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

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

MOTION RECORD OF THE RECEIVER

August 26, 2024

GOODMANS LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

TO: **THE SERVICE LIST**

INDEX

INDEX

1

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

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

NOTICE OF MOTION

FTI Consulting Canada Inc. ("**FTI Consulting**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**"), without security, of substantially all of the assets, undertakings and properties 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**"), as set forth in further detail in the Receivership Order (as defined below), will make a motion before the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) on August 29, 2024, at 10:00 a.m. (Toronto time), or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ In writing under subrule 37.12.1 (1);

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

☐ By telephone conference;

☒ By video conference;

at a Zoom link to be made available by the Court and posted to CaseLines in advance of the hearing.

THE MOTION IS FOR:

1. An Order (the "**Settlement Approval Order**"), *inter alia*, approving a settlement agreement between 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (collectively, the "**Van Essen Companies**") and the Receiver, on behalf of the Debtors (the "**Settlement**"); and

2. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

A. The Receiver's Appointment

3. The application (the "**Receivership Application**") by MBL Administrative Agent LLC ("**MBL**" or the "**Applicant**"), the senior secured creditor of the Debtors, for the Receivership Order (as defined below) was originally scheduled to be heard on December 11, 2023; however, on December 11, 2023, the Court issued an order (the "**Interim Order**") that, among other things, adjourned the hearing of the Receivership Application until December 22, 2023, and appointed FTI Consulting Canada Inc. as Information Officer in respect of the Debtors. The Interim Order, among other things, imposed a stay of proceedings that stayed any person from exercising any right or remedy against the Debtors from the date of the Interim Order.

4. The Receivership Application was heard on December 22, 2023, and the Receiver was appointed as receiver and manager of the Debtors pursuant to an Order of this Court dated December 22, 2023 (the "**Receivership Order**").

B. The Payment Motion and the Cross-Motion

5. Shortly after the Receiver was appointed, it discovered that $1,723,495 of sales proceeds (the "**Techlantic Funds**") owed to Techlantic in respect of the sale of 14 vehicles (the "**Techlantic Vehicles**") had been paid to the Van Essen Companies instead of to Techlantic.

6. The principal of the Van Essen Companies, Wouter Van Essen ("**Wouter**"), is the father of Eric Van Essen ("**Eric**"), who was, at the time, a senior officer and director of Techlantic.

7. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to advise that the Van Essen Companies had received the Techlantic Funds, which Wouter acknowledged represented a payment due to Techlantic. However, Wouter claimed that he had set-off the Techlantic Funds against a debt allegedly owed by Techlantic to the Van Essen Companies on December 20, 2023 (the "**Purported Set-Off**").

8. By way of Notice of Motion dated February 2, 2024, the Receiver commenced a motion against the Van Essen Companies, seeking to recover the Techlantic Funds (the "**Payment Motion**") on the basis that the Purported Set-Off had violated the stay of proceedings imposed by the Interim Order.

9. By way of Notice of Cross-Motion dated February 7, 2024, the Van Essen Companies commenced a cross-motion asserting that they were entitled to retain the Techlantic Funds (the "**Cross-Motion**").

10. The Receiver amended its Notice f Motion on February 27, 2024, to add a claim asserting that the Purported Set-Off was a preference contrary to section 95 of the *Bankruptcy and Insolvency Act*.

C. The Stay Motion and the Stay Motion Appeal

11. The Payment Motion and the Cross-Motion were adjourned multiple times. The motions were originally scheduled to proceed on April 3, 2024. However, the hearing was later adjourned to June 26, 2024, as the Receiver's investigation into the Debtors' affairs uncovered significant additional evidence relevant to the motions and the Van Essen Companies asserted that they needed additional time to respond to that evidence.

12. On April 16, 2024, shortly after the motions were adjourned for the first time, the Van Essen Companies served a Notice of Motion seeking to stay the rights and claims of the Receiver, the Applicant and any related parties as against the Van Essen Companies (the "**Stay Motion**"). The purported basis for the Stay Motion was the Van Essen Companies' allegation that the Receiver had gained access to the Van Essen Companies' privileged communications which were housed on the Debtors' servers.

13. The Stay Motion was initially scheduled to be heard on June 11, 2024. At the Van Essen Companies' request, the Payment Motion was adjourned a second time to July 26, 2024 to accommodate the hearing of the Stay Motion. The Stay Motion was later adjourned to June 17, 2024, to accommodate the Van Essen Companies' decision to retain additional counsel.

14. By way of decision dated June 28, 2024, the Honourable Justice Cavanagh dismissed the Stay Motion in its entirety.

15. On July 19, 2024, the Van Essen Companies served a motion seeking injunctive relief from the Court of Appeal, including a stay of the Payment Motion and Cross-Motion scheduled to proceed on July 26, 2024, pending their motion for leave to appeal in respect of the Stay Motion. This request for injunctive relief was denied by the Court of Appeal.

16. On July 25, 2024, the night before the Payment Motion and Cross-Motion were scheduled to be heard, the Van Essen Companies' counsel advised that they would not be able to proceed with the motions due to a personal emergency and that the Van Essen Companies would be retaining new counsel. The Payment Motion and Cross-Motion were ultimately adjourned to August 29, 2024.

17. On August 1, 2024, the Van Essen Companies served a Notice of Appeal indicating that they intended to appeal and/or seek leave to appeal the dismissal of the Stay Motion (the "**Stay Motion Appeal**").

D. The Settlement

18. The Receiver and the Van Essen Companies have reached the comprehensive Settlement that resolves the Payment Motion, the Cross-Motion and the Stay Motion Appeal on consent of the parties. The key terms of the Settlement include the following:

(a) the Van Essen Companies will make payment to the Receiver of $1,650,000.00 (the "**Settlement Funds**") by no later than August 29, 2024;

(b) the Van Essen Companies will execute a consent to judgment in the amount of the $1,723,495.00 to be held in escrow by counsel for the Receiver, and if the Van Essen Companies fail to make payment of the Settlement Funds per subparagraph (a) above, the Receiver shall have the right to release the consent to judgment from escrow and obtain a judgment against the Van Essen Companies;

(c) the Van Essen Companies and the Receiver shall consent to the dismissal of the Payment Motion and the Cross Motion, with prejudice and without costs;

(d) the Van Essen Companies shall abandon the Stay Motion Appeal, with prejudice and without costs;

(e) the Van Essen Companies and the Receiver shall execute a release relating to the matters at issue on the Payment Motion, the Cross Motion, and the Stay Motion Appeal, provided that the Receiver, on behalf of the Debtors, will only release the Van Essen Companies from the following specified claims (together, the "**Specified Released Claims**"):

(i) the Debtors' claim for repayment of the Techlantic Funds; and

(ii) the Debtors' claim for costs relating to Payment Motion, the Cross-Motion, the Stay Motion and the Stay Motion Appeal;

(f) notwithstanding the foregoing, the Van Essen Companies will retain the right to assert a claim (secured or unsecured) in respect of the amount alleged by the Van Essen Companies to be owing to them with respect to the 2022 Vehicles (as defined in the Receiver's Notice of Motion for the Payment Motion), subject to the following terms and conditions:

(i) the Van Essen Companies shall only assert or advance any such claim as part of a proof of claims process in these receivership proceedings in respect of the Debtors, or otherwise following repayment in full of the amounts owing to the Applicant;

(ii) the Van Essen Companies will release any claims to a constructive trust (or any other trust or other proprietary claim) against or in respect of any of the Debtors; and

(iii) the Van Essen Companies will agree that any claim asserted by the Van Essen Companies will rank behind the claims asserted by the Applicant, such that the Van Essen Companies will only recover funds (if they are successful in their claim) after the Applicant is paid in full; and

(g) the Van Essen Companies will provide a list identifying all documents that they allege to be privileged within the Receiver's database by September 3, 2024, following which the Receiver shall remove such documents from its database. The Receiver will retain the right to challenge any of the Van Essen Companies' privilege claims. Once the documents alleged to be privileged are removed, the Receiver shall have full and unfettered access to the database.

19. The Receiver believes that the approval of the Settlement is in the best interests of the Debtors and their stakeholders, as it provides significant value to the Debtors' estate and favourably resolves a complex dispute that would otherwise be subject to further costly and time-consuming litigation.

20. The Receiver consulted with the Applicant, the Debtors' senior secured creditor, in connection with the Settlement, and the Settlement is supported by the Applicant.

21. Section 243(1) of the *Bankruptcy and Insolvency Act* and sections 101 of the *Courts of Justice Act* (Ontario);

22. The Receivership Order, including paragraph 3(h) and (j) thereof; and

23. Such further and other grounds as counsel may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Fifth Report of the Receiver dated August 26, 2024;

(b) the First Report of the Receiver dated February 1, 2024;

(c) the First Supplemental Report of the Receiver dated April 3, 2024;

(d) the Third Report of the Receiver dated May 17, 2024; and

(e) such further and other evidence as the parties may submit and this Honourable Court may allow.

DATE: August 26, 2024

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

MBL ADMINISTRATIVE AGENT II LLC and 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

NOTICE OF MOTION

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

2

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

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

August 26, 2024

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

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

1. This is the Fifth Report of FTI Consulting Canada Inc. (**"FTI"**) in its capacity as the Court-appointed 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"**) (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.

2. This Fifth Report is tendered in support of the Receiver's motion seeking an Order (the **"Settlement Approval Order"**) approving a settlement agreement (the **"Settlement"**) between the Receiver, on behalf of the Debtors, and 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (together, the **"Van Essen Companies"**).

3. Through the Settlement, the key terms of which are discussed further herein, the Receiver and the Van Essen Companies have, among other things, agreed to settle the following disputes:

(a) the Receiver's motion dated February 2, 2024, as amended February 27, 2024 (the **"Payment Motion"**);

(b) the Van Essen Companies' Cross-Motion dated February 7, 2024 (the **"Cross-Motion"**); and

(c) the Van Essen Companies' leave to appeal motion and appeal of Justice Cavanagh's decision dated June 28, 2024 bearing Court File No. COA-24-OM-0212 (the **"Stay Motion Appeal"**).

4. A comprehensive explanation of the circumstances surrounding the Payment Motion, the Cross-Motion and the motion underlying the Stay Motion Appeal (the **"Stay Motion"**) can be found in the First Report of the Receiver dated February 1, 2024, the First Supplemental Report to the First Report of the Receiver dated April 3, 2024, and the Third Report of the Receiver dated May 17, 2024. Copies of these prior reports (without appendices) are attached hereto as Appendices **"A"**, **"B"** and **"C"**, respectively. A summary of certain key matters regarding the Payment Motion, the Cross-Motion and the Stay Motion as they relate to the Settlement are set out below for reference, and this Fifth Report ought to be read in conjunction with such prior reports. Capitalized terms used herein but not otherwise defined herein have the meanings ascribed to such terms in such prior reports.

5. The Receiver believes that the Settlement is in the best interests of the Debtors and their stakeholders, as it provides significant value to the Debtors' estate and favourably resolves multiple disputes that would otherwise be subject to further costly and time-consuming litigation.

6. The Receiver consulted with MBL Administrative Agent LLC (**"MBL"** or the **"Applicant"**), the Debtors' senior secured creditor, in connection with the Settlement, and the Settlement is supported by the Applicant.

7. For the reasons set out in this Fifth Report, the Receiver submits that the granting of the Settlement Approval Order is appropriate at this time.

B. The Receiver's Appointment

8. The application (the **"Receivership Application"**) by the Applicant, the senior secured creditor of the Debtors, for the Receivership Order (as defined below) was originally scheduled to be heard on December 11, 2023; however, on December 11, 2023, the Court issued an order (the **"Interim Order"**) that, among other things, adjourned the hearing of the Receivership Application until December 22, 2023, and appointed FTI as Information Officer in respect of the Debtors. The Interim Order, among other things, imposed a stay of proceedings that stayed any person from exercising any right or remedy against the Debtors from the date of the Interim Order. A copy of the Interim Order is attached hereto as Appendix **"D"**.

9. The Receivership Application was heard on December 22, 2023, and the Receiver was appointed as receiver and manager of the Debtors pursuant to an Order of this Court dated December 22, 2023 (the **"Receivership Order"**). A copy of the Receivership Order is attached hereto as Appendix **"E"**.

C. The Payment Motion and the Cross Motion

10. Shortly after the Receiver was appointed, it discovered that $1,723,495 of sales proceeds (the **"Techlantic Funds"**) owed to Techlantic in respect of the sale of 14 vehicles (the **"Techlantic Vehicles"**) had been paid to the Van Essen Companies instead of to Techlantic.

11. The principal of the Van Essen Companies, Wouter Van Essen (**"Wouter"**), is the father of Eric Van Essen (**"Eric"**), who was, at the time, a senior officer and director of Techlantic.

12. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to advise that the Van Essen Companies had received the Techlantic Funds, which Wouter acknowledged represented a payment due to Techlantic. However, Wouter claimed that he had set-off the Techlantic Funds against a debt allegedly owed by Techlantic to the Van Essen Companies on December 20, 2023 (the **"Purported Set-Off"**).

13. By way of Notice of Motion dated February 2, 2024, the Receiver commenced the Payment Motion against the Van Essen Companies, seeking to recover the Techlantic Funds on the basis that the Purported Set-Off had violated the stay of proceedings imposed by the Interim Order.

14. By way of Notice of Cross-Motion dated February 7, 2024, the Van Essen Companies commenced the Cross-Motion, asserting that they were entitled to retain the Techlantic Funds.

15. The Receiver amended its Notice f Motion on February 27, 2024, to add a claim asserting that the Purported Set-Off was a preference contrary to section 95 of the *Bankruptcy and Insolvency Act*.

D. The Stay Motion and the Stay Motion Appeal

16. The Payment Motion and the Cross-Motion were adjourned multiple times. The motions were originally scheduled to proceed on April 3, 2024. However, the hearing was later adjourned to June 26, 2024, as the Receiver's investigation into the Debtors' affairs uncovered significant additional evidence relevant to the motions and the Van Essen Companies asserted that they needed additional time to respond to that evidence.

17. On April 16, 2024, shortly after the motions were adjourned for the first time, the Van Essen Companies commenced the Stay Motion seeking to stay the rights and claims of the Receiver, the Applicant and any related parties as against the Van Essen Companies. The purported basis for the Stay Motion was the Van Essen Companies' allegation that the Receiver had gained access to the Van Essen Companies' privileged communications which were housed on the Debtors' servers.

18. The Stay Motion was initially scheduled to be heard on June 11, 2024. At the Van Essen Companies' request, the Payment Motion was adjourned a second time to July 26, 2024 to accommodate the hearing of the Stay Motion. The Stay Motion was later adjourned to June 17, 2024, to accommodate the Van Essen Companies' decision to retain additional counsel.

19. By way of decision dated June 28, 2024, the Honourable Justice Cavanagh dismissed the Stay Motion in its entirety.

20. On July 19, 2024, the Van Essen Companies served a motion seeking injunctive relief from the Court of Appeal, including a stay of the Payment Motion and Cross-Motion scheduled to proceed on July 26, 2024, pending their motion for leave to appeal in respect of the Stay Motion. This request for injunctive relief was denied by the Court of Appeal.

21. On July 25, 2024, the night before the Payment Motion and Cross-Motion were scheduled to be heard, the Van Essen Companies' counsel advised that they would not be able to proceed with the motions due to a personal emergency and that the Van Essen Companies would be retaining new counsel. The Payment Motion and Cross-Motion were ultimately adjourned to August 29, 2024.

22. On August 1, 2024, the Van Essen Companies served a Notice of Appeal indicating that they intended to appeal and/or seek leave to appeal the dismissal of the Stay Motion.

E. The Settlement

23. The Receiver and the Van Essen Companies have reached the comprehensive Settlement that resolves the Payment Motion, the Cross-Motion and the Stay Motion Appeal on consent of the parties.

24. The key terms of the Settlement include the following:

(a) the Van Essen Companies will make payment to the Receiver of $1,650,000.00 (the **"Settlement Funds"**) by no later than August 29, 2024;

(b) the Van Essen Companies will execute a consent to judgment in the amount of the $1,723,495, to be held in escrow by counsel for the Receiver, and if the Van Essen Companies fail to make payment of the Settlement Funds per subparagraph (a) above, the Receiver shall have the right to release the consent to judgment from escrow and obtain a judgment against the Van Essen Companies;

(c) the Van Essen Companies and the Receiver shall consent to the dismissal of the Payment Motion and the Cross Motion, with prejudice and without costs;

(d) the Van Essen Companies shall abandon the Stay Motion Appeal, with prejudice and without costs;

(e) the Van Essen Companies and the Receiver shall execute a release relating to the matters at issue on the Payment Motion, the Cross Motion, and the Stay Motion Appeal, provided that the Receiver, on behalf of the Debtors, will only release the Van Essen Companies from the following specified claims (together, the **"Specified Released Claims"**):

(i) the Debtors' claim for repayment of the Techlantic Funds; and

(ii) the Debtors' claim for costs relating to Payment Motion, the Cross-Motion, the Stay Motion and the Stay Motion Appeal;

(f) notwithstanding the foregoing, the Van Essen Companies will retain the right to assert a claim (secured or unsecured) in respect of the amount alleged by the Van Essen Companies to be owing to them with respect to the 2022 Vehicles (as defined in the Receiver's Notice of Motion for the Payment Motion), subject to the following terms and conditions:

(i) the Van Essen Companies shall only assert or advance any such claim as part of a proof of claims process in these receivership proceedings in respect of the Debtors, or otherwise following repayment in full of the amounts owing to the Applicant;

(ii) the Van Essen Companies will release any claims to a constructive trust (or any other trust or other proprietary claim) against or in respect of any of the Debtors; and

(iii) the Van Essen Companies will agree that any claim asserted by the Van Essen Companies will rank behind the claims asserted by the Applicant, such that the Van Essen Companies will only recover funds (if they are successful in their claim) after the Applicant is paid in full; and

(g) the Van Essen Companies will provide a list identifying all documents that they allege to be privileged within the Receiver's database by September 3, 2024, following which the Receiver shall remove such documents from its database. The Receiver will retain the right to challenge any of the Van Essen Companies' privilege claims. Once the documents alleged to be privileged are removed, the Receiver shall have full and unfettered access to the database.

25. The documentation to be entered into by the Van Essen Companies and the Receiver, on behalf of the Debtors, in respect of the Settlement and the related releases has not yet been finalized by the parties as at the date of this Fifth Report.

26. The Receiver believes that the approval of the Settlement is in the best interests of the Debtors and their stakeholders, as it provides significant value to the Debtors' estate and favourably resolves a complex dispute that would otherwise be subject to further costly and time-consuming litigation.

27. The Receiver consulted with the Applicant, the Debtors' senior secured creditor, in connection with the Settlement, and the Settlement is supported by the Applicant.

F. Conclusion

28. For the reasons discussed herein, the Receiver respectfully requests that the Settlement Approval Order be granted.

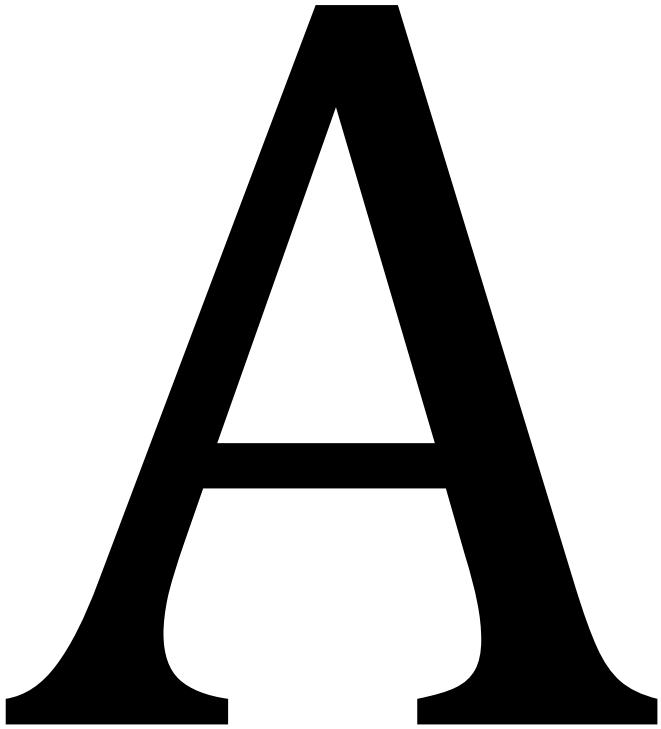
All of which is respectfully submitted,

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

1393-9964-2126


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

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

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

TABLE OF CONTENTS

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 "I".**

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 LLC and 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 REPORT OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

B

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

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

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 arranged 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 LLC and 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 RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

C

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

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

May 17, 2024

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

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

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 a 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

MBL ADMINISTRATIVE AGENT II LLC and 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

THIRD REPORT OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

D

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 11th
	)	
JUSTICE PENNY	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, 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

ORDER

ON READING the Applicant's Amended Notice of Application for an Order pursuant to section 243(1) 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 (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager ("**FTI**" or the "**Information Officer**") without security, of substantially all of the assets and undertakings 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 (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, and the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, FTI, the Debtors and no one appearing although duly served, and on reading the consent of FTI to act as Information Officer,

AND GIVEN the request made by the Debtors to adjourn and postpone the hearing of the Application until December 22, 2023,

AND GIVEN the inherent jurisdiction of the Superior Court of Justice to grant an interlocutory injunction or a mandatory order,

AND GIVEN the provisions of the BIA and CJA,

ADJOURNMENT OF THE APPLICATION

1. **THIS COURT ORDERS** that the hearing on the Application is hereby adjourned and postponed until December 22, 2023 (the "**Postponed Hearing**"), at which time the Application shall be returnable before the Court, at a time and by videoconference to be announced by the Court and communicated to the parties.

2. **THIS COURT ORDERS** that any interested party wishing to object to any relief sought in the Applicant's Application shall be entitled to do so at the Postponed Hearing, provided that such party serves to the Applicant's counsels, and to all other parties, a detailed written response stating the nature and grounds of such objection by no later than 1 p.m. on December 21, 2023.

STAY OF PROCEEDINGS AGAINST THE DEBTORS AND THE PROPERTY

3. **THIS COURT ORDERS** that, until the date of the Postponed Hearing or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (defined below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property, including all rights of His Majesty in right of Canada and His Majesty in right of a Province, are hereby stayed and suspended pending further order of this Court, with the exception of the proceedings commenced against the Debtors' affiliate, 13517985 Canada Inc. ("**Wholesale Express**") by Highcrest Lending Corporation ("**Highcrest**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, in the Commercial Division of the Superior Court of Quebec on November 22, 2023.

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.

5. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Information Officer , or with leave of this Court.

6. **THIS COURT ORDERS** that during the Stay Period and subject to paragraph 8 hereof, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and services, including without limitation all

computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Debtors, with the consent of the Information Officer, or as may be ordered by this Court.

7. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Debtors.

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, cash or cash equivalents placed on deposit by the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Debtors' accounts until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

9. **THIS COURT ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid

10. **THIS COURT ORDERS** that notwithstanding the stay of proceedings ordered herein, the Debtors, with the prior approval of the Information Officer, shall be entitled but not obligated to pay amounts owing, either prior to or after the date of this Order, for goods or services actually supplied to the Debtors or any other expenses incurred in the ordinary course of business, if, in the opinion of the Information Officer, such payments are essential to the business and ongoing operations of the Debtors.

APPOINTMENT OF INFORMATION OFFICER

11. **THIS COURT ORDERS** that until the Postponed Hearing, FTI shall be appointed to act as Information Officer (the "**Information Officer**") of all of the following property (collectively, the "**Property**"):

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

(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.

12. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized, not obligated, to do any of the following where the Information Officer considers it necessary or desirable:

(a) To review and approve the receipts and disbursements of the Debtors, in consultation with the Applicant;

(b) To monitor the Debtors' business and all transactions in connection therewith;

(c) To obtain and review information with respect to the bank accounts of the Debtors (including all transaction activity), and the banks and/or financial institutions which maintain the Debtors' bank accounts are hereby directed to promptly provide any and all such information at the request of the Information Officer and/or its representatives;

(d) To provide a written report to the Court at the Postponed Hearing on all matters relating to the Debtors, their businesses and their Property and any potential transaction;

(e) To provide a written report to the Applicant, Aimia Inc. and to any other interested party as the Information Officer deems appropriate;

(f) To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

13. **THIS COURT ORDERS** that the Debtors and all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, direct or indirect, and any of their affiliates, and all other persons acting on the Debtors' instructions or on their behalf shall cooperate with and provide the Information Officer with such assistance as required to allow the Information Officer to perform its duties as set out in paragraph 11 above.

14. **THIS COURT ORDERS** that during the Stay Period, there shall be no intercompany transactions, including transfers of funds between the Debtors and any of their direct or indirect shareholders or affiliates, except with the written consent of the Information Officer.

15. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against the Information Officer except with the written consent of the Information Officer or with leave of the Court.

16. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, whether common law, statutory, environmental or otherwise, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Information Officer under the BIA, including, without limitation, section 14.06 thereof, or under any other applicable legislation.

17. **THIS COURT ORDERS**, for greater certainty, that none of the orders set forth herein shall be deemed to create an obligation upon the Information Officer to take possession, control or otherwise manage the Property, or any portion thereof, and the Information Officer shall not be presumed to be in possession of same.

18. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in connection with this Order and the exercise of its powers and duties hereunder.

19. **THIS COURT ORDERS** the Debtors to pay the Information Officer's and its Counsel's fees and costs related to the Information Officer's appointment upon receipt of their bill.

20. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting either as a receiver, monitor or trustee in bankruptcy of the Debtors.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com
Tel: 416.863.5567

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

E

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 22nd
	)	
JUSTICE CAVANAGH	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, 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

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) 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 (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager (the "**Receiver**") without security, of substantially all of the assets and undertakings 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 (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, the supplementary affidavit of Westin Lovy sworn December 8, 2023 and the Exhibit thereto, the second supplementary affidavit of Westin Lovy sworn December 21, 2023 and the Exhibits thereto, the Endorsement of Justice Penny dated December 11, 2023, the Interim Order of this Court dated December 11, 2023, and the consent of FTI to act as the Receiver.

ON HEARING the submissions of counsel for the Applicant, counsel for FTI as proposed receiver, counsel for the Debtors, and counsel for Aimia Inc., and being advised that this Application is on consent of the Debtors, and on consent of Aimia Inc. on the condition that the shares of 13517985 Canada Inc. are not included in the Property over which the Receiver is appointed, and with counsel for Highcrest Lending Inc. having appeared before this Court and not opposed to this Application.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Amended Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the following property (collectively, the "**Property**"):

(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.

RECEIVER'S POWERS

3. **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;

(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;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to obtain and review information with respect to each of the bank accounts of each of the Debtors, including, but not limited to, bank accounts with the financial institutions set out in Schedule “B” (the

"**Bank Accounts**"), which includes all transaction activity, and, without limiting the generality of the other provisions of this Order, to take possession of, exercise control over, and withdraw or otherwise transfer amounts from the Bank Accounts, and each of the banks and/or financial institutions which maintain any Bank Accounts are hereby directed to promptly provide any and all such information, and otherwise cooperate with the Receiver with regards to the foregoing, at the request of the Receiver and/or its representatives;

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

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction provided that the aggregate consideration for all such transactions does not exceed $50,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, banks and other financial institutions, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes,

computer disks, or other data storage media or cloud-based storage containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic or cloud-based system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to

observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including, without limitation, set-off rights, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies (each, a "**Loan**") from time to time as it may consider necessary or desirable, provided that the aggregate outstanding principal amount of all of the Loans does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Loans, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any Loan borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the Loans from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case

Website shall be established in accordance with the Protocol with the following URL https://ontariocourts.caselines.com/Case/Details?caseKey=34e91e5ee4f444be8cabe9a6507ad889.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

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

Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties 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 (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ■ day of December, 2023 (the "**Order**") made in an action having Court file number CV-23-00710413-00-CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

BANK ACCOUNTS AND FINANCIAL INSTITUTIONS

In the course of its duties as Information Officer pursuant to the Order of Justice Penny dated December 11, 2023, FTI has discovered that the Respondents hold bank accounts with various financial institutions including, without limitation, the below listed banks, which do not comprise an exhaustive list, as FTI may discover additional financial institutions in the course of executing its duties as Receiver:

1. Royal Bank of Canada;

2. Silicon Valley Bank;

3. TD Bank;

4. National Bank of Canada;

5. China Minsheng Bank;

6. Commerzbank;

7. Standard Chartered Bank;

8. Zenith Bank;

9. Guaranty Trust Bank;

10. Banco Bilbao Vizcaya Argentaria;

11. Banreservas; and

12. Itaú Bank.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com
Tel: 416.863.5567

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

112

MBL ADMINISTRATIVE AGENT II LLC and 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

FIFTH REPORT OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

MBL ADMINISTRATIVE AGENT II LLC and 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

MOTION RECORD OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.