

5. To date, the Receiver has recovered approximately \$1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.

6. The Receiver’s attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors’ accounting records. Among other things, the Receiver has encountered the following challenges:

- (a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;
- (b) the Debtors’ books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;
- (c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors’ directors, officer and/or members of their immediate

families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and

- (d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.

7. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.

8. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.

9. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.

10. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.

11. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.

B. BACKGROUND

12. A number of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the “**Global Facility**”). MBL Administrative Agent II LLC (“**MBL**”) is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the “**Lenders**”). A copy of the Global Facility is attached hereto as Appendix “1”.

13. In addition, a number of Debtors entered into a separate senior secured revolving credit agreement dated February 5, 2021 (the “**Domestic Facility**” and, together with the Global Facility, the “**Facilities**”). MBL is also the administrative agent for a syndicate of Lenders that advanced funds under the Domestic Facility. A copy of the Domestic Facility is attached hereto as Appendix “2”.

14. The Receiver understands that the Lenders are the Debtors' senior secured creditors, with a first ranking security interest over substantially all of the Debtors' assets.¹ Based on the recoveries to date, and the Receiver's assessment of the Debtors' remaining assets, the Lenders are unlikely to recover the full amounts owed to them unless the Receiver is able to successfully investigate and prosecute potential claims available to the Debtors (and subject to the proceeds of such claims being sufficient to satisfy the Lenders' claims). If the Lenders do not recover all amounts owed to them, then the Debtors unsecured creditors and equity claimants are not expected to recover any amounts.

15. In light of the foregoing, the Receiver has, in consultation with MBL on behalf of the Lenders, determined that it is important to conduct a further investigation into the Debtors' affairs to determine what (if any) claims should be pursued.

C. THE FACILITIES

16. In general terms, the Global Facility was intended to fund vehicles sold outside of the United States and the Domestic Facility was intended to fund vehicles sold inside the United States.

17. The Facilities are sophisticated agreements involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Facilities are summarized at a very high level below:

- (a) the Debtors acquired vehicles for sale;

¹ Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

- (b) the Lenders provided an advance to pay the purchase price for the vehicles (the “**Advance**”);
- (c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the “**Borrowing Base**”);
- (d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the “**Collection Accounts**”).

18. One of the Debtors that is important to the Receiver’s investigation is Techlantic. Techlantic became a “Borrower” within the meaning of the Global Facility by an Amendment No. 1 and Joinder to Senior Secured Revolving Credit Agreement dated December 30, 2021, a copy of which is attached hereto as Appendix “3”.

D. APPOINTMENT OF THE RECEIVER

19. On December 4, 2023, MBL brought an application to appoint FTI Consulting as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

20. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately \$7 million that should have been deposited into the Collection Accounts. The Lovy Affidavit describing the alleged diversion of funds from the Collection Accounts is attached hereto (without exhibits) as Appendix “4”.

21. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

22. On December 22, 2023, Cavanagh J. issued the Receivership Order appointing FTI Consulting as the Receiver, without security, of the Property.

23. Pursuant to the Receivership Order, the Receiver is empowered to, among other things, receive and preserve the Property and any proceeds thereof, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

E. DIFFICULTY UNDERSTANDING THE DEBTORS' RECORDS

24. Since the Receiver's appointment on December 22, 2023, the Receiver has worked diligently to receive, preserve, protect and otherwise manage the Debtor's Property in accordance with the Receivership Order. However, it has become clear to the Receiver through these efforts that the Debtors' books and records are, in some instances, not reliable and in other instances very difficult to understand.

25. The Receiver has made inquiries in respect of these issues to representatives of the Debtors, but it has not received satisfactory answers. The Receiver continues to investigate issues involving the Debtors, and is currently aware of a number of issues that it still investigating and in respect of which it requires additional information, including as summarized below.

(i) *Groupe Grégor Claim*

26. The Debtors may have a claim for approximately \$8 million (the "**Groupe Grégor Claim**") against Groupe Grégor Inc. ("**Groupe Grégor**") in connection with the Debtors' purchase

of 13517985 Canada Inc., operating as Wholesale Express (“**Wholesale Express**”) from Groupe Grégor.

27. The Receiver has reviewed the Debtors’ records related to the Groupe Grégor Claim. Its understanding, based on that review, include the following:

- (a) after the Debtors bought Wholesale Express, they were unable to take an immediate assignment of certain permits required to operate its business. To address this issue, Groupe Grégor continued to operate Wholesale Express on behalf of the Debtors and deposit funds generated by Wholesale Express into Groupe Grégor’s bank account;
- (b) the Debtors subsequently alleged that Groupe Grégor did not remit all of the funds generated by Wholesale Express to Wholesale Express;
- (c) separately, Groupe Grégor advanced a claim against the Debtors for approximately \$2.7 million allegedly owed for a working capital adjustment in connection with the Wholesale Express sale (which claim the Receiver understands was being disputed by the Debtors);
- (d) financial statements for both the Debtors and Groupe Grégor indicated that Groupe Grégor owed approximately \$8 million to the Debtors; and
- (e) on October 24, 2023, Wholesale Express assigned the Groupe Grégor Claim to Trade X Parent pursuant to an Assignment of Credit dated October 24, 2023 (the “**Assignment**”).

28. Wholesale Express is currently the subject of separate proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Wholesale Express CCAA Proceedings**"), and its Monitor in the Wholesale Express CCAA Proceedings has filed a motion seeking to set-aside the Assignment of the Groupe Grégor Claim as a transfer at undervalue. Such motion is currently scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. A copy of the Monitor's Notice of Motion in respect thereof is attached hereto as Appendix "5".

29. The Receiver requires further information about both the Groupe Grégor Claim and the Assignment in order to determine whether, and how, to respond to the Monitor's motion and advance the Groupe Grégor Claim on behalf of the Debtors.

(ii) ***Transactions and transfers involving the Debtors' founder and CEO***

30. The Receiver has also been contacted by certain individuals who claim to have invested funds in the Debtors; however, these individuals advised that they paid funds to a company owned and controlled by Mr. Davidson. The Receiver has been unable to determine why these funds were paid to Mr. Davidson's company and whether they were ever transferred to the Debtors. Correspondence relating to these issues is attached hereto as Appendix "6".

31. The Receiver requires additional and accurate information about the transactions between the Debtors, Mr. Davidson and the companies that Mr. Davidson controlled.

(iii) ***The Debtors' records show potential significant overpayments to Auto Credit Canada, a company controlled by one of the Debtors' former executives***

32. The Receiver understands that Auto Credit Canada is operated by Luciano Butera, a former officer of the Debtors, and owned by Mr. Butera or members of his family.

33. Trade X's records indicate that Trade X made overpayments totalling \$1,535,016 to 1254382 Ontario Ltd o/a Auto Credit Canada ("ACC"). On January 18, 2024, the Receiver wrote to ACC and demanded, pursuant to the Receivership Order, that ACC transfer the amount of the overpayment to the Receiver immediately. This correspondence is attached hereto as Appendix "7".

34. By way of email dated January 26, 2024, and attached as Appendix "8", ACC responded stating that it had not received any overpayments from Trade X, but rather that ACC had provided "floorplan funding" to Trade X, through which Trade X purchased vehicles in the name of ACC. The Receiver has requested documentation of this purported floorplan funding agreement, which documentation has not been provided. This correspondence is attached as hereto Appendix "9".

F. TRANSACTIONS WITH TECHLANTIC AND THE VAN ESSEN COMPANIES

35. The Receiver has served a motion seeking to recover approximately \$1.7 million received by the Van Essen Companies (as defined below), which amounts the Receiver believes were improperly taken by the Van Essen Companies (as discussed below and in the First Report of the Receiver dated February 1, 2024). The Receiver is also currently investigating other transactions involving the same individuals and entities; however, Techlantic's officers, employees and consultants have refused to meet with the Receiver to explain the transactions at issue.

(i) *Techlantic*

36. According to its website, Techlantic was founded in 1983 by Wouter Van Essen ("Wouter"). Wouter's twin brother, Tom Van Essen ("Tom"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

37. Techlantic’s core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

38. In August 2019, Wouter’s son Eric Van Essen (“**Eric**”) became a major Techlantic shareholder. When Techlantic announced Eric’s new status as a “major shareholder” of Techlantic, it confirmed that “Tom and Wouter are still actively involved and likely will be for many years”.

39. Relevant excerpts from Techlantic’s website are attached hereto as Appendix “10”.²

40. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic’s Managing Director and had overall responsibility for Techlantic’s business operations. Eric was also a director of Techlantic. Trade X does not appear to have exercised control over Techlantic’s day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

41. As described below, the Receiver’s review of Techlantic’s records showed that Wouter remained very heavily involved in Techlantic’s business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic’s finance team, and its founder, on the Techlantic website, until the website ceased to operate.

(ii) *The Van Essen Companies*

42. Techlantic engaged in a large number of complicated transactions with two companies 1309767 Ontario Ltd. (“**130 Ontario**”) and 2601658 Ontario Ltd. (“**260 Ontario**”, and together

² Techlantic’s website appears to no longer be operational, but the attached screenshots were access through the internet archive at <https://web.archive.org/>

with 130 Ontario, the “**Van Essen Companies**”) and certain other parties that have long-term business relationships with the Van Essens.

43. The Van Essen Companies had the same staff as Techlantic, and Eric was also an officer and director of Techlantic, however, the Eric and certain of Techlantic’s remaining staff have refused to meet with the Receiver to help it understand the relevant transactions unless the Receiver funded legal counsel for them. Correspondence communicating this position is attached hereto as Appendix “11”.

44. Wouter, through counsel, also declined to meet with the Receiver. Correspondence from Wouter’s counsel is attached hereto as Appendix “12”. Wouter’s counsel has stated in subsequent correspondence that Wouter did not refuse to meet with the Receiver, since he intended to attend his scheduled cross-examination on the Receiver’s motion.

(iii) *Dispute between the Receiver and the Van Essen Companies*

45. Issues between the Receiver and the Van Essens began when the Van Essen Companies received approximately \$1.7 million worth of proceeds from the sale of vehicles owned by Techlantic (the “**Techlantic Funds**”). Instead of paying these funds to Techlantic, the Van Essen Companies kept the funds.

46. Wouter claimed in an e-mail that the Van Essen Companies had set off the Techlantic Funds against a debt allegedly owed by Techlantic as a result of different vehicles sold by the Van Essen Companies to Techlantic in 2022 (the “**Purported Set Off**”).

47. Wouter claims to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued an Order dated

December 11, 2023 (the “**Interim Order**”) prohibiting any exercise of rights and remedies against the Debtors.

48. The Receiver has filed a motion, as amended, to recover the Techlantic Funds on the basis that the Purported Set Off was prohibited by the Interim Order and effected a preference contrary to s. 95 of the BIA. The Receiver’s Notice of Motion is attached hereto as Appendix “13”.

49. The Van Essen Companies served a cross-motion claiming that they were entitled to execute the Purported Set Off because they were owed approximately \$1.9 million in connection with vehicles they sold to Techlantic in 2022 (the “**2022 Vehicles**”). The Van Essen Companies’ cross-motion is attached hereto as Appendix “14”.

50. In the course of advancing its motion, the Receiver has discovered a number of important facts relevant to its motion in respect of the Van Essen Companies, including:

- (a) the Van Essen Companies and Techlantic routinely transferred vehicles and funds between them, and generated an enormous (and unusual) amount of accounting entries for individual vehicles in Techlantic’s records;
- (b) the Van Essen Companies and Techlantic shared the same employees and office;
- (c) Eric, who was an officer and director at Techlantic, was also the President of the Van Essen Companies’ parent company and personally advanced some of the funds that the Van Essen Companies used in their dealings with Techlantic;
- (d) Wouter, who Techlantic claims to have engaged as a consultant, appears to have been involved in many aspects of Techlantic’s business and decided when and how

much Techlantic should pay the Van Essen Companies. Wouter also determined when and how much Techlantic should pay its other creditors, including MBL; and

- (e) based on the records reviewed by the Receiver, the Van Essen Companies may have acquired certain of the 2022 Vehicles from certain of the Debtors. The Van Essen Companies then transferred the 2022 Vehicles to Techlantic. Techlantic, in turn, transferred the 2022 Vehicles back to the Debtors that may have previously owned them. The purpose of these circular transactions is unclear.

51. Techlantic's relationship with the Van Essen Companies, and with Techlantic's major customers, is difficult to understand based solely on Techlantic's records and the information provided by Techlantic in writing.

52. The Van Essen Companies, Techlantic, the other Debtors and various customers entered into a large number of transactions with very complex accounting and unclear record keeping. By way of example, two vehicles reviewed by the Receiver were involved in a high number of internal accounting entries, each involving transactions between the Van Essen Companies, Techlantic and other Debtors. The purpose of these transactions, and whether any of them involved the movement of funds, is unclear. A copy of a spreadsheet detailing these transactions is attached hereto as Appendix "15".

53. Among other arguments, the Van Essen Companies have claimed that they provided money to Techlantic as part of a "Liquidity Support Plan". The Receiver notes that section 5.16(g) of Global Facility prohibited the Debtors, including Techlantic, from incurring any debt other than the amounts owing to MBL. Additionally, section 5.16(j) prohibited Techlantic from entering into

any agreement with an affiliate, shareholder or principal, except in certain circumstances, without the consent of MBL.

G. THE RECEIVER'S ATTEMPTS TO GAIN CLARITY IN RESPECT OF THESE TRANSACTIONS

54. The Receiver has reached out to representatives of the Debtors, such as Eric, to clarify the circumstances leading to the above-noted questions and discrepancies. The answers it has received in respect of these inquiries have not been satisfactory and often do not align with other information available to the Receiver.

55. As noted above, in an attempt to further clarify these issues, the Receiver asked to meet with Eric and two additional long-time Techlantic employees. Those meetings were scheduled to take place on March 6, 2024, and initially accepted by Eric and the two employees. However, they were subsequently declined by all three of them on the morning of March 6, 2024.

56. As also noted above, the Receiver has also asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver. As described above, Wouter's counsel has stated that he intends to attend his scheduled cross-examination.

H. AUTHORITY TO ASSIGN INTO BANKRUPTCY

57. Based on the current facts and circumstances and information available to the Receiver, the Receiver does not at this time believe that there is a realistic prospect of a going concern sale in respect of the Debtors' business. Among other things, the Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024 soliciting interest in the assets and business of Trade X and Techlantic, a copy

of which is attached hereto as Appendix “16”. The Receiver received limited interest or inquiries to such notices, none of which resulted in any offers for any assets of the Debtors. The Receiver did receive offers for the Techlantic business from Mr. Eric Van Essen, which the Receiver, in consultation with MBL, believed was likely below the liquidation value of the remaining Techlantic assets.

58. As noted above, the Receiver continues to investigate the Debtors’ affairs and evaluate potential claims. As that investigation progresses, the Receiver may determine that the enhanced powers available to a trustee in bankruptcy would facilitate matters and potentially benefit all stakeholders. For clarity, the Receiver has not yet made such a conclusion, and thus at this time only seeks the authority, and not the requirement, to assign one or more of the Debtors into bankruptcy. The Receiver is mindful of the potential additional administrative costs associated with bankruptcy assignments, and prior to proceeding with any potential bankruptcy assignment of any of the Debtors, the Receiver will assess whether such an assignment would likely provide benefits as compared to those available in these receivership proceedings.

I. CONCLUSION

59. The Receiver may be able to recover substantial amounts through commencing actions on behalf of the Debtors in respect of the transactions described herein. However, the Receiver requires additional and accurate information to better assess the viability of these claims and whether it is worthwhile to advance them.

60. The books and records and other information obtained by the Receiver do not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and

difficult to interpret absent additional information and assistance from the Debtors' representatives and other parties, a number of whom have refused to meet with the Receiver to date.

61. The Receiver accordingly respectfully requests the relief set forth herein and in the Receiver's Notice of Motion dated March 21, 2024, so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

62. Further, the Receiver believes that there is a likelihood that it may, at some point, be necessary or desirable to assign the Debtors' into bankruptcy for the benefit of the creditors as a whole.

Dated this 27th day of March, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property of 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, and not in its personal or corporate capacity



Paul Bishop
Senior Managing Director



Kamran Hamidi
Managing Director

MBL ADMINISTRATIVE AGENT II -and-
LLC

TRADE X GROUP OF COMPANIES
INC. et al

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

Applicant

Respondents

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COMMERCIAL LIST
Proceeding commenced at Toronto

SECOND REPORT OF THE RECIEVER

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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**

**THIRD REPORT OF FTI CONSULTING CANADA INC., AS
COURT-APPOINTED RECEIVER**

May 17, 2024

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.

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Respondents

A. Introduction

1. This is the Third Report of FTI Consulting Canada Inc. (“**FTI**”) in its capacity as receiver and manager (the “**Receiver**”), without security, of the following property (collectively the “**Property**”) of Trade X Group of Companies Inc. (“**Trade X Parent**”), 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. (“**Techlantic**”) and TX Ops Canada Corporation (“**TX Canada**”, and collectively, the “**Debtors**”):

- (a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;
 - (b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and
 - (c) certain assets, undertakings and properties of TX Canada defined as the “TX Canada Collateral” in the Affidavit of Westin Lovy sworn December 4, 2023 (the “**Lovy Affidavit**”).
2. This Third Report is tendered in response to the motion brought by 1309767 Ontario Ltd. (“**130 Ontario**”) and 2601658 Ontario Ltd. (“**260 Ontario**”, and together with 130 Ontario, the “**Van Essen Companies**”) to (among other things) stay all present and future litigation against them in relation to the Debtors (the “**Stay Motion**”).

B. The Receiver’s mandate and right to access Techlantic’s documents

3. On December 4, 2023, MBL Administrative Agent II LLC (“**MBL**”) brought an application to appoint FTI as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.
4. MBL alleged that the Debtors had defaulted on their obligations under a senior secured revolving credit agreement dated September 27, 2021 (the “**Global Facility**”)¹ by, among

¹ The Receiver’s First Report incorrectly stated that the Global Facility is dated February 5, 2021. Some of the Debtors entered into a separate facility (the “Domestic Facility”) on February 5, 2021. The Global Facility is dated September 27, 2021.

other things, diverting vehicle sale proceeds totalling approximately \$7 million that should have been deposited into the established collection account. MBL is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders. The Lovy Affidavit describing the alleged diversion of funds from the collection accounts is attached hereto (without exhibits) as Appendix “A”.

5. The Receiver has not yet independently verified MBL’s allegations. It notes, however, that the Debtors did not challenge MBL’s evidence before or after the Receiver was appointed.
6. On December 22, 2023, Justice Cavanagh issued the Receivership Order appointing FTI as the Receiver, without security, of the Property. The Receivership Order is attached hereto as Appendix “B”.
7. Pursuant to the Receivership Order, the Receiver was, among other things, specifically empowered and authorized to:
 - (a) take possession and exercise control over the Property;
 - (b) manage, operate and carry on the business of the Debtors, including Techlantic; and,
 - (c) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings with respect to the Debtors, including Techlantic.
8. In connection with its business, Techlantic operated an e-mail server (the “**Techlantic Server**”) that Techlantic’s employees and consultants used to send e-mails (the “**Techlantic E-mails**”) relating to Techlantic’s business.

9. After the Receiver was appointed, it paid the fees required to operate the Techlantic Server and use and access the Techlantic E-mails. It made these payments in order to ensure that Techlantic's remaining employees could operate Techlantic's business and assist with the Receiver's realization efforts, and to preserve the Techlantic Server and the Techlantic E-mails.
10. After the Receivership Order, the Van Essen Companies did not ask for permission to use the Techlantic Servers. The Receiver did not know that they were doing so.

(ii) Review of Techlantic's Documents

11. Following the Receiver's appointment on December 22, 2023, the Receiver worked diligently to receive, preserve, protect and otherwise manage the Debtors' Property in accordance with the Receivership Order. In the course of the Receiver's efforts to manage the Debtors' Property, it became clear to the Receiver that the Debtors' books and records were, in some instances, not reliable and in other instances very difficult to understand.
12. By February 2024, the Receiver had identified a number of potential issues that required further investigation. Those issues are set out in the Second Report of the Receiver (the "**Second Report**") at paragraphs 26-34. The Second Report is attached hereto (without appendices) as Appendix "C".
13. Given the difficulties with the Debtors' records, and especially in light of MBL's evidence that funds had been improperly diverted by the Debtors, the Receiver determined that it was appropriate to conduct a more detailed review of the Debtors' electronic records, including the Techlantic E-mails and the documents stored on the Techlantic Server.

(iii) The Receiver engaged FTI Forensic to assist with its Review

14. On or around February 1, 2024, the Receiver and its counsel, Goodmans LLP (“**Goodmans**”) began to discuss engaging members of FTI’s Forensic and Litigation Consulting group (“**FTI Forensic**”) to assist with the Receiver’s investigation.
15. FTI Forensic operates a separate business line from the Receiver. Although both businesses are owned by FTI Consulting Canada Inc. (defined above as “**FTI**”) they have separate internal reporting structures, internal profit and loss statements and information technology infrastructures. In the ordinary course, employees in FTI’s Corporate Finance and Restructuring practice (including those working for the Receiver) cannot access documents stored on FTI Forensic’s information storage and document management systems, and vice versa.
16. FTI Forensic prepared a budget estimate and proposal for approval by the Receiver before it began any work. The Receiver, in consultation with MBL, decided to engage FTI Forensic.

(iv) E-mails from certain Techlantic employees – but not Wouter – added to Relativity Database on February 16, 2024

17. In keeping with its mandate and the Receivership Order, the Receiver took steps to preserve the Techlantic Server, including the Techlantic E-mails, shortly after its appointment.
18. However, and as described below, the Receiver never reviewed the Techlantic Server or the Techlantic E-mails. All review of the Techlantic Server and Techlantic E-mails was conducted by either Goodmans or FTI Forensic, at the Receiver’s request. To the extent

that the Receiver obtained information about documents on the Techlantic Server or Techlantic E-mails, this information was provided to it by either FTI Forensic or Goodmans.

19. The Techlantic Server and the Techlantic E-mails were hosted by a third party provider, MMO Techno. FTI Forensic asked MMO Techno to provide the contents of the mailboxes for the following e-mail addresses (the “**Initial Custodians**”):²
- (a) eric@techlantic.com
 - (b) eric.vanessen@tradexport.com
 - (c) eric@tradexport.com
 - (d) june@techlantic.com
 - (e) michelle@techlantic.com
 - (f) ping@techlantic.com
 - (g) wouter@techlantic.com
20. The email inboxes from the Initial Custodians listed above were uploaded into a document management software called Relativity. In order to review the Techlantic E-mails, reviewers from either Goodmans or FTI Forensic had to login to the Relativity database (the “**Database**”).

² Other tradexport.com mailboxes were collected, but these mailboxes are not directly relevant to this motion.

21. Kamran Hamidi of the Receiver entered the Database only once, to click on one document as a “test” of his credentials.
- (v) The Receiver did not know that the Techlantic E-mails contained Van Essen Companies e-mails, let alone privileged emails
22. The Van Essen Companies are operated by Wouter Van Essen (“**Wouter**”). Wouter is the father of Eric Van Essen (“**Eric**”), who was an officer and director of Techlantic when the Receiver was appointed.
23. Eric notified the Receiver of his resignation as a director and officer of Techlantic on January 2, 2024. Eric stayed on as a Techlantic employee until April 19, 2024.
24. When the Receiver’s investigation began, it did not know (or have any reason to suspect) that the Van Essen Companies had used the Techlantic Server or the Techlantic E-mails for privileged communications. In fact, the Van Essen Companies did not tell the Receiver that they had used the Techlantic Server or the Techlantic E-mails for any business communication.
25. Importantly, the Van Essen Companies had represented to the Receiver that, despite the father/son relationship between Wouter and Eric, they dealt with Techlantic at arm’s length. The Receiver assumed that this included operating the Van Essen Companies’ business from a separate e-mail server that they paid for and controlled.
26. Because the Receiver did not know or suspect that the Van Essen Companies had any information (let alone privileged information) stored on the Techlantic Server, it did not

take any steps to identify or isolate any potentially privileged information that might belong to the Van Essen Companies.

27. It is not the Receiver's practice (nor, to the Receiver's knowledge, common practice among restructuring professionals) to screen a debtor's electronic records to determine whether privileged or confidential documents held by third parties might be stored there. Screening for potentially privileged documents without knowing anything about the documents (i.e., who sent them, when they were sent or what they relate to) would be very difficult, and in some cases impossible. In order to find privileged documents, the Receiver would have had to know where to look. Before receiving the Van Essen Companies' e-mail on April 5, 2024, the Receiver had no reason to believe that there were any privileged documents belonging to a third party on the Techlantic Server.
28. If the Receiver had known that there were (or might be) privileged communications on the Techlantic Server, then it would have taken appropriate steps to ensure that those documents were not included in the Database or reviewed by anyone. However, the Receiver was not aware of any reason to implement these procedures when Goodmans and FTI Forensic began reviewing documents.
- (vi) *Eric Tried to Delete Wouter's Emails from the Techlantic Server*
29. As described above, although Eric resigned as a director and officer shortly after the Receivership Order, he continued to work as an employee of Techlantic until April 19, 2024.

30. On or around February 7, 2024, without the Receiver's knowledge or permission, Eric instructed MMO Techno to remove certain users from the Techlantic Server, including Wouter. This request would have resulted in Wouter's e-mail account, and all of the data associated with it, being deleted. This e-mail is attached hereto as Appendix "D".
31. On or around February 16, 2024, Goodmans and FTI Forensic began to review documents in the Database. Shortly thereafter, Goodmans informed the Receiver that it had discovered through its preliminary review that Wouter had an e-mail account on the Techlantic Server.
32. After discovering this, FTI Forensic tried to collect Wouter's e-mails and add them to the Database. It was at this time that it learned, for the first time, that Eric had asked for Wouter's e-mail to be removed and deleted along with e-mails belonging to a number of Techlantic employees. Upon learning this, the Receiver instructed MMO Techno to disregard Eric's instructions and restore Wouter's email inbox. E-mails between the Receiver and MMO Techno are attached hereto as Appendix "E".
33. On February 21, 2024, Eric e-mailed the Receiver to advise that "Wouter suggested taking over some of the infrastructure costs" relating to the Techlantic Server. At no point during this correspondence did Eric indicate that there were privileged documents belonging to the Van Essen Companies on the Techlantic Server.
34. The Receiver wrote to Eric to clarify that the Receiver had to preserve Techlantic's historical records and that nothing should be deleted:

I just sent you an invite for 1 pm with the agenda attached within the meeting invite.
Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and **we need to preserve that information for the Receiver's**

records so we cannot transfer those costs to any other party unless it relates to a sale of the business.

I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so **we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.** [emphasis added]

35. A copy of this email is attached hereto as Exhibit “F”.

(vii) *Documents Presented to the Receiver*

36. As described above, the Receiver did not conduct any document review. Document review relating to the Receiver’s investigation was conducted by Goodmans or FTI Forensic. Specifically, FTI Forensic participated in its own separate review that focused primarily on investigating various financial transactions undertaken by the Debtors.

37. FTI Forensic communicated its findings to the Receiver and Goodmans through periodic presentations (the “**FTI Forensic Presentations**”). FTI Forensic also sent certain documents referenced in its presentations to the Receiver and Goodmans.

38. Many of the Techlantic documents referenced in the FTI Forensic Presentations were accounting documents, invoices and other financial documents relating to Techlantic’s business. To the best of the Receiver’s knowledge, the documents excerpted in the FTI Forensic Presentations are not documents alleged to be privileged. For greater clarity, none of the excerpted documents contain any correspondence between Wouter and Ms. Beale or Ms. Brinston, nor do they contain documents from within the “legal” folder in Wouter’s inbox.

39. On March 28, 2024, FTI Forensic presented certain findings relating to Techlantic's purchase of vehicles from the Van Essen Companies in 2022. FTI Forensic subsequently sent certain supporting documents relating to its analysis. The Receiver was copied on FTI Forensic's e-mail to Goodmans, but did not review any of the supporting documents at any point in time.
40. On May 17, 2024, the Receiver was advised by Goodmans that the documents sent on March 28, 2024 included a potentially privileged e-mail. Upon being advised of this by Goodmans, the Receiver personnel copied on Ms. Patel's e-mail deleted the e-mails from Ms. Patel without reviewing them.
41. In order to facilitate certain information sharing relating to this project, the Receiver granted certain members of FTI Forensic access to a shared drive (the "**FTI Drive**"). FTI Forensic saved documents to the FTI Drive, but the Receiver did not access them.
42. For clarity, the only documents from the Database that have been reviewed by the Receiver are those documents presented to it in the FTI Forensic Presentations or appended to the Receiver's Reports.
- C. The Van Essen Companies raise their privilege allegations for the first time on April 5, 2024**
43. The Receiver delivered its Supplemental Report to the First Report on April 4, 2024 (the "**First Supplemental Report**"). The First Supplemental Report attached a number of e-mails sent and received by Wouter and Eric.
44. On April 5, 2024, Ms. Beale wrote to assert (for the first time) that the Van Essen Companies used the Techlantic Server for the purposes of "receiving legal advice

settlement-related discussion and litigation advice and strategy, including in relation to the litigation herein.”

45. Ms. Beale also asserted that the Receiver had received and reviewed “all e-mails” sent from techlantic.com and many e-mails from techlanticconsulting.com. This is not correct. As noted above, the Receiver did not review any documents – all document review was conducted by either Goodmans or FTI Forensic.
46. Ms. Beale asked for a complete inventory of the Database and a copy of a “Document Collection and Review Protocol” that showed “measures taken to identify and exclude privileged information”. The e-mail is attached hereto as Appendix “G”.
47. As described above, the Receiver did not believe (or have any reason to believe) that any privileged material (other than potentially Techlantic’s privileged material, which it was entitled to review) and so it did not implement any procedures for excluding such materials.

D. Conclusion

48. Since the Van Essen Companies initially raised their concerns about privilege, the Receiver has tried to work with the Van Essen Companies to address any legitimate concerns relating to the allegedly privileged documents in the Database. The Receiver does not believe that the Van Essen Companies should benefit from any inadvertent review of privileged documents that may have occurred, particularly given the Van Essen Companies’ use of the Techlantic Server without the Receiver’s permission, their delay in raising their privilege concerns, and the fact that the Receiver has not reviewed any privileged documents. In the Receiver’s view, the Van Essen Companies would receive a significant benefit if their motion is granted by the Court, because substantial potential liabilities

would be effectively eliminated without any hearing on the merits, and without any demonstration that the Van Essen Companies have actually suffered any prejudice. That benefit would come at the expense of Techlantic's stakeholders, and the Receiver does not believe that it is appropriate.

All of which is respectfully submitted,

FTI Consulting Inc., solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradeexpress 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, and not in its personal or corporate capacity.



Paul Bishop
Senior Managing Director



Kamran Hamidi
Managing Director

Applicant

Respondents

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

Proceeding commenced at Toronto

THIRD REPORT OF THE RECEIVER

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TRADE X GROUP OF COMPANIES
INC. et al

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

**FOURTH REPORT OF THE RECEIVER, FTI
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