

**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

BETWEEN:

**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

SUPPLEMENTAL AFFIDAVIT OF WOUTER VAN ESSEN

I, **WOUTER VAN ESSEN**, of the City of Oakville in the Province of Ontario, **MAKE OATH AND AFFIRM:**

1. I am the principal of 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together with 130 Ontario, the "**Van Essen Companies**"), and as such, I have direct and personal knowledge of the matters deposed to herein except where stated to be on information and belief, and where so stated, I believe them to be true.

2. This supplemental affidavit is sworn in support of our motion seeking to stay the rights and claims of the Receiver, FTI Consulting Canada Inc., and any related parties, and for an order granting judgment in the Motion and Cross-Motion in favour of the Van Essen Companies.

A. No Delay

3. Based on my review of the Receiver's Aide Memoire dated April 29, 2024, I understand that the Receiver intends to take the position that this motion is tactical and that I intentionally delayed in raising concerns regarding the Receiver's access to my privileged correspondence. I strongly deny any such suggestions. I raised concerns as soon as I realized that the Receiver might be reviewing my privileged correspondence.

4. I acted diligently as soon as I realized the issue. I brought this motion within days of learning of the Receiver's potential improper access, and I strongly deny any suggestion that I delayed intentionally or otherwise acted tactically.

5. In a letter from the Receiver's counsel, dated May 10, 2024, the Receiver's counsel restates this position:

In this case, the Van Essen Companies knew that the Receiver had "unfettered access" to the Techlantic E-mails and the Techlantic Server as of the date of the Receivership Order on December 22, 2023. The Van Essen Companies knew as of February 1, 2024 that the Receiver was seeking an order for the return of specified sums received by the Van Essen Companies to Techlantic. I specifically told you, orally (on February 23, 2024) and in writing (on February 27, 2024), that we were reviewing the Techlantic E-mails and some of what we had found.

This letter is included as **Exhibit "A"**, hereto.

6. I did not have any such knowledge. On the contrary, I assumed that access to the Van Essen Company documents, including my own documents, was the subject of ongoing discussions between the Receiver and my counsel.

7. Those discussions began in early January 2024 and included voluntary disclosures of information, including in an email dated January 3, 2024. This email, without attachments, is included as **Exhibit “B”**, hereto.

8. The Receiver’s counsel made an additional request for information by email dated January 10, 2024:

Mr. Van Essen’s email of January 2, 2024 notes that his company deposited six cheques from Mr. Zhou that were for payment due to Techlantic Ltd. Please provide as soon as possible copies of these 6 cheques that were deposited.

Please also provide any additional relevant documentation that may be in the possession of Mr. Van Essen, 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd. that relate to the above Techlantic Funds, as well as any other relevant documentation setting out the arrangements between Techlantic and the Van Essen companies that are described in your correspondence.

The Receiver will review such additional information and we will advise if any additional questions or information requests.

9. In response, by email dated January 11, 2024, my counsel provided the specific bank drafts requested and stated that:

Regarding your request for additional relevant documentation that may be in the possession of Mr. Van Essen, 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd, given the breadth of the request, my clients propose to reconsider such a comprehensive provision of documents at a later stage if deemed necessary. My clients are, of course, willing to continue their efforts to provide the Receiver with specific documentation as requested on an ongoing basis.

This email chain is included as **Exhibit “C”**, hereto.

10. I am unaware of any further documentation requests during this period.

11. On February 2, 2024, I was served with the Receiver’s notice of motion for the underlying motion.

12. On February 15, 2024, Counsel for the Receiver wrote to my counsel and said, “[...]the Receivership Order requires that all Persons produce Records in their possession relating to Techlantic’s business. We understand that the Van Essen Companies and Mr. Van Essen have Records in their possession, and we will send a request for Records under separate cover.” This letter is included as **Exhibit “D”**, hereto.

13. I was awaiting a document request and did not have any indication that the Receiver would independently access my emails. It certainly never occurred to me that the Receiver might be reviewing my privileged correspondence.

14. No request for records was sent, but on February 19, 2024, my counsel responded that “the *Rules of Civil Procedure* will dictate the procedures for exchanging further information.” This letter, without attachment, is included as **Exhibit “E”**. As of this date, my understanding was that I would be cross-examined on my affidavit sworn in the Underlying Motion and Cross-Motion and that I would provide further information in the context of the cross-examination.

15. On February 27, 2024, the Receiver responded, “It is unfortunate that your clients have declined our invitation to provide further information relevant to the Receiver’s analysis, and the Receiver will proceed based on the information available to it. We note, for clarity, that the ongoing dispute does not change your clients’ obligation to provide Records (within the meaning of the Receivership Order) and the Receiver reserves all of its rights in that regard.” This letter is included as **Exhibit “F”**, hereto.

16. The Receiver has asserted in its Aide Memoire that in February 2024, it specifically disclosed to me via email that it was reviewing certain emails, and goes on to imply that I knew at this point that the Receiver was reviewing my privileged correspondence and yet still took no steps.

17. This is incorrect. In February 2024, I did not know that the Receiver was reviewing my privileged correspondence.

18. The email relied on by the Receiver is attached as **Exhibit “G”**. It is from the Receiver’s counsel to my counsel, dated February 27, 2024, sent later the same day as the letter referred to in paragraph 15, above, where the Receiver acknowledges my counsel’s refusal to make further voluntary disclosures.

19. It is important to understand the context of this email exchange. This was an exchange among counsel regarding various procedural aspects of the underlying motion concerning the disputed entitlement to certain funds. On February 27, 2024, in response to inquiries from my counsel, the Receiver’s counsel responded, among other things:

Alexis,

Thank you for your e-mail. Our responses are below:

1. We expect to respond to your request tomorrow. As you know, we do not agree that the Request to Inspect is valid or appropriate;

2. We are preparing a supplementary report, based on the information located in Techlantic’s records. It will primarily attach e-mails sent to or received by your clients. We are aiming to deliver the supplementary report this week, although that depends on our ongoing review and how much additional material we find;

3. The motion has been amended such that no relief is sought against Wouter Van Essen personally. The Receiver reserves all rights against Mr. Van Essen.

20. Based on the Receiver’s Aide Memoire, I understand that it relies, in particular, on item #2 in the above email.

21. I received a copy of this email at or around the time it was sent. Partly due to the unrelated context of the exchange, I did not appreciate from paragraph #2 (or any other aspect of the email) that the Receiver was reviewing materials from my email accounts that might be privileged or, more generally, that the Receiver had collected the entirety of my email accounts.

B. My Email Account Usage and Folder Structure

22. I have used two main email accounts for my business operations.

23. The first, wouter@techlantic.com, has been my primary email since 2001, handling both my business and private emails.

24. In late 2023, I created a new email account, wouter@techlanticconsulting.com, and began using it regularly in order to compartmentalize the business conducted on behalf of the Van Essen Companies.

25. I regularly used both email accounts for my daily business activities. Both contain privileged correspondence.

26. I am in the habit of filing every email that I want to keep in a folder structure set up in Outlook. I have used this folder structure for a number of years, organized by subject matter (finance, legal, insurance, employees) or projects (associations, corporate (incl. private and family-owned companies), sales, sourcing, etc.

27. Essentially, I now understand that this filing practice leads to intermingling between the two email accounts. In particular, I now understand that emails sent and received from the wouter@techlanticconsulting.com account are available within the wouter@techlantic.com account, because emails from the former account end up filed in the folders stored within the latter account. I did not appreciate this fact until the events described below.

C. Discovery of Potential Privilege Issue

28. The first time I realized that the Receiver might be reviewing my privileged correspondence was when I received and reviewed the First Supplemental Report to the Receiver's First Report dated April 3, 2024, on or around that date.

29. Appendices 7, 36, 38 of the First Supplemental Report include the emails that prompted me to raise concerns. Given the number of senders and recipients on those emails, I could not be sure where they were collected from, but I had concerns that the source was my personal email accounts, which gave rise to broader concerns about privilege.

30. I promptly raised this matter with my counsel.

31. On April 5, 2024 – two days after the First Supplemental Report was delivered – my counsel contacted the Receiver, asking for, among other things, an inventory of what was collected and reviewed.

32. An inventory was delivered on April 15, 2024. After reviewing this inventory, I knew the collection included my techlanticconsulting.com emails stored in my folder structure. This motion was filed the next day.

D. Attempts to Understand Review

33. My counsel has made numerous attempts to seek clarification about the scope of the review.

34. The most recent attempt was on May 2, 2024, when my counsel sent a letter restating the demand that the Receiver and its counsel identify what has been reviewed. My counsel's letter stated, among other things:

In light of the above, we reiterate our demand for the Receiver and its counsel to identify, with full particulars, the extent of their review of any documents falling into the above categories or any other documents that are potentially privileged to our clients. We understand that the Receiver may be able to generate logs of its (or its counsel's) activity in its documentary database that would show precisely which documents have been reviewed. We believe that it is incumbent on the Receiver to make transparent reference to those logs in its response to this inquiry.

The letter is included in **Exhibit "H"** hereto.

35. On May 10, 2024, the Receiver's counsel responded that they had viewed certain documents I claim to be solicitor-client privileged. Concerning litigation-privileged documents, the Receiver's counsel asserted, "There is no practical way for us to identify documents that may be subject to litigation privilege based on your letter." This letter is included at Exhibit "A" hereto.

36. In this letter, the Receiver asserts that it formulated its position on the underlying motion before it had access to my emails. I simply do not understand how this could be the case given the letter from the Receiver's counsel dated February 15, 2024 (Exhibit "D") stated the opposite:

To be clear, the Receiver has not yet reached a final determination on the issues raised on the Cross-Motion and Motion. However, since there is significant time before the hearing of the motion, the Receiver expects that it will have the opportunity to obtain, review and assess additional information necessary to be able to make a final determination about these issues prior to the hearing date.

Before reaching a final conclusion, the Receiver would like to invite the Van Essen Companies to submit any further evidence available to them in support of their position. Ideally, any such documents would be provided in advance of the meeting described above. Alternatively, further evidence can be provided in advance of, or together with, the evidence that is to be served on March 1, 2024.

37. Also, the Receiver's First Supplemental Report, dated April 3, 2024, expressly states that the Receiver's conclusions were based on its review of my emails.

38. The Receiver expressly acknowledges that the conclusions were based on the review of my emails, done without my counsel's consent:

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*.

39. The report then concludes, at various points, that based on the review, the Receiver has determined that "the Purported Set-Off and the transactions leading up to it effected a preference that is void as against the Receiver" (e.g. para. 21).

40. The Receiver has provided no information displacing the conclusions in the Receiver's Report. I believe the privileged and confidential information the Receiver accessed is highly prejudicial to my and the Van Essen Companies' interests in this litigation.

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Sworn remotely by Wouter Van Essen)
of the City of Oakville in the Province)
of Ontario before me at the City of)
Toronto in the Province of Ontario on)
this 10th day of May, 2024, in)
accordance with O. Reg. 431/20,)
Administering an Oath Remotely.)



Alexis Beale
Commissioner for Taking Affidavits, etc.

Wouter Van Essen

Wouter Van Essen (May 10, 2024 17:00 EDT)

Wouter Van Essen

This is Exhibit "A"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

May 10, 2024

Via Email

Rosemount Law PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Attention: Alexis Beale

Dear Ms. Beale:

Re: MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

We are writing in response to your letter dated May 2, 2024.¹

Background

As a preliminary matter, we firmly deny the allegations in Mr. Van Essen's affidavit sworn April 16, 2024 (the "**Wouter Affidavit**"). Neither the Receiver, the forensic professionals in FTI's Forensic and Litigation Consulting group ("**FTI Forensic**") that assisted with the document review, nor Goodmans LLP ("**Goodmans**") knowingly reviewed any correspondence that is (or might be) privileged. No such documents informed the Receiver's current or future litigation strategy.

You have previously requested "proof" that your clients have not suffered prejudice. We consistently asked for details of the allegedly privileged documents (the "**APD**") so that we could respond. To date, only very limited details have been provided in the Wouter Affidavit and your letter dated May 2, 2024.

Now that we have some (albeit limited) information about the APDs, we have been able to investigate the allegations in some detail and provide a response. That response is set out below and certain supporting documents are enclosed with this letter.

We are prepared to provide sworn evidence to support our responses herein, and we are working diligently to prepare that evidence. Your clients have made serious allegations (for which we

¹ Unless otherwise stated, capitalized terms used herein and not otherwise defined herein have the meanings given to them in the First Report of the Receiver dated February 1, 2024.

believe there is no basis) and the Receiver has spent, and continues to spend, significant funds responding to those allegations.

In order to respond to your clients' allegations, it is necessary to disclose certain information about work performed by FTI and Goodmans. However, the Receiver does not waive any privilege and, to the extent that a waiver is necessary, the waiver does not go beyond what is specifically set out in this letter.

Summary of Access to Database and Document Review Efforts

Set-Up of Database

In February 2024, FTI Forensic collected certain electronic documents held on servers maintained by or on behalf of Techlantic (the "**Techlantic Servers**") including e-mails sent to or received by certain custodians (the "**Techlantic E-mails**"). The documents collected by the Receiver (which were a subset of the documents stored on the Techlantic Servers) were loaded into a document database maintained by FTI Forensic using Relativity document review software (the "**Database**"). Certain representatives of the Receiver, FTI Forensic and Goodmans were granted access to the database beginning on or around February 16, 2024.

The Receiver did not Review Documents

As you know, FTI Consulting Canada Inc. ("**FTI**") was appointed Receiver. The two individuals primarily responsible for the Receiver's mandate are Paul Bishop and Kamran Hamidi. Mr. Bishop did not access the Database. Mr. Hamidi accessed the Database once, to test his access credentials. Mr. Hamidi clicked on one document as part of this test. That document is not an APD.

Goodmans' Document Review

Goodmans reviewed certain documents as part of assisting the Receiver's investigation. The review was conducted by me, Brittini Tee (an associate at Goodmans) and Josh Sloan (an articling student at Goodmans).

I note, for completeness, that Caroline Descours (a partner in our insolvency department) had access to the Database but only reviewed one document to test her login credentials. The document was not an APD.

Ms. Tee and I reviewed certain documents relevant (or potentially relevant) to the Receiver's investigation into the dealings between Techlantic and 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (together, the "**Van Essen Companies**"), including the Purported Set-Off and related transactions. The most relevant documents uncovered during that review are appended to the Receiver's First Supplemental Report to its First Report (the "**Supplemental Report**"). We do not believe that any documents appended to the Supplemental Report are privileged.

Ms. Tee and I did not conduct a systematic document review. We did not review every document in the Database for relevance or to identify Techlantic's potentially privileged documents. We conducted searches using document metadata (including key words and phrases) seeking to answer specific questions or find specific documents. The searches were conducted under fairly significant time pressure, because we were initially trying to preserve the April 3, 2024 motion date and that would have required serving the Supplemental Report in late February or early March, 2024.

Mr. Sloan reviewed specific search results relating to a potential claim against the vendors of Wholesale Express.

FTI Forensic Review

On or around February 1, 2024, Goodmans and the Receiver began to discuss engaging members of FTI Forensic to assist with its investigation.

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. FTI Forensic prepared a budget and scope of work for the engagement and presented that budget and scope of work to the Receiver.

Employees of the Receiver (including Mr. Bishop and Mr. Hamidi) cannot access documents stored on FTI Forensic's information storage and document management systems.

A team from FTI Forensic, led by Anita Patel, reviewed various documents in order to investigate issues relating to Techlantic, Trade X and other parties.

The Receiver gave FTI Forensic access to a shared file on the Receiver's server so that FTI Forensic could access the documents. We understand that FTI Forensic saved certain documents on the shared drive, but the Receiver did not access those documents.

We note, as well, that FTI Forensic did not participate in the Receiver's discussions with Goodmans about the conduct of the litigation. Its discussions with the Receiver and Goodmans focused on communicating FTI Forensic's factual findings. The Receiver and Goodmans made decisions about what steps to take based on those findings in separate discussions.

FTI Forensic communicated with Goodmans and the Receiver by making periodic presentations about its findings. These presentations did not contain any documents that are, or are alleged to be, privileged.

The Allegedly Privileged Documents

Between your letter and the Wouter Affidavit, the Van Essen Companies have identified four categories of documents that are alleged to be privileged:

1. Communications between Wouter Van Essen (“**Wouter**”) and you “in relation to this litigation”;
2. Communications between Wouter and Andrea Brinston (who you identified for the first time as the Van Essen Companies’ corporate counsel in your letter dated May 2, 2024) from October 2023 onwards;
3. Documents stored by Wouter in a folder marked “legal”; and
4. Communications between Wouter, Eric and unidentified “others” that may be subject to litigation privilege.

We have been able to determine whether any documents in the first three categories were “viewed” within the Database. To be clear, a document is “viewed” if it appears on a reviewer’s screen. It is not possible to determine how long the document was open. In other words, if a reviewer clicks through a series of documents in order to find a different document then all of the documents will be “viewed” according to the Database. The fact that a document is “viewed” does not mean that a reviewer actually viewed the contents or read the document.

We note, as well, that each reviewer viewed a large number of documents. A chart listing the number of documents reviewed by each reviewer is attached at Tab “**A**”. By way of example, I viewed 3,257 documents, Ms. Tee viewed 2,330 documents and Ms. Patel viewed 2,387.

The fourth category is, with respect, too vague to permit an informed response. There are a large number of communications between Eric and Wouter and with “others” during this period. Several such communications are attached to the Supplemental Report and, as noted above, we do not believe that any such communications are privileged.

There is no practical way for us to identify documents that may be subject to litigation privilege based on your letter.

We note, as well, that we previously offered to have a separate team of FTI Forensic’s technical personnel operating behind an ethical wall, conduct searches and provide potentially privileged documents to you for review. Your clients initially accepted that offer, but then changed their mind and refused it on April 23, 2024.

As you know, the Receiver has retained Lax O’Sullivan Lisus Gottlieb LLP (“**Lax**”) to assist in arguing this motion because I will likely swear an affidavit. The Receiver may at some point forward these documents to Lax for review for the purposes of determining whether the Receiver

will argue that the documents are not privileged and to respond to any prejudice arguments that your clients advance.

Category #1: Correspondence between Wouter and Ms. Beale

With respect to the first category, we have asked a member of FTI Forensic's technical team (located on the other side of an ethical wall) to conduct a search for all emails sent to or from Wouter to your two e-mail addresses (alexisbeale@northcliffebarristers.ca and abeale@rosemountlaw.com). This member of FTI Forensic's technical team conducted this search, and then accessed the audit logs to determine if any of the allegedly privileged documents had been viewed. The results are attached at Tab "B".

You will note the following:

- A total of 25 documents were "viewed" in category #1;
- 11 of the "viewed" emails were exchanged after the Receivership Order was granted;
- 14 of the "viewed" emails pre-date the Receivership. It is not clear whether these documents were (or could have been) sent "in relation to" the litigation between the Receiver and the Van Essen Companies, but they have been included for completeness;
- 8 of the "viewed emails" were viewed by Goodmans, and the balance were "viewed" by FTI Forensic. None were viewed by the Receiver.

Category #2: Correspondence between Wouter and Ms. Brinson

FTI Forensic's technical team followed the same process with respect to the second category. The results are attached at Tab "C".

You will note the following:

- A total of 27 documents were "viewed" in category #2 and all of them pre-date the Receivership. It is not clear whether these documents were (or could have been) sent "in relation to" the litigation between the Receiver and the Van Essen Companies, but they have been included for completeness;
- 13 of the documents were "viewed" by Goodmans, and the balance were "viewed" by FTI Forensic. None were viewed by the Receiver.

Category #3: Wouter's "legal" folder

As a preliminary matter, we do not believe that the evidence establishes that the contents of this folder are privileged or that if there is any privilege, that such belongs to the Van Essen Companies.

Wouter is not a lawyer and it is unclear how he determined that the documents are privileged, or what privilege is alleged to apply. Moreover, Wouter routinely instructed counsel to Techlantic. Even if some or all of the documents in the “legal” folder are privileged, it is not clear that the privilege belongs to Wouter or to the Van Essen Companies, as opposed to Techlantic.

We note, in addition, that the Database does not use a folder structure. The folder is preserved in metadata along with a large variety of other metadata. We do not typically check what folder a document is stored in unless there is some reason to believe that it is relevant. The reviewers that viewed documents in the “legal” folder did not notice the name of the folder in Wouter’s inbox.

In any event, we attach a chart setting out reviewers’ “views” of the “legal” folder at Tab “D”.

You will note the following:

- no e-mails in the folder were viewed;
- 26 documents were “viewed”, but the metadata discloses no information about these documents apart from their date. Accordingly, the Receiver cannot know whether they are (or may be) privileged; and
- all of the documents significantly predate the receivership and this litigation.

Potential Lack of and/or Waiver of Privilege

As a preliminary matter, many of the APDs do not appear to be privileged. To be clear, we do not seek to access or review any of these documents at this stage. But questions about whether the documents are privileged are relevant to assessing the prejudice your client claims to have suffered.

Eric Van Essen (“Eric”) received substantially all of the APDs. Eric was a director and officer of Techlantic until January 2, 2024 and he remained an employee of Techlantic until April 19, 2024. We do not know what (if any) position Eric holds at the Van Essen Companies, and neither Wouter nor the Van Essen Companies have ever explained Eric’s role with the Van Essen Companies. Sending the APDs to Eric may have waived any privilege that might otherwise have applied to the APDs.

Even if Eric had a role with the Van Essen Companies, he owed a fiduciary duty to Techlantic and that duty required that he disclose all relevant information to Techlantic. It is not clear, on these facts, how Techlantic (and, by extension, the Receiver) would be prohibited from seeing any document relevant to Techlantic’s business that was sent to Eric.

In addition to any waiver of privilege due to the act of sending an otherwise privileged communication to Eric Van Essen, we are considering whether your clients’ (as-yet unexplained) delay in raising their concerns about the APD constitutes a waiver of privilege and/or a delay disentitling them to raise any objection. As you know, a party claiming privilege over a document

has a duty to make an immediate attempt to retrieve that document upon learning it was disclosed. A failure to act can result in waiver of privilege, and/or loss of any right to complain, particularly where the late-breaking privilege claim would cause unfairness to the receiving party and the process.

In this case, the Van Essen Companies knew that the Receiver had “unfettered access” to the Techlantic E-mails and the Techlantic Server as of the date of the Receivership Order on December 22, 2023. The Van Essen Companies knew as of February 1, 2024 that the Receiver was seeking an order for the return of specified sums received by the Van Essen Companies to Techlantic. I specifically told you, orally (on February 23, 2024) and in writing (on February 27, 2024), that we were reviewing the Techlantic E-mails and some of what we had found.

Despite these repeated notifications that the Receiver had the APDs and was pursuing a motion against the Van Essen Companies in respect of which the APDs could be relevant, your clients sat on their alleged rights until April 5, 2024. You and your clients have not explained why you and they did not immediately raise their alleged privilege concerns. The Van Essen Companies’ delay has caused significant unfairness in the litigation process. If the concerns had been identified in a timely way in December 2023 or even February 2024, the APDs could have been segregated and then addressed through an orderly process. Instead, the Van Essen Companies waited to raise their concerns and now seek to eliminate potentially significant liabilities without a hearing on the merits. In other words, the Van Essen Companies claim to have used Techlantic’s server to exchange allegedly privileged information, and now rely on that use to seek to shield themselves from liability.

The Alleged Prejudice

In the Wouter Affidavit, Wouter asserts (without explanation) that “the Receiver has used this unauthorized access to gain an unfair advantage in the ongoing litigation.” This assertion is unfounded.

As noted above, the Receiver did not review the Database and has not viewed any of the APD. Nor have the APDs informed the Receiver’s litigation strategy. Indeed, the Receiver challenged the Purported Set-Off (as defined in the First Report) before it even had access to the Database on the basis that the Purported Set-Off was prohibited by the Interim Order. The Receiver’s subsequent investigation into the relationship between Techlantic and the Van Essen Companies are obvious steps that any competent receiver would take based on the facts known to the Receiver at the time. The Receiver’s conclusion that the Van Essen Companies did not deal at arm’s length with Techlantic was based in part on Goodmans’ review of the Database. That conclusion was not, however, informed by any of the APDs.

It is not, of course, possible for us to know whether any of the APDs could hypothetically be relevant to the litigation between the Van Essen Companies and the Receiver, because we do not know the contents of such documents. We understand, however, based on your correspondence

to us that the Van Essen Companies' concerns are largely focussed on the Category #1 documents (correspondence between you and Wouter relating to the litigation). The Van Essen Companies' evidence focuses almost exclusively on the e-mails that you sent to and received from Wouter's inbox. As described below, those e-mails were not available to the Receiver when it formulated its position.

Correspondence between you and Wouter. You will note that, according to FTI Forensic's technical team, I "viewed" four documents in category #1, Ms. Tee viewed nine documents in category #1, and Mr. Sloan viewed one document in category #1. We can state definitively (and I am ready to give sworn evidence both personally and on information and belief from Ms. Tee and Mr. Sloan) that we did not read these "viewed" documents and we have no knowledge of what was communicated in them.

With respect to the "viewed" category #1 documents, given the sender, recipient and timing of those documents, if I had read them then, I would have identified an issue and addressed it. I cannot be sure how I came to "view" these documents, because I have no recollection of when or how I viewed them. That said, the relevant documents are dated in February 2024 and we were not interested in that time frame in preparing the Supplemental Report. I likely clicked past the documents while trying to find earlier documents relevant to the review. I have spoken to Ms. Tee and Mr. Sloan and they have the same recollection with respect to their access to documents in category #1.

With respect to FTI Forensic, we can confirm that none of the category #1 documents that were "viewed" by FTI Forensic were part of FTI Forensic's communications to the Receiver. We note, as well, that FTI Forensic was not involved in the litigation process and so they may not have recognized that you are counsel to Wouter.

Correspondence between Ms. Brinston and Wouter. With respect to the "viewed" category #2 documents, neither Ms. Tee, Mr. Sloan nor I recall seeing any e-mails between Wouter and Ms. Brinston.

We do not know the contents of the discussions between Ms. Brinston and Wouter. Since all of the correspondence appears to pre-date the Receivership, it is unlikely that any of that correspondence could cause prejudice.

In addition, and to avoid any doubt, neither I nor Ms. Tee nor Mr. Sloan discussed the contents of the category #1 or #2 e-mails with the Receiver (or anyone else) and the e-mails had no impact at all on the litigation strategy in this matter.

Documents in the "Legal" folder. Neither I nor Ms. Tee reviewed any of the category #3 documents. We have confirmed with Mr. Sloan (the only person at Goodmans that viewed documents in Category #3) that he does not recall seeing any apparently privileged documents. Mr. Sloan cannot identify the documents that he apparently viewed based on the (very limited)

available metadata. In any event, the documents are dated in 2021 and 2022 and Mr. Sloan did not discuss the contents of any documents from these time periods with me or Ms. Tee.

We note, as well, that there is no suggestion that documents in the “Legal” folder are relevant to the current litigation.

Wouter’s inbox documents were not reviewed until after the Receiver formulated its position.

In addition, based on the Wouter Affidavit, the Van Essen Companies appear to be primarily concerned about documents collected from Wouter’s inbox (the “**Wouter E-mails**”). The Wouter E-mails were not available to Goodmans or FTI Forensic when the Receiver reached the conclusions set out in the Supplemental Report.

I previously advised that the Wouter E-mails were collected on February 22 and 23, 2024. While this is true, FTI Forensic’s technical team has since advised that the Wouter E-mails were not processed and available for review in the Database until February 28, 2024. As you know, I wrote to you on February 27, 2024, setting out the conclusions that the Receiver had reached based on the document review. You will note from the Supplemental Report that there has been no meaningful change to those conclusions since February 27, 2024. In other words, the Receiver formulated its position before it even had access to the Wouter E-mails.

Conclusion

I trust that the foregoing clarifies the facts. In your letter, you advise that the Van Essen Companies may be open to “tailoring” or “withdrawing” their stay motion. To the extent the Van Essen Companies intend to amend their motion, we ask that they act as soon as possible because the Receiver is working hard to respond to the existing motion. The Receiver reserves all of its rights should the Van Essen Companies seek to amend their motion.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es
encl.

cc: Matthew Gottlieb and Andrew Winton, *Lax O’Sullivan Lisus Gottlieb LLP*

Daniel Rosenbluth, *Paliare Roland Rothstein LLP*

A

FullName	Total Usage Time (HH:MM:SS)	Distinct Views
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Wilder, Elaina	7:46:47	164
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Hamidi, Kamran	0:01:00	1
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Love, Morgan	51:56:33	1512
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Sloan, Josh	18:43:48	3004
Malhi, Jassie	12:29:34	854

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C

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This is Exhibit "B"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

From: [Alexis Beale](#)
To: [Harmes, Andrew](#)
Cc: [Descours, Caroline](#); Kamran.Hamidi@fticonsulting.com
Subject: Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)
Date: January 3, 2024 2:44:52 PM
Attachments: [Documents on Behalf of 1309767 Ontario Ltd. and 2601658 Ontario Ltd., Jan 3, 2024.pdf](#)

Andrew,

Thank you for the discussion yesterday about the status of the Trade X Receivership and my clients', 1309767 Ontario Ltd. and 2601658 Ontario Ltd., proprietary right in 36 vehicles and/or the proceeds of the sales therefrom.

Further to your request, I attach here a PDF bundle of documents containing the following:

- Tab A (1-36): The relevant invoices pertaining to the vehicles in question. These documents serve as one of the bases upon which my clients' proprietary right is derived, on the stipulated terms that title to the goods shall not pass to the purchaser until full payment is received.
- Tab B: The Irrevocable Letter of Direction dated January 30, 2023. This document was an attempt by the parties to satisfy the obligations to my client. It signifies the good faith attempts for resolution but does not override the existing proprietary rights as established by the invoices.
- Tab C: An email from Wouter van Essen to Techlantic staff dated January 2, 2024. This email details the setoff being applied to satisfy a portion of the amount outstanding to the numbered companies. It's indicative of ongoing efforts to resolve the financial obligations and the interactions between parties involved.

In relation to Tab C and the asserted set off, I would like to provide the following context:

- Collection and Further Procurement: Historically, my clients have procured vehicles for Techlantic. These vehicles are then sold by Techlantic. In that vein, my clients have been collecting certain funds on behalf of Techlantic. These funds were typically reinvested in the procurement of vehicles for Techlantic.
 - In the case of the 14 vehicles currently in question, the end purchaser followed this custom as part of a broader arrangement, which also included

purchases from a Canadian entity related to the purchaser.

- **Change Due to Receivership:** In or around mid-October 2023, in part considering the events leading up to the Receivership, the regular course of business, including the further purchases with the collected funds, has ceased.
- **Basis for Set-Off:** My clients currently holds funds on account of vehicles purchased on Techlantic's behalf. These funds are now asserted to be set off against the pre-existing debt owed to my clients by Techlantic (details are in Tab C and the attachment thereto).

Considering that there is an outstanding amount of \$189,093.28, we request that the Receiver provide us with information to enable us to trace the vehicles and the proceeds from their sale, with reference to the VINs provided in the attached documents. My clients assert a constructive trust claim over these proceeds.

We look forward to your response and further information regarding the claims process.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

From: Harmes, Andrew <aharmes@goodmans.ca>
Sent: December 28, 2023 7:54 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Great, thanks – I will send an invite.

Andrew Harmes

Goodmans LLP

416.849.6923
aharmes@goodmans.ca
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, December 28, 2023 7:41 PM
To: Harmes, Andrew <aharmes@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com
Subject: Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Andrew,

Thank you. Yes, 11:30 is good for me.

Best,

Alexis

On Dec 28, 2023, at 4:35 PM, Harmes, Andrew <aharmes@goodmans.ca> wrote:

Hi Alexis – I am tied up tomorrow but can speak early next week. Would Tuesday after 11am work? Let me know.

Thank you,

Andrew Harmes

Goodmans LLP

416.849.6923
aharmes@goodmans.ca
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, December 28, 2023 2:47 PM
To: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com
Cc: Harmes, Andrew <aharmes@goodmans.ca>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Caroline,

I am in the process of preparing a letter regarding my clients' interests in the

receivership, but I think it may be helpful to have a call to discuss. Do you have any availability tomorrow or early next week?

Kinds regards,

Alexis

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

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From: Descours, Caroline <cdescours@goodmans.ca>

Sent: Friday, December 22, 2023 3:08 PM

To: Alexis Beale <abeale@rosemountlaw.com>; Kamran.Hamidi@fticonsulting.com

Cc: Harmes, Andrew <aharmes@goodmans.ca>

Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Alexis,

That is correct. FTI was appointed receiver today.

We will add you to the service list going forward and caselines.

Thank you.

Caroline Descours

(she/her)

Goodmans LLP

[416.597.6275](tel:416.597.6275)

From: Alexis Beale <abeale@rosemountlaw.com>

Sent: Friday, December 22, 2023 1:59 PM

To: Kamran.Hamidi@fticonsulting.com; Descours, Caroline <cdescours@goodmans.ca>

Subject: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Good afternoon,

My name is Alexis Beale and I am counsel to (1309767 Ontario Ltd. and 2601658 Ontario Ltd., collectively the "Van Essen Numbered Companies"). I

have just been retained and I am in the process of getting up to speed, but I understand that FTI was appointed as Receiver earlier today. My clients have an interest in this Receivership I request that you add me to the service list, on my clients' behalf.

I would also like to be invited to the Caselines site for this matter, so that my clients have access to all materials filed/ orders granted to date.

Kind regards,

Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

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**** Attention ****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca. You may unsubscribe to certain communications by clicking here.

This is Exhibit "C"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

From: Descours, Caroline <cdescours@goodmans.ca>
Sent: Friday, January 12, 2024 8:19 AM
To: Alexis Beale <abeale@rosemountlaw.com>; Harmes, Andrew <aharmes@goodmans.ca>
Cc: Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Trade X Group of Companies Inc. et al - Court File No. CV-23-00710413-00CL

Hi Alexis,

Confirming receipt – we will review with the Receiver.

Thank you.

Caroline Descours
(she/her)
Goodmans LLP
[416.597.6275](tel:416.597.6275)

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, January 11, 2024 5:03 PM
To: Descours, Caroline <cdescours@goodmans.ca>; Harmes, Andrew <aharmes@goodmans.ca>
Cc: Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Trade X Group of Companies Inc. et al - Court File No. CV-23-00710413-00CL

Hi Caroline,

My clients attach the bank drafts you requested in relation to the CA\$1,723,495, henceforth referred to as the “Set Off Funds”.

We reassert our stance that the Set Off Funds do not constitute property of the Receiver. This remains a contested issue, and given the nascent stage of your review, as indicated in your correspondence, a

near-term resolution seems unlikely.

It is crucial to reiterate that my clients assert a proprietary right and had affected a set-off in relation to this right before the Receivership Order. Consequently, we maintain that the Receiver has no claim to my clients' property. Furthermore, in compliance with the Receivership Order, my clients have ceased any further set-off actions against received amounts.

Separately, but relatedly, as you are aware, the obligations owed by Techlantic to my clients were confirmed in the Irrevocable Letter of Direction, dated Jan 30, 2023. My clients' ability to recover any of the outstanding amounts pursuant to the ILD is contingent upon the transaction that will be presented before the court tomorrow for approval. My clients have not been privy to the discussions surrounding the proposed reverse vesting structure, but understand that the Receiver has been involved. Suffice it to say, the likelihood of my clients recovering any amounts under this structure is currently uncertain. Nonetheless, we commit to reimbursing Techlantic for any amounts recovered through the ILD, should they exceed the outstanding amounts owed to my clients.

Regarding your request for additional relevant documentation that may be in the possession of Mr. Van Essen, 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd, given the breadth of the request, my clients propose to reconsider such a comprehensive provision of documents at a later stage if deemed necessary. My clients are, of course, willing to continue their efforts to provide the Receiver with specific documentation as requested on an ongoing basis.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation

(647) 692-0222 abeale@rosemountlaw.com
www.rosemountlaw.com

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From: Descours, Caroline <cdescours@goodmans.ca>
Sent: Wednesday, January 10, 2024 12:23 PM
To: Alexis Beale <abeale@rosemountlaw.com>; Harmes, Andrew <aharmes@goodmans.ca>
Cc: Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@_fticonsulting.com>
Subject: RE: Trade X Group of Companies Inc. et al - Court File No. CV-23-00710413-00CL

Hi Alexis,

Based on the information available to and reviewed by the Receiver to date, it appears on all accounts that the CA\$1,723,495 of payments due to Techlantic in connection with the sale of various vehicles by Techlantic to Mr. Steven Zhou (referred to as the "Techlantic Funds" in our prior correspondence) are properly the Property of Techlantic.

Mr. Van Essen's email of January 2, 2024 notes that his company deposited six cheques from Mr. Zhou that were for payment due to Techlantic Ltd. Please provide as soon as possible copies of these 6 cheques that were deposited.

Please also provide any additional relevant documentation that may be in the possession of Mr. Van Essen, 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd. that relate to the above Techlantic Funds, as well as any other relevant documentation setting out the arrangements between Techlantic and the Van Essen companies that are described in your correspondence.

The Receiver will review such additional information and we will advise if any additional questions or information requests.

We re-iterate that the Receiver remains of the view that the Techlantic Funds are the Property of Techlantic, and as set forth in our correspondence of January 4, they should be immediately delivered to the Receiver pursuant to the Receivership Order.

The Receiver continues to review the correspondence and information provided with regards to this matter and, for clarity, this letter does not serve as a complete response to all matters asserted, alleged or raised by or on behalf of the Van Essen Companies at this time as the Receiver continues to review such matters and seek additional information.

The Receiver reserves all of the rights and remedies of the Debtors and the Receiver in respect of any and all Property of the Debtors.

Thank you.

Caroline Descours
(she/her)
Goodmans LLP
[416.597.6275](tel:416.597.6275)

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Tuesday, January 9, 2024 12:58 PM
To: Harmes, Andrew <aharmes@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Trade X Group of Companies Inc. et al - Court File No. CV-23-00710413-00CL

Andrew,

Please find attached my correspondence of today's date.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

This is Exhibit "D"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

February 15, 2024

Via Email

Rosemount Law PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Attention: Alexis Beale

Dear Ms. Beale:

Re: MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

As you know, the Receiver¹ is conducting a review of claims between the Techlantic and the Van Essen Companies, including the claims asserted by the Van Essen Companies in their Notice of Cross-Motion (the “Cross-Motion”) dated February 7, 2024. We write to further that review, and to respond to your letter dated February 15, 2024.

For the reasons described below, we agree with you that an exchange of information between the Receiver and the Van Essen Companies would be beneficial. That exchange is separate from, and can be conducted in parallel with, the preparation for the motion to be heard on April 3, 2024. We suggest that a meeting be held so that the parties can exchange information and further understand the facts relevant to this matter.

Response to Letter dated February 15, 2024

As I have previously told you, the Receiver is prepared to disclose documents to your clients that are relevant to their proprietary claim. I asked you to identify specific documents that your client wants access to. The request in your letter is not specific enough to permit production of documents. It is, in effect, asking that the Receiver conduct a forensic accounting exercise for the benefit of your client.

As I also explained to you, the Receiver is concerned about the cost of conducting a forensic accounting exercise for the benefit of your clients without addressing how it will be funded. To be clear, the Receiver is not refusing the request. It remains prepared to discuss these issues with your client.

¹ Capitalized terms in this letter have the meaning ascribed to them in the Notice of Motion.

We also do not understand the connection between the Cross-Motion and the proprietary relief. The Cross-Motion explicitly does not seek any proprietary relief. Moreover, on the facts as we understand them, it does not seem that there is a potential proprietary claim to the Techlantic Funds. The purchase of the Techlantic Vehicles in 2023 was funded by the Global Facility. It seems to follow that the proceeds of the 2022 Vehicles did not flow into the 2023 Vehicles. We would like to understand how there is a potential proprietary claim to the Techlantic Funds in these circumstances.

Liquidity Support Agreement and Vehicle Transactions

Based on the Receiver's review of Techlantic's accounting records, Techlantic paid the Van Essen Companies approximately \$3.9 million in respect of various vehicle transactions in the three month period prior to the Receivership. These amounts are in addition to the Techlantic Funds.

In addition, we understand that Techlantic paid the Van Essen Companies approximately \$1.4 million in consulting fees in 2023. The invoices for the consulting fees, which are attached for reference, do not specify what services were provided or how the fees were calculated.

We also understand, from our review of the Cross-Motion, that Techlantic and the Van Essen Companies entered into a Liquidity Support Plan on or around November 15, 2021. The Cross-Motion identifies certain amounts that were due from Techlantic to the Van Essen Companies under the Liquidity Support Plan.

The Van Essen Companies claim proprietary and equitable relief with respect to certain vehicles sold in 2022. The Cross-Motion seeks production of documents but it does not specify what documents the Van Essen Companies want produced or what proprietary relief is being claimed in respect of what property.

In order to further the Receiver's understanding of these issues, and its ongoing consideration of the Van Essen Companies' claims, we would like to suggest a meeting (in person or by zoom) between the Receiver, the Van Essen Companies and counsel. Please advise whether the Van Essen Companies are prepared to participate in this meeting and when Mr. Van Essen is available.

The Motion and Cross-Motion

The Receiver's Motion currently seeks an interim order for preservation of the Techlantic Funds. The Cross-Motion seeks a final determination that the Van Essen Companies are entitled to the Techlantic Funds. Given the timeline established at the scheduling hearing held on February 9, 2024, the Receiver has determined that an interim motion by the Receiver may not be necessary in such circumstances (unless the Receiver becomes aware in the meantime that the Van Essen Companies are dissipating the funds and determines urgent relief is required). Rather, in the Receiver's view, the proceeding will be more efficient if the Motion also seeks a final determination on the issue of who is entitled to the Techlantic Funds.

To be clear, the Receiver has not yet reached a final determination on the issues raised on the Cross-Motion and Motion. However, since there is significant time before the hearing of the motion, the Receiver expects that it will have the opportunity to obtain, review and assess additional information necessary to be able to make a final determination about these issues prior to the hearing date.

Before reaching a final conclusion, the Receiver would like to invite the Van Essen Companies to submit any further evidence available to them in support of their position. Ideally, any such documents would be provided in advance of the meeting described above. Alternatively, further evidence can be provided in advance of, or together with, the evidence that is to be served on March 1, 2024.

After receiving the Van Essen Companies' motion record, and any further evidence that they choose to submit, the Receiver intends on working to make its final determination and amending its Notice of Motion accordingly.

Finally, the Receivership Order requires that all Persons produce Records in their possession relating to Techlantic's business. We understand that the Van Essen Companies and Mr. Van Essen have Records in their possession, and we will send a request for Records under separate cover.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

This is Exhibit "E"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)



Rosemount Law PC

Alexis Beale

t. (647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

150 King Street W.
Suite 200
Toronto, ON
M5H 1J9

February 19, 2024

BY E-MAIL

Mark Dunn
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
mdunn@goodmans.ca

Dear Mr. Dunn,

MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

I am in receipt of your letter dated February 15, 2024. In your letter, you: (a) responded to my correspondence of that same day requesting documents for the motion scheduled on April 3, 2024; (b) advised that the Receiver will be amending its Notice of Motion to seek a final determination of the entitlement to the disputed funds; and (c) requested further information from my clients. The Van Essen Companies respond to each of the issues below.

The Outstanding Document Request

You will recall that my letter requested a discrete list of documents related to the sale of 36 Misappropriated Vehicles (as defined therein). The documents requested are sales invoices, vehicle registration documents, proof of receipt of funds, accounting ledgers showing in which account the funds were deposited, and any information regarding the application of the funds, including whether the payments were directed to Post Road Group (or another MBL entity). This request is now incorporated into my clients' Request to Inspect, served upon the Receiver along with this correspondence.

Your latest correspondence states, "the Receiver is prepared to disclose documents [...] that are relevant to [the] proprietary claim" but advises that my letter is not specific enough. I disagree, and your response demonstrates an unwillingness to engage meaningfully in this request. Regardless, to the extent that it assists, my clients have advised that based on their limited knowledge of the records kept by Trade X, these documents should be identifiable by the work order/invoice numbers associated with the VINs referenced in the attached schedule.

Your letter asks about the relevance of the proprietary claim to the motions to be heard. The relevance of proprietary claims over funds is clear on the face of the Receiver's motion materials, which plead facts about the Misappropriated Vehicle transactions (paras. 20 and 24). Taking the Receiver's motion materials at face value, it is clear the Receiver contemplated reviewing the documents and information my clients requested to assess my clients' claims. That information must be shared, especially as the Receiver appears to acknowledge that it cannot preserve funds without first establishing that it is entitled to the same.



If there is any question that the entitlement to the funds between the parties turns on the nature of their respective proprietary rights, my clients will amend their Notice of Cross-Motion to make this express.

My clients reiterate their previous request that these documents be provided by **February 23, 2024**. The Receiver has had nearly two months to respond to this request, and any further delay will be prejudicial.

The Receiver's Proposed Amended Notice of Motion

Your letter forecasts an Amended Notice of Motion. Please note that any step by the Receiver to Amend its Notice of Motion, not least after the delivery of my clients' Responding Record, will be prejudicial, and my clients will not consent to the same. Leave of the court will be required under the *Rules*, and the proposed motion date will need to be adjourned to allow my clients time to respond.¹ I also expect to have instructions to seek my clients' costs associated with the prejudice incurred.

The Receiver's Information Request

My clients acted with complete transparency and made continuous good-faith attempts to resolve all these issues before the Receiver pursued its motion. To that end, my clients understand that the Receiver has been provided with the calculations underlying the consulting fees charged in 2023 and my clients' **complete bookkeeping records**. The Receiver has already had all the information it could require for some time.

Regrettably, the Receiver opted to bring its motion. Still, we are now on the path of litigation, and the *Rules of Civil Procedure* will dictate the procedures for exchanging further information.

Regards,

Alexis Beale

¹ In the circumstances, the Receiver's Motion Record is an Originating Process under Rule 14.09 and Rules 26.02(a) and 26.05 apply to protect from the prejudice associated with late amendments to pleadings.

This is Exhibit "F"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

February 27, 2024

Via Email

Rosemount Law PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Attention: Alexis Beale

Dear Ms. Beale:

Re: MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

I am writing in response to your letter dated February 19, 2024. Capitalized terms not otherwise defined have the meaning ascribed to them in our client's Notice of Motion.

Amended Notice of Motion

As we previously indicated to you, the Receiver has continued its investigation into the matters at issue in the Motion and Cross-Motion. As a result of those investigations, the Receiver has amended its Notice of Motion. The Amended Notice of Motion is attached.

We do not agree with the procedural objections that you raised in your letter. If your clients intend to object to the amendments then we will need to have these objections resolved in Court.

We do not intend to debate the substance of the allegations by correspondence. However, in the interest of transparency, we advise that the Receiver has reviewed the allegation at paragraphs 37-40 of the Cross-Motion that Techlantic and 130 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:

- Wouter remained intimately involved in Techlantic's business at all material times and, among other things, instructed Techlantic's accounting staff with respect to whether available funds should be paid to 130 or to PRG;
- 130 and Techlantic were operated as an integrated business;
- Eric was a shareholder and the president of 130's parent company, Techlantic Consulting Ltd.;
- Eric directed Techlantic staff to purchase vehicles for 130;

- In the fall of 2023, Eric told Techlantic staff to conduct transactions through 130 instead of Techlantic; and,
- There is no evidence of any negotiations between Techlantic and 130 with respect to any of the transactions at issue.

Based on (among other things) these facts, the Receiver has concluded that the Purported Set-Off is a preference that is prohibited by the *BIA* and has amended its Notice of Motion accordingly.

Document request

As a preliminary matter, we do not agree that the Request to Inspect served by your clients is valid. Receiver's reports are not subject to the same evidentiary rules as pleadings or affidavits. The appropriate way to seek further information relating to a receiver's report is to pose questions in writing. We will treat the Request to Inspect as questions posed in writing, and respond under separate cover.

In addition, we do not understand how the document request is (or could be) relevant to the Motion or the Cross-Motion. We specifically articulated these concerns, and did not receive a meaningful response.

Despite this, and without derogating from the foregoing, the Receiver has conducted a preliminary investigation to assess whether the 36 2022 Vehicles, or their proceeds, could be readily identified. I have attached a summary provided by Trade X staff with respect to which entities sold the 2022 Vehicles. Trade X staff advised that these vehicles were sold by Trade X entities, but that funds were not paid to Techlantic due to "funding issues".

With respect to the broader document request, only three of the VINs provided appear in Trade X's general ledger. This makes it very difficult to identify documents relating to these transactions in Trade X's books and records. The Receiver is continuing to review this issue, and will provide further information if and when it is available.

We remain prepared to discuss whether and how the tracing exercise requested by your clients can proceed. The Receiver does not, however, believe that the exercise is relevant to the Motion or the Cross-Motion.

Request for information

It is unfortunate that your clients have declined our invitation to provide further information relevant to the Receiver's analysis, and the Receiver will proceed based on the information available to it.

We note, for clarity, that the ongoing dispute does not change your clients' obligation to provide Records (within the meaning of the Receivership Order) and the Receiver reserves all of its rights in that regard.

Yours truly,

Goodmans LLP



Mark Dunn
MD/es

1411-1954-9194

This is Exhibit "G"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)

From: [Dunn, Mark](#)
To: [Alexis Beale](#); [Tee, Brittni](#)
Cc: [Renner, Natalie](#); [Descours, Caroline](#)
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)
Date: February 29, 2024 8:23:52 PM

Thank you for your e-mail. I'll respond briefly below:

- There is a well-established procedure with respect to how stakeholders can seek information from a receiver's report. The respect to inspect is not consistent with that procedure and not technically valid under the *Rules*. It is, in any event, not clear why this matters since we responded to the request;
- We have been clear about why Mr. Lovy's affidavit was included in the record. It is the evidentiary basis for the Receivership Order, and included for background. If you have some specific concern, we can consider it;
- With respect to scheduling, you should not assume that you will have the amount of time it has taken the Receiver to prepare its amended record (or even how that time would be calculated). The Receiver's report largely addresses an issue specifically raised in the cross-motion, which is whether Techlantic and the Van Essen Companies dealt with each other at arm's length. This is an issue that was, presumably, already going to be addressed in your clients' materials.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, February 29, 2024 4:35 PM
To: Tee, Brittni <btee@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>
Cc: Renner, Natalie <nrenner@dwpv.com>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Counsel,

I am considering this with my client.

In the meantime, please: 1) advise what you rely on for the position that the Request to Inspect is invalid; and 2) confirm that you will not rely on any of Mr. Lovy's evidence in your argument. Given the inclusion of this untested evidence in the record, my clients reserve their right to examine Mr. Lovy.

Please also advise when we can expect your amended record. As trite as it is, it bears repeating that my clients cannot fairly respond in the present circumstances and that they will require a reasonable amount of time to respond. Reasonable will be measured by the amount of time that it has taken the Receiver to prepare its amended record. At a minimum, my clients will require the same amount of time to respond once the record is received.

Kind Regards,
Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

<https://www.rosemountlaw.com/>

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From: Tee, Brittni <btee@goodmans.ca>

Sent: Thursday, February 29, 2024 11:06 AM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Renner, Natalie <nrenner@dwpv.com>; Descours, Caroline <cdescours@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>

Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Alexis,

Please see the attached correspondence sent on behalf of Mark Dunn.

Brittni Tee

(She/her)

Associate

Goodmans LLP

416.849-6954

btee@goodmans.ca

goodmans.ca

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Tuesday, February 27, 2024 6:18 PM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Alexis,

Thank you for your e-mail. Our responses are below:

1. We expect to respond to your request tomorrow. As you know, we do not agree that the Request to Inspect is valid or appropriate;
2. We are preparing a supplementary report, based on the information located in Techlantic's records. It will primarily attach e-mails sent to or received by your clients. We are aiming to deliver the supplementary report this week, although that depends on our ongoing review and how much additional material we find; _
3. The motion has been amended such that no relief is sought against Wouter Van Essen personally. The Receiver reserves all rights against Mr. Van Essen.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>

Sent: Tuesday, February 27, 2024 12:12 PM

To: Dunn, Mark <mdunn@goodmans.ca>

Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Hi Mark,

Thank you. I will review with my clients, but before I respond, I request that you advise of the following:

- 1) When the Receiver will serve its responses to our request to inspect;
- 2) Whether the Receiver will proffer any further evidence in support of the motion and if so when it will be served?

And confirm, the following:

- 1) That the Receiver will not be pursuing Wouter Van Essen in his personal capacity.

Kind Regards,
Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

<https://www.rosemountlaw.com/>

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Tuesday, February 27, 2024 11:56 AM

To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittini <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>

Subject: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Alexis,

Please see attached correspondence. With respect to your earlier e-mail about an extension, I would suggest that we have a discussion about next steps once you have reviewed our correspondence.

Regards,
Mark

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

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This is Exhibit "H"
to the Affidavit of Wouter Van Essen
sworn remotely in accordance with O. Reg. 431/20,
Administering an Oath Remotely,
this 10th day of May, 2024



Commissioner for Taking Affidavits, etc.
Alexis Beale (LSO #65902W)



Rosemount Law PC

Alexis Beale

t. (647) 692-0222

abeale@rosemountlaw.com

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150 King Street W.
Suite 200
Toronto, ON
M5H 1J9

May 2, 2024

BY E-MAIL

Mark Dunn
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
mdunn@goodmans.ca

Dear Mr. Dunn,

MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

We understand from your aide memoire dated April 29, 2024 that the Receiver intends to argue on the stay motion that our clients have “refused to provide any information” about the documents over which we assert privilege. We disagree with the accuracy of this statement, but in any event, we can advise that while it is not possible for our clients to catalogue the documents in issue, based on our review of the metadata provided and to the best of our clients’ recollection, we believe that the most prejudicial of the documents collected are: 1) correspondence between Wouter Van Essen and myself in relation to this litigation; 2) correspondence between Wouter Van Essen and Andrea Brinston from October 2023 onwards; and 3) correspondence among the Van Essens and others that is subject to (or potentially subject to) litigation privilege during the period starting October 2023 onwards, in relation to the ILLD, the outstanding debt and their interests in the CCAA and Receivership proceedings.

In light of the above, we reiterate our demand for the Receiver and its counsel to identify, with full particulars, the extent of their review of any documents falling into the above categories or any other documents that are potentially privileged to our clients. We understand that the Receiver may be able to generate logs of its (or its counsel’s) activity in its documentary database that would show precisely which documents have been reviewed. We believe that it is incumbent on the Receiver to make transparent reference to those logs in its response to this inquiry.

If your response satisfies us that no (or limited) prejudicial conduct has occurred, then we will be happy to discuss with you whether the relief sought on this motion can be tailored or whether the motion can be withdrawn in its entirety. Unless and until that occurs, we will rely on your existing position that the specific documents reviewed by the Receiver and its counsel “need not be disclosed,” a position we view as contrary to *Continental Currency v. Sprott*.

Finally, we intend to have Wouter Van Essen swear a supplemental affidavit, which we intend to deliver by the end of next week.

Please note that Dan Rosenbluth has been retained as co-counsel on this motion, and we would appreciate it if he could be copied on future correspondence.

We are open to discussing other procedural aspects prior the attendance before Justice Cavanagh on May 16.



Regards,

Alexis Beale

c. Dan Rosenbluth
Daniel.Rosenbluth@paliareroland.com

Applicant

Respondents

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

Proceeding commenced at Toronto

**SUPPLEMENTAL AFFIDAVIT
OF WOUTER VAN ESSEN**

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO No. 65902W)
Tel: 647-692-0222
abeale@rosemountlaw.com

Lawyers for the Responding Parties and Moving
Parties on the Cross-Motion







Supplemental Affidavit of W. Van Essen - 10 May 2024

Final Audit Report

2024-05-10

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"Supplemental Affidavit of W. Van Essen - 10 May 2024" History

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-  Email viewed by wouter@techlanticconsulting.com
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-  Signer wouter@techlanticconsulting.com entered name at signing as Wouter Van Essen
2024-05-10 - 9:00:47 PM GMT
-  Document e-signed by Wouter Van Essen (wouter@techlanticconsulting.com)
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